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Friday
June 18, 1999

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Presidential Documents

Title 3—

The President

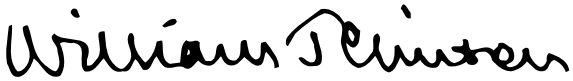
Memorandum of June 10, 1999

Delegation of Responsibility Under the Senate Resolution of Advice and Consent to Ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of State the responsibility of the President, under the July 31, 1998, Senate resolution of advice and consent to ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, to submit annual reports to the Congress relating to enforcement and monitoring of that Convention.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 10, 1999.

[FR Doc. 99–15666
Filed 6–17–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 64, No. 117
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate to the Under Secretary for Natural Resources and Environment, to be exercised only with the concurrence of the General Counsel, the authority vested in the Secretary pursuant to Executive Order No. 12580, as amended by Executive Order No. 13016, to take enforcement action, including the issuance of administrative orders, under sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9606(a), 9622.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Harwood, Executive Director, Hazardous Materials Policy Council, United States Department of Agriculture, 324 25th Street, Ogden, Utah 84401, telephone (801) 625–5196.

SUPPLEMENTARY INFORMATION: Pursuant to section 106(a) of CERCLA, 42 U.S.C. 9606(a), when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substance, the President, after notice to the affected State, may take such action as may be necessary, including issuance of administrative orders, to protect public health and welfare and the environment. Pursuant to section 122 of CERCLA, 42 U.S.C. 9622, the President may enter into an agreement with any person to perform any response action if the President determines that such action will be done properly by such person. Executive Order No. 12580, as amended by Executive Order 13016 (61 FR 45871, Aug. 30, 1996), delegated the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of CERCLA to the Secretary of Agriculture with respect to any release or threatened release affecting natural resources under the Secretary's trusteeship or a vessel or facility subject to the Secretary's custody, jurisdiction, or control. This document amends the formal delegations of authority by the Secretary of Agriculture and General Officers of the Department to reflect the previous internal delegation by the Secretary to the Under Secretary for Natural Resources and Environment, to be exercised only with the concurrence of the General Counsel, of the authority to take enforcement action, including the issuance of administrative orders, under sections 106(a) and 122 of CERCLA.

This rule relates to internal agency management. Therefore pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Flexibility Act of 1996, Public Law 104–121, this rule may be made effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows;

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.20, paragraph (a)(1)(vii) is added to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(1) * * *

(vii) Take such action as may be necessary, including issuance of administrative orders, and enter into agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order No. 12580, as amended by Executive Order No. 13016, to be exercised only with the concurrence of the General Counsel.

* * * * *

Dated: June 11, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–15368 Filed 6–17–99; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–23–AD; Amendment 39–11197; AD 99–13–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 206H and T206H Airplanes

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 206H and T206H airplanes. This AD requires inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable. This AD is the result of an inspection on one of the

affected airplanes that showed that the aileron control bellcrank stop bolt had partially backed out of the threaded boss. The actions specified by this AD are intended to detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the ailerons with possible partial or complete loss of aileron control.

DATES: Effective July 13, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277–7706; telephone: (316) 517–5800; facsimile: (316) 942–9066. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shane Bertish, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone: (316) 946–4156; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received information from an inspection of a Cessna Model 206H airplane that reveals that the aileron control bellcrank stop bolt had partially backed out of the threaded boss on one end of a yoke assembly. This restricted the movement of both ailerons, which could result in partial or complete loss of aileron control.

Both the Cessna Models 206H and T206H airplanes with the following serial numbers have aileron system designs where the above-referenced situation could exist:

Models	Serial numbers
206H ...	20608002 through 20608026.
T206H	T20608002 through T20608015; T20608017 through T20608023; and T20608025 through T20608028

Relevant Service Information

Cessna has issued Special Service Project SSP99–27–02, which specifies procedures for inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—the actions referenced in the service information should be accomplished on the Cessna Models 206H and T206H airplanes; and

—AD action should be taken to detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the aileron with possible partial or complete loss of aileron control.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 206H and T206H airplanes of the same type design, the FAA is taking AD action. This AD requires inspecting the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies, and accomplishing follow-on and corrective actions, as applicable.

Accomplishment of the actions specified in this AD are required in accordance with the instructions in Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

Compliance Time of This AD

Although the aileron control bellcrank stop bolts and lock nuts not being flush and in tight contact with the surface of the threaded boss on each end of the yoke assemblies is only unsafe while the airplane is in flight, this condition is not a result of the number of times the airplane is operated. The chance of this situation existing is the same for an airplane with 200 hours time-in-service (TIS) as it is for an airplane with 3,000 hours TIS. In addition, the usage levels of the affected airplane vary immensely. Some operators may accumulate 25 hours TIS in a matter of days, where other operators may only utilize their airplanes a few hours in a month.

For these reasons, the FAA has determined that a compliance based on calendar time and hours TIS (with the prevalent one being that which occurs first) should be utilized in this AD in order to assure that the unsafe condition is addressed on all affected airplanes in a reasonable time period without inadvertently grounding certain airplanes. The compliance time of the inspection required by this AD will be as follows:

"Within the next 10 hours TIS after the effective date of this AD or within the next 60 calendar days after the effective date of this AD, whichever occurs first."

Determination of the Effective Date of the AD

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to 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 above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–23–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–13–04 Cessna Aircraft Company: Amendment 39–11197; Docket No. 99–CE–23–AD.

Applicability: The following airplane model and serial number airplanes, certificated in any category:

Models	Serial numbers
206H ...	20608002 through 20608026.
T206H	T20608002 through T20608015; T20608017 through T20608023; and T20608025 through T20608028.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct loose aileron control bellcrank stop bolts, which could result in restricted movement of the aileron with possible partial or complete loss of aileron control, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD or within the next 60 calendar days after the effective date of this AD, whichever occurs first, inspect the left and right wing aileron control bellcrank stop bolts and lock nuts for flush and tight contact with the surface of the threaded boss on each end of the yoke assemblies. Accomplish this inspection in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

(b) If the bolts and nuts are flush and tight, or loose but flush after tightening, prior to further flight, accomplish the following actions in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999:

(1) Loosen nuts;
(2) Clean threads (bolt and nut);
(3) Wick Loctite 290 into threads; and
(4) Torque nut.

(c) If the bolts and nuts are not flush, prior to further flight, accomplish the following actions in accordance with the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999:

(1) Remove nut and stop bolt;
(2) Spotface boss;
(3) Clean threads (boss, bolt, and nut);
(4) Apply Loctite 242;
(5) Adjust stop bolt; and
(6) Torque bolt.

Note 2: Paragraphs (b) and (c) of this AD present a basic outline of the follow-on work to be accomplished. The detailed procedures to accomplish these actions are included in the INSPECTION/MODIFICATION INSTRUCTIONS section of Cessna Special Service Project SSP99–27–02, dated May 18, 1999.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) The inspections and follow-on actions required by this AD shall be done in accordance with Cessna Special Service Project SSP99–27–02, dated May 18, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277–7706. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1999.

Issued in Kansas City, Missouri, on June 10, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–15220 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Household Products Containing Methacrylic Acid

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant (''CR'') packaging for liquid household products containing more than 5 percent methacrylic acid (weight-to-volume) in a single package. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of methacrylic acid. The Commission is specifically concerned about nail care products containing methacrylic acid, the only household product the Commission has confirmed contains methacrylic acid. The Commission takes this action under the Poison Prevention Packaging Act of 1970.

DATES: This rule will become effective on June 19, 2000 and applies to methacrylic acid preparations packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Laura E. W. Noble, Directorate for Compliance, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1452.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant'' (''CR'') packaging, is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics that are ''customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household.'' 15 U.S.C. 1471(2). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Methacrylic Acid

Methacrylic acid (''MAA'') is used as a primer before applying artificial fingernails. Nail products containing MAA are cosmetics under the Food Drug and Cosmetic Act (''FDCA''). Although MAA is also used as a chemical intermediate in making some other products, the Commission does not believe that the rule would affect these products.

Nail primers help acrylic overlays adhere to the nail surface. Primers may contain MAA exclusively, but some may have other ingredients. Of the primers that the staff examined, those that do contain MAA have at least 50 percent MAA. Most of the nail primers that contain MAA are labeled ''For Professional Use Only.'' They are generally distributed through wholesale distributors directly to nail salons and to retail beauty supply stores. Some of these retail stores sell to both professionals and consumers. According to industry sources, there may be as many as 50 nail primer suppliers. Approximately 90 percent of nail primers marketed to professionals contain MAA. The Commission knows of 13 companies that market or have marketed MAA-containing nail primers. Based on industry estimates, the CPSC staff estimates annual unit sales of MAA-containing nail primers at about 1.0 to 1.3 million units in ¼ oz., ½ oz. and larger sizes. These units have a retail value of $4–6.5 million. Their wholesale value is about $2.9 to $4.6 million, based on a 40 percent mark-up typical of the industry.

The industry could not estimate the number of consumers using MAA-containing primers at home. It is clear, however, from the incident data discussed below that these products are used in homes, and children are obtaining access to them. The CPSC staff purchased these primers at retail stores and by mail. This also shows that these products are readily available to consumers.

3. The Proposed Rule

On December 30, 1998, the Commission issued a notice of proposed rulemaking (''NPR'') requiring CR packaging for liquid household products containing more than 5 percent MAA (weight-to-volume) in a single package. 63 FR 71800.

The Commission also mailed copies of the NPR to 150 firms and trade associations that might have an interest in the rulemaking. The Commission received 5 comments in response to the proposed rule. No commenters objected to the proposed rule; three expressed support, and two expressed concern for the professionals applying the primers.

The American Academy of Pediatrics (''AAP''), the American Beauty Association (''ABA'') and the Methacrylate Producers Association (''MPA'') all wrote in support of the rule. The AAP noted the potential harm to children exposed to MAA and its common use in the home. The ABA, a non-profit trade association representing manufacturers selling more than 80 percent of professional-use beauty salon products, stated that the Commission had fairly weighed the hazards to children and conducted a ''fair analysis of the practicality and feasibility of protecting children against the hazards.'' The MPA, an association of manufacturers of MAA and MAA esters, noted that with the corrosive properties of MAA and the widespread use of primers in the home, the Commission's special packaging proposal is appropriate.

No Lift Nails, a manufacturer of MAA-containing nail primers, expressed concern that no available CR caps would fit a 15 mm bottle finish, and larger bottles would expose more cosmetologists to MAA because of spills. The commenter suggested that the Commission require that bottles be both no larger than ½ ounce, and that they have a small orifice. The commenter also suggested that the Commission require a restricted flow feature in addition to the small orifice. Under the PPPA, the Commission cannot prescribe a particular packaging design or size. 15 U.S.C. 1472(d). The Commission can require restricted flow. The Commission is not doing so here because of the small volume applied in a single use and because applicators are commonly inserted into the containers.

Beatrice Kaye Cosmetics commented that MAA poses a serious health problem for professional cosmetologists and their patrons. The PPPA provides the Commission with authority to require CR packaging for substances that pose a hazard to children in the home.

It does not give the Commission jurisdiction over hazards unique to professionals in the workplace.

B. Toxicity of Methacrylic Acid

MAA is readily absorbed through mucous membranes of the lungs and gastrointestinal (''GI'') tract as well as through the skin. It is rapidly distributed to all major tissues, with the highest concentrations in the liver and kidneys. It destroys tissue by chemical action. This makes it a ''corrosive'' substance as defined in the Federal Hazardous Substances Act. 15 U.S.C. 1261(i).

MAA's effects are similar to those of other acids. As discussed in the NPR, dermal burns, inhalation of acid vapors, ingestion, and eye exposure all can be harmful.

C. Incident Data

The staff reviewed several sources for information of adverse health effects from nail products containing MAA. These sources are published reports in the medical literature, the American Association of Poison Control Centers (''AAPCC''), the FDA Cosmetic Voluntary Registration Program (''CVRP''), and reports from the injury surveillance databases maintained by the Commission. The NPR discusses incident data from those sources in detail.

1. Medical Literature

As discussed in the NPR, two recent articles in the medical literature reviewed relevant data. The first analyzed data from the Toxic Exposure Surveillance System (''TESS''), a database that AAPCC maintains, for 1993 through 1995. Of the 759 reports of exposures to MAA-containing nail products, 564 exposures involved children less than 6 years old. Most of these occurred at home. Approximately 10 percent of young children suffered moderate to major injuries.

The second article reviewed the hazard of nail care products, among them nail primers containing MAA, and reported the medical consequences of ingestion of and/or dermal exposure to primers in two children less than 5 years old and one adult. The NPR provides details of these incidents.

2. CPSC Databases

The staff reviewed CPSC's databases for poison incidents involving nail primers. As recounted in the NPR, between 1988 and September 30, 1998, the staff identified 85 cases as exposures to nail products specifically identified as primers or as containing MAA. Five of these involved serious injuries resulting from ingestion or dermal exposure to MAA in nail primers. Since publication of the NPR, three additional injuries were reported to CPSC. None of the three children was hospitalized. One incident involved a nail primer that was not confirmed to contain MAA. The other two children suffered burns on their legs after spilling bottles of nail primers known to contain MAA.

3. AAPCC Data

The staff obtained AAPCC data isolating nail products containing MAA for the years 1996 and 1997. The data include 467 exposures, including 341 poisonings (ingestion, ingestion/dermal), 11 ocular exposures, and 115 dermal exposures to children less than 5 years old. No deaths were reported. One poisoning with major medical consequences was reported in 1997. There were 32 poisoning outcomes coded as moderate (10.7 percent) and 137 poisonings (39.3 percent) coded as having minor outcomes. Approximately 90 percent of poisonings occurred in the home.

4. FDA Database

The FDA's CVRP data base contains four reports of injuries from nail primers. One of these reports indicates that a 2-year-old male was brought to the ER after a nail primer splashed in his face and caused burns to the cornea of the eye and the face (1988).

D. Level for Regulation

The Commission is issuing a rule that requires special packaging for household products containing more than 5 percent methacrylic acid in a single package.

At this time, there is no evidence establishing the lowest concentration or amount of MAA capable of causing severe personal injury or illness to young children. Burn severity from corrosive chemicals depends on exposure duration, contact site and product volume, concentration, and chemical characteristics. These chemical characteristics include pH, physical nature, viscosity, titratable acidity or alkalinity, molarity, oxidation-reduction potential, and complexing affinity for bivalent ions. MAA is a weak organic acid closely resembling acetic acid; acetic acid is 1.3-fold more acidic than MAA when concentration is expressed in percent units. As discussed in detail in the NPR, the Commission arrived at a level for regulation based on mutually supportive evidence derived from a report of concentration-related skin injury in mice due to MAA, the calculated pH of various concentrations of MAA, and the effects of acetic acid on humans at various concentrations.

The actual degree of irritancy or corrosion at 1 to 20 percent concentrations would probably depend on the volume of acid in contact with tissues, the surface area and site affected, and duration of the contact. A concentration of approximately 5 percent MAA does not cause serious injury to mouse skin. It is not likely to be more than a moderate irritant to the eyes of humans, or a mild irritant to the skin of humans. It is equivalent to a 4 percent concentration of acetic acid (about the same as vinegar). That concentration is not associated with serious personal injury or illness in young children. However, concentrations of approximately 10 percent MAA are, at the very least, severe skin irritants in a mouse model and, judging from calculated pH values, are capable of serious eye injury. Because the Commission is not aware of data defining the precise point between 5 and 10 percent at which injury becomes serious, the Commission is requiring child-resistant packaging for products containing more than 5 percent MAA to protect children from potential serious injury. The Commission received no comments on this level.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data demonstrate that MAA can cause serious illness and injury to children when ingested. Moreover, it is available to children in the form of nail primers that are accessible in the home. These packages are not CR.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from handling and ingesting household products containing MAA requires special packaging to protect children from serious illness. The Commission bases this finding on the toxic nature of MAA-containing products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

To issue a standard for special packaging under the PPPA, the Commission must find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). The Commission may find technical feasibility when technology exists or can be readily developed and implemented to produce packaging that conforms to the standards. Practicability

means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

Packaging for MAA-containing nail primers that is senior friendly (''SF'') and CR is technically feasible. There are currently available 20 millimeter (''mm'') continuous-threaded (''CT'') caps without built-in applicator brushes that are SF and CR. The manufacturer of this cap also manufactures a 28 mm CT closure that is CR and SF and has a built in applicator brush. This manufacturer told staff that it could develop a 20 mm CR and SF cap with a built-in applicator brush suitable for use with MAA within one year. Manufacturers of bottles with smaller finishes (the part of a bottle that receives the cap) may have to change to bottles with 20 mm finishes. Some of the smallest sizes of bottles used for MAA-containing primers (0.25 ounces) already have a 20 mm finish. Alternatively, manufacturers could use a restrictive insert to decrease the inside diameter of the bottle opening in conjunction with CR 20 mm finishes.

Special packaging for MAA-containing household products is practicable. CT caps that meet the senior friendly and CR testing requirements have been mass-produced for many years. A 20 mm continuous threaded closure that is CR and SF but lacks an insert for a brush is now mass-produced. Similarly, a 28 mm continuous threaded closure that is CR and SF and does have an insert for a brush is mass-produced. The mass production and assembly line techniques used for the 28 mm CR and SF closure with insert can be adapted to those used for the 20 mm non-CR closure with an insert and brush.

Special packaging is appropriate when it will protect the integrity of the substance and not interfere with intended storage or use. Nail primers containing MAA are currently packaged in both glass and plastic bottles. Thus, both glass and plastic containers are suitable for MAA-containing products. One packaging manufacturer uses identical materials to produce a 28 mm continuous threaded CR and SF closure (equipped with an insert for attaching a brush) and a 20 mm continuous threaded non-CR closure that is currently used for MAA-containing primers and is equipped with an insert and attached brush. Plastic bottle neck restriction devices should also be compatible with MAA since at least one is already in use. Therefore, the same materials used for non-CR packages of MAA-containing products, with or without brushes or inserts, are used or can be used for CR-packages.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of affected industries; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to this rule, and finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Exemption

The Commission is aware of one MAA-containing primer that is packaged in a tube with a fiber applicator tip. The container looks like a plastic marker pen. The fiber strand holds the MAA so that no free liquid flows through the device. A cap covers the applicator tip. Several manufacturers market this type of device for applying nail primer. Some of these primers contain MAA.

As stated in the NPR, the Commission believes that MAA-containing primers packaged this way do not pose a risk of serious injury. For this type of package not to pose a risk to children, the Commission believes that two conditions must be met: (1) the absorbent material must hold the MAA so that no free liquid is in the device, and (2) through reasonably foreseeable use the MAA will be released only through the tip of the device. Reasonably foreseeable use would include reasonably foreseeable abuse by children. These conditions are grounded in an existing exemption from FHSA labeling for porous-tip ink-marking devices. 16 CFR 1500.83(a)(9).

The volume of MAA available and accessible is extremely small (total amount of material in the devices is reportedly less than ½ gram). The only possible route of serious injury would be from direct contact of the felt tip with the eye. The staff has not identified any incidents involving these types of devices. Thus, the Commission is exempting MAA-containing primers contained in these marker-like devices if they meet the conditions discussed above.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

As proposed, the Commission is providing a one-year effective date. Currently, 20 mm CT caps that are CR and senior friendly are available. However, these caps are not available with a built-in applicator brush. Thus, manufacturers will need to make some modifications to provide a CR cap with a built-in applicator. Such closures should be available within one year. The Commission received no comments respecting the effective date.

Thus, the rule will take effect 12 months after publication and will apply to products that are packaged on or after the effective date.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared an assessment of the impact of a rule to require special packaging for household products containing more than 5 percent methacrylic acid. As discussed in the NPR, based on this assessment the Commission certified that the rule is not likely to have a substantial effect on a significant number of small businesses. The Commission requested suppliers, particularly small businesses, to provide information on the impact the proposed rule would have on them, but did not receive any such comments.

I. Environmental Considerations

As noted in the NPR, the Commission assessed the possible environmental effects associated with the proposed PPPA requirements for MAA-containing products and found that the rule would have little or no potential for affecting the human environment. The Commission concluded that neither an environmental assessment nor an

environmental impact statement is required.

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. As explained in the NPR, the rule requiring CR packaging for household products containing more than 5 percent MAA would preempt non-identical state or local special packaging standards for such MAA-containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Cosmetics, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. In § 1700.14 the introductory text of paragraph (a) is republished and paragraph (a)(29) is added to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) Substances. The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(29) *Methacrylic acid*. Except as provided in the following sentence, liquid household products containing more than 5 percent methacrylic acid (weight-to-volume) in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a),(b) and (c). Methacrylic acid products applied by an absorbent material contained inside a dispenser (such as a pen-like marker) are exempt from this requirement provided that: (i) the methacrylic acid is contained by the absorbent material so that no free liquid is within the device, and (ii) under any reasonably foreseeable conditions of use the methacrylic acid will emerge only through the tip of the device.

Dated: June 15, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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

List of Relevant Documents

1. Briefing memorandum from Susan Aitken, Ph.D., EH, to the Commission, ''Proposed Special Packaging Standard for Household Products Containing Methacrylic Acid,'' November 23, 1998.
2. Memorandum from Susan Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., Associate Executive Director, EH, ''Toxicity of Methacrylic Acid'' August 12, 1998.
3. Memorandum from Susan C. Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., EH, ''Human Injuries from Nail Products Containing Methacrylic Acid,'' August 12, 1998.
4. Memorandum from Marcia P. Robins, EC, to Susan Aitken, Ph.D., EH, ''Economic Considerations: Proposal to Require Child-Resistant Packaging for Household Products Containing Methacrylic Acid,'' August 17, 1998.
5. Memorandum from Tewabe A. Asebe, EH, to Susan Aitken, Ph.D., EH, ''Technical Feasibility, Practicability, and Appropriateness Determination for Proposed Rule to Require Special Packaging for Methacrylic Acid-Containing Products,'' August 17, 1998.
6. Memorandum from Bhooshan Bharat, Ph.D., LS, and Bhavi K. Jain, MS, LS, ''Report on the Testing of Nail Products for Titratable Acid Reserve (''TAR''), Quantification of Methacrylic Acid, and pH,'' August 20, 1998.
7. Briefing memorandum from Susan Aitken, Ph.D., EH, to the Commission, ''Final Rule to Require Child-Resistant Packaging for Household Products Containing More Than 5 Percent Methacrylic Acid in a Single Package,'' May 21, 1999.
8. Memorandum from Marcia P. Robins, EC, to Susan Aitken, Ph.D., EH, ''Final Rule for Child-Resistant Packaging for Household Products Containing Methacrylic Acid: Regulatory Flexibility Issues,'' April 8, 1999.
9. Memorandum from Tewabe A. Asebe, EH, to Susan Aitken, Ph.D., EH, ''Assessment of Technical Feasibility, Practicability, and Appropriateness for the Final Rule to Require Child-Resistant Packaging for Methacrylic Acid Products,'' April 23, 1999.

[FR Doc. 99–15580 Filed 6–17–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 98C–0158]

Listing of Color Additives For Coloring Meniscal Tacks; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid). This action responds to a petition filed by Linvatec Corp.

DATES: This regulation is effective July 20, 1999; except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by July 19, 1999.

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

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of March 13, 1998 (63 FR 12473), FDA announced that a color additive petition (CAP 8C0255) had been filed by Linvatec Corp., P.O. Box 2917, Largo, FL 33779–2917. The petition proposed to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid). The petition was filed under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)(1)).

II. Regulatory History

The regulatory history of D&C Violet No. 2 was summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). Since the publication of the May 7, 1990, final rule, other uses of D&C Violet No. 2 have been approved by the agency. For example, in a final rule published in the **Federal Register** on April 23, 1998 (63 FR 20096), FDA amended § 74.3602 to list D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for use in general surgery.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). D&C Violet No. 2 is added to absorbable meniscal tacks made from poly(L-lactic acid) in such a way that at least some of the color additive will come into contact with the body when the tacks are in place. In addition, the meniscal tacks are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al., have demonstrated that *p*-toluidine is a carcinogen in the mouse (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine, and manufacturing aids are commonly found as impurities in chemical products, including color additives.

V. Determination of Safety

Under the general safety standard of the act (section 721(b)(4)) for color additives, a color additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define ''safe'' as ''reasonable certainty that no harm will result from the intended use of the color additive.''

The color additives anticancer, or Delaney, clause of the color additive amendments (section 721(b)(5)(B)) provides that no noningested color additive shall be deemed safe and shall be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

VI. Safety of The Petitioned Use of The Additive

FDA estimates that the petitioned use of the additive, D&C Violet No. 2, will result in exposure to no greater than 105 microgram (μg) per person over a 70-year lifetime or an estimated daily intake (EDI) of 4 nanograms per person per day (ng/p/d) (Ref. 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small daily exposure resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *p*-toluidine, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. p-Toluidine

FDA has estimated the lifetime exposure to *p*-toluidine from the petitioned use of D&C Violet No. 2 in absorbable meniscal tacks made from poly(L-lactic acid) to be no more than 0.008 ng/p/d (Ref. 4). The agency used data from a long-term rodent bioassay on *p*-toluidine conducted by Weisburger et al. (Ref. 1), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The authors reported that the rodent bioassay showed that the test material caused an increased incidence of hepatomas (liver tumors).

Based on the agency's estimate that exposure to *p*-toluidine will not exceed 0.008 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 5.3×10^{-13} or 5.3 in 10 trillion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to *p*-toluidine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to *p*-toluidine would result from the proposed use of the additive.

B. Specifications

The agency also has considered whether specifications are necessary to control the amount of *p*-toluidine present as an impurity in D&C Violet No. 2. The additive is currently produced as a certified color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602 (21 CFR 74.1602), the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in absorbable meniscal tacks made from poly(L-lactic acid).

VII. Conclusions on Safety

FDA has evaluated the data and information in the petition and other relevant material. Based on this information the agency concludes that: (1) The proposed use of D&C Violet No. 2, at a level not to exceed 0.15 percent

by weight of the tack material, for coloring absorbable meniscal tacks made from poly(L-lactic acid) is safe; and (2) the color additive will achieve its intended coloring effect, and thus, is suitable for this use. Further, the agency concludes that the color additive regulations in § 74.3602 should be amended as set forth below.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition (63 FR 12473, March 13, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

X. Paperwork Reduction Act of 1995

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

XI. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 19, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XII. References

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

1. Weisburger, E. K. et al., ''Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity,'' *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Memorandum from the Division of Product Manufacture and Use, Chemistry Review Team (FDA), to the Division of Product Policy (FDA), concerning ''CAP 8C0255 (MATS M2.0 & 2.1): Linvatec, Inc. (Submission of 28 January, 1998). Petition for the Safe Use of of [sic] D&C Violet #2 to Tint Poly(L-lactic acid) Meniscal Taks.'' dated April 13, 1998.

3. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

4. Memorandum from Division of Petition Control (FDA), to Executive Secretary, Quantitative Risk Assessment Committee (FDA), concerning ''Estimate of the Upper Bound Lifetime Risk From *p*-toluidine in D&C Violet No. 2 Used as a Color Additive for Meniscal Tacks Made from Poly(L-lactic acid): CAP 8C0255,'' dated September 28, 1998.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 74.3602 is amended by redesignating paragraph (b)(4) as paragraph (b)(5) and by adding new paragraph (b)(4) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(4) The color additive, D&C Violet No. 2, may be safely used for coloring absorbable meniscal tacks made from poly (L-lactic acid) at a level not to exceed 0.15 percent by weight of the tack material.

* * * * *

Dated: June 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15512 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Chapter VII

Abolishment of the U.S. International Development Cooperation Agency and Revision of Code of Federal Regulations Chapter Heading

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: The Overseas Private Investment Corporation (''OPIC'') is amending its chapter in the Code of Federal Regulations (''CFR'') to delete the reference to the U.S. International Development Cooperation Agency (''IDCA''). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, IDCA was abolished, effective April 1, 1999.

DATES: Effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Eli Landy, Legal Affairs Department, 202–336–8418, eland@opic.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

The abolition of IDCA does not affect the status and validity of OPIC regulations, directives, rulings, policies; they continue in effect.

This is a procedural rule exempt from notice and comment under 5 U.S.C. 533(b)(3)(a). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule does not have a significant impact on small business entities under the Regulatory Flexibility Act.

For the reasons set forth in the preamble and under the authority of 22 U.S.C. 2191, revise the heading of

chapter VII of title 22 of the Code of Federal Regulations to read as follows:

CHAPTER VII—OVERSEAS PRIVATE INVESTMENT CORPORATION

Charles D. Toy,

Vice President and General Counsel.

[FR Doc. 99–15502 Filed 6–17–99; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 92

RIN 1105–AA58

FY 1998 Police Recruitment Program

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Office of Community Oriented Policing Services, U.S. Department of Justice, in the **Federal Register** on September 21, 1998, which established a framework for the Police Recruitment Project, authorized by the Police Recruitment Act, Subtitle H of the Violent Crime Control and Law Enforcement Act of 1994. No comments were received before the comment period expired on October 21, 1998.

DATES: Final rule is effective on June 18, 1999.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or Rob Chapman, Office of Community Oriented Policing Services, at (202) 633–1295.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidance to the non-profit community groups interested in applying to participate in the Police Recruitment Program. The rule addresses program purposes and goals, and project and eligibility requirements. The rule is not intended to be a comprehensive compilation of the administrative requirements of the Police Recruitment Program. Other program requirements and procedures will be formulated by the participating community organizations and police departments in light of their circumstances and needs.

The rule amends 28 CFR part 92 by designating existing §§ 92.1 through 92.6 as subpart A to read as follows: ''Police Corps Eligibility and Selection Criteria.'' The rule further amends 28 CFR part 92 by adding subpart B to read as follows: ''Police Recruitment Program Guidelines.''

Overview

The Office of Community Oriented Policing Services, U.S. Department of Justice, administers the Police Recruitment Program. This program is designed to develop pilot projects to meet the ongoing need for additional improvement in recruiting, selecting and retaining police officer applicants. The Police Recruitment program will make grants to a limited number of qualified community organizations to assist in meeting the cost of qualified programs designed to recruit and retain applicants to police departments.

To do this, applicants under this program are expected to utilize innovative and effective methods in meeting the program guidelines. Successful applicants will be funded for a total of up to $500,000 for a one-year grant period only, though two additional years of no-cost extensions will be permitted.

The successful applicants funded under the Police Recruiment program will ultimately design programs to enhance opportunities and increase inroads for individuals within their local police agencies. These advances will be accomplished through a variety of methods, including, but not limited to, targeted recruitment efforts; tutorial programs to enable individuals to meet police force academic requirements and pass entrance examinations; counseling for those applicants who may encounter problems throughout the application process; and programs to aid in the retention of these applicants throughout the application and hiring process.

Regulatory Flexibility Act

The Director of the Office of Community Oriented Policing Services, in accordance with the Regulatory Flexibility Act, codified at 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This Final Rule builds upon the statutory outline of a program providing federal grant assistance to programs sponsored by non-profit organizations providing recruiting and retention services to police department applicants. The award of such grants imposes no significant economic impacts on substantial numbers of small businesses or other entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Community Oriented Policing Services has determined that this Final Rule is not a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule ha not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The interim rule is not subject to the Paperwork Reduction Act requirements because the information collected as part of the grant application process will be collected from fewer than ten respondents.

List of Subjects in 28 CFR Part 92

Law enforcement officers, Scholarships and fellowships.

Accordingly, the interim rule amending 28 CFR part 92 by redesignating existing §§ 92.1 through 92.6 as subpart A and adding subpart B, which was published in the **Federal**

Register on September 21, 1998, at 63 FR 50145, is adopted as a final rule without change.

Dated: June 1, 1999.

John Hart,

Principal Deputy Director.

[FR Doc. 99–15203 Filed 6–17–99; 8:45 am]

BILLING CODE 4440–AT–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ50

Pension Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect statutory provisions extending the date through which VA will limit the pension benefits of certain veterans and surviving spouses receiving Medicaid-covered nursing home care to $90 per month.

DATES: *Effective Date:* August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 8003 of Pub. L. 101–508 required VA to limit the pension benefits of any veteran having neither spouse nor child and who receives Medicaid-covered nursing home care to no more than $90 per month. This statutory provision expired September 30, 1992. Section 601 of Pub. L. 102–568 extended the expiration date of that statutory provision until September 30, 1997. In addition, it imposed a similar limitation on payment of death pension to surviving spouses who receive Medicaid-covered nursing home care and have no children. Section 12005 of Pub. L. 103–66 further extended the expiration date until September 30, 1998, for these limitations on payment of pension benefits to veterans and surviving spouses. Section 8015 of the Balanced Budget Act of 1997, Pub. L. 105–33, extends the expiration date until September 30, 2002. This document amends 38 CFR 3.551(i) to reflect this statutory change, which is effective August 5, 1997, the date of enactment of Pub. L. 105–33.

This final rule reflects statutory requirements. Accordingly, there is a basis for dispensing with the prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.551 [Amended]

2. Section 3.551(i) is amended by removing ''September 30, 1998'' and adding, in its place, ''September 30, 2002''.

[FR Doc. 99–15521 Filed 6–17–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI97

Direct Service Connection (Post-Traumatic Stress Disorder)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the type of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This amendment implements a decision by the United States Court of Veterans Appeals (the Court) which stated that current regulations do not adequately reflect the governing statute.

DATES: *Effective Date:* March 7, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: PTSD is classified by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM–IV) as an anxiety disorder resulting from exposure to an extreme traumatic stressor involving direct personal experience of an event that involved actual or threatened death or serious injury or other threat to one's physical integrity; witnessing an event that involved death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate. The person's response to the event must involve intense fear, helplessness, or horror. PTSD is characterized by persistent reexperiencing of the traumatic event, persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness, and persistent symptoms of increased arousal.

VA regulations at 38 CFR 3.304(f) provide that service connection for PTSD requires medical evidence establishing a clear diagnosis of the condition, credible supporting evidence that the claimed in-service stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed in-service stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed in-service stressor.

Section 1154(b) of title 38, United States Code, which is the statutory authority for § 3.304(f), provides that, where a veteran engaged in combat with the enemy, VA must accept as sufficient proof of service-connection for a claimed disease or injury satisfactory lay or other evidence of service incurrence or aggravation of such disease or injury, if consistent with the

circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of the incurrence or aggravation of the claimed disease or injury. In *Cohen* v. *Brown*, 10 Vet. App. 128 (1997), the Court of Veterans Appeals found a deficiency in § 3.304(f) in that it does not adequately reflect, for the purposes of establishing an in-service stressor, the relaxed adjudicative evidentiary requirements provided by 38 U.S.C. 1154(b) for establishing service incurrence of an event. The Court noted that, although § 3.304(f) states that proof of an in-service stressor that is claimed to be related to combat may be shown by service department evidence that the veteran engaged in combat, or that the veteran received a particular decoration or award, § 3.304(f) does not expressly provide that a combat veteran's lay testimony alone may establish an in-service stressor pursuant to 38 U.S.C. 1154(b). The Court reiterated its conclusion in *Zarycki* v. *Brown*, 6 Vet. App. 91, 98 (1993), that, under 38 U.S.C. 1154(b), where it is determined that the veteran engaged in combat with the enemy and the claimed stressor is related to such combat, the veteran's lay testimony regarding the claimed stressor must be accepted as conclusive as to its occurrence and that no further development for corroborative evidence is required, provided that the testimony is ''satisfactory'' and consistent with the circumstances, conditions, or hardships of the veteran's service. VA has amended § 3.304(f) accordingly to provide that, if a veteran engaged in combat and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, occurrence of the claimed stressor may be established by the veteran's lay testimony alone.

Previously 38 CFR 3.304(f) provided that ''service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantryman Badge, or similar combat citation'' was conclusive evidence of ''the claimed in-service stressor.'' In fact, service department evidence that the veteran engaged in combat or received combat citations serves to establish that the veteran engaged in combat rather than that the claimed stressor occurred. We have therefore removed the references to service department evidence of combat or receipt of specific combat citations and revised the regulation to state that if evidence establishes that the veteran engaged in combat, the veteran's lay testimony, subject to the restrictions cited above, is sufficient to establish that the claimed combat-related stressor actually occurred.

Additionally, we have amended that portion of § 3.304(f) regarding prisoner-of-war-related stressors in a similar manner. 38 U.S.C. 1154(a) requires that the Secretary include in regulations pertaining to service-connection for disabilities provisions requiring that due consideration be given to the places, types, and circumstances of the veteran's military service. Prisoner-of-War (POW) experience is another type of situation where events often can never be fully documented and therefore warrants the same relaxed adjudication requirements for service connection of PTSD as for those veterans who engaged in combat.

The Court in *Cohen* v. *Brown* also pointed out that, although on October 8, 1996, VA issued a final rule amending the Schedule for Rating Disabilities (38 CFR Part 4) pertaining to mental disorders which adopted the nomenclature of DSM–IV (See 61 FR 52695–702), no amendment to § 3.304(f) was made. The Court noted that § 3.304(f) does not specifically set forth any requirements regarding the sufficiency of a stressor and the adequacy of symptomatology to support a diagnosis of PTSD. We have therefore amended § 3.304(f) to require that the medical evidence diagnosing PTSD comply with 38 CFR 4.125(a), which requires that diagnoses of mental disorders conform to DSM–IV.

VA is issuing a final rule, effective March 7, 1997, the date of the *Cohen* v. *Brown* decision, to make the above described amendments. Because these amendments reflect a decision of the Court, publication as a proposal for public comment is unnecessary.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: November 20, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, paragraph (f) is revised to read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Post-traumatic stress disorder.* Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(Authority: 38 U.S.C. 1154(b))

[FR Doc. 99–15522 Filed 6–17–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 078–1078; FRL–6361–8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the 1998 revisions to the Kansas State Implementation Plan (SIP).

EFFECTIVE DATE: June 28, 1999.

ADDRESSES: Copies of the state submittal(s) 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, DC 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Environmental Protection Agency, 901 North 5th Street, Air Planning and Development Branch, Kansas City, Kansas 66101, (913) 551–7609.

SUPPLEMENTARY INFORMATION: On May 27, 1999, EPA published a document (64 FR 28757), adding § 52.869. The intent of the rule was to conditionally approve elements of the maintenance plan revision to the SIP submitted by the Governor's designee on May 21, 1998, which address contingency measures for the Kansas City ozone maintenance area. In addition, the rule intended to establish a window of one year from the effective date of the final rule under which Kansas must submit additional air pollution control measures to receive full approval of the revised SIP. The rule incorrectly established a window of 30 days rather than one year. This action corrects the erroneous date. The date is being amended from June 28, 1999, to June 28, 2000.

Administrative Requirements

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by E.O. 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

Because this corrective rulemaking action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule for the Kansas City ozone maintenance plan is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: June 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

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 R—Kansas

2. Section 52.869 is corrected by revising the date ''June 28, 1999'', to read ''June 28, 2000''.

[FR Doc. 99–15431 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 077–1077; FRL–6361–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the 1998 revisions to the Missouri State Implementation Plan (SIP).

EFFECTIVE DATE: June 28, 1999.

ADDRESSES: Copies of the state submittal(s) 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, DC 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7609.

SUPPLEMENTARY INFORMATION: On May 27, 1999, EPA published a document (64 FR 28753), adding § 52.1319. The intent of the rule was to conditionally approve elements of the maintenance plan revision to the SIP submitted by the Governor's designee on March 23, 1998, which address contingency measures for the Kansas City ozone maintenance area. In addition, the rule intended to establish a window of one year from the effective date of the final rule under which Missouri must submit additional air pollution control measures to receive full approval of the revised SIP. The rule incorrectly established a window of 30 days rather than one year. This action corrects the erroneous date. The date is being amended from June 28, 1999, to June 28, 2000.

Administrative Requirements

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with state officials as specified by E.O. 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994).

Because this corrective rulemaking action is not subject to notice-and-comment requirements under the

Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule for the Kansas City ozone maintenance plan is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: June 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

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 AA—Missouri

§ 52.1319 [Corrected]

2. Section 52.1319 is corrected by revising the date in paragraph (b) from ''June 28, 1999'', to ''June 28, 2000''.

[FR Doc. 99–15432 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL183–1a; FRL–6360–1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving a site specific revision to the Illinois State Implementation Plan (SIP) for volatile organic materials (VOM). This revision is an exemption from the otherwise applicable SIP requirements for W.R. Grace, a manufacturer of container sealants, lubricant fluids, and concrete additives at 6050 West 51st Street, Chicago, Cook County, Illinois. The State's requested revision was submitted to USEPA on September 17, 1998. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting comments on, this approval. If adverse written comments are received on this action, the USEPA will withdraw this direct final rule and address the comments received in response to this action in a final rule on the related proposed rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: This rule is effective on August 17, 1999, unless USEPA receives adverse written comments by July 19, 1999. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the plan and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Fayette Bright at (312) 886–6069 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION:

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I. What Action Is USEPA Taking?

USEPA is approving a SIP revision for the W.R. Grace and Company facility at 6050 West 51st Street, Chicago, Illinois. This SIP revision approves new Section 218.940(h), which has been added to Subpart QQ of Part 218. Section 218.940(h) waives the control requirements that would otherwise apply to the solvation mixers at W.R. Grace.

II. What Is a SIP?

Section 110 of the CAA requires states to develop regulations and control strategies to address air pollution within their jurisdictions. They must submit these to USEPA for approval and incorporation into the Federally enforceable SIP. To be approved they must meet Federal requirements and not adversely impact attainment of the National Ambient Air Quality Standards (NAAQS) established by USEPA.

III. Why Is USEPA Taking This Action?

a. USEPA is approving this action because W.R. Grace Company has demonstrated the infeasibility of complying with the control regulations of Subpart QQ, which call for an overall VOM reduction of at least 81 percent.

b. As required by Section 182 of the Clean Air Act (42 U.S.C. 7511a), sources in ozone nonattainment areas classified as severe must have reasonably available control technology (RACT) if they have the potential to emit 25 tons of VOM annually (VOM is the same as volatile organic compounds).

c. The information gathered from an explosion investigation, and current state of the art technology that detects solvent emission peaks, suggests no catalytic oxidizer may be designed for control of emissions from W.R. Grace's mixer loading operations that will be free from risk of another explosion.

d. W.R. Grace's consultant, Versar, determined through the control device investigations that there is no reasonably available control technology for the solvent mixers at Grace's facility. No add-on control was found to be technically and economically feasible.

IV. What Are the CAA RACT Requirements?

a. Section 172 of the CAA contains general requirements for States to implement RACT in areas that do not meet the NAAQS.

b. Section 182(b)(2) of the CAA contains more specific requirements for moderate and above ozone nonattainment areas.

c. Chicago is classified as a severe nonattainment area for ozone, VOM is an ozone precursor.

V. Does This Source Comply With CAA RACT Requirements?

Yes, due to the possibility of another explosion and other economic infeasibility issues, RACT for W.R. Grace's solvent mixers does not require additional emission control equipment.

VI. Summary of SIP Revision

This SIP revision adds the following exemption, in Section 218.940(h), to Subpart QQ of Part 218 for W.R. Grace's solvation mixers.

Section 218.940(h)—The control requirements of this Subpart shall not apply to the solvation mixers at the container sealant manufacturing facility located at 6050 West 51st Street in Chicago, Illinois.

Grace's Chicago facility was established in 1940, and currently employs approximately 100 people. The facility manufactures container sealants, lubricant fluids, and concrete additives. The container sealants are a rubbery coating material used by beverage, food, and other can coaters to form a seal between the ends of cans to the can body within the area where the two pieces are crimped together. Grace's Chicago plant produces both solvent-based and water-based container sealants.

a. Regulatory Background

In 1994, the Illinois Pollution Control Board promulgated certain amendments to 35 Ill. Adm. Code Part 218 that require RACT, for sources in the Chicago ozone nonattainment area, with the potential to emit 25 tons of VOM annually, as mandated by Section 182 of the Clean Air Act.

Emissions from W.R. Grace's mixers occur in a complex and variable manner due to the batch nature of the process. On June 14, 1996, W.R. Grace's incinerator exploded resulting in a fire in the solvent mixing area of the facility. The explosion significantly damaged the oxidizer and the associated ventilation system. Information gathered in the investigation of the explosion suggests that no catalytic oxidizer is currently available that will control the emissions from W.R. Grace's mixer loading operations and that will be free from the risk of another explosion.

b. USEPA's Review of This Site Specific SIP Revision Request

This exemption was reviewed on the merits of W.R. Grace's RACT analysis, primarily based upon the uncertainties involved in the chance of another explosion. This site specific SIP revision request is technically justified.

VII. What Changes Will This Federal Action Make?

It exempts W.R. Grace's solvation mixers from the control requirements of Subpart QQ of Part 218.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by July 19, 1999. Should USEPA receive such comments, it will publish a final rule informing the public that this action will not take effect. 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 will be effective on August 17, 1999.

VIII. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

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 17, 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, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(149) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(149) On September 17, 1998, the Illinois Environmental Protection Agency submitted a site specific State Implementation Plan revision request for W.R. Grace and Company's facility, which manufactures container sealants, lubricant fluids, and concrete additives, and is located at 6050 West 51st Street in Chicago, Illinois (Cook County). This rule revision is contained in R98–16, the July 8, 1998, Opinion and Order of the Illinois Pollution Control Board, and consists of new Section 218.940(h), which exempts W.R. Grace's facility from the control requirements in 35 Illinois Administrative Code Part 218 Subpart QQ.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218 Organic Material Emission Standards and Limitations for the Chicago Area, Subpart QQ: Miscellaneous Formulation Manufacturing Processes, Section 218.940 Applicability, paragraph (h) which was amended in R98–16 at 22 Ill. Reg. 14282, effective July 16, 1998.

[FR Doc. 99–15531 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–11

[FTR Interim Rule 7]

RIN 3090–AG99

Federal Travel Regulation; Income Tax Reimbursement Allowance (ITRA)

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to reimburse Federal, State and local income taxes incurred as a result of long term official travel. It also allows for the reimbursement of penalty and

interest payments due to incorrect withholdings by the employee's agency for tax years 1993 and 1994.

DATES: *Effective Date:* This interim rule is effective January 1, 1993 and applies to all employees on a long term temporary duty assignment who incurred income taxes on money received for travel expenses.

Comment Date: Comments must be received by August 17, 1999.

ADDRESSES: Written comments should be sent to Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405. E-mail comments may be sent to *RIN.3090–AG99@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel and Transportation Management Policy Division (MTT), telephone 202–501–0483.

SUPPLEMENTARY INFORMATION:

A. Background

In 1992, the Congress eliminated the travel expense deduction for travel assignments lasting more than one year, which caused travel expense reimbursements to become taxable income. On October 19, 1998, the President signed into law the Travel and Transportation Reform Act of 1998 (the Act) (Pub. L. 105–264). This interim rule implements the provisions of the Act authorizing the reimbursement of taxes incurred due to a temporary duty travel assignment.

B. Executive Order 12866

GSA has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This interim rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR part 301–11

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–11 is amended to read as follows:

PART 301–11—PER DIEM EXPENSES

1. The authority citation for part 301–11 is revised to read as follows:

Authority: 5 U.S.C. 5707.

2. Part 301–11 is amended by adding Subparts E and F to read as follows:

Subpart E—Income Tax Reimbursement Allowance (ITRA), Tax Years 1993 and 1994

General

Sec.
301–11.501 What is the Income Tax Reimbursement Allowance (ITRA)?
301–11.502 Who is eligible to receive the ITRA?
301–11.503 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

Employee Responsibilities

301–11.521 Must I file a claim to be reimbursed for the additional income taxes incurred?
301–11.522 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?
301–11.523 What documentation must I submit to substantiate my claim?
301–11.524 What steps must my agency take to determine my ITRA?
301–11.525 Is the ITRA I receive taxable income?
301–11.526 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?
301–11.527 If I elect a lump sum payment, how is the ITRA paid?
301–11.528 If I do not elect lump sum payment is there any additional reimbursement?

Agency Responsibilities

301–11.531 What documentation must the employee submit to substantiate a claim?
301–11.532 How should we compute the employee's ITRA?
301–11.533 Are tax penalty and interest payments reimbursable?
301–11.534 What tax tables should we use to calculate the amount of allowable reimbursement?
301–11.535 How should we calculate the ITRA?
301–11.536 Is the ITRA reimbursement considered to be income to the employee?
301–11.537 Are income taxes to be withheld from the ITRA?
301–11.538 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?
301–11.539 If the employee does not elect a lump sum payment, how is the tax on the ITRA calculated?
301–11.540 How do we handle any excess payment?

General

§ 301–11.501 What is the Income Tax Reimbursement Allowance (ITRA)?

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

§ 301–11.502 Who is eligible to receive the ITRA?

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location, and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

§ 301–11.503 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

No. Reimbursement is limited to income taxes.

Employee Responsibilities

§ 301–11.521 Must I file a claim to be reimbursed for the additional income taxes incurred?

Yes. A claim must be submitted in accordance with your agency's policy.

§ 301–11.522 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?

Yes, for the total amount of the income tax penalty and/or interest assessed by the IRS for tax years 1993 and 1994 only.

§ 301–11.523 What documentation must I submit to substantiate my claim?

Your agency will determine what documentation is sufficient. (See § 301–11.531.)

§ 301–11.524 What steps must my agency take to determine my ITRA?

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8, and Appendices A, B, C and D to part 302–11 of this title; or

(b) Determine reimbursement as calculated in the illustration shown in § 301–11.535.

§ 301–11.525 Is the ITRA I receive taxable income?

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under § 301-11.528.

§ 301–11.526 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

§ 301–11.527 If I elect a lump sum payment, how is the ITRA paid?

(a) Reimbursement is as illustrated:

LUMP SUM ITRA TAX PAID TO EMPLOYEE

ITRA reimbursement for tax year 1993	$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and the tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on $19,307.

§ 301–11.528 If I do not elect lump sum payment is there any additional reimbursement?

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see § 302–11.8 of this title).

Agency Responsibilities

§ 301–11.531 What documentation must the employee submit to substantiate a claim?

You must determine what documentation you require to be submitted with the employee's claim. It can include:

(a) A certified statement as prescribed in § 302–11.10 of this title or copies of completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W–2's and Form 1099's.

(c) Any documentation received from the IRS identifying any interest or penalty payment (tax years 1993 and 1994 only).

(d) Any other documentation necessary to substantiate the claim.

§ 301–11.532 How should we compute the employee's ITRA?

You should follow the procedures prescribed for the relocation income tax allowance, see § 302–11.7, § 302–11.8 and Appendices A, B, C, and D to part 302–11 of this title or as illustrated in § 301–11.535.

§ 301–11.533 Are tax penalty and interest payments reimbursable?

Yes, the total amount of any penalty and interest assessed by the IRS (for tax years 1993 and 1994 only) due to the failure of the Government to withhold the appropriate income taxes are reimbursable.

§ 301–11.534 What tax tables should we use to calculate the amount of allowable reimbursement?

The tax tables for the year the tax was incurred are to be used.

§ 301–11.535 How should we calculate the ITRA?

(a) Use the documents prescribed in § 301–11.531 to calculate the ITRA as follows:

(1) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title; and

(2) Add any penalty or interest for tax years 1993 or 1994 only to determine the full ITRA payment; or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in Appendix B to part 302–11 of this title:

FOR TAX YEARS 1993 OR 1994 (MARRIED FILING JOINT RETURN)

	Original	Recalculated
1. Adjusted Gross Income (w/ travel reimbursement)	$75,246	$75,246
2. Subtract travel reimbursement	.....	(15,482)
3. Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
4. Adjusted taxable Income	62,557	47,075
5. Tax liability on adjusted taxable income:		
a. Federal	17,516	$7,061*
	(28%)	(15%)
b. State, VA (5.75% tax bracket)	3,597	2,707
c. Local: Not applicable	0	0
d. Total	21,113	9,768
6. Difference of total of column 1 minus total of column 2:		
Additional Taxes Incurred due to travel reimbursement—$11,345		
7. Add to the tax difference:		
a. Penalty Payment imposed by IRS tax year 1993—1,500		
b. Interest Payment imposed by IRS tax year 1993—1,500		
Total 6 and 7a and b = ITRA—$14,345**		

* Adjusted taxable income places employee in lower tax bracket.

** The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

§ 301–11.536 Is the ITRA reimbursement considered to be income to the employee?

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

§ 301–11.537 Are income taxes to be withheld from the ITRA?

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

§ 301–11.538 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible

for any income taxes without further reimbursement. (See the illustration in § 301–11.527.)

§ 301–11.539 If the employee does not elect a lump sum payment, how is the tax on the ITRA calculated?

The tax on the ITRA reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See § 302–11.8.)

§ 301–11.540 How do we handle any excess payment?

You must collect any excess payments, which includes issuing corrected W–2's or 1099's.

Subpart F—Income Tax Reimbursement Allowance (ITRA), Tax Years 1995 and Thereafter

General

Sec.
301–11.601 What is the Income Tax Reimbursement Allowance (ITRA)?
301–11.602 Who is eligible to receive the ITRA?
301–11.603 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

Employee Responsibilities

301–11.621 Must I file a claim to be reimbursed for the additional income taxes incurred?
301–11.622 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?
301–11.623 What documentation must I submit to substantiate my claim?
301–11.624 What steps must my agency take to determine my ITRA?
301–11.625 Is the ITRA I receive taxable income?
301–11.626 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?
301–11.627 If I elect a lump sum payment, how is the ITRA paid?
301–11.628 If I do not elect lump sum payment is there any additional reimbursement?

Agency Responsibilities

301–11.631 What documentation must the employee submit to substantiate a claim?
301–11.632 How should we compute the employee's ITRA?
301–11.633 Are tax penalty and interest payments reimbursable?
301–11.634 What tax tables should we use to calculate the amount of allowable reimbursement?
301–11.635 How should we calculate the ITRA?
301–11.636 Is the ITRA reimbursement considered to be income to the employee?
301–11.637 Are income taxes to be withheld from the ITRA?
301–11.638 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?
301–11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated?
301–11.640 How do we handle any excess payment?

Subpart F—Income Tax Reimbursement Allowance (ITRA), Tax Years 1995 and Thereafter

General

§ 301–11.601 What is the Income Tax Reimbursement Allowance (ITRA)?

The ITRA is an allowance designed to reimburse Federal, State and local income taxes incurred incident to an extended TDY assignment at one location.

§ 301–11.602 Who is eligible to receive the ITRA?

An employee (and spouse, if filing jointly) who was in a TDY status for an extended period at one location and who incurred Federal, State, or local income taxes on amounts received as reimbursement for official travel expenses.

§ 301–11.603 Are Federal Insurance Contribution Act (FICA) and Medicare deductions included in any reimbursement under this part?

No. Reimbursement is limited to income taxes.

Employee Responsibilities

§ 301–11.621 Must I file a claim to be reimbursed for the additional income taxes incurred?

Yes, a claim must be submitted in accordance with your agency's policy.

§ 301–11.622 If I was assessed an income tax penalty and/or interest payment due to incorrect income tax withholdings, are those payments reimbursable?

No. The reimbursement of tax penalty and/or interest payment assessed by the IRS is limited by law to tax years 1993 and 1994 only.

§ 301–11.623 What documentation must I submit to substantiate my claim?

Your agency will determine what documentation is sufficient. (See § 301–11.631.)

§ 301–11.624 What steps must my agency take to determine my ITRA?

Your agency should:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title; or

(b) Determine reimbursement as calculated in the illustration shown in § 301–11.535.

§ 301–11.625 Is the ITRA I receive taxable income?

Yes. The amount received must be reported as taxable income in the year in which received, but you are eligible to receive an allowance to cover the taxes assessed on the ITRA under § 301-11.628.

§ 301–11.626 May I receive a lump sum payment of the additional tax liability on the covered ITRA in lieu of submitting another claim?

Yes, if agreed to in writing by your agency and with the understanding that you will be responsible for any income taxes due without further reimbursement.

§ 301–11.627 If I elect a lump sum payment, how is the ITRA paid?

(a) Reimbursement is as illustrated:

LUMP SUM ITRA TAX PAID TO EMPLOYEE

ITRA reimbursement for tax year 1995	$14,435
Federal Tax liability on ITRA Reimbursement (@ 28%)	4,042
VA State tax liability (@ 5.75%)	830
Local tax liability	0
Total reimbursement	19,307

(b) Reimbursement of the ITRA and tax on the ITRA is a final lump sum payment with no further reimbursement. You will be responsible for any income taxes due on $19,307.

§ 301–11.628 If I do not elect lump sum payment is there any additional reimbursement?

Yes. You are reimbursed for the tax on the tax reimbursement received. Your agency will calculate the tax on the tax reimbursement using the formulas developed for the Year 2 reimbursements of the relocation income tax allowance (see § 302–11.8 of this title).

Agency Responsibilities

§ 301–11.631 What documentation must the employee submit to substantiate a claim?

You must determine what documentation you require to be submitted with the employee's claim. It may include:

(a) A certified statement as prescribed in § 302–11.10 of this title or a copy of the employee's completed Federal, State and local tax return for the tax year in which the taxes were withheld and paid.

(b) Copies of W–2's and Form 1099's; and

(c) Any other documentation necessary to substantiate your claim.

§ 301–11.632 How should we compute the employee's ITRA?

You should follow the procedures prescribed for the relocation income tax allowance, see § 302–11.7, § 302–11.8 and Appendices A, B, C, and D to part 302–11 of this title or as illustrated in § 301–11.535.

§ 301–11.633 Are tax penalty and interest payments reimbursable?

No. The reimbursement of penalty and/or interest payments assessed by the IRS is limited by law to tax years 1993 and 1994 only.

§ 301–11.634 What tax tables should we use to calculate the amount of allowable reimbursement?

The tax tables for the year the tax was incurred are to be used.

§ 301–11.635 How should we calculate the ITRA?

Use the documents prescribed in § 301–11.631 to calculate the ITRA as follows:

(a) Determine Federal, State and local marginal tax rates by using the procedures and the marginal tax tables established for the relocation income tax allowance in § 302–11.7, § 302–11.8 and Appendices A, B, C and D to part 302–11 of this title, or

(b) As calculated in the following illustration.

Example of calculating an employee's tax return using the marginal tax rate schedules in Appendix B to part 302–11 of this title:

FOR TAX YEAR 1995 AND THEREAFTER

[MARRIED FILING JOINT RETURN]

	Original	Recalculated
1. Adjusted Gross Income (w/ travel reimbursement):	$75,246	$75,246
2. Subtract travel reimbursement:	.....	(15,482)
3. Subtract personal exemptions and itemized or standard deductions	(12,689)	(12,689)
4. Adjusted taxable income	62,557	47,075
5. Tax liability on adjusted taxable income:		
a. Federal (28%)	17,516	*7,061 (15%)
b. State, VA (5.75% tax bracket)	3,597	2,707
c. Local: Not applicable	0	0
d. Total	21,113	9,768
6. Difference of total of column 1 minus total of column 2: Additional Taxes Incurred due to travel reimbursement—$11,345		
Total = ITRA—$11,345**		

*Adjusted taxable income places employee in lower tax bracket.
**The ITRA reimbursement is taxable income for the year in which paid at the appropriate Federal, State and local income tax rates.

§ 301–11.636 Is the ITRA reimbursement considered to be income to the employee?

Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

§ 301–11.637 Are income taxes to be withheld from the ITRA?

Yes, as determined by your internal tax withholding procedures established for your agency pursuant to IRS procedures.

§ 301–11.638 May we offer a lump sum payment to cover the income tax liability on the covered ITRA?

Yes, if the employee mutually agrees in writing to the lump sum payment and understands that he/she is responsible for any income taxes without further reimbursement. See the illustration in § 301–11.627.

§ 301–11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated?

The tax on the tax reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance. (See § 302–11.8.)

§ 301–11.640 How do we handle any excess payment?

You must collect any excess payments, which includes issuing corrected W–2's or 1099's.

Dated: June 10, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–15540 Filed 6–17–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7289]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ohio:					
Franklin	City of Columbus	January 12, 1999, January 19, 1999, *The Columbus Dispatch.*	The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	April 19, 1999	390170 G
Franklin	City of Reynoldsburg.	January 12, 1999, January 19, 1999, *The Columbus Dispatch.*	The Honorable Robert McPherson, Mayor of the City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, Ohio 43068–2080.	April 19, 1999	390177 G

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

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15559 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps

are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Dallas (City), Paulding County (FEMA Docket No. 7283)	
Griffin Creek:	
Approximately 40 feet downstream of Sara Babb Road	*899
Upstream side Atlanta Highway (Business State Route 6)	*986
Weaver Creek:	
Approximately 2,300 feet downstream of West Memorial Drive (State Route 120)	*942
Approximately 0.7 mile upstream of Seaboard Drive	*991
Maps available for inspection at the Dallas City Hall, 120 Main Street, Dallas, Georgia.	
Georgia Hiram (City), Paulding County (FEMA Docket No. 7283)	
Lick Log Creek:	
Approximately 1.1 miles downstream of Dallas Nebo Road	*957
Approximately 0.53 mile downstream of Dallas Nebo Road	*961
Davis Mill Creek:	
Approximately 950 feet upstream of Nebo Road	*941
Approximately 1 mile upstream of Lake Swan Outfall	*990
Mill Creek:	
Approximately 0.78 mile upstream of Pool Road	*920
Approximately 0.79 mile upstream of State Route 92	*937
Maps available for inspection at the Hiram City Hall, 186 Oak Street, Hiram, Georgia.	
Lowndes County (Unincorporated Areas) (FEMA Docket No. 7267)	
Three Mile Branch:	
Approximately 0.50 mile downstream of Country Club Drive	*138
Approximately 0.72 mile upstream of Country Club Drive	*195
Maps available for inspection at the Lowndes County Board of Commissioners, Administrative Building, Engineering Department, 325 West Savannah Avenue, Valdosta, Georgia.	
Paulding County (Unincorporated Areas) (FEMA Docket No. 7283)	
Davis Mill Creek:	
At confluence with Mill Creek (formerly Lick Log Creek)	*920
Approximately 1.3 miles upstream of Lake Swan Outfall	*1,003
Griffin Creek:	
At confluence with Lawrence Creek	*857
Approximately 710 feet upstream of Atlanta Highway (State Business Route 6)	*988
Lawrence Creek:	
Approximately 60 feet upstream of Old Cartersville Road	*852
Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92)	*895
Lick Log Creek:	
At confluence with Davis Mill Creek	*941
Approximately 200 feet downstream of Dallas Nebo Road	*967
McClendon Creek:	
At conflence with Mud Creek	*1,132
Approximately 1.54 miles upstream of McGarity Road	*1,153

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Mill Creek:	
At confluence with Sweetwater Creek	*907
Approximately 1.0 mile upstream of Davis Mill Road	*1,027
Tallapoosa River and Mud Creek:	
Approximately 200 feet downstream of Goodman Road	*1,123
Approximately 1.0 mile upstream of Honey Suckle Lane	*1,159
Possum Creek:	
Confluence with Picketts Mill Creek	*827
Approximately 825 feet upstream of Due West Road	*980
Powder Springs Creek:	
Upstream side Lost Mountain Road (formerly County Line Road)	*947
Approximately 0.51 mile upstream of Mark Drive	*1,136
Pumpkinvine Creek:	
Approximately 1,700 feet downstream of Dabbs Bridge Road	*742
Approximately 2.7 miles upstream of confluence of Little Pumpkinvine Creek	*933
Rakestraw Creek:	
Approximately 50 feet downstream of county boundary	*929
Approximately 20 feet upstream of Macland Road	*1,156
Weaver Creek:	
Approximately 1,500 feet upstream of confluence with Pumpkinvine Creek	*870
Approximately 125 feet upstream of State Route 120 (West Memorial Drive)	*954
West Fork:	
Confluence with Pumpkinvine Creek	*777
Approximately 0.52 mile upstream of confluence with Pumpkinvine Creek	*777
Lawrence Creek:	
Approximately 60 feet upstream of Old Cartersville Road	*852
At confluence of Griffin Creek	*857
Dewberry Creek (formerly Lawrence Creek):	
At confluence of Griffin Creek	*857
Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92)	*895
Little Pumpkinvine Creek 1 (formerly Picketts Mill Creek):	
At confluence with Pumpkinvine Creek	*759
At confluence of Possum Creek	*827
Picketts Mill Creek:	
At confluence of Possum Creek	*827
Approximately 720 feet upstream of Holland Road	*969
Maps available for inspection at the Paulding County Engineering Department, 25 Courthouse Square, Dallas, Georgia.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
MASSACHUSETTS	
Millbury (Town), Worchester County (FEMA Docket No. 7279)	
Ramshorn Brook:	
Approximately 1,300 feet downstream of Dolan Road and Dam	*610
Approximately 0.5 mile upstream of Dolan Road and Dam (upstream corporate limits)	*633
Dorothy Pond:	
Upstream side of Riverlin Street	*393
Approximately 700 feet upstream of Wheelock Avenue	*399
Maps available for inspection at the Town Hall, Planner's Office, 127 Elm Street, Millbury, Massachusetts.	
MICHIGAN	
Farmington Hills (City), Oakland County (FEMA Docket No. 7259)	
Main Ravines Drain:	
At Inkster Road	*633
Approximately 70 feet upstream of Tenmile Road	*691
Tributary A:	
At confluence with Main Ravines Drain	*641
Approximately 100 feet upstream of Cora Street	*697
Tributary B:	
At confluence with Main Ravines Drain	*667
Approximately 980 feet upstream of Brookplace Court	*704
Tributary C:	
At confluence with Main Ravines Drain	*633
At Middlebelt Road	*727
Minnow Pond Drain:	
Approximately 500 feet upstream of confluence with Upper River Rouge	*764
At Fourteen Mile Road	*880
Pebble Creek:	
At downstream corporate limits	*694
At downstream side of Fourteen Mile Road	*893
Seeley Drain:	
At confluence with Upper River Rouge	*761
At upstream side of Thirteen Mile Road	*893
Tarabusi Creek:	
At Eight Mile Road	*695
Approximately 150 feet downstream of upstream corporate limits	*748
West Bell Branch Creek:	
At Eight Mile Road	*753
Approximately 570 feet upstream of Rutgers Road	*826
North Branch of Main Ravines Drain:	
At downstream corporate limits	*660

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of Eleven Mile Road	*720
Maps available for inspection at the Farmington Hills City Engineering Department, 31555 Eleven Mile Road, Farmington Hills, Michigan.	
Owosso (Township), Shiawassee County (FEMA Docket No. 7255)	
Owasso Drain:	
At the downstream corporate limits	*740
Approximately 1,500 feet upstream of Delaney Road	*743
Maps available for inspection at the Owosso Township Hall, 2998 West M21, Owosso, Michigan.	
MISSISSIPPI	
Lee County (Unincorporated Areas) (FEMA Docket No. 7271)	
Little Coonewah Creek:	
Approximately 1,250 feet upstream of Natchez Trace Parkway	*292
Approximately 0.6 mile upstream of Endville Road	*362
Tributary to Little Coonewah Creek:	
At confluence with Little Coonewah Creek	*336
Approximately 1,950 feet upstream of Dogwood Hills Circle	*359
Mud Creek:	
Approximately 0.8 mile upstream of U.S. Route 78	*271
Approximately 0.6 mile upstream of Barnes Crossing Road	*278
Tributary No. 1 to Mud Creek:	
Approximately 125 feet upstream of North Veteran's Boulevard	*279
Approximately 200 feet upstream of Fern Ridge Road upstream crossing	*316
Town Creek:	
Approximately 100 feet downstream of confluence of Tulip Creek	*250
Approximately 0.5 mile upstream of confluence of Tulip Creek	*252
Tulip Creek:	
At confluence with Town Creek	*250
Approximately 100 feet upstream of U.S. Route 78	*290
West Tulip Creek:	
At confluence with Tulip Creek	*279
Upstream of Elvis Presley Lake Dam	*346
Maps available for inspection at the Lee County Courthouse, 201 West Jefferson, Suite A, Tupelo, Mississippi.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Plantersville (Town), Lee County (FEMA Docket No. 7271)	
Tulip Creek:	
Approximately 400 feet upstream of railroad	*257
Just downstream of State Route 6	*266
Maps available for inspection at the Plantersville Town Hall, 2587 Main Street, Plantersville, Mississippi.	
Saltillo (Town), Lee County (FEMA Docket No. 7271)	
Sand Creek:	
At Lake Lamar Bruce Road	*307
Approximately 250 feet upstream of Pea Ridge Road	*313
Maps available for inspection at the Saltillo Town Hall, 205 Second Street, Saltillo, Mississippi.	
Tupelo (City), Lee County (FEMA Docket No. 7271)	
Tributary No. 2 to Coonewah Creek:	
Approximately 1,400 feet downstream of Brooks Street	*279
At upstream side of Cliff Gookin Boulevard	*307
Kings Creek:	
At confluence with Town Creek	*258
Upstream of Walsh Road	*338
Little Coonewah Creek:	
Just upstream of Natchez Trace Parkway	*292
Approximately 1,500 feet downstream of Old Chesterville Road	*336
Mud Creek:	
At confluence with Town Creek	*259
Approximately 0.5 mile upstream of Barnes Crossing Road	*278
Tributary No. 1 to Mud Creek:	
At confluence with Mud Creek	*268
Approximately 1,300 feet upstream of North Veteran's Boulevard	*289
Tributary No. 2 to Mud Creek:	
At confluence with Mud Creek	*270
Approximately 110 feet upstream of U.S. Route 45 on-ramp	*273
Russell Creek:	
At confluence with Little Coonewah Creek	*300
Approximately 75 feet upstream of Butler Road	*341
Town Creek:	
Approximately 0.5 mile upstream of confluence of Tulip Creek	*252
Approximately 100 feet upstream of Natchez Trace Parkway	*275
Tulip Creek:	
Approximately 0.6 mile upstream of confluence with Town Creek	*253
At State Route 178	*279
West Tulip Creek:	
Approximately 350 feet upstream of confluence with Tulip Creek	*279
Approximately 0.54 mile downstream of Elvis Presley Lake Road	*300
Maps available for inspection at the Tupelo City Hall, Department of Planning and Community Development, 117 North Broadway, 2nd Floor, Tupelo, Mississippi.	
Verona (Town), Lee County (FEMA Docket No. 7271)	
Town Creek:	
Approximately 600 feet upstream of the confluence of Tulip Creek	*251
Approximately 1,300 feet upstream of the confluence of Tulip Creek	*251
Maps available for inspection at the Verona City Hall, 194 Main Street, Verona, Mississippi.	
NEW JERSEY	
Lavellette (Borough), Ocean County (FEMA Docket No. 7279)	
Atlantic Ocean:	
Approximately 100 feet east of the intersection of Guyer Avenue and Grand Central Avenue 35N	#1
Approximately 1,050 feet east of the intersection of Brown Avenue and Grand Central Avenue 35N	*13
At the intersection of Brooklyn Avenue and West Central	*5
Barnegat Bay:	
At the intersection of Pershing Boulevard and Bullard Drive	*5
Maps available for inspection at the Lavallette Borough Hall, 1306 Grand Central Avenue, Lavallette, New Jersey.	
NEW YORK	
Deerpark (Town), Orange County (FEMA Docket No. 7251)	
Basher Kill:	
Approximately 450 feet upstream of confluence with Neversink River	*485
At upstream county boundary	*507
Pine Kill:	
At confluence with Basher Kill	*507
At upstream county boundary	*517
Maps available for inspection at the Town of Deerpark Offices, Route 209, Huguenot, New York.	
Oswego (Town), Oswego County (FEMA Docket No. 7275)	
Gardenier Creek:	
Upstream corporate limits	*317
Downstream corporate limits	*317
Maps available for inspection at the Oswego Town Hall, 2320 County Route 7, Oswego, New York.	
Verona (Town), Oneida County (FEMA Docket No. 7279)	
Fish Creek:	
Approximately 8,800 feet downstream of Cook Road	*377
Approximately 1.60 miles upstream of Higginsville Road	*383
Maps available for inspection at the Verona Town Office Building, 6600 Germany Road, Durhamville, New York.	
Vienna (Town), Oneida County (FEMA Docket No. 7275)	
Fish Creek:	
Approximately 8,970 feet downstream of Cook Road	*377
Approximately 1.6 miles upstream of Higginsville Road	*383
Maps available for inspection at the Town of Vienna Planning Board Office, 2091 Route 49, North Bay, New York.	
NORTH CAROLINA	
Ashe County (Unincorporated Areas) (FEMA Docket No. 7275)	
South Fork New River:	
Approximately 3,000 feet upstream of SR 1100 bridge	*2,922
At upstream county boundary	*2,955
Maps available for inspection at the Old Jefferson School, Building Inspector's Office, 118 William J. B. Blevins Drive, Jefferson, North Carolina.	
TENNESSEE	
Murfreesboro (City), Rutherford County (FEMA Docket No. 7271)	
Bushman Creek:	
Approximately 1,100 feet upstream of Osborne Lane	*560
Approximately 250 feet downstream of New Lascassas Road	*583
Sinking Creek:	
Approximately 0.88 mile upstream of confluence with West Fork Stones River	*548
At downstream side of Ewing Boulevard	*610

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Unnamed Tributary of West Fork Stones River:	
At confluence with West Fork Stones River	*589
Approximately 0.6 mile upstream of confluence	*589
West Fork Stones River:	
Approximately 0.5 mile upstream of Mason Drive	*576
Approximately 0.5 mile upstream of State Route 99	*596
Lytle Creek:	
Approximately 1,200 feet downstream of Old Fort Parkway	*579
Approximately 100 feet upstream of Old Fort Parkway	*580
Maps available for inspection at the Murfreesboro City Hall, Planning Department, 111 West Vine Street, Murfreesboro, Tennessee.	
Rutherford County (Unincorporated Areas) (FEMA Docket No. 7271)	
Bushman Creek:	
Approximately 1,750 feet upstream of Compton Road	*546
Approximately 1,400 feet upstream of New Lascassas Road	*589
Unnamed Tributary of West Fork Stones River:	
Approximately 1,000 feet downstream of State Route 99	*589
Approximately 370 feet downstream of Cason Lane	*591
West Fork Stones River:	
Approximately 0.5 mile upstream of Mason Drive	*576
Approximately 0.5 mile upstream of State Route 99	*596
Maps available for inspection at the Rutherford County Engineering Department, 1 Public Square South, Room 204, Murfreesboro, Tennessee.	
VERMONT	
Royalton (Town), Windsor County (FEMA Docket No. 7279)	
First Branch White River:	
At confluence with White River	*471
Approximately 900 feet downstream of the county boundary	*510
Second Branch White River:	
At confluence with White River	*503
Approximately 160 feet upstream of the furthest upstream corporate limits	*527
White River:	
Approximately 550 feet upstream of corporate limits with Sharon, Vermont	*457
Approximately 150 feet upstream of corporate limits with Bethel, Vermont	*531
Maps available for inspection at the Royalton Town Office Building, Safford Street, South Royalton, Vermont.	
VIRGINIA	
Rocky Mount (Town), Franklin County (FEMA Docket No. 7279)	
Furnace Creek:	
Approximately 25 feet downstream of Scuffling Hill Road	*991
Approximately 75 feet downstream of Route 40/Franklin Street	*1,035
Furnace Creek Tributary:	
Approximately 75 feet downstream of Route 40/Franklin Street	*1,035
Approximately 1,900 feet upstream of Franklin Street	*1,046
Maps available for inspection at the Rocky Mount Town Hall, 345 Donald Avenue, Rocky Mount, Virginia.	
WEST VIRGINIA	
Mineral County (Unincorporated Areas) (FEMA Docket No. 7275)	
Cabin Run:	
Approximately 1,200 feet upstream of confluence with Patterson Creek	*645
Approximately 1,950 feet upstream of State Route 16	*814
Maps available for inspection at the Mineral County Courthouse, County Planner's Office, 150 Armstrong Street, Keyser, West Virginia.	

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

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15561 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–17; RM–9409]

Radio Broadcasting Services; Belt, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 269A to Belt, Montana, in response to a petition filed by Belt Broadcasting Company. *See* 64 FR 5739, February 5, 1999. The coordinates for Channel 269A at Belt are 47–23–12 NL and 110–55–18 WL. The channel can be allotted to Belt without a site restriction. Since Belt is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 269A at Belt will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–17, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Belt, Channel 269A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15513 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–22; RM–9426]

Radio Broadcasting Services; Ashland, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *275A to Ashland, Wisconsin, and reserves the channel for noncommercial educational use in response to a petition filed by The State of Wisconsin Educational Communications Board. *See* 64 FR 6020, February 5, 1999. The coordinates for Channel *275A at Ashland are 46–35–24 NL and 90–53–00 WL. The channel can be allotted to Ashland without a site restriction. With this action, this proceeding is terminated. A filing window for Channel *275A at Ashland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–22, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel *275A at Ashland.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15514 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–21; RM–9389]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299C3 to Perry, Florida, in response to a petition filed by Albert L. Brooks. *See* 64 FR 5738, February 5, 1999. The coordinates for Channel 299C3 at Perry Are 29–59–47 NL and 83–39–33 WL. The channel can be allotted to Perry with a site restriction 14.9 kilometers (9.3 miles) southwest of the community. With this action, this proceeding is terminated. A filing window for Channel 299C3 at Perry will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–21, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 299C3 at Perry.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15515 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–20; RM–9413]

Radio Broadcasting Services; Florence, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Florence, Montana, in response to a petition filed by Florence Broadcasting Company. *See* 64 FR 5738, February 5, 1999. The coordinates for Channel 278A at Florence are 46–37–42 NL and 114–04–48 WL. The channel can be allotted to Florence without a site restriction. Since Florence is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 278A at Florence will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–20, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Florence, Channel 278A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15516 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–19; RM–9397]

Radio Broadcasting Services; Lockwood, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Lockwood, Montana, in response to a petition filed by Lockwood Broadcasting Company. *See* 64 FR 5738, February 5, 1999. The coordinates for Channel 294A at Lockwood are 45–49–09 NL and 108–24–51 WL. The channel can be allotted to Lockwood without a site restriction. With this action, this proceeding is terminated. A filing window for Channel 294A at Lockwood will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–19, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Lockwood, Channel 294A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15517 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–16; RM–9403]

Radio Broadcasting Services; Eden, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Eden, Texas, in response to a petition filed by Kent S. Foster. *See* 64 FR 5739, February 5, 1999. The coordinates for Channel 283A at Eden are 31–13–06 NL and 99–50–36 WL. The channel can be allotted to Eden without a site restriction. Since Eden is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 283A at Eden will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–16, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Eden, Channel 283A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15518 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–12; RM–9441]

Radio Broadcasting Services; Joliet, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 259C3 to Joliet, Montana, in response to a petition filed by Mountain West Broadcasting. See 64 FR 5738, February 5, 1999. The coordinates for Channel 259C3 at Joliet are 45–29–06 NL and 108–58–18 WL. The channel can be allotted to Joliet without a site restriction. With this action, this proceeding is terminated. A filing window for Channel 259C3 at Joliet will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order, MM Docket No. 99–12, adopted June 2, 1999, and released June 11, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Joliet, Channel 259C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–15519 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 060999B]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 2 Period

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

ACTION: Commercial quota harvest for Quarter 2 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 2 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the northeast region for the remainder of the 1999 Quarter 2 quota period (through June 30, 1999). Regulations governing the black sea bass fishery require publication of this notice to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3' N. lat.

DATES: Effective June 18, 1999, 0001 hrs, local time through June 30, 1999, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, at (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods, based upon percentages of the annual quota. The Quarter 2 commercial quota (April through June) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.140.

The initial total commercial quota for black sea bass for the 1999 calendar year was set equal to 3,025,000 lb (1,372,117 kg)(63 FR 72203, December 31, 1998). The Quarter 2 period quota, which is equal to 29.26 percent of the annual commercial quota, was set at 885,115 lb (401,481 kg).

Section 648.141 requires the Regional Administrator to monitor the commercial black sea bass quota for each quota period and, based upon dealer reports, state data and other available information to determine when the commercial quota has been harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 2 period, north of 35°15.3′ N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 1999 Quarter 2 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the Quarter 2 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, June 18, 1999, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.5′ N. lat. by vessels holding commercial Federal fisheries permits are prohibited through June 30, 1999, 2400 hrs local time. The Quarter 3 period for commercial black sea bass harvest will open on July 1, 1999. Effective June 18, 1999, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders that land in coastal states from Maine through North Carolina for the remainder of the Quarter 2 period (through June 30, 1999).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.5′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator (see Table to § 600.502) and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15527 Filed 6–15–99; 3:33 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011399A]

Fisheries of the Northeastern United States; Northeast Monkfish Fishery; Amendment 1 to the Monkfish Fishery Management Plan (FMP) to Designate Essential Fish Habitat (EFH) for Monkfish

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

ACTION: Approval of Amendment 1 to the Monkfish FMP.

SUMMARY: NMFS announces that the Secretary of Commerce (Secretary) has approved Amendment 1 to the Monkfish FMP. This amendment was prepared jointly by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC). This amendment implements the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment describes and identifies EFH for the monkfish fishery, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH.

DATES: Amendment 1 to the Monkfish FMP was approved on April 22, 1999.

ADDRESSES: Copies of the amendment and the Environmental Assessment (EA) are available from the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Chief, Habitat Conservation Division, 978–281–9332 or Peter.Colosi@NOAA.gov.

SUPPLEMENTARY INFORMATION:

Background

Amendment 1 to the Monkfish FMP is part of an omnibus amendment for EFH, which also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. Because of the additional time required for coordination with MAFMC, the monkfish FMP amendment was considered for Secretarial approval in an action separate from these other amendments, which were approved on March 3, 1999. The omnibus amendment also includes the EFH components of the Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval. An EA is also included with the Monkfish Amendment 1.

Monkfish Amendment 1 was prepared by the NEFMC and MAFMC to satisfy the EFH mandates of the Magnuson-Stevens Act. The amendment designates EFH in waters of the United States for monkfish. Public comments were invited on Monkfish Amendment 1 from January 22, 1999 (64 FR 3480), through March 23, 1999. NMFS has determined that the amendment is consistent with the Magnuson-Stevens Act and other applicable laws, and approved it on April 22, 1999. Additional information on this action is contained in the January 22, 1999, Notice of Availability (64 FR 3480).

Upon initial consideration, it appeared that regulations to implement the amendment were not required. However, further consideration identified that implementing regulations are required to codify the framework specifications for designating EFH and Habitat Area of Particular Concern for the Monkfish FMP. A rulemaking to promulgate these regulations will be initiated in the near future.

Comments and Responses

Two letters were received during the comment period.

Comment 1: One commenter provided extensive comments on technical aspects of the amendment's discussion of potential impacts to EFH from oil, gas, and mineral extraction, and the recommended conservation and enhancement measures dealing with these activities.

Response: NMFS appreciates the detailed comments that were provided, and has forwarded them to the Councils for future reference.

Comment 2: Another commenter considered the amendment to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine waters. The commenter stated that the Councils' methodology for designating EFH based on the highest relative density of monkfish was arbitrary.

Response: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which would be classified as ''level 2'' information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation is consistent with these requirements. EFH for monkfish was not designated in estuarine waters.

The specific methodology used by the Councils for designating EFH was based on the highest relative density of monkfish. This methodology was developed by scientists at the NMFS Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species' range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats. NMFS and the Council have developed a management regime designed to increase the population of monkfish. The broad EFH designation for monkfish is intended to include habitat essential for the species' long-term well-being.

Comment 3: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the amendment are not based on the best available science, nor sufficiently supported. The commenter contends that the recommended measures do not take into consideration current practices, and are likely to be in conflict with measures being pursued under

other regulatory programs. The commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

Response: NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in this section of the amendment is well researched and substantiated by the best available information. Moreover, the commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to ''identify other actions to encourage the conservation and enhancement of [EFH].'' This information is provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required and the Councils are authorized to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

Comment 4: A commenter stated that the amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenter suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. The commenter also contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comment 5: A commenter stated that the amendment generally failed to address the potential for significant adverse impacts of this amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

Response: The conservation and enhancement recommendations outlined in the amendment include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated earlier, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the EA included with the amendment, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of this amendment. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and ensure a workable review process. The analytical requirements of the RFA apply only to regulatory actions for which notice and comment rulemaking is required under the Administrative Procedure Act or another statute. The requirements of the RFA do not apply to the approval of this amendment, since a proposed rule has not been developed.

Comment 6: A commenter charged that the amendment does not address Magnuson-Stevens Act national standards 1 (overfishing), 2 (best available scientific information), and 7 (unnecessary duplication).

Response: As a part of the Council's omnibus EFH amendment, Monkfish Amendment 1 was intended to address only habitat issues, including the EFH mandate of the Magnuson-Stevens Act. The recently approved (March 3, 1999) Monkfish FMP includes the necessary provisions to satisfy national standard 1. Since Amendment 1 does not detract from nor negate the overfishing discussion and measures implemented in the Monkfish FMP, it is consistent with national standard 1.

The amendment was developed with significant input from scientists of the NMFS Northeast Fisheries Science Center and is based upon the best scientific information available. In the strategic plan portion of the amendment, the Councils have clearly stated their commitment to updating the amendment as new information becomes available. NMFS finds the amendment consistent with national standard 2.

The commenter does not elaborate upon its assertion that the amendment violates national standard 7, so NMFS assumes, for the purpose of responding to this comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation processes. NMFS has determined that the EFH amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act; they are not optional. Section 305(b)(2) of the Magnuson-Stevens Act states: ''Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.''

Existing Federal statutes such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA already require consultation or coordination between NMFS and other Federal agencies. As explained above, EFH consultations will be conducted to the greatest extent possible under existing review processes and within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The EFH regulations at 50 CFR Part 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate

conservation measures can minimize the potential for adverse effects to EFH. The amendment contains conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

Comment 7: A commenter stated that the amendment avoided discussion of fishing impacts to EFH.

Response: The Councils approached the evaluation of impacts from fishing gears methodically. It identified the major gears used in the region based on landings; described the major gears; identified that otter trawls and scallop dredges were the most likely to have adverse impacts on habitat; appended a summary of the literature on fishing gear impacts to habitat; and described other impacts from fishing activities such as the impacts of fishing-related marine debris and lost gear, impacts of aquaculture, and impacts of at-sea fish processing. The Councils also evaluated fisheries management measures currently in place and assessed their impact on EFH. Finally, the Councils identified a number of areas that required further research in order to provide a better basis for determining fishing gear impacts, such as the spatial distribution and extent of fishing effort for gear types; the effects of specific gear types along a gradient of effort on specific habitat types; and recovery rates of various habitat types following fishing activity. Although the commenter may disagree with the manner in which the information was presented, NMFS concludes that the Councils satisfied the requirements of the Magnuson-Stevens Act and the EFH regulations (50 CFR 600.815(a)(3)) regarding the assessment of fishing gear impacts.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: June 11, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–15535 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 117
Friday, June 18, 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 HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA02

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) published a second notice of proposed rulemaking on risk-based capital in the **Federal Register**, 64 FR 18083, April 13, 1999. The proposed rule described the risk-based capital stress test used to determine the risk-based capital requirement for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). OFHEO is making available supplemental information regarding this proposed rule. This supplemental information is available electronically through the OFHEO website or by requesting a copy from OFHEO. This announcement addresses the availability of this information.

ADDRESSES: Requests regarding information may be addressed to Kathleen K. McLees, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Information is also available on the OFHEO website at: http://www.ofheo.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen K. McLees, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3836 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Dated: June 8, 1999.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 99–15564 Filed 6–17–99; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–44]

Proposed Establishment of Class E Airspace; Montague, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM), reopening of comment period.

SUMMARY: On January 9, 1996, the FAA proposed to amend Class E Airspace at Siskiyou County Airport, Montague, CA. This action intended to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations. The proposed airspace amendment was published incorrectly. This Supplementary Notice of Proposed Rulemaking (SNPRM) corrects those errors and provides an additional comment period.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch AWP–520, Docket No. 95–AWP–4, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

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

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

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Federal Aviation Administration, 1500 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–44.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of SNPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Siskiyou County Airport, Montague, CA. The original Notice of Proposed Rulemaking (NPRM) proposed an amendment to the aforementioned airspace. The existing Class E airspace does not require an amendment. The establishment of additional Class E airspace 1,200 feet or more above ground level (AGL) is necessary to provide controlled airspace or IFR operations, specifically the departure procedure from runway 35 for Siskiyou County Airport. The original proposal is being modified to accurately describe the required Class E airspace. The FAA published an NPRM on this proposal on January 8, 1996, (61 FR 550). Since issuance of the NPRM, the FAA has discovered errors in the proposal. Changes to the proposal to correct these errors are significant enough to warrant issuance of a SNPRM and reopening of the comment period.

Comments received in response to the original NPRM and this SNPRM would be addressed in the final disposition of the rule. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F dated September 4, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 4, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AWP CA E5 Montague, CA [New]

Montague, Siskiyou County, Airport, CA
(Lat. 41°46′54″ N, long. 122°28′05″ W)
Montague NDB
(Lat. 41°43′38″ N, long. 122°28′55″ W)
Klamath Fall VORTAC
(Lat. 42°09′12″ N, long. 121°43′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Siskiyou County Airport. That airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5.2 miles west of the 356° and 176° bearings from the Montague NDB, extending from 7 miles north to 1 mile south of the NDB and within 8.3 miles east and 5.2 miles west of the 180° bearing from the Montague NDB, extending from the NDB to 16.5 miles south of the NDB, and from lat. 41°52′23″ N, long. 122°24′32″ W, thence clockwise along the 34.8 mile radius of Klamath Falls VORTAC to lat. 42°13′00″ N, long. 122°30′00″ W, to lat. 42°11′00″ N, long. 122°16′30″ W, to lat. 41°51′20″ N, long. 122°22′00″ W and thence counterclockwise along the 6.1 mile radius of the Siskiyou County Airport to the point of beginning.

* * * * *

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

John Clancy,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 99–15385 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 30

Access to Automated Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules; withdrawal.

SUMMARY: On March 24, 1999, the Commission issued proposed rules to permit the use in the United States of automated trading systems providing access to foreign electronic boards of trade. The Commission has decided to withdraw these proposed rules.

FOR FURTHER INFORMATION CONTACT: David M. Battan, Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Charles T. O'Brien, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION: The Commission had first sought public comment on these matters in a concept release published July 24, 1998, followed by the proposed rules published in March. After an extension was granted at the request of a number of industry participants, the comment period on the proposed rules closed on April 30, 1999. During the comment period, the Commission held a Public Roundtable as well as a meeting of its Global Markets Advisory Committee (''GMAC'') to discuss these matter.

On June 2, 1999, the Commission issued an order withdrawing the proposed rules and instructing the staff ''to begin immediately processing no-action requests from foreign boards of trade seeking to place terminals in the United States, and to issue responses where appropriate, pursuant to general guidelines included in the Eurex (DTB) no-action process,[1] or other guidelines issued by the Commission, to be reviewed and applied as appropriate on a case-by-case basis.'' See Order of the Commission (June 2, 1999). In the same order, the Commission determined to ''commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic systems so as not to

[1] In February 1996, the Commission's Division of Trading and Markets (''Division'') issued a no-action letter to the Deutsche Terminborse (''DTB'' or ''Eurex''), an all-electronic futures and option exchange headquartered in Frankfurt, Germany, in which the Division agreed, subject to certain conditions, not to recommend enforcement action to the Commission if Eurex placed computer terminals in the U.S. offices of its members.

provide one with a competitive advantage.'' *Id*.

As with the rapid developments in technology overtaking other industries, the growth of electronic exchanges and the placement of cross-border futures and option trading systems in the United States raise some of the most basic and fundamental issues facing the Commission and the futures industry. Among the critically important questions that need to be addressed are what role intermediation will play when technological developments make access to global markets far easier than before; what the future relationships will be between and among customers, futures commission merchants, exchanges, technology providers, and regulators; and how to provide a level-playing field and foster fair competition in the context of electronic trading systems between domestic and foreign market participants and between exchanges and FCMs while maintaining the protection of customers and the safety and soundness of larger and faster global markets.

The Commission's July 1998 concept release was by necessity of a general nature, and the resulting comments were not able to address with specificity all of these difficult issues. Only with the release of the proposed rules have all of the interested parties focused fully on all of the specific questions at hand. Moreover, even in just the past few months, the technology and the business relationships among the various constituents in the futures industry have changed substantially, and continue to do so. In any event, the result of all this, as evidenced by the comments received on the proposed rules, and by the wide-ranging positions outlined at the recent Roundtable and GMAC meetings on these issues, is that further consensus among the various affected parties must be sought before rules or guidelines may be finalized in this area. In this environment, the Commission determined to withdraw its proposed rules and defer adoption of final rules or guidelines pending further consideration of these issues by the Commission.

Issued in Washington, D.C. on June 11, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

U.S. Commodity Futures Trading Commission

Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

June 2, 1999.

Order of the Commission

It is hereby ordered that the Commodity Futures Trading Commission shall, effective immediately:

Lift the moratorium and instruct the staff to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the United States, and to issue responses where appropriate, pursuant to the general guidelines included in the Eurex (DTB) no-action process, or other guidelines established by the Commission, to be reviewed and applied as appropriate on a case-by-case basis;

Commit to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage; and

Withdraw the proposed rules regarding access to automated boards of trade and proceed expeditiously toward adoption of rules and/or guidelines.

Dated: June 2, 1999.

Commissioner Barbara P. Holum.

Dated: June 2, 1999.

Commissioner David D. Spears.

Dated: June 2, 1999.

Commissioner James E. Newsome.

[FR Doc. 99–15441 Filed 6–17–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Center for Food Safety and Applied Nutrition; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to understand the economic impact that any proposal to establish current good manufacturing practices (CGMP's) regulations for dietary supplements may have on small businesses in the dietary supplement industry. This meeting is intended to give interested persons, including small businesses, an opportunity to comment on the economic impact that such a proposal may have on small businesses.

DATES: The public meeting will be held on Monday, July 12, 1999, from 7 p.m. to 9 p.m. You must register by July 7, 1999. You may submit written comments until August 12, 1999.

ADDRESSES: The public meeting will be held at the Flamingo Hotel, The Carson City II Room, 3555 Las Vegas Blvd., Las Vegas, NV. Submit written comments to the Dockets Management Branch (HFA–305), Docket No. 96N–0417, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 330 C St. SW., Washington, DC 20204, 202–205–5329, FAX 202–260–0794, or e-mail pvardon@bangate.fda.gov.

If you would like to attend the public meeting, you should register by July 7, 1999, by faxing or e-mailing your name, title, firm name, address, and telephone number to Peter Vardon (address above).

There is no registration fee for this public meeting, but early registration is suggested because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for an open discussion of the manufacturing practices of small businesses in the dietary supplement industry. The meeting is intended to be one of a series intended to give all interested parties an opportunity to comment on the economic effects of a possible proposed regulation on CGMP's in the dietary supplement industry. This public meeting is also intended to fulfill part of the outreach requirement of Small Business Regulatory Enforcement Fairness Act of 1996. The agenda will include topics regarding the small business entities' manufacturing practices and standard operating procedures for: (1) Personnel, (2) buildings and facilities, (3) equipment, (4) lab operations, (5) production and process controls, and (6) warehousing, distribution and post-distribution of raw, intermediate and final products. The meeting will also include a discussion about the verification of the identity, purity, and composition of dietary supplements and dietary supplement ingredients.

FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record.

You may request a transcript of the public meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15475 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL183–1b; FRL–6360–2]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a site specific revision to the Illinois State Implementation Plan (SIP) for volatile organic materials (VOM). This revision is an exemption from the otherwise applicable SIP requirements for W.R. Grace, a manufacturer of container sealants, lubricant fluids, and concrete additives at 6050 West 51st Street, Chicago, Cook County, Illinois. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 19, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 7, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–15532 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7287]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood

Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Bay County (Unincorporated Areas).	Gulf of Mexico	Approximately 500 feet southwest of the intersection of Paridiso Place and Miracle Strip Parkway.	*9	*16
			Approximately 1,100 feet southwest of Salt Creek crossing of U.S. Route 98.	None	*8
		East Bay	At Farndale Bayou shoreline crossing	*5	*6
			Approximately 500 feet west of the Hamilton Road extended.	*6	*11
		St. Andrew Bay	Approximately 500 feet east of the intersection of Delwood Beach Road and Delwood Drive.	*4	*12
			Approximately 500 feet west of the intersection of Sabre Drive and Delta Avenue.	None	*8
		North Bay	Approximately 500 feet west of the intersection of 27th Street and Mound Avenue.	*4	*11
			Approximately 750 feet north of the intersection of North Shore Road and Goose Bayou Road.	None	*7
		Callaway Creek	At State Route 22	*4	*7
			Approximately 0.8 mile upstream of State Route 22.	*6	*7
		Callaway Bayou	Approximately 200 feet south of intersection of Colonial Road and Coleridge Drive.	*4	*7
			Approximately 1,600 feet south of intersection of Colonial Road and Coleridge Drive.	*6	*10
		Watson Bayou Tributary	Approximately 200 feet southwest of intersection of Cherry Street and Everitt Avenue.	None	*8
		St. Andrew Sound	Approximately 4,000 feet south of intersection of Interstate 98 and Unnamed Road.	*3	*11
			Approximately 2,000 feet south of intersection of Interstate 98 and Unnamed Road.	*8	*13
Maps available for inspection at the Bay County Builders Services Division, 640 Mulberry Avenue, Panama City, Florida. Send comments to Mr. Jonathon A. Mantay, Bay County Manager, P.O. Box 1818, Panama City, Florida 32402.					
Florida	Green Cove Springs (City), Clay County.	Governors Creek	At confluence with St. Johns River	*6	*5
			Immediately downstream of Idlewild Avenue.	*9	*8
		Buckeys Creek	Approximately 1,200 feet upstream of confluence with Governors Creek.	None	*5
			Approximately 1.2 miles upstream of confluence with Governors Creek.	None	*19
		St. Johns River	For its entire reach within the community	*6	*5

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Planning and Zoning Office, 229 Walnut Street, City Hall, Green Cove Springs, Florida.					
Send comments to Mr. Earl Meserve, City Manager, 229 Walnut Street, Green Cove Springs, Florida 32043.					
Illinois	Arlington Heights (Village), Cook County.	Salt Creek, Arlington Heights Branch.	Upstream side of Euclid Avenue	None	*707
			Downstream face of Chicago and Northwestern Railway.	*713	*710
Maps available for inspection at the Village of Arlington Heights Engineering Department, 33 South Arlington Heights Road, Arlington Heights, Illinois.					
Send comments to The Honorable Arlene J. Mulder, Mayor of the Village of Schaumburg, 33 South Arlington Heights Road, Arlington Heights, Illinois 60005–1499.					
Illinois	Cook County (Unincorporated Areas).	Salt Creek Tributary D	Approximately 750 feet upstream of Hammond Drive.	None	*732
			Approximately 800 feet upstream of Roselle Road.	None	*752
		Salt Creek, Arlington Heights Branch.	At downstream face of Chicago and Northwestern Railway.	None	*710
			At downstream face of Forest Preserve Access Road.	None	*778
		Salt Creek West Branch	Approximately 250 feet downstream of Interstate Route 290.	None	*693
			Approximately 1,700 feet downstream of Basswood Road.	*739	*736
		Salt Creek West Branch Tributary A.	At confluence with Salt Creek West Branch.	*726	*725
			Approximately 1,375 feet upstream of confluence with Salt Creek West Branch.	None	*730
		Salt Creek (Upper Reach)	Approximately 400 feet upstream Evanston-Elgin Road.	None	*693
			Approximately 75 feet downstream of Meacham Road.	*716	*715
		Salt Creek Arlington Heights Branch, Anderson Drive Tributary.	Approximately 2,750 feet downstream of Evergreen Drive.	None	*717
			Approximately 500 feet downstream of Evergreen Drive.	None	*717
		Buffalo Creek Tributary A	Just upstream of Hicks Road	*741	*740
			Downstream face of Dundee Road	*742	*743
		Unnamed Tributary to Salt Creek Tributary D.	At confluence with Salt Creek Tributary D	None	*735
			Approximately 3,400 feet upstream of the confluence with Salt Creek Tributary D.	None	*750
		North Creek	Upstream face of Cottage Grove Avenue	*607	*608
			Approximately 1,000 feet upstream of Oakwood Drive.	*612	*611
		Lansing Ditch, Lynwood Tributary.	Approximately 500 feet upstream of confluence of North Creek.	None	*610
			At Burnham Avenue		
		Tributary	At Burnham Avenue	None	*616
		Lansing Ditch	Southwest corner of intersection of 204th Street and Burnham Avenue.	None	*616
			Approximately 0.96 mile upstream of 223rd Street.	None	*653
		Lansing Ditch, Tributary A	Confluence with Lansing Ditch	*628	*631
			Just downstream of Katz Corner Road	None	*632
		Lansing Ditch, East Tributary.	Approximately 500 feet upstream of confluence with Lansing Ditch.	*632	*636
			Just downstream of Steger Road	None	*654
		Lansing Ditch, West Tributary.	At confluence with Lansing Ditch	*628	*631
			Approximately 1,860 feet upstream of Torrence Avenue.	None	*632
		Lansing Ditch, Torrence Tributary.	At confluence with Lansing Ditch, just downstream of CONRAIL railroad tracks.	*628	*627

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.26 miles upstream of confluence with Lansing Ditch.	None	*630
		Skokie River	Just upstream of Willow Road	None	*626
			Just downstream of Lake-Cook Road	None	*633
		Skokie River, Botanical Garden Division.	At confluence with Skokie River	None	*628
			At divergence from Skokie River	None	*633
		Skokie River, Western Ditch.	At confluence with Skokie River	None	*626
			Approximately 0.35 mile upstream of confluence with Skokie River.	None	*626
Maps available for inspection at the Cook County Building and Zoning Department, 69 West Washington, Suite 2830, Chicago, Illinois. Send comments to Mr. Donald Wlodarski, Cook County Commissioner, 69 West Washington, Suite 2840, Chicago, Illinois 60602.					
Illinois	Elk Grove (Village), Cook County.	Salt Creek, West Branch Tributary 6.	At confluence with Salt Creek West Branch.	*709	*708
			Approximately 75 feet downstream of Plum Grove Road.	None	*724
		Salt Creek West Branch Tributary 7.	At confluence with Salt Creek West Branch Tributary 6.	*713	*715
			Approximately 1,450 feet upstream of Baltimore Drive.	*728	*726
		Salt Creek West Branch	Just upstream of Meacham Road	None	*706
			Approximately 850 feet downstream of confluence of Salt Creek West Branch Tributary 3.	*713	*714
Maps available for inspection at the Village of Elk Grove Engineering and Community Development, Charles Zeitek Municipal Center, 901 Wellington Avenue, Elk Grove, Illinois. Send comments to Mr. Craig Johnson, Village of Elk Grove President, 901 Wellington Avenue, Elk Grove, Illinois 60007.					
Illinois	Flossmoor (Village), Cook County.	Butterfield Creek Tributary No. 3.	Just upstream of Illinois Central Railway	None	*669
			Approximately 105 feet upstream of Kedzie Avenue.	None	*687
		Butterfield Creek Tributary No. 4.	Just upstream of Illinois Central Railway	None	*665
			Approximately 130 feet upstream of Governors Highway.	None	*698
Maps available for inspection at the Flossmoor Public Works Department, Service Center, 1700 Central Park Avenue, Flossmoor, Illinois. Send comments to The Honorable Roger G. Molski, Mayor of the Village of Flossmoor, 2800 Flossmoor Road, Flossmoor, Illinois 60422.					
Illinois	Glencoe (Village), Cook County.	Skokie River	Approximately 250 feet upstream of Tower Road.	*625	*628
			Approximately 450 feet upstream of Dundee Road (State Route 68).	*626	*628
		Skokie River Botanical Gardens Diversion.	Approximately 600 feet upstream of Botanical Gardens Dam.	None	*630
			Approximately 0.38 mile upstream of Botanical Gardens Dam.	None	*630
Maps available for inspection at the Village of Glencoe Engineering Department, 675 Village Court, Glencoe, Illinois. Send comments to Mr. James O. Webb, President of the Village of Glencoe, 675 Village Court, Glencoe, Illinois 60022.					
Illinois	Hoffman Estates (Village), Cook County.	Salt Creek (Upper Reach)	Approximately 400 feet upstream of Poteet Avenue.	*817	*815
		Salt Creek, West Branch Tributary A.	Approximately 700 feet downstream of Basswood Road.	*741	*740
			Approximately 125 feet upstream of Apple Street.	None	*759
Maps available for inspection at the Village of Hoffman Estates Community Development Department, 1400 Hassell Road, Hoffman Estates, Illinois. Send comments to Mr. Michael O'Malley, President of the Village of Hoffman Estates, 1900 Hassell Road, Hoffman Estates, Illinois 60195.					
Illinois	Inverness (Village), Cook County.	Salt Creek Tributary C	At upstream side of Roselle Road	None	*766
			Approximately 200 feet upstream of Roselle Road.	None	*767

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Salt Creek Tributary B	Approximately 75 feet upstream of the confluence with Salt Creek.	*788	*787
			Approximately 450 feet upstream of Palatine Road.	None	*819
		Salt Creek Tributary A	Confluence with Salt Creek	*762	*761
			Just downstream of Ela Road	None	*838
		Salt Creek (Upper Reach)	Downstream side of Harrison Avenue At Roberts Road.	*820	*815
Maps available for inspection at the Inverness Village Hall, 1400 Baldwin Road, Inverness, Illinois.					
Send comments to Mr. Jack Tatooles, President of the Village of Inverness, 1400 Baldwin Road, Inverness, Illinois 60067.					
Illinois	Lansing (Village), Cook County.	Lansing Ditch	Approximately 100 feet downstream of 189th Street.	*613	*612
			Approximately 0.73 mile upstream of Burham Avenue.	*616	*615
		North Creek	Approximately 925 feet upstream of Torrence Avenue.	None	*610
			Approximately 350 feet downstream of confluence of Lansing Ditch.	*612	*611
Maps available for inspection at the Village of Lansing Building Department, 18200 Chicago Avenue, Lansing, Illinois.					
Send comments to The Honorable Robert West, Mayor of the Village of Lansing, 18200 Chicago Avenue, Lansing, Illinois 60438.					
Illinois	Lynwood (Village), Cook County.	Lansing Ditch	Approximately 0.57 mile downstream of 202nd Street.	*616	*615
			Approximately 350 feet upstream of Glenwood Dyer Road.	*627	*626
		Lansing Ditch, Lynwood Tributary.	Downstream side of Glenwood Lansing Road.	*614	*611
			Approximately 600 feet downstream of subdivision entrance.	*614	*615
Maps available for inspection at the Village Hall, 21460 Lincoln Highway, Lynwood, Illinois.					
Send comments to The Honorable Russell R. Meltby, Mayor of the Village of Lynwood, 21460 Lincoln Highway, Lynwood, Illinois 60411.					
Illinois	McLean County (Unincorporated Areas).	Sugar Creek	Approximately 230 feet downstream of Stringtown Road.	None	*697
			At downstream side of Airport Road	*808	*810
		East Tributary Skunk Creek.	At confluence with Skunk Creek	*757	*756
			At Norfolk and Western Railway	None	*757
		Skunk Creek	At confluence with Sugar Creek	*745	*744
			Appoximately 625 feet downstream of Interstate Routes 55 and 74.	None	*780
		North Branch Sugar Creek Tributary.	Approximately 625 feet upstream of confluence with North Branch Sugar Creek.	None	*781
			At downstream side of Koerner Street	None	*812
		North Branch Sugar Creek	Approximately 125 feet upstream of Fort Jesse Road.	None	*790
			Approximately 225 feet upstream of Raab Road.	None	*814
		Brookridge Branch	At confluence with Little Kickapoo Creek	*821	*819
			Approximately 2,020 feet upstream of Hershey Road.	None	*827
		Little Kickapoo Creek	Approximately 250 feet downstream of County Road 800.	None	*739
			Just downstream of Lincoln Street	*822	*820
		Butcher's Lane Tributary ..	Approximately 240 feet downstream of Butchers Lane.	None	*761
			At upstream side of Butchers Lane	None	*765
		Goose Creek	Approximately 325 feet upstream of West Oakland County Road.	*743	*740
			Just upstream of Morris Avenue	*779	*771
		Short Point Creek Tributary A.	1,120 feet upstream from U.S. Route 51	None	*739
			1,960 feet upstream from U.S. Route 51	None	*744
		West Branch Sugar Creek	Upstream of Raab Road	None	*817

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the McLean County Law and Justice Center, 104 West Front Street, Bloomington, Illinois.					
Send comments to Mr. Gary Riss, McLean County Chairperson, 104 West Front Street, Box 2400, Room 701, Bloomington, Illinois 61702–2400.					
Illinois	Northbrook (Village), Cook County.	Skokie River	Approximately 0.4 mile upstream of Dundee Road.	None	*628
			Approximately 500 feet downstream of Lake-Cook Road.	None	*632
		Botanical Garden Diversion.	Approximately 0.41 mile upstream of confluence with Skokie River.	None	*630
			Approximately 0.44 mile upstream of confluence with Skokie River.	None	*630
Maps available for inspection at the Northbrook Village Hall, Village Engineering Department, 1225 Cedar Lane, Northbrook, Illinois.					
Send comments to Mr. Mark W. Damisch, President of the Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062.					
Illinois	Northfield (Village), Cook County.	Skokie River, West Ditch	Just upstream of Willow Road	*625	*626
			Approximately 0.5 mile upstream of confluence with Skokie River.	*625	*626
Maps available for inspection at the Village of Northfield Community Development Department, 361 Happ Road, Northfield, Illinois.					
Send comments to Mr. Mark Morien, Village of Northfield Administrator, 361 Happ Avenue, Northfield, Illinois 60093.					
Illinois	Olympia Fields (Village), Cook County.	Butterfield Creek Tributary No. 4.	Approximately 50 feet downstream from intersection of Kedzie Avenue with Vollmer Road.	None	*683
			Approximately 100 feet downstream from Governors Highway.	None	*698
Maps available for inspection at the Olympia Fields Village Hall, 20701 Governors Highway, Olympia Fields, Illinois.					
Send comments to Mr. Lindzey Jones, President of the Village of Olympia Fields, 20701 Governors Highway, Olympia Fields, Illinois 60461.					
Illinois	Rolling Meadows (City), Cook County.	Salt Creek Tributary	At confluence with Salt Creek (Upper Reach).	*727	723
		Salt Creek, Arlington Heights Branch.	At confluence with Salt Creek	*701	*700
			Downstream side of Euclid Avenue	*708	706
		Salt Creek (Upper Reach)	At Evanston-Elgin Road	*691	*693
			Aproximately 75 feet upstream of Euclid Avenue.	*728	*693
Maps available for inspection at the City of Rolling Meadows Building and Zoning Department, 3600 Kirchoff Road, Rolling Meadows, Illinois.					
Send comments to The Honorable Thomas F. Menzel, Mayor of the City of Rolling Meadows, 3600 Kirchoff Road, Rolling Meadows, Illinois 60008.					
Illinois	Sauk Village (Village), Cook County.	Lansing Ditch	Approximately 750 feet downstream of Sauk Trail Road.	*630	*631
			Approximately 0.96 mile upstream of 223rd Street.	None	*653
		Lansing Ditch East Tributary.	At confluence with Lansing Ditch	*632	*635
			Approximately 0.6 mile upstream of Katz Corner Road.	None	*646
		Lansing Ditch West Tributary.	Approximately 1,250 feet upstream of the confluence with Lansing Ditch.	*628	*631
			Approximately 50 feet upstream of Torrence Avneue.	*628	*631
		Lansing Ditch Torrence Tributary.	Approximately 0.78 mile upstream of confluence with Lansing Ditch.	None	*629
			Approximately 1.28 miles upstream of confluence with Lansing Ditch.	None	*630
Maps available for inspection at the Village of Sauk Village Building Department, 21701 Torrence Avenue, Sauk Village, Illinois.					
Send comments to The Honorable Roger Peckham, Mayor of the Village of Sauk Village, 21701 Torrence Avenue, Sauk Village, Illinois 60411.					
Illinois	Schaumburg (Village), Cook County.	Salt Creek, West Branch Tributary 5.	At confluence with Salt Creek West Branch Tributary 3.	None	*729

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 250 feet upstream of Summit Drive.	None	*746
		Salt Creek, West Branch Tributary 4.	Approximately 210 feet upstream of confluence with Salt Creek West Branch Tributary 3.	*738	*737
			Approximately 200 feet upstream of Roselle Road.	None	*788
		Salt Creek, West Branch Tributary 3.	Approximately 280 feet upstream of confluence with Salt Creek West Branch.	*716	*715
			Approximately 350 feet upstream of Roselle Road.	None	*777
		Salt Creek, West Branch Tributary 6.	At upstream side of Plum Grove Road	None	*724
			Approximately 100 feet upstream of Summit Drive.	None	*744
		Salt Creek, West Branch Tributary 7.	Approximately 200 feet upstream of Baltimore Drive.	*723	*722
			Approximately 125 feet downstream of Plum Grove Road.	None	*738
		Salt Creek West Branch ...	Approximately 150 feet downstream of Interstate Route 290.	None	*693
			Approximately 100 feet upstream of Roselle Road.	None	*748
		Salt Creek West Branch Tributary A.	Approximately 1,375 feet upstream of confluence with Salt Creek West Branch.	None	*730
			Approximately 650 feet downstream of Basswood Road.	None	*740
		Salt Creek Tributary D	At confluence with Salt Creek (Upper Reach).	(722	*718
			Approximately 1,000 feet upstream of Hammond Drive.	*735	*732
		Salt Creek (Upper Reach)	Approximately 60 feet downstream Meacham Road.	*715	*716
			Approximately 75 feet upstream Hartung Road.	*726	*721
	Salt Creek Tributary C.	Approximately 1,000 feet northwest of the intersection of Algonquin Road and College Drive.	None	*750	
Maps available for inspection at the Village of Schaumburg Engineering Department, 101 Schaumburg Court, Schaumburg, Illinois.					
Send comments to Mr. Al Larson, President of the Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.					
Illinois	Wheeling (Village), Cook County.	McDonald Creek	Downstream side of Wheeling Road	*651	*650
			Approximately 1,300 feet downstream of Wheeling Road.	*650	*649
		Wheeling Drainage Ditch ..	At confluence with Des Plaines River	*639	*641
			Approximately 1,000 feet downstream of Hintz Road.	*640	*641
		Des Plaines River	Approximately 450 feet downstream of confluence of Wheeling Drainage Ditch.	None	*641
			Approximately 50 feet downstream of County Line Road.	None	*644
Maps available for inspection at the Village of Wheeling Engineering Office, 255 West Dundee Road, Wheeling, Illinois.					
Send comments to Mr. Greg Klatecki, President of the Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090.					
Maine	Dallas Plantation (Town), Franklin County.	Haley Pond	For the entire shoreline within the community.	None	*1,528
Maps available for inspection at the Dallas Plantation Town Office, Dallas Hill Road, Dallas Plantation, Maine.					
Send comments to Mr. Dean Morrison, Dallas Plantation First Assessor, P.O. Box 460, Rangeley, Maine 04970.					
Maine	Starks (Town), Somerset County.	Sandy River	Approximately 2,500 feet downstream of Sandy River Dam Road.	*193	*194
			At upstream corporate limits	None	*235
		Lemon Stream	Approximately 1.1 miles downstream of State Route 43.	None	*247

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet upstream of State Route 43.	None	*270
Maps available for inspection at the Starks Town Office, Lockhill Road, Starks, Maine.					
Send comments to Ms. Barbara Heultner, Town of Starks First Selectman, R.R. #1, Box 950, Starks, Maine 04911.					
Minnesota	New Ulm (City), Brown County.	Minnesota River	Approximately 1,050 feet upstream of 20th S. Street.	*809	*808
			At U.S. Highway #14	*810	*809
		Cottonwood River	Approximately 2,200 feet upstream of Dam.	None	*831
			Approximately 500 feet downstream of County Highway 13.	None	*832
Maps available for inspection at the New Ulm City Engineer's Office, 100 North Broadway, New Ulm Minnesota.					
Send comments to Mr. Richard D. Salvati, New Ulm City Manager, 100 North Broadway, New Ulm, Minnesota 56073.					
New Hampshire	Brentwood (Town), Rockingham County.	Exeter River	At downstream corporate limits	None	*50
			At upstream corporate limits	*135	*134
		Dudley Brook	At downstream corporate limits	None	*80
			At North Road	None	*108
Maps available for inspection at the Selectmen's Office, 1 Dalton Road, Brentwood Town Hall, Brentwood, New Hampshire.					
Send comments to Mr. Irving Cross, Chairman of the Board of Selectmen, 1 Dalton Road, Brentwood Town Hall, Brentwood, New Hampshire 03833.					
North Carolina	Leggett (Town), Edgecomb County.	Swift Creek	Approximately 1.4 miles downstream of State Route 97.	None	*53
			Approximately 2.1 miles upstream of State Route 97.	None	*61
Maps available for inspection at the Leggett Town Hall, Intersection of Highway 33 and 97, Edgecomb, North Carolina.					
Send comments to The Honorable Jim Wood, Mayor of the Town of Leggett, Route 2, Box 211, Tarboro, North Carolina 27886.					
Puerto Rico	Commonwealth	Quebrada Berrenchin	Area within floodwall, approximately 366 meters west of intersection of new Puerto Rico Route 2 and Puerto Rico Route 335.	None	*30.5
Maps available for inspection at the Puerto Rico Planning Board, 12th floor, North Building, Minillas Governmental Center, De Diego Avenue, Parada 22, Santurce, Puerto Rico.					
Send comments to Mr. Jośe R. Caballero Mercado, President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940.					
South Carolina	Hollywood (Town), Charleston County.	Mellichamp Branch	Approximately 600 feet from the upstream side of a breached dam.	None	*8
			Approximately 0.63 mile upstream of Towles Road bridge.	None	*811
Maps available for inspection at the Hollywood Town Hall, 6316 Highway 162, Hollywood, South Carolina.					
Send comments to The Honorable Herbert Gadson, Mayor of the Town of Hollywood, P.O. Box 519, Hollywood, South Carolina 29449.					
South Carolina	Ravenel (Town), Charleston County.	Mellichamp Branch	At downstream side of New Road	None	*27
			Approximately 1.3 miles downstream of State Route 165.	None	*11
Maps available for inspection at the Ravenel Town Hall, 5962 Highway 165, Suite 100, Ravenel, South Carolina.					
Send comments to The Honorable Opal Baldwin, Mayor of the Town of Ravenel, 5962 Highway 165, Suite 100, P.O. Box 126, Ravenel, South Carolina 29470.					
Tennessee	Fayetteville (City), Lincoln County.	Wells Creek	At the confluence of the Elk River	None	*673
			Approximately 2,000 feet upstream of confluence with the Elk River.	None	*673
		Elk River	Approximately 350 feet downstream of confluence of Wells Creek.	None	*673
			Approximately 4.73 miles upstream of confluence of Stuart Creek.	*680	*673

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Fayetteville City Hall, 110 South Elk Avenue, Fayetteville, Tennessee.					
Send comments to The Honorable Mark Clark, Mayor of the City of Fayetteville, P.O. Box 13, 110 South Elk Avenue, Fayetteville, Tennessee 37334.					
Tennessee	Lincoln County (Unincorporated Areas).	Norris Creek	Approximately 1,450 feet downstream of Old Marrs Road.	None	*680
			Approximately 40 feet upstream of Old Marrs Road.	None	*682
		Cotton Mill Branch	Approximately 600 feet downstream of Brookside Drive.	None	*681
			Approximately 0.71 mile upstream of Cedarwood Street.	None	*711
		Boonshill Road Branch	At confluence with the Elk River	None	*665
			At Old Boonshill Road	None	*674
		Wells Creek	At confluence with Elk River	None	*673
			Approximately 898 feet upstream of Private Road.	None	*693
		Elk River	Approximately 1.1 miles downstream of the confluence with Boonshill Road Branch.	None	*663
			Approximately 5.0 miles upstream of the confluence of Stuart Creek.	None	*686
Maps available for inspection at the Lincoln County Courthouse, County Executive's Office, 112 Main Avenue, South, Fayetteville, Tennessee.					
Send comments to Mr. Stephen Graham, Chairman of the Lincoln County Board of Commissioners, 112 Main Avenue, South, Room 101, Fayetteville, Tennessee 37334.					

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

Dated: June 9, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–15560 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 64, No. 117
Friday, June 18, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cannon Gulch Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Mountain Home Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a timber salvage project in the Cannon Gulch project area, located immediately southwest of Pine, Idaho. Access is via Forest Highway 61. The project area encompasses approximately 1,100 acres of National Forest System land and is located 60 road miles northeast of Mountain Home and about 100 road miles east of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

Proposed Action

The proposed action would commercial thin and salvage harvest approximately 500 acres. Prescribed fire would be used on approximately 240 acres (40 acres of site preparation for tree planting, an additional 100 acres to take advantage of natural fuel breaks, and 100 acres to rejuvenate aspen). Logs would be yarded with a helicopter using one helicopter landing south of the Pine schoolhouse. Conifer seedlings would be planted on 40 acres. The activities would occur from 2000 to 2001.

Preliminary Issues

One significant issue has been identified with the proposed action which is that timber harvest would develop a portion of the Rainbow Inventoried Roadless Area (IRA), changing the wilderness attributes on that portion. The developed portion would not be given future consideration for wilderness designation under current Forest Service guidelines.

Possible Alternatives to the Proposed Action

One alternative to the proposed action identified is the no action alternative. Other alternatives may be developed as issues are raised and information is received.

Decisions To Be Made

The Boise National Forest Supervisor will decide whether to conduct timber management and harvest activities now or to defer them until a later time. If he chooses to conduct timber management and harvest activities now, he will decide which acres to treat and which logging systems to use; what, if any, acres to treat with prescribed fire; and what mitigation and/or monitoring measures to implement to meet Forest standards and minimize resource conflicts.

Schedule

Draft Environmental Impact Statement (DEIS), August 1999. Final, November 1999.

Public Involvement

Scoping was initiated in January 1998. A scoping letter was sent to over 60 individuals, groups, organizations, and agencies. Comments received from these public involvement efforts will be incorporated into the analysis process.

Comments

Written comments concerning the proposed project and analysis are encouraged and should be postmarked within 30 days following publication of this announcement in the **Federal Register**. Mail comments to Jane Beaulieu, Mountain Home Ranger District, 2180 American Legion Boulevard, Mountain Home, ID 83647; telephone 208–587–7961. Further information can be obtained at the same location.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

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 DEIS's 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 DEIS stage but 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, 1002 (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 45-day 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 the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. 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.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Suite 200, Boise, ID 83709.

Dated: June 10, 1999.

Jack E. Williams,

Deputy Forest Supervisor.

[FR Doc. 99–15371 Filed 6–17–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest Region Douglas-Fir Tussock Moth Project, Colville, Okanogan, and Wenatchee National Forests in Washington; and Malheur, Fremont, Ochoco, Umatilla, Wallowa-Whitman, and Winema National Forests in Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forested sands infested with Douglas-fir tussock moth. Activities include no-action and short-term treatments with a biological insecticide to maintain existing desired stand structure and tree condition.

DATES: Commetns concerning the scope of this analysis should be received no later than July 19, 1999.

ADDRESSES: Submit written comments to National Resource Staff; Air Management, Forest Insects and Diseases Group; Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208–3623.

FOR FURTHER INFORMATION CONTACT: Bill Funk, Team Leader, Douglas-fir Tussock Moth Project, Pacific Northwest Regional Office, PO Box 3623, Portland, OR 97208–3623 by calling (503) 808–2984.

SUPPLEMENTARY INFORMATION:

A. Need for the Proposal

The Douglas-fir tussock moth (DFTM) is a native insect, occurring in the Douglas-fir and true fir hosts throughout the west. Outbreaks of this insect are short and cyclic in nature, occurring approximately every 7 to 10 years. Sometimes outbreaks are widespread, and other times they are more localized. In Washington and Oregon, outbreaks of this insect occur east of the Cascades and most notably in northeastern Oregon, and north central and northeastern Washington. The last widespread outbreak, which caused significant damage, occurred in the early 1970s causing defoliation and tree mortality throughout about 700,000 acres in Oregon, Washington, and Idaho. More localized, less dramatic outbreaks occurred in the early 1980s and 1990s. By the time noticeable defoliation occurs, it is too late to implement a management strategy if needed. As a result, following the outbreak in the early 1970s, a DFTM early warning trapping system was put in place throughout eastern Washington and Oregon. This trapping system is used to monitor changes in the populations and give an advance indication of a potential outbreak, thus allowing land managers to do analysis and implement possible actions, as necessary, prior to severe visible defoliation. Data from the 1997 and 1998 trapping program indicate that there has been a significant increase in populations, particularly in northeastern Oregon and northcentral and northeastern Washington. Based on this information, a fairly widespread DFTM outbreak is anticipated involving several Forests, as well as other land ownerships, in 2000 and 2001; and this outbreak will be similar to the one experienced in 1972–1974.

Since the outbreak is anticipated to be widespread, we recognize that it is not realistic nor desirable to try to control or stop it. There is, however, opportunity to evaluate its impacts on specific areas where foliage protection and tree protection may be critical, and to evaluate effects of short-term management strategies.

DFTM larvae emerge in the spring and begin feeding on new needles of Douglas-firs and true firs. As the larvae get older they begin to feed on older needles, and in high populations, whole trees will be defoliated in a single year. Complete defoliation often results in tree mortality. The female moth has vestigial wings, and therefore, does not fly and disperse her eggs throughout the forest canopy as other forest defoliators might do. AS a result, a DFTM outbreak has a patchy appearance, with pockets of heavy defoliation scattered throughout a larger area of light or moderate defoliation. The areas of heavy defoliation and mortality vary in size, but can often be 500–1000 acres.

This insect has a short-term outbreak cycle of four phases or years. This makes the timing of any short-term management options critical. During the first two phases, populations begin to increase. Widespread, significant defoliation occurs in the third phase when populations are very high. Significant defoliation also occurs during the fourth phase, but due to competition for available food and a natural virus, the population collapses naturally. For any short term treatment to be effective and provide foliage protection, it should be applied at, or before, the beginning of the third phase. The short-term cycle of the outbreak, and the immobility of the female make it possible to treat localized areas without concern about spread and re-invasion from adjacent untreated areas.

In addition to the impacts of defoliation and tree mortality, there is also the consideration of additional tree mortality from bark beetles attracted to trees weakened from defoliation. A current outbreak of Douglas-fir bark beetle in parts of the area under consideration makes this a particular concern.

The hairs on the bodies of the larvae and the cocoon cases of this insect are irritating hairs that cause welts, rashes and reactions in many people when they are exposed to this insect. This reaction is called tussockosis. The level of reaction is dependent on individual sensitivity.

The purpose of this EIS is to identify those areas where foliage and stand structure must be protected to maintain the integrity of existing conditions, such as critical habitat for threatened, endangered and sensitive species, and late and successional old-growth reserves; or to reduce impacts of the insect and defoliation on the human environment, such as campgrounds, administrative sites, or foreground aesthetics. It will evaluate the impacts of short-term management options, should treatment be necessary. There are two insecticides that are currently registered and will be considered in the analysis. Both are biological insecticides. One insecticide uses *Bacillus thuringiensis var. kurstaki,* which is bacterium-based, and affects some of the lepidopteran (moth and butterfly) species. The second insecticide employs a nucleopolyhedrosis virus specific to DFTM, and which affects a few other closely related species, such as the rusty tussock moth.

B. Proposed Action

The Pacific Northwest Region will be preparing an EIS to evaluate short-term suppression of a potential DFTM outbreak using a biological insecticide, to protect specific areas and habitats, such as riparian habitats of isolated bull trout populations, high value recreation sites and administrative sites. The intent is only to look at short-term strategies. Long-term strategies are addressed in longer term management plans.

C. Proposed Scoping

Public participation is an important part of the analysis. The scoping period associated with this Notice of Intent will be thirty (30) days in length, beginning the day after publication of this notice. In addition to this scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. Comments submitted during the scoping process should be in writing. They should be specific to the action being proposed and should describe as clearly and completely as possible any issues the commentor has with the proposal. This input will be used in preparation of the draft EIS.

D. Preliminary Issues Identified to Date

Preliminary issues that have been identified are:

- The impacts of the DFTM outbreak and subsequent defoliation and tree mortality, and the proposed treatment options, on habitats for threatened, endangered or sensitive species.
- The impacts of defoliation on remaining stands of limited late and old growth structure in many of the Forests.
- The impacts of the DFTM on the human environment such as recreation areas, and residential and administrative sites, along with the issues of tussockosis, aesthetics and water quality.
- The response and concerns of the proposed insecticide treatments which will be considered, and the impacts and risk of these treatments to humans and the environment.
- The significant concern over the impact of numerous forest health related problems that have already been occurring, especially in the Blue Mountain forests, such as the past western spruce budworm outbreak, and an ongoing Douglas-fir bark beetle outbreak, and high amounts of existing fuels, and loss of timber.

E. Alternatives Considered

The No Action alternative will serve as a baseline for comparison of alternatives. This alternative will be no change from current management of the Forests and will be fully developed and analyzed. The proposed action, as described above will be consider and other alternatives developed around the proposed action to address issues identified in the scoping and public involvement process.

F. Estimated Dates for Draft and Final EIS

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by October 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

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 EIS 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 objectives that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334 (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 45-day 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 the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if the comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in February 2000. The Regional Forester is the responsible official and as such will consider comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible official will document the decision and reasons for the Pacific Northwest Region Douglas-fir Tussock Moth Project in the Record of Decision. That will be subject Forest Service Appeal Regulations (36 CFR Part 215).

Dated: June 11, 1999.

Nancy Graybeal,

Acting Regional Forester, Pacific Northwest Region.

[FR Doc. 99–15504 Filed 6–17–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 19, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 26 and May 7, 1999, the Committee for Purchase From People

Who Are Blind or Severely Disabled published notices (64 FR 9470 and 24570) of proposed additions to and deletions from the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element Store Minot Air Force Base, North Dakota

Cleaning Services

Crane Division, Naval Surface Warfare Center, Crane, Indiana

Janitorial/Custodial

Statue of Liberty National Monument & Ellis Island, New Jersey/New York

Support Activities for Forestry (Timber Stand Improvement)

Crane Division, Naval Surface Warfare Center, Crane, Indiana

Trash Pick-up

Crane Division, Naval Surface Warfare Center, Crane, Indiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Enamel

8010–00–159–4519
8010–00–159–4520
8010–00–159–4521
8010–00–159–4522
8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–203–7803
8010–01–203–7804
8010–00–079–3750
8010–00–079–3752
8010–00–079–3754
8010–00–079–3756
8010–00–079–3762
8010–00–079–3764

Enamel, Primer Coating

8010–00–159–4518
8010–00–584–2426

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–15537 Filed 6–17–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 19, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commissary Shelf Stocking, Custodial and Warehousing

Kaneohe Bay, Hawaii, NPA: Lanakila Rehabilitation Center, Honolulu, Hawaii

Grounds Maintenance

Manchester AFRC, 64 Harvey Road, Londonderry, New Hampshire, NPA: Goodwill Industries of Northern New England, Portland, Maine

Grounds Maintenance

Naval and Marine Corps Reserve Center, 5101 North Assembly Street, Spokane, Washington, NPA: Career Connections, Spokane, Washington

Laundry Service

Bangor Naval Subase, USS Lincoln and Miscelleaneous Sites to include ships in port, FISC/Puget Sound, Bremerton, Washington, NPA: Northwest Center for the Retarded, Seattle, Washington

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Floorboard, Vehicular

2510–01–063–3892

Floorboard, Wood

2510–01–063–3893
2510–01–067–2630

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–15538 Filed 6–17–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Wholesale Trade Survey.

Form Number(s): B–310.

Agency Approval Number: 0607–0190.

Type of Request: Revision of a currently approved collection.

Burden: 5,320 hours.

Number of Respondents: 3,800.

Avg Hours Per Response: 7 minutes.

Needs and Uses: The Monthly Wholesale Trade Survey (MWTS) provides the only continuous measure of monthly sales, end-of-month inventories, method of inventory valuation, and inventory/sales ratios in the United States by selected kinds of business for merchant wholesalers. The Bureau of Economic Analysis uses this information to improve the inventory valuation adjustments applied to estimates of the Gross Domestic Product (GDP). The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements.

We currently publish wholesale sales and inventory estimates on the Standard Industrial Classification (SIC) basis. Starting in the spring of 2001, we will publish on the North American Industry Classification System (NAICS) basis. The SIC definition of wholesale trade and the NAICS definition of wholesale trade are substantially different. The SIC defines wholesalers as establishments engaged in selling merchandise to other businesses. NAICS distinguishes wholesalers from retailers based on what the establishment does rather than to whom the establishment sells. Wholesalers are defined as those establishments that sell from offices or warehouses, usually in large quantities, advertise to businesses rather than to the general public, and generally have no walk-in traffic or formal displays. Businesses, formerly classified in wholesale trade, that sell to the general public are now classified as retail.

NAICS provides a better way to classify individual businesses, and will be widely adopted throughout both the public and private sectors. NAICS will change the information that is currently available with reclassifications, definitional changes, and movement of activities in or out of wholesale trade. NAICS is more relevant as it identifies more industries that contribute to today's growing economy. NAICS was developed by the United States, Canada, and Mexico to produce comparable data among the NAFTA partners.

In addition, the MWTS will convert its monthly report form to a print-on demand system. This new system allows us to tailor the survey instrument to a specific industry. For example, it will print an additional instruction for a particular NAICS code. This system also reduces the time and cost of preparing mail-out packages that contain unique variable data, while improving the look and quality of the products being produced.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–15570 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1039]

Grant of Authority for Subzone Status Kvaerner Philadelphia Shipyard, Inc. (Shipbuilding), Philadelphia, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities

cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Philadelphia Regional Port Authority, grantee of FTZ 35, for authority to establish special-purpose subzone status for the shipbuilding facility of Kvaerner Philadelphia Shipyard, Inc., in Philadelphia, Pennsylvania, was filed by the Board on December 10, 1998, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 56–98, 63 FR 69261, 12–16–98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, Therefore, the Board hereby grants authority for subzone status at the shipbuilding facility of Kvaerner Philadelphia Shipyard, Inc., in Philadelphia, Pennsylvania (Subzone 35E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill; and,

2. In addition to the annual report, Kvaerner Philadelphia Shipyard, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 3rd day of June 1999.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–15566 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1038]

Grant of Authority for Subzone Status, Borg-Warner Automotive Powertrain Systems Corporation (Automotive Transfer Cases), Seneca, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has made application for authority to establish special-purpose subzone status at the automotive transfer case manufacturing plant of Borg-Warner Automotive Powertrain Systems Corporation (Inc.) located in Seneca, South Carolina (FTZ Docket 33–98, filed 6–23–99);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 36213, 7–2–98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Borg-Warner Automotive Powertrain Systems Corporation (Inc.) located in Seneca, South Carolina (Subzone 38B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of June 1999.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–15565 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Final Results of First Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the final results in the first antidumping duty administrative review and new shipper review of the antidumping duty order on brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the first antidumping duty administrative review and new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. This review covers the period October 10, 1996, through March 31, 1998.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0629, respectively.

Postponement of Final Results of Review

The Department of Commerce (''the Department'') published the preliminary results of the first antidumping administrative review and new shipper review on brake rotors from the People's Republic of China (''PRC'') on May 6, 1999 (64 FR 24322). The current deadline for the final results in these reviews is September 3, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, we determine that it is not practicable to complete this review within the original time frame. Because of travel restrictions imposed by the U.S. Embassy in Beijing, we are

currently unable to conduct verification and allow sufficient opportunity for the submission of interested party comments, prior to the current final results deadline, as originally planned. Thus, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for completion of the final results of these reviews until November 2, 1999, which is 180 days after the date on which the notice of the preliminary results was published in the **Federal Register**.

Dated: June 14, 1999.

Laurie Parkhill,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–15569 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On February 22, 1999, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on potassium permanganate from the People's Republic of China (PRC) covering Guizhou Provincial Chemical I/E Corp. (GPC), an exporter/reseller of subject merchandise, and Zunyi Chemical Factory (Zunyi), a manufacturer of subject merchandise. This review was requested by GPC and Zunyi and covers the period January 1, 1998, through December 31, 1998. The Department is rescinding the review after receiving a withdrawal of the requests for review from GPC and Zunyi.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or James Terpstra, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–4474 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (April, 1998).

Background

On January 27, 1999, GPC and Zunyi requested that the Department conduct an administrative review of the order on potassium permanganate from the People's Republic of China for the period January 1, 1998, through December 31, 1998. No other interested party requested that the Department conduct an administrative review.

On February 22, 1999, the Department published in the **Federal Register** (64 FR 8542) a notice of initiation of administrative review with respect to GPC, an exporter/reseller of subject merchandise, and Zunyi, a manufacturer of subject merchandise. On April 6, 1999, GPC and Zunyi filed letters with the Department withdrawing the requests that the Department conduct an administrative review. This withdrawal complies with section 351.213(d) of the Department's regulations, which grants parties 90 days from the publication of the notice of initiation of review to withdraw a request for review. *See* 19 CFR 351.213(d). Therefore, the Department is rescinding this administrative review.

This notice is in accordance with section 751 of the Act and section 351.213(d) of the Department's regulations.

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–15568 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 89–00001.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Illinois World Trade Center Association doing business as EXILL Trading Company (''EXILL''). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to EXILL.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on April 28, 1988 to EXILL.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (§ 325.10(a)(3) and 325.14(c) of the regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On April 18, 1998, the Department of Commerce sent to EXILL a letter containing annual report questions with a reminder that its annual report was due on June 12, 1998. Additional reminders were sent on July 9, 1998 and on September 30, 1998. The Department has received no written response from EXILL to any of these letters.

On March 16, 1999, and in accordance with § 325.10(c)(1) of the regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify EXILL that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing EXILL thirty days to respond was published in the **Federal Register** on March 22, 1999 at 64 FR 13777. Pursuant to § 325.10(c)(2) of the regulations (15 CFR 325.10(c)(2)), the Department considers the failure of EXILL to respond to be an admission of

the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to EXILL for its failure to file an annual report. The Department has sent a letter, dated June 14, 1999, to notify EXILL of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the regulations, 15 CFR 324.10(c)(4) and 325.11 of the regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: June 14, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–15494 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499B]

Submission for OMB Review: Comment Request

The Department of Commence (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Collection Request.

Burden: 750 hours.

Number of Respondents: 500.

Avg. Hours Per Response: 1.5 hours.

Needs and Uses: The National Marine Fisheries Service will provide disaster assistance for persons or entities in the Northeast Multispecies Fishery who have incurred losses from a commercial fishing failure under section 308(b) of the Interjurisdictional Fisheries Act. In exchange for the disaster assistance the recipients will commit to assisting fishing-related research through a cooperative program in which fishermen provide vessels and support and government or academic institutions provide scientific staff and equipment. The collection of information is needed to identify individuals wishing to participate in the program and to confirm their acceptance of the conditions of receiving the disaster assistance.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: One-time collection.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at Lengelm@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by no later June 23, 1999, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15536 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of the Under Secretary and Administrator, National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997 and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND PLACE: Wednesday, July 7, 1999 from 10 a.m. to 5:30 p.m.; Thursday, July 8, 1999 from 8:30 a.m. to 5 p.m.; and Friday, July 9, 1999 from 1:30 p.m. to 5:30 p.m. The meeting will take place in the Cascade Room at the Hotel Edgewater, Pier 67, 2411 Alaskan Way, Seattle, WA, 98121.

Agenda

1. Overview of NOAA-University/State of Washington Partnership activities.
2. Overview and discussion of NOAA science as it is related to the Endangered Species Act (ESA) and potentials for future ESA-oriented science.
3. Public input session with SAB discussion.
4. Discussion on NOAA Strategic Planning Process related to science priorities.
5. Presentation of options, with discussion by SAB, for potential SAB participation/oversight in NOAA Science Program and Panel Reviews.
6. SAB Sub-Committee and Issue Group reports.
7. Concluding SAB discussion on priority science-related issues for NOAA, with Sub-Committee action items, next steps and/or preliminary recommendations identified for any of the subjects discussed during the course of the meeting.

PUBLIC PARTICIPATION: The meeting will be open to public participation with at least 45 minutes set aside during the meeting for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by June 21, 1999, in order to provide sufficient time for SAB review prior to meeting date. Written comments received by the SAB Executive Director after June 21 will be distributed to the SAB, but may possibly not be reviewed prior to the meeting date. Approximately twenty (20) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served bases.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Hwy, Silver Spring, MD, 20910 (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: MICHAEL.CROSBY@NOAA.GOV).

Dated: June 10, 1999.

D. James Baker,

Under Secretary for Oceans and Atmosphere and Administrator for NOAA.

[FR Doc. 99–15501 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–08–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052199A]

Marine Mammals; Permit No. 928 (File No. P351E)

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 928, issued to Ms. Olga von Ziegesar, North Gulf Oceanic Society, P.O. Box 15191, Homer, AK 99603, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 928 authorizes Ms. von Ziegesar to harass humpback whales (*Megaptera novaeangliae*) during photo-identification studies and biopsy sampling activities in Alaska waters. This amendment authorizes the extension of the expiration date through December 31, 1999.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–15534 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

June 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 adjusted, variously, for swing, carryover, carryforward, special swing and special shift.

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 59945, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 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, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on , you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Fabric Group	
338/339	1,471,338 dozen.
341/641	1,610,116 dozen of which not more than 704,485 dozen shall be in Category 341.
347/348	706,710 dozen.
645/646	352,503 dozen.
647/648	2,085,995 dozen of which not more than 1,367,930 dozen shall be in Category 647–K [2] and not more than 1,367,930 dozen shall be in Category 648–K [3].
Group II	
201, 222–224, 239pt. [4], 332, 352, 359pt. [5], 360–362, 369pt. [6], 400–431, 433, 434, 436, 438–O [7], 440, 443, 444, 447, 448, 459pt. [8], 464, 469pt. [9], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [10], 666, 669pt. [11], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [12], as a group..	51,176,834 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 369pt.: all HTS numbers except 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.

[7] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[8] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[9] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[10] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[11] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[12] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of 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. 99–15466 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3178–000]

MidAmerican Energy Company; Filing

June 10, 1999.

Take notice that on June 8, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission Firm Transmission Service Agreements with Central Minnesota Municipal Power Agency (Central Minnesota), dated June 3, 1999, and Ames Municipal Electric System (Ames Municipal), dated June 3, 1999, and a Non-Firm Transmission Service Agreement with Central Minnesota, dated June 3, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of June 3, 1999, for the Agreements with Central Minnesota, and June 3, 1999, for the Agreement with Ames Municipal, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Central Minnesota, Ames Municipal, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15510 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–161–000, et al.]

NRG Northeast Generating LLC, et al.

Electric Rate and Corporate Regulation Filings

June 11, 1999.

Take notice that the following filings have been made with the Commission:

1. NRG Northeast Generating LLC

[Docket No. EG99–161–000]

Take notice that on June 9, 1999, NRG Northeast Generating LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). On June 9, 1999, Applicant filed an amendment to its Application, consisting of an order of the New York Public Service Commission (PSC) dated June 8, 1999, in which the PSC made the findings required by section 32(c) of PUHCA as to two of the generating facilities being acquired by Applicant.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. LIC Funding, Limited Partnership

[Docket No. EG99–164–000]

Take notice that on June 9, 1999, LIC Funding, Limited Partnership (LIC Funding) filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

LIC Funding is a Delaware limited partnership that will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities located in Queens, New York. The eligible facilities will consist of approximately 1,742 MW of gas and/or oil fired steam electric generation facilities and related interconnection facilities. The output of the eligible facilities will be sold exclusively at wholesale.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Arthur Kill Power LLC

[Docket No. EG99–165–000]

Take notice that on June 9, 1999, Arthur Kill Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Arthur Kill Generating Station in Staten Island, New York (Facility) and selling electric energy at wholesale. The Facility consists of two steam generating units of 335 MW and 491 MW, one black start gas turbine of 16 MW, and associated interconnection components. The applicant intends to purchase the Facility from Consolidated Edison Company of New York.

Comment date: July 2, 1999, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Astoria Gas Turbine Power LLC

[Docket No. EG99–167–000]

Take notice that on June 9, 1999, Astoria Gas Turbine Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Astoria Gas Turbine Site in Astoria, New York (Facility) and selling electric energy at wholesale. The Facility consists of twenty small combustion turbines with a total capacity of 614 MW and associated interconnection facilities. The applicant intends to purchase the Facility from Consolidated Edison Company of New York.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. United Power, Inc.

[Docket No. EL99–70–000]

Take notice that on June 8, 1999, United Power, Inc. tendered for filing a request for a waiver of the requirements of Order Nos. 888 and 889 and certain regulations.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–3149–000]

Take notice that on June 4, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) submitted for filing a service agreement under which the CSW Operating Companies will provide ancillary services to Ingleside Cogeneration Limited Partnership (Ingleside) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on Ingleside.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER99–3150–000]

Take notice that on June 4, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) filed amendments to ComEd's Open Access Transmission Tariff (OATT) to deter customers from exceeding their firm reserved capacity at a point of receipt or point of delivery through a penalty, to require schedules for point-to-point transmission service to comply with NERC Policy No. 3 and to revise the information that must be submitted for a completed application. ComEd is also filing to allow requests for daily service to be submitted on the prior Friday when service is to commence on a Monday or Tuesday after a National Holiday as defined in Schedule 7 of the OATT.

ComEd requests an effective date of August 3, 1999 for the above-described amendments. Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER99–3152–000]

Take notice that on June 4, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements with one new customer, Cleco Corporation.

CILCO requested an effective date of May 28, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy Corp. and Pennsylvania Power Company

[Docket No. ER99–3153–000]

Take notice that on June 4, 1999, FirstEnergy Corp. tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with DTE Energy Trading, Inc. pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is June 1, 1999.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER99–3155–000]

Take notice that on June 4, 1999, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement with Southern Company Services, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Sunflower Electric Power Corporation

[Docket No. NJ99–2–001]

Take notice that on June 9, 1999, Sunflower Electric Power Corporation (Sunflower) submitted revised transmission tariff pages in order to comply with the Commission's June 1, 1999, order in the above-captioned proceeding finding Sunflower's tariff to be an acceptable reciprocity tariff.

Comment date: July 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Salt River Project Agricultural Improvement and Power District

[Docket No. NJ99–3–000]

Take notice that on June 8, 1999, the Salt River Project Agricultural Improvement and Power District (SRP), a non-public utility operating in Arizona submitted for filing typographical corrections to schedule and tariff section numbers referenced in SRP's revised voluntary Open Access Transmission Tariff (OATT) and the Attachments to SRP's OATT. SRP requests that the Federal Energy Regulatory Commission (Commission) accept its corrected tariff sheets and substitute such sheets in SRP's clean

and redlined version of its OATT which was filed previously on May 10, 1999.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15480 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–76–000, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

June 9, 1999.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. EC99–76–000]

Take notice that on June 3, 1999, Phibro Inc. tendered for filing with the Federal Energy Regulatory Commission, exhibits to the ''Application for Authorization under Section 203 of the Federal Power Act'' filed by Phibro Inc. on May 28, 1999 in the above-referenced proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company, The Detroit Edison Company, FirstEnergy Corp. on behalf of: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, and Virginia Electric and Power Company

[Docket No. EC99–80–000]

Take notice that on June 3, 1999, American Electric Power Service Corporation on behalf of the public utility operating company subsidiaries of the AEP system (Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), Consumers Energy Company, Detroit Edison Company, FirstEnergy Corp. on behalf of the transmission-owning FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company), and Virginia Electric and Power Company (collectively, the Alliance Companies) filed an application under Section 203 of the Federal Power Act for approval of the transactions necessary to create the Alliance Regional Transmission Organization (Alliance RTO).

The Alliance Companies state that their application is a companion filing to, and a necessary part of, their concurrent application under Section 205 of the Federal Power Act to establish the Alliance RTO.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dominion Resources, Inc., and Consolidated Natural Gas Company

[Docket No. EC99–81–000]

Take notice that on June 7, 1999, Dominion Resources, Inc. (Dominion), and Consolidated Natural Gas Company (CNG), on behalf of their public utility subsidiaries (collectively, the Applicants), filed a Joint Application under Section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's regulations to request authorization and approval for the proposed merger between Dominion and CNG.

The Applicants state that copies of the filing have been served upon the state utility commissions of Virginia, North Carolina, West Virginia, Pennsylvania and Ohio and wholesale customers of Dominion and CNG.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc. and Astoria Generating Company, L.P.

[Docket Nos. EC99–82–000 ER99–3164–000]

Take notice that on June 7, 1999, Consolidated Edison Company of New York, Inc. and Astoria Generating Company, L.P. (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of three oil-and gas-fired steam electric generating units and one gas turbine unit at the Astoria Generating Station located in Queens, New York, and a number of gas turbines located on floating barges at the Gowanus Gas Turbine site and Narrows Gas Turbine site in Brooklyn, New York. The Applicants also tendered for filing pursuant to Section 205 of the Federal Power Act certain agreements providing for services related to the transfer of facilities.

The Applicants have served a copy of this filing on the New York Public Service Commission.

Comment date: July 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company and FirstEnergy Operating Companies, The Cleveland Electric Illuminating Company, Ohio Edison Company, and Pennsylvania Power Company

[Docket No. EC99–83–000]

Take notice that on June 8, 1999, Duquesne Light Company and the First Energy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company) (collectively Applicants) submitted for filing a joint application (Application) requesting authorization under Section 203 of the Federal Power Act to transfer certain jurisdictional transmission facilities between Duquesne and FirstEnergy and to assign rights under certain FERC-jurisdictional agreements.

The Applicants request expeditious action on the Application in order that there be no delay in the transaction.

Comment date: July 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Fulton Cogeneration Associates, L.P.

[Docket No. EG99–159–000]

Take notice that on June 4, 1999, Fulton Cogeneration Associates, L.P. (Applicant), Nine Greenway Plaza, Houston, Texas filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a New York limited partnership owns power generating facilities in Rensselaer New York. These facilities will consist of a 79 MW (net) topping cycle cogeneration facility, and facilities necessary to interconnect with Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Tenaska Georgia Partners, L.P.

[Docket No. EG99–160–000]

Take notice that on June 7, 1999, Tenaska Georgia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Georgia), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Tenaska Georgia, a Delaware limited partnership, will construct and operate a natural gas-fired generating facility (the Facility) to be located near the town of Franklin in Heard County, Georgia. The Facility will consist of six generating units which will use natural gas as the primary fuel and fuel oil as backup fuel. The Facility will also include natural gas receipt and delivery facilities, fuel oil storage facilities, fuel oil unloading facilities, and certain fuel control systems and water facilities. The maximum electric power production capacity of the facility will be 1,100 MW. The Facility will also include related transmission interconnection components necessary to interconnect the Facility with Georgia Transmission Corporation. The Facility will be used exclusively for the generation of electric energy for sale at wholesale.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. NRG Northeast Generating LLC

[Docket No. EG99–161–000]

Take notice that on June 8, 1999, NRG Northeast Generating LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged indirectly and exclusively in owning and operating eligible facilities and selling electric energy at wholesale. The facilities will consist initially of: (a) the Arthur Kill Generating Station in Staten Island, New York constituting two steam generating units of 335 MW and 491 MW, one black start gas turbine of 16 MW, and associated interconnection facilities; (b) the Astoria Gas Turbine Site in Astoria, New York, constituting twenty small combustion turbines with a total capacity of 614 MW and associated interconnection facilities; (c) the Dunkirk Generating Station in Dunkirk, New York, constituting two coal-fired 100 MW units, two coal-fired 200 MW units, and associated interconnection facilities; (d) the Huntley Generating Station located three miles north of Buffalo, New York, constituting four 90 MW coal-fired units, two 200 MW coal-fired units, and associated interconnection facilities; and (e) the Somerset Generating Station located in Somerset, Massachusetts, constituting a 112 MW coal-fired unit, a 69 MW coal-fired unit that is on deactivated reserve status, two combustion turbine units power by jet fuel with a combined capability of 24 MW, and associated interconnection facilities.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Dunkirk Power LLC

[Docket No. EG99–162–000]

Take notice that on June 8, 1999, Dunkirk Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Dunkirk generating station in Dunkirk, New York (Facility) and selling electric energy at wholesale. The Facility consists of two coal-fired 100 MW units, two coal-fired 200 MW units, and associated interconnection components. The applicant intends to purchase the Facility from Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Huntley Power LLC

[Docket No. EG99–163–000]

Take notice that on June 8, 1999, Huntley Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Huntley generating station located three miles north of Buffalo, New York (Facility) and selling electric energy at wholesale. The Facility consists of four 90 MW coal-fired units, two 200 MW coal-fired units, and associated interconnection facilities. The applicant intends to purchase the Facility from Niagara Mohawk Power Corporation.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. Appalachian Power Company

[Docket Nos. ER92–323–000 and ER92–324–000]

Take notice that on June 7, 1999, Appalachian Power Company, tendered for filing a compliance filing pursuant to a June 29, 1998 order issued in the above-referenced docket.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket Nos. ER95–469–004 and ER95–457–006]

Take notice that on June 7, 1999, Florida Power Corporation tendered for filing a refund report for calendar year 1997 related to the recovery of ''Qualifying Facility Energy Payments'' from Florida Power Corporation's wholesale full and partial requirements customers in accordance with the Settlement Agreements approved in

Docket Nos. ER95–469–000 and ER95–457–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–001]

Take notice that on June 7, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

14. Advantage Energy, Inc.

[Docket No. ER97–2758–006]

Take notice that on June 4, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

15. The Montana Power Company

[Docket No. ER99–2370–000]

Take notice that on June 4, 1999, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission an amendment to its original filing in the above referenced docket. The original filing, and this amendment, pertain to unexecuted Network Integration Transmission Service Agreements and Network Operating Agreements with Golden Sunlight Mines, Inc. (Golden Sunlight), Cenex Harvest States Cooperatives (Cenex), Illinova Energy Partners, Inc. (Illinova), and Energy West Resources, Inc. (Energy West), Ash Grove Cement Company (Ash Grove), and Montana Refining Company (Montana Refining) under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Golden Sunlight, Cenex, Illinova, Energy West, Ash Grove and Montana Refining.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Sunlaw Cogeneration Partners I, L.P.

[Docket No. ER99–2685–000]

Take notice that on June 2, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

17. Cinergy Services, Inc.

[Docket No. ER99–3154–000]

Take notice that on June 4, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Illinova Energy Partners, Inc., (IEP).

Cinergy and IEP are requesting an effective date of May 7, 1999.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER99–3159–000]

Take notice that on June 4, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the long-term sale of electric capacity and energy to meet the full requirements of the Borough of Milltown, New Jersey, less any New York Power Authority hydroelectric allocation, and the procurement of associated transmission service under the prevailing PJM Open Access Transmission Tariff, or its successor pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be make effective as of June 14, 1999.

Copies of the filing have been served upon the Borough of Milltown and the New Jersey Board of Public Utilities.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–3160–000]

Take notice that on June 7, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with FPL Energy Power Marketing, Inc. (FPL), under the NU System Companies' System Sale For Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to FPL.

NUSCO requests that the Service Agreement become effective on June 1, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER99–3161–000]

Take notice that on June 7, 1999, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Alliant Energy Corp. Services, Inc., under its Market-Based Rate Tariff.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER99–3162–000]

Take notice that on June 7, 1999, Orange and Rockland Utilities, Inc. (O&R), tendered for filing amendments to its Continuing Site/Interconnection Agreements with Southern Energy Lovett, L.L.C., Southern Energy Bowline, L.L.C., and Southern Energy NY–GEN, L.L.C. (the Southern Energy Parties). The Southern Energy Parties concur in this filing.

O&R has requested an effective date of June 30, 1999.

Copies of this filing have been served upon the utility regulatory commissions of the states of New York, New Jersey and Pennsylvania.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. UtiliCorp United Inc.

[Docket No. ER99–3163–000]

Take notice that on June 7, 1999, UtiliCorp United Inc. (UtiliCorp), tendered for filing amendments to the open access transmission tariffs for its Missouri Public Service, WestPlains Energy-Kansas, and WestPlains Energy-Colorado operating divisions. The amendments include changes to the rates for transmission and ancillary services under each of the three tariffs.

UtiliCorp requests that the amendments become effective on August 6, 1999.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Tenaska Georgia Partners, L.P.

[Docket No. ER99–3165–000]

Take notice that on June 7, 1999, Tenaska Georgia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Georgia), which will own and operate a natural gas-fired electric generating facility to be constructed in Heard County, Georgia, tendered for filing with the Federal

Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1, which will enable Tenaska Georgia to engage in the sale of electric energy and capacity at market-based rates.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Co.

[Docket No. ER99–3166–000]

Take notice that on June 7, 1999, Southern California Edison Company (SCE), tendered for filing the Transmission Owner Tariff Expedited Service and Interconnection Agreement (Agreement) between SCE and Wintec Energy, LTD (Wintec).

The Agreement specifies the terms and conditions under which SCE will interconnect Wintec's 3.705 MW of generation at Buckwind Substation pursuant to SCE's Transmission Owner Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Rochester Gas and Electric Corporation

[Docket No. ER99–3167–000]

Take notice that on June 7, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Cargill-Alliant LLC., Customer. This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of June 1, 1999 Cargill-Alliant's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Astoria Generating Company, L.P.

[Docket No. ER99–3168–000]

Take notice that on June 7, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application seeking waivers and granting blanket approvals under various Commission regulations and for an order accepting Astoria Generating Company's initial rate schedule, FERC Electric Rate Schedule No. 1.

Astoria Generating Company's acquisition of the Astoria Bundle generating plants in New York State will not close before July 30, 1999. Astoria Generating Company intends to sell energy and capacity, and certain ancillary services from the Astoria Bundle facilities at market-based rates. In transactions where Astoria Generating Company sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Harbor Cogeneration Company

[Docket No. ER99–3169–000]

Take notice that on June 9, 1999, Harbor Cogeneration Company filed amendments to its rate schedule and code of conduct in the above-referenced docket.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Niagara Mohawk Power Corporation

[Docket No. ER99–3170–000]

Take notice that on June 7, 1999, Niagara Mohawk Corporation tendered for filing an Interconnection Agreement with the Village of Solvay, New York, a municipal electric utility. The Interconnection Agreement governs a new interconnection between Niagara Mohawk's transmission system and a new substation being constructed by the Village of Solvay, New York. Niagara Mohawk currently provides transmission services to the Village of Solvay, interconnection with the Village of Solvay at the Village's Matthews Avenue Substation.

The Village of Solvay, New York's new substation is being constructed to allow it to take power deliveries from the New York Power Authority for use in providing electric service to the Village of Solvay's electric customers.

Copies of the filing were served upon the Village of Solvay, New York and the New York Public Service Commission.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Charles W. Pryor, Jr.

[Docket No. ID–3370–000]

Take notice that on June 3, 1999, Charles W. Pryor, Jr. tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Executive Officer, Westinghouse Electric Company.

Director, The Detroit Edison Company.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Bucksport Energy LLC

[Docket No. QF99–54–000]

Take notice that on June 4, 1999, Bucksport Energy LLC (Applicant), tendered for filing an amendment to the above filing of February 25, 1999, in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides certain technical clarifications and additional information pertaining to the ownership of the cogeneration facility.

Comment date: July 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15481 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–870–009, *et al.*]

Sunoco Power Marketing, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

June 10, 1999.

Take notice that the following filings have been made with the Commission:

1. Sunoco Power Marketing, L.L.C.

[Docket No. ER97–870–009]

Take notice that on June 7, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Public Service Electric and Gas Company; PSEG Fossil LLC; PSEG Nuclear LLC; PSEG Energy Resources & Trade LLC

[Docket Nos. EC99–79–000 and ER99–3151–000]

Take notice that on June 4, 1999, Public Service Electric and Gas Company (PSE&G), PSEG Fossil LLC, PSEG Nuclear LLC, and PSEG Energy Resources & Trade LLC (collectively, Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities and rate schedules in connection with the sale of PSE&G's generating facilities. The Applicants also tendered for filing under Section 205 of the Federal Power Act certain related service agreements.

Comment date: July 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER99–1413–002]

Take notice that on June 7, 1999, Central Maine Power Company tendered for filing a report of compliance in response to the Commission's order issued in the above referenced docket on May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool and ISO New England Inc.

[Docket No. ER99–1414–001]

Take notice that on June 7, 1999, New England Power Pool and ISO New England Inc., filed a Report of Compliance in response to the Commission order in the above referenced docket of May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER99–1525–001]

Take notice that on June 4, 1999, the Mid-Continent Area Power Pool tendered for filing its compliance filing in the above-reference docket.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Electric Power Company

[Docket No. ER99–1690–002]

Take notice that on June 7, 1999, Maine Electric Power Company filed a Report of Compliance in response to the Commission Order in the above referenced docket of May 28, 1999.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER99–2019–001]

Take notice that on June 7, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment in the above-referenced filing. The amendment revises the terminology ''firm load curtailment'' to ''firm transmission curtailment'' to be consistent with language used by the North American Electric Reliability Council (NERC) in Docket No. EL98–52–000.

Copies of the filing have been served on all members of the Mid America Interconnected Network (MAIN), the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cambridge Electric Light Company; Commonwealth Electric Company

[Docket No. ER99–2239–001]

Take notice that on June 7, 1999, Cambridge Electric Light Company and Commonwealth Electric Company tendered for filing a compliance report in response to the Commission order in the above-captioned docket of May 28, 1999.

Copies of said report have been served upon all parties to this proceeding.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER99–3136–000]

Take notice that on June 2, 1999, Montana Power Company tendered for filing an amendment to its 1982 agreement for Purchase of Power between Montana Power Company and Big Horn County Electric Cooperative, Inc.

Comment date: June 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Dighton Power Associates Limited Partnership

[Docket No. ER99–3146–000]

Take notice that on May 27, 1999, the above-mentioned public utility filed their quarterly report for the quarter ending March 31, 1999.

Comment date: June 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Complete Energy Services, Inc.

[Docket No. ER99–3147–000]

Take notice that on June 4, 1999, Complete Energy Services, Inc. (Complete), petitioned the Commission for acceptance of Complete Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Complete intends to engage in wholesale electric power and energy purchases and sales as a marketer. Complete is not in the business of generating or transmitting electric power.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. California Power Exchange Corporation

[Docket No. ER99–3148–000]

Take notice that on June 4, 1999, the California Power Exchange Corporation (PX), tendered for filing proposed tariff changes collectively comprising the PX's Tariff Amendment No. 11. The main purpose of Amendment No. 11 is to modify the PX Tariff and Protocols to reflect changes made by the California Independent System Operator Corporation (ISO) in its Amendment No. 14, which was recently accepted by the

Commission. Amendment 14 effected a substantial redesign of the ISO's Ancillary Services Markets, and the PX's Amendment No. 11 modifies the PX Tariff and Protocols to adapt to Amendment No. 14.

In addition to the changes to adapt to the ISO's Amendment No. 14, the PX also proposed relatively modest changes to its Tariff and Protocols, including provisions related to losses and to the settlement and payment time lines.

The PX requests an effective date to coincide with the effective date of the ISO's Amendment No. 14.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER99–3158–000]

Take notice that on June 4, 1999, the California Independent System Operator Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission its ''Annual Report on Market Issues and Performance'' prepared by the Market Surveillance Unit of the ISO. This report is the first Annual Report assessing the activities of the ISO and the state of competition in the California electricity market.

The ISO states that copies of the Annual Report have been served upon the Public Utilities Commission of California, the California Energy Commission, and the California Electricity Oversight Board. The ISO is also posting the Annual Report on its Home Page, www.caiso.com.

Comment date: June 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Geysers Power Company, LLC

[Docket No. ER99–3177–000]

Take notice that on June 7, 1999, Geysers Power Company, LLC (Geysers), tendered for filing an Offtake Agreement dated May 7, 1999 between Geysers and Calpine Power Services Company. The agreement was filed as a long-term transaction pursuant to paragraph 7(a) of Appendix B of the Letter Order issued April 28, 1999 in Docket No. ER99–1983–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ES99–40–000]

Take notice that on June 8, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) filed an application for an order, pursuant to Section 204 of the Federal Power Act, authorizing Con Edison during the period from July 1, 1999 through June 30, 2001 to issue and sell unsecured evidences of indebtedness maturing not more than twelve months after their date of issue up to an amount not to exceed $650 million outstanding at any one time. The requested authorization would supersede the order issued under Docket No. ES98–16–000.

Comment date: June 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15479 Filed 6–17–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6362–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products

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 for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): ''Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products,'' EPA No. 1764.01, OMB No. 2060–0348, expires June 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 17, 1999.

ADDRESSES: *Information concerning the ICR and the rule.* Information on the ICR and the Consumer Products Rule can be obtained from the docket (below) and is also available for downloading from EPA's internet website for this rule at ''http://www.epa.gov/ttn/uatw/183e/cp/cppg.html.''

Docket: Docket Number A–95–40, containing the ICR and supporting statement, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore at (919) 541–5460, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, e-mail (moore.bruce@epa.gov).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture, distribute, or import consumer products for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title: National Volatile Organic Compound Emission Standards for Consumer Products, OMB Control No. 2060–0348; EPA ICR No. 1764.01; expires June 30, 1999.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C—National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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: 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. Total industry burden is estimated to be 29,550 hours per year, at a total labor cost of $970,500 per year. Labor costs were estimated based on Table 2 of the Bureau of Labor Statistics (BLS) Employment Cost Trends. After adding overhead costs of 100 percent to the BLS figures, the resulting hourly labor rates for management, technical, and clerical labor are $69, $48, and $32, respectively. There are no capital costs associated with this collection. Burden was calculated based on the following assumptions:

(i) Initial Notification Reports will have been submitted by nearly all regulated entities (approximately 3000) prior to expiration of the existing ICR. Therefore, the burden calculation is based on 30 notifications per year beginning in 1999.

(ii) Reading the rule to obtain the recordkeeping and reporting instructions would require 2 hours.

(iii) Completion of the Initial Notification Report would involve 1 hour for data gathering and 1 hour for preparation of the initial notification report.

(iv) Notification of change in date code would require 1 hour preparation time.

(v) Annual planning for recordkeeping activities would require 2 hours.

(vi) Implementation of recordkeeping would require 8 hours per month.

Dated: June 9, 1999.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–15549 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–6]

Review of Clean Water Act Continuing Planning Process in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Region 9, is announcing that the Clean Water Act Continuing Planning Process for California is available for public review, and that EPA is reviewing the State's Continuing Planning Process with respect to the listing of impaired waters and establishment of total maximum daily loads.

FOR FURTHER INFORMATION CONTACT: David W. Smith, Water Division (WTR–2), U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2012.

SUPPLEMENTARY INFORMATION: Section 303(e) of the Clean Water Act requires that each State establish and maintain a continuing planning process (CPP) consistent with the Act. EPA reviews the State's CPP from time to time. Section 303(d) of the Act requires that each State identify waters within its boundaries not meeting water quality standards, and establish total maximum daily loads for such waters. EPA is reviewing that portion of California's CPP related to section 303(d) to determine whether it is consistent with section 303(e) and EPA's implementing regulations at 40 CFR 130.5. EPA is providing notice that California's CPP is available for public review. By September 22, 1999, EPA will prepare and make available to interested parties upon request for their review and comment EPA's preliminary written summary of its review. Interested persons may request copies of the CPP and EPA's preliminary written summary of its review when available. EPA will consider any comments on the preliminary written summary submitted not later than forty-five (45) days after the summary becomes available. By December 22, 1999, EPA will determine whether that portion of the CPP related to the section 303(d) program is consistent with the Act and its implementing regulations. EPA will also provide to interested persons upon request a final written summary of EPA's review of the CPP that will include any recommendations for improvement.

Dated: June 9, 1999.

Janet Y. Hashimoto,

Acting Director, Water Division.

[FR Doc. 99–15550 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 07, 1999 Through June 11, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990190, DRAFT EIS, COE, TN, KY, Reelfoot lake Project, Implemention of Wetland Preservation, Waterfowl Habitat Restoration, Fishery Improvement, Lake and Obion Counties, TN and Fulton County, KY, Due: August 02, 1999, Contact: Richard Hite (901) 544–0706.

EIS No. 990191, DRAFT SUPPLEMENT, AFS, SD, Veteran/Boulder Area Project, Updated Information on Additional Analysis for the Forbes Gulch Portion within the Beaver Park Roadless Area, Implementation, Black Hills National Forest, Spearfish and Nemo Ranger District, Lawrence and Meade Counties, SD, Due: August 02, 1999, Contact: Joy Trowbridge (605) 642–4622.

EIS No. 990192, FINAL EIS, FHW, MO, MO–13 AND M0–7 Highway/Freeway

Improvements, MO–13 from US 24 in Lexington to Truman Reservoir south of Clinton and MO–7 in the immediate area of Clinton, Funding, Lafayette, Johnson and Henry Counties, MO, Due: July 19, 1999, Contact: Don Neumann, (573) 636–7104.

EIS No. 990193, DRAFT EIS, FHW, WA, Cross-Base Highway, To Develop a new arterial Roadway between I–5 and WA–7 (Pacific Avenue), Between McChard Air Force Base and Ft. Lewis, Genetic Analysis of Western Gray Squirrels, Major Investment Study, Pierce County, WA, Due: August 31, 1999, Contact: Jim Leonard (360) 753–9408.

EIS No. 990194, DRAFT EIS, UAF, NV, Nellis Air Force Base, Proposal to Base or Beddown F–22 Aircraft Force Development Evaluation and Weapons School, Clark County, NV , Due: August 02, 1999, Contact: Don Kellogg (703) 652–6552.

Amended Notices

EIS No. 990145, DRAFT EIS, AFS, UT, South Manti Timber Salvage, To address Ecological and Economic Values affected by Spruce Beetle Activity in the South Manti Project, Manti-La National Forest, Ferron-Price and Sanpete Ranger Districts, Sanpete and Sevier Counties, UT, Due: July 21, 1999, Contact: Don Fullmer (435) 637–2817.

Published FR 06–18–99—Review Period extended.

Dated: June 15, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–15562 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 24, 1999 through May 28, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–USN–K11097–GU Rating LO, Agana Naval Air Station Disposal and Reuse, Implementation, Guam.

Summary: EPA expressed a lack of objection to the project.

ERP No. D–USN–K11098–CA Rating EC2, Alameda Naval Air Station and Fleet and Industrial Supply Center, Disposal and Reuse, Alameda Annex and Facility, City of Alameda and Alameda County, CA.

Summary: EPA expressed environmental concerns, because the Environmental Impact Report and the DEIS were prepared as separate documents with potentially different mitigation proposals, and due to specific concerns with hazardous materials and wastes.

Final EISs

ERP No. F–AFS–J65291–MT Ash and Iron Mountain Grazing Permit Reissuance, Allotment Gallatin National Forest, Park County, MT.

Summary: EPA review did not identify any potential environmental impacts requiring substantive changes in the proposal, therefore EPA has no objection to the action.

ERP No. F–DOE–K08022–AZ Griffith Energy Project, Construction and Operation, 520-Megawatt (MW) Natural Gas-Fired and Combined Cycle Power Plant, Right-of-Way Grant, Operating Permit and COE Section 404 Permit, Kingman, AZ.

Summary: EPA's previous objections have been resolved, therefore EPA has no objection to the action as proposed.

ERP No. F–FTA–J40143–UT University-Downtown-Airport Transportation Corridor, Major Investment Study, Construction and Operation of the East-West Corridor Light Rail Transit (LRT), Transportation System Management (TSM) and Central Business District (CBD), Funding, Salt Lake County, UT.

Summary: EPA's review has not identified any potential impacts, when combined with proposed mitigation measures, that require substantive changes to implementation of preferred alternative.

ERP No. FB–COE–K36009–CA Napa River and Napa Creek Flood Protection Project, New and Refined Information, City of Napa, Napa County, CA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: June 15, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–15563 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–7]

Support of Small Watershed Programs; Request for Proposals and Federal Grant Applications FY 99, U.S. EPA, Region III, Chesapeake Bay Program Office

EPA seeks to award financial assistance to support communities undertaking small-scale watershed projects for the benefit of the Chesapeake Bay and its rivers. Congressional appropriation of $750,000 has been designated for the Small Watershed Grant Program for fiscal year 1999. Funding will be provided to an intermediary organization under the authority of Section 104(b)(3) of the Clean Water Act (CWA) to make subawards to local governments and communities that are eligible to apply and are engaged in watershed protection. Intermediary organizations that are eligible for financial assistance awards include non-profits, interstate agencies, and educational institutions that have experience with federal grant procedures. Subawards administered by the intermediary organization may support investigations, experiments, surveys, studies, training, and demonstrations (as allowed by Section 104(b)(3) of the CWA) to work towards the protection and restoration of the Chesapeake Bay and its rivers.

Electronic versions of the full Request for Proposals (RFP), links to background information and links to federal grant information are provided at the EPA Region III home page at: http://www.epa.gov/r3chespk/smallwater/.

All applicants will be required to provide a full federal grant application. A grant application kit and RFPs are available by calling Kim Scalia at 215–814–5421, by E-mail at : Scalia.Kimberly@EPA.GOV or by visiting: http://www.epa.gov/ogdunix1/grants.htm

Send signed original and five copies of complete grant application to: Ms. Kim Scalia (3CB00), Chesapeake Bay Program Office, US EPA Region 3, 1650 Arch St., Philadelphia, PA 19103–2029.

All Applications must be Postmarked by July 15, 1999.

EPA Contacts

Mindy Lemoine, Chesapeake Bay Program Office, US EPA Region III, 1650 Arc Street, Philadelphia, PA 19103–2029, 215–814–2736—Lemoine.Mindy@epa.gov

Amanda Bassow, Chesapeake Bay Program Office, US EPA Region III, 410 Severn Ave., Suite 109, Annaplis, MD 21403, 410–267–5723—Bassow.Amanda@epa.gov

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 99–15541 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–8]

RIN 2050–AE50

Office of Solid Waste Burden Reduction Project

AGENCY: Environmental Protection Agency

ACTION: Notice of data availability and request for comment.

SUMMARY: To meet the goals of the Paperwork Reduction Act of 1995, the Office of Solid Waste (OSW) plans to reduce the recordkeeping and reporting burden on states, the public and regulated community associated with the Resource Conservation and Recovery Act (RCRA). The Paperwork Reduction Act establishes a federal government-wide goal to reduce the recordkeeping and reporting burden on the states, the public and regulated community by 40% from a starting date of 1995 to September 2001. We are working to reduce burden while protecting human health and the environment.

For this Notice of Data Availability (NODA), we reviewed our recordkeeping and reporting requirements and their burden on the states, public, and regulated community; reviewed burden reduction ideas developed by other EPA offices and the regulated community; developed additional burden reduction ideas; and sought input from EPA offices and states. In today's NODA, we are soliciting comment on our ideas and our background documents. These background documents are available on the Internet and in the RCRA Information Center. We plan to issue a proposed rulemaking to implement many of these ideas.

DATES: Written comments must be received by September 20, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–IBRA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries should be made to the RCRA Information Center at the Arlington, VA address below. Comments also may be submitted electronically via the Internet to: rcra-docket@epamail.epa.gov.

Comments in an electronic format also should reference docket number F–1999–IBRA–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. Commenters must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Public comments and technical background information are available for viewing in the RCRA Information Center (RIC), located on the first floor of Crystal Gateway I, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that an appointment be made by calling (703) 603–9230. The public may copy a maximum of 100 pages from the docket at no charge. Additional copies are $0.15 per page. The docket index and some technical background information materials are also available electronically.

FOR FURTHER INFORMATION ON THIS NOTICE CALL: The RCRA Hotline. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long-distance callers may call 1–800–424–9346 or TDD 1–800–553–7672. The RCRA Hotline operates weekdays, 9:00 a.m. to 6:00 p.m. eastern time. Send written requests to: RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically to paper form and place them in the official record. The official record also will include all comments submitted in writing.

Acronyms

ICR: Information Collection Request
LDR: Land Disposal Restrictions
LQG: Large Quantity Generator
NODA: Notice of Data Availability
OSHA: Occupational Safety and Health Administration
OSW: Office of Solid Waste
PRA: Paperwork Reduction Act
RCRA: Resource Conservation and Recovery Act
TRI: Toxics Release Inventory
TSDF: Treatment, Storage and Disposal Facility

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Glossary of Terms:

Boilers/industrial furnaces: An enclosed device using controlled flame combustion to accomplish recovery of materials or energy.

Characteristic waste: A solid waste that is a hazardous waste because it exhibits one or more of the following hazardous characteristics: ignitability, corrosivity, reactivity, or toxicity.

EPA identification number: A number assigned by EPA to each generator; transporter; and treatment, storage, or disposal facility. Identification numbers are facility-specific, except for the transporter who has one for all his/her operations.

Facility: All land and structures used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal units.

Generator: Any person whose process produces a hazardous waste in excess of 100 kg/month or acutely hazardous waste in excess of 1 kg/month, or whose actions cause a hazardous waste to become subject to regulation.

Groundwater: Water below the land surface.

Hazardous waste: Includes solid wastes that have not been excluded from the definition of hazardous waste; have been listed as hazardous wastes by EPA; exhibit one or more characteristics of hazardous waste; or have been mixed with a hazardous waste.

Inspections: Owner/operators of facilities must inspect their facilities for malfunctions and deterioration, operator errors, and discharges which may cause of lead to releases of hazardous constituents to the environment or a threat to human health.

Land disposal: Includes placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposed.

Land Disposal Restrictions: Also known as the land ban, these restrictions prohibit any land disposal of untreated hazardous wastes. Land Disposal Restrictions establish treatment standards that must be met prior to any land application of hazardous wastes.

Listed waste: A waste is a listed as hazardous based on the process from which the waste was generated and/or the constituents found in the waste.

Manifest: The paperwork that must accompany a shipment of hazardous waste as it moves from the generator to the transporter and eventually to the treatment, storage, or disposal facility.

Notification form: A form that notifies regulators of hazardous waste management activities at a facility.

Operator: The person responsible for the overall operation of a facility.

Owner: The person who owns a facility.

RCRA: The Resource Conservation and Recovery Act (RCRA) was enacted to protect human health and the environment, and to conserve valuable material and energy resources. The most important aspect of RCRA is the establishment of standards for the management and tracking of waste from generator to transporter to treatment, storage, and disposal.

Permit: Lays out the legally enforceable requirements that owners and operators of hazardous waste treatment, storage, and disposal facilities must comply with.

Recordkeeping and reporting requirements: A generator, transporter, or treatment, storage and disposal facility must keep all data relating to hazardous waste management units. They must also file reports to EPA, which become part of their operating record.

Solid waste: Any garbage, refuse, sludge, or other waste materials not excluded by definition. Hazardous waste is a subset of solid waste.

Treatment, Storage and Disposal Facility: A facility that treats, stores, and/or disposes of hazardous waste.

Treatment: Any method, technique, or process designed to change the physical, chemical, or biological character or composition of a hazardous waste to neutralize it or recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous.

Treatment standards: Standards that hazardous wastes must meet prior to land disposal.

I. Background and Purpose of Today's NODA

A. What Is RCRA?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. RCRA also establishes a program for controlling nonhazardous industrial solid waste and municipal solid waste by encouraging states to develop comprehensive plans to manage these wastes, setting criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibiting the open dumping of solid waste. RCRA is implemented by EPA and the states.

EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in Parts 260 through 279. The solid waste regulations are listed in Title 40, Parts 240 through 258. In this NODA, we often give the location of where you can find specific regulations as 40 CFR, with the specific part or parts listed afterward (e.g., 40 CFR Part 264).

B. What Is Recordkeeping and Reporting Burden?

Recordkeeping and reporting burden includes information that EPA requires or requests of you (the public, states, and regulated community), and then is reported to us and/or kept as records by you.

C. Why Do We Ask You To Recordkeep and Report?

We need information to ensure that human health and the environment are protected as required by RCRA. We can require that you provide us with information and/or that you keep records of information under the authority of RCRA. In addition, we sometimes ask you to submit information through voluntary surveys, focus groups, and studies.

D. What Are Our Goals for Reducing Recordkeeping and Reporting Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we are taking steps to reduce recordkeeping and reporting burden by 40 percent. Recordkeeping and reporting burden includes not only the time spent submitting information to us (writing a letter and putting it in the mail) or keeping records (creating and maintaining a filing system), but also the time it takes to develop the information (collecting data; organizing, analyzing, and summarizing data; writing reports; or filling out forms). Burden covers information that we require by regulation and the information that we request you give us voluntarily.

The PRA establishes a government-wide goal of reducing the paperwork burden to the public by 40 percent from the total amount of paperwork required or requested from the public annually as of September 30, 1995. The PRA allows us to reduce paperwork burden in stages: 25 percent by September 30, 1998, an additional 5 percent by September 30, 1999, another 5 percent

by September 30, 2000, and a final 5 percent by September 30, 2001.

E. How Is Burden Estimated?

We estimate the amount of time it takes you to respond to our information requests as follows: First, we list all of the activities you as state employees, members of the regulated community, or private citizens undertake to collect, organize, or otherwise develop the information; report the information; or keep it in your records. For each activity, we then estimate the time it takes an average respondent to complete the information request, taking into account differences such as facility size or level of data complexity. Next, we verify these estimates through consultations with a small number of respondents. Finally, these hour estimates are multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are published in Information Collection Requests (ICRs).

F. What Is an ICR?

An Information Collection Request (ICR) is a document summarizing our estimates of paperwork burden for an information collection. We have to obtain approval from the Office of Management and Budget (OMB) of the ICR before we can collect any information. Under the Paperwork Reduction Act, you (state employees, members of the regulated community, or private citizens) have an opportunity to comment on the estimates in our ICRs prior to our submitting them to OMB for approval. After a 60-day public comment period, we review and incorporate, where appropriate, your comments into our estimates.

OMB generally approves ICRs for a three-year period. In order to continue an information collection after this period, we must renew the ICR with OMB. ICR renewals follow the procedures outlined above, including consultations and public comment.

G. What Is the Baseline for OSW Paperwork Requirements and What Progress Has Been Made to Date in Reducing It ?

On September 30, 1995, the paperwork burden baseline for the regulations OSW implements was 12,600,000 hours. To meet the government-wide goal, we would have to reduce this burden baseline by 5,040,000 hours to an annual total of 7,560,000 hours by September 30, 2001. As of October 1, 1998, we achieved burden reductions totaling nearly 2,000,000 hours or 16 percent. A chart of all OSW burden hours is available in the RCRA docket or on the Internet.

H. What Is the OSW Burden Reduction Initiative and What Have We Done to Date?

The OSW Burden Reduction Initiative grew out of workshops and round tables for reinventing the RCRA regulations, such as the Land Disposal Roundtable we sponsored in July 1998. Over the last two years, we reviewed all of the OSW reporting and recordkeeping requirements and developed ideas for eliminating or streamlining them. After obtaining input from within EPA and a limited number of state experts, we developed today's NODA to seek broader input on the ideas. The goal of the Burden Reduction Initiative is to reduce paperwork while maintaining a protective OSW program.

I. What Is in Today's NODA?

In today's NODA, we present our major burden reduction ideas. We also reference other smaller ideas, which are available in the RCRA Docket and on the Internet. And, we mention other ongoing burden reduction efforts so you can gain an understanding of our overall burden reduction strategy.

If all of the burden reductions ideas presented in today's NODA and the background documents were implemented, we would achieve burden reductions that would allow us to meet our 40 percent goal. We estimate these ideas add up to 3.3 million hours, which is about a 40% overall reduction in burden. Note that this figure does not include savings from accounting changes, which are discussed at the end of the NODA. Also, in calculating this figure, we made sure that we were not double-counting any burden reduction savings from the multiple ideas.

Some of the ideas presented today are controversial, and we may not necessarily go forward with each idea in a rulemaking. However, we do expect to go forward with many of them. As discussed throughout today's NODA, your input will help us decide which areas are the best candidates to pursue in a later rulemaking. Please note that today's Notice does not change any existing recordkeeping and reporting requirements—they remain effective and are enforceable.

J. What We Would Like You To Do

After reviewing today's NODA and the background information, we would like you to comment on: the positive and negative impacts of the burden reduction ideas; whether they would reduce burden as we have estimated; and other ideas for reducing RCRA burden, both in areas covered by this NODA and any others.

K. Information on Burden Reduction Ideas Not in the NODA

You can find on the Internet at: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction a document entitled ''Burden Reduction Ideas'' which lists some additional burden reduction ideas not in the NODA. This document is a chart that lists each idea, its ICR number(s) and regulatory citation(s), its baseline burden hour estimate, and an estimate of the burden savings that might be achieved if it were implemented.

L. What Happens After We Receive Your Comments?

After reviewing comments received, we will issue a proposed rulemaking to implement a number of these burden reduction ideas. We will consider your comments and suggestions, and will probably do supplemental analyses on some of the ideas. The proposed rulemaking that follows this NODA will present more complete rationales for changes we are considering to existing requirements.

II. Our Major Burden Reduction Ideas

For the ideas presented below, we summarize our existing policies on the issue, discuss possible changes, and highlight areas you might want to comment on. Comments are of course welcome on any and all aspects of the discussion below.

A. Should We Allow Facilities To Submit All Information and Keep All Records of Information Electronically?

Existing Policies for Electronic Reporting and Recordkeeping

EPA has been working to introduce electronic reporting and recordkeeping into our programs. In the short term, our goal is to eliminate the cost to industry and government of using paper to transfer data and eliminate the errors and delays involved in keystroking reports into databases. Our longer term goal is to use electronic reporting as a tool for streamlining and automating the exchanges of data among industry, environmental agencies, and the public. To accomplish these goals, we are developing guidelines and have convened workgroups to ensure that we develop consistent and effective electronic reporting and recordkeeping programs across all program offices.

In the RCRA program, we are exploring ways to increase electronic reporting and recordkeeping. While we have no RCRA-wide policy on this subject, we have made strides in some

areas. For example, on November 2, 1996, we wrote an interpretive letter to the company Safety-Kleen saying that they can store electronic image files of manifests instead of keeping paper copies. We also recently initiated a pilot project to test the feasibility of using Electronic Data Interchange and the Internet to automate manifesting activities. In this pilot, users will prepare, transmit and keep copies of a digitally signed electronic manifest. The pilot is scheduled to be completed by September 1999 and will be evaluated by EPA as part of a manifest revisions proposed rule. We are also heavily promoting electronic reporting for the Biennial Report.

Possible Changes to Our Policies for Electronic Reporting and Recordkeeping

We are evaluating whether to develop an across-the-board policy whereby you could electronically report and keep records of RCRA-required documents so long as you meet some conditions, such as ensuring data integrity in storage and that the documents are readily available during inspections. This would mean that you would not have to keep paper copies of any RCRA records, unless you prefer to do so. In some cases, this policy would mean that we would have to upgrade our data management systems. We will not be able to do this immediately, but over time we could move to a primarily electronic system for RCRA, while maintaining paper capability for those parties who cannot or will not go to electronic reporting.

Questions/Comments

We want comment on whether electronic reporting and recordkeeping should be allowed across-the-board, or whether it should be limited to specific areas. In addition, please comment on the enforceability of electronic signatures (we especially want comment from state agencies who would be implementing the requirements), the accessibility of electronic records during inspections, and how easy it would be for companies to submit electronically. Also comment on whether you would see any burden or cost savings from electronic reporting and recordkeeping.

In addition, please comment on whether the costs of automation such as obtaining a computer, software, and on-line provider outweigh these cost savings. Even though the electronic submissions would be voluntary, we need to understand how many parties are likely to pursue electronic submissions to help us decide what resources we should be committing to this area.

B. Should EPA Reduce Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)?

Existing Reporting Requirements

We receive more than 300 notifications, reports, certifications, demonstrations, and plans from generators and TSDFs in order to show compliance with the RCRA regulations, as well as applications for extensions, permits, variances, and exemptions. Generators and TSDFs must notify us of their regulated waste activities and TSDFs must submit information such as ground-water quality reports, closure and post-closure certifications, and Part A permit applications. These reporting requirements are in 40 CFR Parts 262, 264, 265, 266, 268, 270.

Possible Changes to Reporting Requirements/Agency Analyses and Data

We are evaluating whether we should continue to require facilities to submit all this information. We would still require facilities to develop and maintain the required information. Rather than submitting the required information to EPA, however, it would be kept on-site.

We believe that not requiring facilities to submit this information will save them time and money. Receiving less information would also reduce our data management and administrative burden. We have developed a list of all of the reporting requirements that apply to generators and TSDFs, and the burden for each of these activities. This list is available in the RCRA Information Center and on the Internet at: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction.

Please be aware that we believe some notices to be high priority (to ensure compliance with regulations), and do not plan on eliminating the requirement that they be sent to EPA. Below are some of the notices we will keep:

- 40 CFR Parts 264.143, 145 and 265.143, 145 requirements that facilities submit financial assurance information or updates of financial assurance information. Allowing facilities to maintain this information on site only rather than sending it to EPA will increase the likelihood that facilities will not obtain adequate financial assurance for closure or corrective action.
- 40 CFR Parts 262.12; 263.11; 264.11; 265.11; and 266.70 requirements that facilities notify us of their legal owner. This information is needed to identify responsible parties in enforcement cases.
- 40 CFR Part 264.12 requirement that TSDFs notify generators that they have appropriate permits. Eliminating this requirement would shift the burden of proof to the Agency when we attempt to bring an action against a generator that ships waste to an unpermitted TSDF.
- 40 CFR Parts 264.12; 265.12 transfer of ownership requirements. These requirements help ensure that the buyer is fully aware of its RCRA obligations and increases the likelihood that the new owner will be in compliance with RCRA.
- 40 CFR Part 268.7(a) generator notification requirements. This tracking requirement is essential for federal regulators to ensure that the correct information is placed on file at the waste generating facility and is provided to the receiving facility, and allows us to monitor what happens to hazardous waste from generation to treatment.
- 40 CFR Part 268.7(b)(3)–(b)(4) treatment facility notifications. This tracking requirement is essential for federal regulators to ensure that the correct information is placed on file at the facility and is provided to the waste disposal facility, and to allow us to monitor what happens to hazardous waste.
- 40 CFR Part 268.9 characteristic waste notifications. Maintaining this notice and supporting information is important because once the waste has been decharacterized it can be land disposed in a nonhazardous landfill. An inspector will not know where this waste was sent for treatment or disposal without this notice because the receiving facility is out of RCRA jurisdiction. Therefore, this information is critical to maintain the RCRA cradle-to-grave tracking process.
- 40 CFR part 264.1036—RCRA air regulations subpart AA reporting requirements are used to determine compliance.
- 40 CFR part 264.1065—RCRA air regulations subpart BB reporting requirements are used to determine compliance.
- 40 CFR part 264.1090—RCRA air regulations subpart CC reporting requirements are used to determine compliance.
- 40 CFR Parts 262.12, 263.11, 264.11 notification of regulated waste activity. This is a basic requirement to inform us of who is generating and managing hazardous waste.

Questions/Comments

By identifying these high priority notices, we are asking whether the remaining paperwork imposed by existing regulations has to be sent to us.

The notices highlighted above are, in our opinion, necessary to properly ensure compliance. The other nearly 300 notices, however, may not be absolutely necessary, and simple recordkeeping onsite may suffice. We recognize that opinions will vary on how we should decide which notices to keep and thus welcome comments on a methodology for deciding what to drop and what to keep.

We are also interested in learning what impact there may be on the environment, human health, and worker health and safety if this information were not required to be submitted to EPA. In addition, we would like to know if this proposal would relieve the public and regulated community of significant burden.

To help you evaluate which of these notices and other documents are necessary to be submitted to us, we have developed some criteria, such as notices necessary for:

- Hazardous Waste Program Evaluation: These are items collected to measure the success of programs in protecting human health and the environment. They could include corrective action reports.
- Hazardous Waste Program Implementation: This is information collected to help us develop regulations and policies. This could include the biennial report and assurances of financial responsibility for corrective action.
- Enforcement: These items are necessary for the enforcement of environmental regulations. For example, the requirement that hazardous waste generators and transporters notify us of their legal owner provides us with information needed to identify responsible parties in enforcement cases.
- Required by statute: These are information items we must collect according to the RCRA statute, such as the hazardous waste reports under RCRA Section 3002.

C. Should We Lengthen the Periods Between Facility Self-Inspections?

Existing Self-Inspection Requirements

RCRA regulations require large quantity generators and treatment, storage and disposal facilities to inspect their facilities to ensure that they are operating in compliance with RCRA requirements. The regulations include both facility-wide and specific types of unit and equipment inspection standards. Some of RCRA's inspection requirements specify a frequency with which inspections must be conducted. For example, an owner of a container storage area must inspect it at least weekly, while an owner of a tank must inspect it daily. You can find RCRA's inspection requirements throughout the regulations, but mostly in 40 CFR Parts 264 and 265.

Inspections are a vital component of an effective regulatory system. We also recognize that some facilities may have very good facility management practices and might be able to inspect less frequently without sacrificing human health and environmental protection.

Possible Changes to the Inspection Requirements

We are evaluating whether to revise RCRA's inspection requirements by lengthening the time between inspections. We believe that some facilities might have controls in place that could let us reduce the frequency of inspections; this could possibly be established on a case-by-case basis. These special inspection schedules might be worked out during facility permitting, and/or we might put a special variance in the regulations under which we could allow less frequent inspections. We are also considering a variable implementation schedule, where for example, larger tank inspection frequency would remain the same, while smaller tanks would be inspected less frequently. And, we are considering a phased schedule where facility inspection might go from daily to weekly to biweekly, if no problems arise.

Questions/Comments

We would like comment on whether we should lengthen any of RCRA's inspection frequencies, on the extent to which such an action would reduce burden, and whether this would impact human health and the environment. Also, you might suggest mechanisms such as variances and waivers that we could use to allow a less frequent schedule, and what should be involved in such mechanisms, such as public input. If you are opposed to the idea of lengthening inspection frequencies, please explain your concerns.

D. Should We Change RCRA Personnel Training Requirements?

Existing RCRA Requirements for Personnel Training

RCRA regulations require large quantity generators (LQGs) and treatment, storage, and disposal facilities (TSDFs) to train their employees on how to perform their jobs in a way that ensures the facility's compliance with RCRA requirements (see 40 CFR 262.34(a)(4) for LQGs and 40 CFR 264.16 for TSDFs).

The training program must ensure that employees are able to respond to emergencies by familiarizing them with emergency procedures, equipment, and systems, and must include introductory and refresher courses and be taught by a qualified trainer. Employees must complete the program within six months after being hired or assigned to a new position at the facility. LQGs and TSDFs must keep updated information on employees, job descriptions, and the type of training that facility personnel have received. Training records on current personnel must be kept until closure of the facility.

Possible Changes to RCRA Personnel Training Requirements

We are evaluating two alternatives for changing the RCRA personnel training requirements. Alternative 1 would keep the requirements for personnel training under RCRA the same. However, we would eliminate all associated recordkeeping. Alternative 2 would eliminate the RCRA personnel training requirements that we believe overlap with Occupational Safety and Health Administration (OSHA) training requirements.

Alternative 1: Eliminate Recordkeeping for RCRA Personnel Training.

We are evaluating eliminating all recordkeeping associated with RCRA personnel training and replacing it with a one-time certification that all employees have been properly trained. Under this approach, we would maintain the Section 264.16(a)–(c) requirements and eliminate paragraph (d), replacing it with the certification. We would like comment on whether a certification would be sufficient to verify that employees have received proper training.

Alternative 2: Replace RCRA Personnel Training Requirements that overlap OSHA Training Requirements.

We believe that some RCRA personnel training requirements overlap with OSHA's requirements for health and safety training (see 29 CFR 1910.120 for some of OSHA's training requirements). For example, both regulatory programs require that facility personnel be trained in emergency response.

We are evaluating whether to eliminate RCRA requirements that may duplicate OSHA's. For requirements that overlap, we could just reference the OSHA requirements, or simply eliminate the entire set of RCRA requirements. We would work closely with OSHA if we did this. We have prepared a document that is in the

RCRA Information Center and on the Internet which provides information on what we believe to be overlapping requirements.

Questions/Comments

We would like comment on whether we should eliminate all recordkeeping for RCRA personnel training, or all training and recordkeeping that duplicates OSHA's. Please let us know if and where you believe the RCRA and OSHA training programs are duplicative for LQGs and TSDFs. In addition, please comment on whether the RCRA regulations require training beyond the scope of OSHA's training and whether their elimination would impact human health or the environment.

E. Should We Streamline the LDR Paperwork Requirements?

Existing LDR Paperwork Requirements

The Land Disposal Restrictions (LDR) are a major component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, Part 268 requires generators and TSDFs to determine if their waste needs to be treated before land disposal, and requires notices and/or certifications to be sent with the waste shipments to TSDFs. Generators and TSDFs must keep records of their waste determinations, notifications, certifications, and other paperwork for three years.

The LDR paperwork requirements account for nearly one-third of all the burden for the RCRA program. Since the passage of the Paperwork Reduction Act, we have reduced LDR paperwork substantially—particularly with the May 12, 1997 Land Disposal Restrictions rule. Before this rule, generators and treaters that sent their hazardous waste offsite had to send a notification with each shipment of waste. This rule changed these requirements so that the notification need only be sent with the initial waste shipment, so long as the waste and the receiving facility remained unchanged. This paperwork change resulted in a savings of 1,630,000 burden hours annually. We are now evaluating the LDR paperwork requirements for even more burden reduction.

Based on our review of the LDR paperwork requirements, as well as conversations with the regulated community, we believe that some of the Part 268 requirements for waste determinations, notifications, and certifications could be reduced or eliminated altogether. We have summarized these requirements as they currently exist in the following paragraphs:

Section 268.7(a) Generator Paperwork Requirements.

Hazardous waste generators must determine if their waste meets the applicable LDR treatment standards. They may either test the waste or use their knowledge of it to make the determination (268.7(a)(1)). If the waste does not meet the applicable standards, the generator must send a one-time notification to the treatment facility indicating this. And, when the waste does meets the treatment standards, the generator must also send a one-time certification with the initial shipment. These one-time notifications and certifications must be placed in the generator's files. No further notification is required, except if the waste or receiving facility changes, in which case a new notification must be sent and a copy placed in the generator's files (268.7(a)(2)–(3)). Generators must keep copies of all waste determinations, notifications and certifications for at least three years (268.7(a)(8)).

Section 268.7(b) Treatment Facility Paperwork Requirements.

Treatment facilities must test their waste according to the frequencies established in their waste analysis plans to determine whether their waste complies with applicable LDR treatment standards (268.7(b)(1)–(2)). In addition, treatment facilities must send a one-time notice to the disposal facility that provides specified information on the waste. The treatment facility must also send a one-time certification to the disposal facility that the treatment technology used was operated properly. No further notification or certification is required, except if the waste or receiving facility changes, in which case a new notification and certification must be sent and a copy placed in the treatment facility's files (268.7(b)(3)–(4)). Where a waste is a recyclable material used in a manner constituting disposal (and meets other criteria), the treatment facility/recycler need not notify the receiving facility. It still must send a notice and certification with each shipment to EPA. It must also keep records of who received the hazardous waste-derived product (268.7(b)(6)).

Section 268.7(d) Paperwork Requirements for Hazardous Debris.

Generators or treatment facilities who claim that their hazardous debris is excluded from the definition of a hazardous waste, such as debris treated by a specified extraction or destruction technology, must send a one-time notification to EPA and keep a copy in their files. The notification must be updated under specified circumstances such as if the waste is shipped to a different facility. In addition, treatment facilities must certify compliance with the treatment standards by keeping specified records such as inspections and, for each shipment of treated debris, place a signed certification of compliance in their files.

Section 268.9 Paperwork Requirements for Characteristic Waste.

Generators of characteristic hazardous wastes must determine the underlying hazardous constituents (268.2(i)) in their characteristic waste. They may either test the waste or use knowledge of it to make the determination. (268.7(a)(1)). Generators or treatment facilities who treat their characteristic hazardous wastes to meet the treatment standards at 40 CFR Section 268.48 and render the waste non-hazardous must place a one-time notification and certification in their files. They must also send a copy to EPA. The generator or treatment facility must update the notification and certification in their files if the operation generating the waste changes and/or if the facility receiving the waste changes. The generator or treatment facility must update EPA on an annual basis if such changes occur.

Possible Changes to LDR Paperwork Requirements

We are evaluating the following changes to the LDR program:

Change 1: Eliminate 268.7(a)(1) Generator Waste Determinations.

We are assessing whether a separate waste determination under 268.7(a) is needed. Currently, generators are required to determine whether they have a hazardous waste under section 262.11. And, treaters are required to obtain a detailed chemical and physical analysis under section 264.13, which provides all the information required to comply with Part 268. Under section 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

We believe that the section 262.11 waste determination, along with the determinations required under sections 264.13 and 268.40, would be sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. In addition, we believe that a TSDF may continue to use generator-supplied information, if available, to meet 264.13 and 269.40 obligations, even if the waste determination requirement under 268.7

is removed. Therefore, we are considering whether the 268.7(a) waste determination should be eliminated.

Change 2: Eliminate 268.7(b)(6) Recycler Notifications and Certifications.

We believe it may be unnecessary for treatment facilities or recyclers to send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records. We note that this kind of reporting relief is not new to the RCRA program. RCRA regulations currently allow waste handlers making a claim (or taking other action) to keep records on site and not submit them. For example, under 261.2(f), a person can accumulate materials before recycling without being subject to RCRA if it can be proved that the materials are potentially recyclable and have a feasible means of being recycled. Submittal of this proof is not required.

Change 3: Eliminate 268.7(d) Hazardous Debris Notifications.

We believe it may be unnecessary for generators and treaters of excluded debris to send these notifications to EPA, as long as the information contained in them is kept in facility records. Our reasoning is set out in Change 2 above.

Change 4: Eliminate 268.9(a) Characteristic Waste Determinations and Streamline 268.9(d) Notification Procedures.

We are reconsidering whether a separate waste determination under 268.9(a) is needed. Generators are required to determine whether they have a hazardous waste under section 262.11. Treaters are required to obtain a detailed chemical and physical analysis under section 264.13 which provides all information required to comply with Part 268 (among other requirements). And under section 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater and nonwastewater classification, and treatability group).

We believe that the section 262.11 waste determination, along with the determinations required under sections 264.13 and 268.40, would be sufficient to assure a waste is properly characterized for achieving compliance with the LDRs. Therefore, we are considering whether the 268.9(a) waste determination should be eliminated.

Under section 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification must be placed in the generators' or treaters' files and sent to EPA. We are reevaluating whether these records need to be sent to EPA when they are required to be kept on site in the facility's files. Our reasoning is set out in Change 2 above.

Comments/Questions

We are soliciting comment on whether we should modify any of these LDR requirements for waste determinations or notifications. Please let us know if the contemplated modifications would eliminate information waste handlers need to manage wastes properly. And, please let us know if the reduced tracking requirements would weaken waste handlers' accountability.

F. Should We Reduce Amount of Data Collected by the Biennial Report?

Existing Reporting Requirements for the Biennial Report

RCRA requires hazardous waste generators and TSDFs to submit a report every other year on the quantity, composition, and disposition of hazardous wastes they generate or receive for treatment, storage, or disposal. Congress required that these reports be submitted to EPA or an authorized state.

To implement these provisions, we issued the Biennial Report regulations for large quantity generators and TSDFs, which are found in 40 CFR 262.41, 264.75, and 265.75. Generators and TSDFs must submit the Biennial Report forms by March 1 of every even numbered year for their hazardous waste activities in the previous (odd numbered) year. Through these forms and their instructions, we tell generators and TSDFs what information they should provide.

Over the years, we have changed the Biennial Report forms and instructions. For example, in the 1997 Biennial Report, we eliminated the entire Waste Treatment, Disposal, or Recycling Process System (PS) form and the waste minimization questions. In doing so, we decreased the amount of burden associated with the Biennial Report.

Possible Changes to the Biennial Report

We are evaluating whether we should revise the Biennial Report forms and instructions to further reduce burden. Potentially, these changes could be implemented for the 2001 Biennial Report cycle.

Change 1: Remove Optional Data Elements from the Current BRS Forms.

The current Biennial Report forms include data elements required by EPA and those that are optionally reported by respondents. These optional elements include state hazardous waste code, SIC code, origin code, source code, point of measurement, and form code. We are evaluating whether to remove some or all of these optional data elements from the Biennial Report forms. Since not all respondents complete the optional elements, we have incomplete information in our national database for these elements. We have proposed eliminating these elements before, and have received mixed feedback from states and the regulated community.

Change 2: Eliminate Reporting of RCRA Hazardous Wastes That Are Managed in Units Exempt From RCRA Permitting.

Currently, the Biennial Report covers all hazardous wastes that are generated by LQGs and managed by TSDFs. However, many RCRA hazardous wastestreams are managed in units that are subject to other environmental laws, such as the Clean Water Act and the Safe Drinking Water Act. These particular waste streams are typically high volume industrial wastewaters. We are considering whether to continue asking for the reporting of any wastewater or nonwastewater wastestream managed in exempt units in future Biennial Reports. We have also proposed this idea before, and received mixed feedback.

Questions/Comments

We would like to know how you use Biennial Report data. We would also like comments on these and other possible changes to the Biennial Report. We want to know what impacts these changes might have on how your facility would be characterized, as well as the characterization of your waste streams. Would hazardous waste generation and management data collected through a data set that excluded hazardous wastes managed in units exempt from RCRA permitting meet the needs of Biennial Report users? Would Biennial Report data that does not have optional data elements be useful? Conversely, if optional data elements are retained, how will that affect the usefulness and quality of the data for analysis? As with other sections in today's NODA, do you have additional ideas for reducing burden associated with the Biennial Report?

III. What Other Burden Reduction Efforts Are Taking Place in RCRA

In addition to the proposals listed in today's NODA, there are other efforts in EPA to identify and streamline RCRA paperwork requirements. Because these projects are being conducted as separate

efforts from this particular burden reduction project, we are not seeking detailed comments on them in this Notice, except for the BRS/TRI integration idea.

A. Changes to the Hazardous Waste Manifest

Existing Manifest Requirements

RCRA directs us to develop a manifest system to ensure that offsite shipments of hazardous waste arrive at a designated treatment, storage, or disposal facility. The manifest system requirements are in 40 CFR Parts 262, 263, 264, and 265. Under Part 262, hazardous waste generators generally must complete a manifest for each shipment of hazardous waste offsite. The manifest consists of a minimum of four copies to facilitate recordkeeping by multiple parties. Generators must keep a copy of the manifest signed by the transporter and, subsequently, by the designated TSDF who must return a copy to the generator. Part 263 requires hazardous waste transporters to sign and date the manifest at pickup, carry it to the designated TSDF, and keep a copy. Parts 264 and 265 require designated TSDFs to sign and date the manifest, note any significant discrepancies, return a copy to the generator, and keep a copy.

Proposed Changes to Manifest System

Based on recent analyses, we estimate that waste handlers take about 4.2 million hours each year to comply with EPA and State manifesting requirements. We are evaluating modifications to the manifest system which could substantially reduce this burden, including:

Modifying the manifest form.

We are considering further standardizing the manifest form and allowing generators to obtain the form from multiple sources. We are also thinking about ways to reduce the burden associated with a generator's waste minimization certification requirements.

Providing manifesting relief to utilities.

Electric and gas utilities have told us they have difficulty complying with some of the manifest procedures at their remote sites (such as substations and manholes). We are evaluating whether to streamline manifesting procedures for these sites.

Allowing automation of manifesting activities.

We are considering standards to enable industry to automate their manifesting. To study this, we developed the Hazardous Waste Manifest Automation Pilot Project, which is looking at both Electronic Data Interchange (EDI) and the Internet as mechanisms for automation. We have tested EDI with waste handlers and hazardous waste agencies in three states. Generators initiated the EDI manifests from their personal computers and transmitted them through a network to transporters, waste management facilities, and state agencies. Each facility signed their manifests with a unique identification number. Plans for the rest of 1999 include testing a digital signature in an EDI system and testing use of the Internet to transmit manifests.

Addressing other technical concerns.

We are also evaluating improvements to other areas of the manifest system. These include reducing inconsistencies between EPA and DOT shipping requirements and improving the tracking of problem shipments such as rejected loads and container residues.

If adopted, these changes could result in 600,000 hours of burden reduction. These changes are scheduled to be published in a proposed rule in June 2000.

B. Is There a Way To Decrease Burden Reduction of Biennial Reporting System (BRS) Through Integration With the Toxics Release Inventory (TRI)?

An area for potential burden reduction that comes up frequently is minimizing the overlap of reporting requirements for facilities that file both the Biennial Report and the Toxic Release Inventory. EPA is aware of the differences between these two information systems, including the universe covered, the frequency of reporting, what is reported, and the definition of facilities. However, a 1995 study of facilities showed that 43% of facilities reporting under BRS also reported to TRI and these facilities produced over 90% of the hazardous waste volumes reported to BRS. With recent changes to TRI, the percentage of BRS facilities that also report to TRI are expected to be even higher. Given this overlap, EPA believes it should assess burden reduction opportunities in this area. Comment is requested on the following ideas:

Change 1: Pre-population of electronic forms with redundant data elements.

Some burden reduction may be achieved by ensuring that similar data elements are uniformly defined so that an electronic reporting format for pre-populating a facility's TRI report with similar data elements from that facility's BRS submission (or a BRS submission with TRI data) could be implemented. These include the name of the facility, street and mailing addresses of the facility, contact names and telephone numbers, SIC Code, and EPA ID Number.

Change 2: Eliminate Biennial Reporting for wastes covered under TRI.

Studies have shown that facilities which report under the Biennial Report and also report to the Toxics Release Inventory are likely generating 90% of the wastes that are reported to BRS. Although BRS collects data on hazardous waste quantities and not the toxic chemical quantities reported to TRI, we are studying ways to match hazardous waste streams with the chemicals reporting in TRI . To the extent these matches can be made clearly and accurately, we could potentially eliminate whole categories of hazardous waste from being reported in the Biennial Report.

Change 3: Limit the Biennial Report to 100 top generators; rely on TRI for other RCRA facilities.

A small number of facilities are responsible for the majority of the waste reported in BRS. This option would require the top 100 (or some other number) facilities as measured by waste volume reported to BRS to continue reporting under BRS. No other facilities would have to report to BRS. All of these other facilities who reported to TRI in the past would still report to TRI in this option.

Note that only facilities in certain North American Industrial Classification System (NAICS—the replacement for SIC) codes are required to report under TRI. Under this option, many generators who now report under BRS would not be required to report under TRI. This would include business services (NAICS 5414), automotive repair and services (NAICS 8111), health services (NAICS 621), national security (NAICS 928), and wholesale/retail trade sectors. Furthermore, under this option, we would no longer obtain information on off-site waste shipments, since this is not covered in TRI.

Change 4: Collect all information under TRI.

Under this option, the TRI form would be modified to take data elements currently only collected in BRS, such as waste code description, waste code number, RCRA permitting information and put them on the TRI form. There would be no more Biennial Report. The TRI reporting universe would remain the same under this option.

EPA is aware that these options could pose concerns to both states and the regulated community, especially given the investments that have been made in BRS. We welcome comment on impacts should any of these options be

implemented, and whether they would reduce the paperwork burden on the public and regulated community.

C. Other RCRA Initiatives

We are not taking comments on the following initiatives. They are being presented for informational purposes.

• EPA and the States have recognized the need to reassess the information collected and managed to implement the RCRA hazardous waste program. To meet this need, the Waste Information Needs (WIN) Initiative was established to plan for and implement necessary information management changes. One of the key principles of the WIN Initiative is to identifying opportunities for reducing reporting burden.

The Initiative is evaluating what information is needed to implement and manage the hazardous waste program. Once these needs have been identified, the Initiative will determine what information should be available in a national database. The project has five phases: Planning, analysis, design, construction, and implementation. Currently the project is in the analysis and design phases.

For the analysis phase we divided the hazardous waste program into five areas, which are called Program Area Analyses (PAA). Three PAAs are active:

—Program Evaluation: The information needed to plan and evaluate the hazardous waste program against its goals and objectives.
—Universe Identification: Who is regulated and what we need to know to categorize and track them.
—Waste Activity Monitoring: The information needed on characterization, generation, movement, and management of hazardous wastes.

More information on the WIN/INFORMED Initiative is available on the Internet at: http://www.eps.gov/epaoswer/hazwaste/data.

• EPA is drafting streamlined permitting procedures for facilities that generate hazardous waste and manage it on-site in tanks, containers, or containment buildings. We expect a proposed rule on this subject to be published this summer.

• EPA proposed in a rulemaking in February of this year to allow generators of the RCRA hazardous waste F006 (wastewater treatment sludges from electroplating) up to 180 days (or 270 days, if applicable) accumulation time without obtaining a hazardous waste storage permit or interim status if certain conditions are met. This is an extension by 90 days of the time period to store hazardous waste without a permit.

• EPA is working to streamline RCRA Appendix VIII of 40 CFR 261. This is a list of over 480 chemicals used to define hazardous waste as well as the constituents which must be monitored during waste treatment. To reduce the burden to Appendix VIII users, EPA is reconfiguring and modifying Appendix VIII entries based on the probability of occurrence of certain constituents in particular types of waste.

• A number of years ago, we reexamined the regulatory standards for used oil handlers. We decided to remove used oil handlers entirely from the hazardous waste regulatory realm. They are now covered under their own regulatory authority, which provides hazardous waste regulatory-level environmental protection with a much lower level of reporting and record keeping. At the time these standards were established, EPA learned that most of the recordkeeping requirements established in the new regulatory scheme were already standard industry practices. Because substantial changes have already been implemented by this program, we have not included any used oil ideas in today's Notice.

• Likewise, a number of years ago we reexamined the regulations governing the collection and management of universal waste—batteries, thermostats, and certain pesticides. We decided to reduce the reporting requirements for these wastes at that time. For example, Biennial Report requirements do not apply to large quantity and small quantity handlers of universal waste, and a manifest is not required to accompany off-site shipments.

• The Office of Air Quality Planning and Standards has enacted burden reduction for the RCRA air regulations (40 CFR Parts 264 and 265 subparts AA: Process vents, BB:Equipment leaks, and CC: Tanks, surface impoundments, containers, and miscellaneous units). This eliminated much of the overlap between the RCRA air regulations and the Clean Air Act standards. Now TSDFs and large quantity generators can demonstrate compliance with the RCRA air regulations by simply documenting that affected units are operating with air emission controls that are in accordance with applicable Clean Air Act standards under 40 CFR 60, 61, or 63.

For any RCRA unit in compliance with such Clean Air Act regulations, these provisions would reduce the reporting and record keeping burden of the RCRA air regulations by nearly 100%. EPA is currently in the process of quantifying the burden reduction savings of these provisions. We expect that the majority of large-quantity generators and TSDFs are subject to one or more regulations under 40 CFR 60, 61 or 63. In addition to these compliance exemptions, EPA has also published other amendments to the Subparts AA, BB and CC air regulations that significantly reduce reporting and record keeping.

IV. What Are Other Agency Burden Reduction Initiatives?

We are not taking comments on the following initiatives. They are being presented for informational purposes.

• The Agency's The Next Generation in Permitting Plan, which was announced in February of this year, combines permitting system improvements underway in the individual program offices (such as hazardous waste, air, and water) with improvements developed by an Agency workgroup. The goal is to increase flexibility, encourage pollution reduction, improve public participation in permitting decisions, and reduce paperwork burden.

• The different designs of Agency information collection systems have caused facilities to be identified inconsistently across program offices. This makes it difficult to link and analyze all the information collected by EPA. The Agency's Facility Identification Initiative hopes to standardize identification information for all facilities subject to federal environmental reporting requirements.

• The One Stop Reporting Program's mission is to reinvent environmental reporting to: reduce industry reporting burden, foster multimedia and place-based (a specific area of contamination, an ecological area, or a political jurisdiction) approaches to environmental problem solving, and provide the public with easy access to environmental information. Recognizing the importance of states as primary collectors of environmental data, One-Stop is working with them to implement data reporting and management reforms. To date, the One Stop Program has awarded demonstration grants to 21 states to work towards achieving these goals.

• The Common Sense Initiative (CSI), which began in1994, has tested the possibilities of replacing a single-media approach to regulation and reporting with a multimedia approach focusing on industrial sectors. One of the industries that has been looked at is the metal finishing industry. From this examination, several recommendations were made: We should promote electronic reporting (one of the recommendations in today's NODA), replace RCRA IDs with a common identification that could be used across

multi-media programs, and eliminate redundancy in the Toxics Release Inventory, the Hazardous Waste Manifest, and the Biennial Report.

The CSI CURE (Consolidated Uniform Report for the Environment) project was developed for the computer and electronics industry sector between 1995–99 by the state of Texas. CSI CURE examined consolidating environmental reporting at the facility level and eliminating redundancies.

- In February 1998, the EPA Administrator issued the Reinventing Environmental Information Action Plan. The Plan commits EPA, in partnership with the states, to implement core data standards and make electronic reporting available in the Agency's major national systems within five years.
- Finally, in partnership with industry associations, environmental groups, universities, and other government agencies, EPA has created nine Compliance Assistance Centers. The Centers help small and medium sized businesses and local governments better understand and comply with federal environmental requirements. Each center is targeted to a specific industry sector and explains relevant federal environmental regulations.

V. Technical Background Information Containing Specific Burden Reduction Ideas

A. Is There a Description of Burden Reduction Ideas Not in Today's NODA?

We have put a document entitled ''Burden Reduction Ideas'' in the RCRA Information Center and on the Internet: http://*www.epa.oswer/hazwaste/data/burdenreduction*. In it, we describe some sections of the RCRA regulations that require paperwork and propose ideas for reducing this burden.

We seek your comments on the merits or disadvantages of any of these ideas and our estimates of burden savings. As with other sections of this NODA, if you have additional ideas, we welcome them.

B. What Are the RCRA Hazardous Waste Reporting Requirements?

We have put a document entitled ''RCRA Hazardous Waste Reporting Requirements'' in the RCRA Docket and on the Internet. In this document, we list all the RCRA hazardous waste reporting requirements. For each reporting requirement, we provide specific information on each requirement, including a description of the requirement, its regulatory citation(s), the approved EPA ICR that covers the reporting requirement, the current baseline burden estimate, frequency of its reporting, and whether the requirement applies to generators, TSDFs, or both. We organize and display the reporting requirements in six categories: Notifications; reports; certifications; variances, exemptions, demonstrations, and extensions; permits; and plans. Within these categories, we sorted the requirements by regulatory citation.

As noted earlier in the NODA, we are evaluating whether we should turn some of the RCRA hazardous waste reporting requirements into recordkeeping requirements. We recognize that some of this information will still need to be reported to EPA or a state. We seek your comments on this concept, what criteria should be used in determining whether reporting requirements can be turned into recordkeeping requirements, any potential impacts there would be if this information is not submitted, and whether this will result in burden reduction.

C. What Are the Accounting Changes for OSW ICRs?

We have put a document entitled ''Accounting Changes'' in the RCRA Docket and on the Internet. In this document, we list accounting changes for some OSW ICRs that could be implemented through ICR renewals. Accounting changes are not changes to paperwork requirements but rather changes to the way we measure burden in our ICRs. They are our efforts to better estimate the actual burden to the public and regulated community. For example, we could make it a rule throughout all ICRs that we only assign burden for reading regulations to new facilities. The presumption here is that existing facilities know the regulations and do not have to read them each time they do an activity. While not regulatory changes, these accounting changes reduce the amount of paperwork burden OSW has in its individual ICRs.

In this document, we list proposed accounting changes for reducing burden associated with specific paperwork requirements and ICRs. Each idea includes a brief summary, the affected regulatory citations, comments on implementing these ideas, the ICR in which the paperwork requirement can be found, an estimate of the burden savings that might be achieved if it were implemented, and a description of the assumptions used in calculating the potential burden hour savings. In most cases, we used our best judgment to estimate the savings, while in others, we were able to make specific calculations.

In reviewing this document, we ask you to comment on whether these are realistic assumptions and the accuracy of our estimates of burden savings.

D. What Are OSW's Burden Hours ?

We have put a document in the RCRA docket and on the Internet which lists OSW's ICRs and their burden hours as of 1995 and today.

Dated: June 8, 1999.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–15544 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34188; FRL 6084–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: The Agency will approve these use deletions and the deletions will become effective on or soon after the date of publication.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Office of Pesticide Programs (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5404; e-mail: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in three (3) chlorpyrifos

pesticide registrations listed in Table 1 below. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the food use site being deleted has been a registered site for chlorpyrifos products, a tolerance has not been established for this commodity under the Federal Food, Drug, and Cosmetic Act (FFDCA). Therefore, under FIFRA section 2(b), this uses represent an unreasonable adverse effect on the environment, as it would result in human dietary risk from residues resulting from use of a pesticide in or on food inconsistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

TABLE 1——REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
51036–291	Chlorpyrifos 4# AG	Chlorpyrifos	Use on popcorn
51036–300	Chlorpyrifos 15G	Chlorpyrifos	Use on popcorn
067760–14	Nufos 15G	Chlorpyrifos	Use on popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2——REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
51036	MICROFLO Company, P.O. Box 772099, Memphis, TN 38117
067760	Cheminova, Inc., Oak Hill Park, 1700 Route 23, Suite 210, Wayne, New Jersey 07470

III. Existing Stocks Provisions

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after the effective date of use deletions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 7, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–15551 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–3]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Elizabethtown Landfill De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of one *de minimis* party for response costs incurred by the United States Environmental Protection Agency at the Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania, U.S. EPA Docket No. III–99–013–DC.

FOR ADDITIONAL INFORMATION CONTACT: Margaret Cardamone, Associate Regional Counsel, (215) 814–2477, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Elizabethtown Landfill Superfund Site in West Donegal Township, Lancaster County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on April 7, 1999, and is subject to review by the public pursuant to this document. The agreement has been approved by Attorney General, United States Department of Justice or her designee. Listed below, is the party who has executed binding certifications of its consent to participate in the settlement:

National Standard Company

This party agreed to pay $549,316.23 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of

CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the Elizabethtown Landfill Superfund Site who are responsible for less than one percent of the volume of identified hazardous substances at the Site.

The *de minimis* party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Elizabethtown Landfill Superfund Site.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this document. A copy of the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Margaret Cardamone, Associate Regional Counsel, at (215) 814–2477.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–15545 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6363–4]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Elizabethtown Landfill De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to amend a *de minimis* settlement which was entered on June 27, 1996, pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed amendment is intended to resolve the liability under CERCLA of one additional *de minimis* party for response costs incurred by the United States Environmental Protection Agency at the Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Elizabethtown Landfill Superfund Site, West Donegal Township, Lancaster County, Pennsylvania, U.S. EPA Docket No. III–96–10–DC.

FOR ADDITIONAL INFORMATION CONTACT: Margaret Cardamone, Associate Regional Counsel, (215) 814–2477, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed amendment to an administrative settlement concerning the Elizabethtown Landfill Superfund Site in West Donegal Township, Lancaster County, Pennsylvania. The amendment to the administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on October 26, 1998, and is subject to review by the public pursuant to this Notice. The agreement has been approved by the Attorney General, United States Department of Justice or her designee. Listed below, is the party who was added to this agreement under the amendment and has executed binding certifications of its consent to participate in the settlement:

Pennsylvania Department of Health

This party agreed to pay $117,062 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the Elizabethtown Landfill Superfund Site who are responsible for less than .39 percent of the volume of identified hazardous substances at the Site.

The *de minimis* party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Elizabethtown Landfill Superfund Site.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this document. A copy of the proposed amendment to the Administrative Order on Consent, as well as the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Margaret Cardamone, Associate Regional Counsel, at (215) 814–2477.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–15547 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6362–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act; Havertown PCP Superfund Site; CERCLA § 122(g) Administrative Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative *de minimis* settlements concerning the Havertown PCP Superfund Site (the Site), Haverford Township, Delaware County, Pennsylvania (Proposed Settlements). The Proposed Settlements with the Philadelphia Chewing Gum Corporation and R&E Investments, Inc. (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The

Proposed Settlements were signed by the Regional Administrator of the United States Environmental Protection Agency (EPA), Region III, on February 9, 1999, pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622 (g), and is subject to review by the public pursuant to this notice.

The Proposed Settlements resolve any potential claims that EPA may have had against the settling parties, who own property located above the plume of contaminated groundwater originating at the former National Wood Preservers, Inc. facility. The properties owned by the Settling Parties are located across the street from the former National Wood Preservers, Inc. Property. As part of the settlement, the Settling Parties have granted to EPA access rights and easements onto their properties so that EPA can implement its groundwater remedial action at the Site. The settlements do not require the payment of any money by the Settling Parties.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Settlement. EPA will consider all comments received and may withdraw or withhold consent to the Proposed Settlements if such comments disclose facts or considerations which indicate the Proposed Settlement are inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1605 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before July 19, 1999.

ADDRESSES: The proposed Settlement agreements are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Settlement agreements may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the ''Havertown PCP Superfund Site'' and EPA Docket Nos. III–98–095 and III–98–096 and should be forwarded to Suzanne Canning at the address above.

FOR FURTHER INFORMATION CONTACT: Andrew Duchovnay (3RC42), (215) 814–2484, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

Dated: June 3, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–15548 Filed 6–17–99; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Evaluation of Performance as Required Under the Government Performance and Results Act

AGENCY: Office of Science and Technology Policy.

ACTION: Request for comments.

SUMMARY: This notice describes a survey that will be conducted by the President's Committee of Advisors on Science and Technology (PCAST) to evaluate the performance of the Office of Science and Technology Policy (OSTP) as required under the Government Performance Results Act (GPRA). Because the survey will be sent to more than nine non-governmental employees, the Office of Management and Budget must approve the survey instrument and thus notification to the public is required.

DATES: Comments must be received on or before August 17, 1999.

ADDRESSES: Submit written comments by mail to: GPRA/PCAST Review Committee, Office of Science and Technology Policy, Room 435, OEOB, Washington, DC 20502 or by fax to 202–456–6026.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kahin or Dr. Joan Porter, GPRA/PCAST Review Committee, Office of Science and Technology Policy, Room 435, OEOB, Washington, DC 20502 or by phone 202–456–6035 (Kahin) or 202–456–6101 (Porter).

SUPPLEMENTARY INFORMATION: PCAST will conduct a survey of approximately 200 individuals to determine how well OSTP is performing its mission as outlined in Public Law 94–282.

OSTP's continuing mission is set out in the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Pub. L. 94–282). It calls for OSTP to:

Serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government.

The Act authorizes OSTP to:

- Advise the President and others within the Executive Office of the President on the impacts of science and technology (S&T) on domestic and international affairs;
- Lead an interagency effort to develop and implement sound S&T policies and budgets;
- Work with the private sector to ensure Federal investments in S&T contribute to economic prosperity, environmental quality, and national security;
- Build strong partnerships among Federal, State, and local governments, other countries, and the scientific community;
- Evaluate the scale, quality, and effectiveness of the Federal effort in S&T. OSTP's Senate-confirmed Director also serves as Assistant to the President for Science and Technology. In this role, he co-chairs the President's Committee of Advisors on Science and Technology (PCAST) and supports the President's National Science and Technology Council (NSTC).

A Senate-confirmed Associate Director leads each of OSTP's four divisions covering the areas of Environment, National Security and International Affairs, Science, and Technology. OSTP's four general goals flow directly from Public Law 94–282.

Goal 1: Advise

Provide sound, timely, clear, and accurate advice to the President and others within the Executive Office of the President on topics where S&T can have an impact on domestic and international affairs, and in areas where Federal action has the potential to advance or impede scientific or technological progress.

Performance on This Goal Will be Evaluated According to the Following Criteria

- OSTP is successful in achieving this goal if it delivers timely advice on topics of great importance to the Nation, and its efforts have a favorable effect on associated national policies and on Federal research and development (R&D) program priorities and budgets.
- OSTP is minimally effective in achieving this goal if it delivers advice on topics that are important to the Nation, and its efforts have a discernable effect on associated national policies and on Federal R&D program priorities and budgets.

Goal 2: Coordinate

Coordinate the development and implementation of the Administration's domestic and international S&T policies, programs, and budgets.

Performance on This Goal Will be Evaluated According to the Following Criteria

- OSTP is successful in achieving this goal if coordination of the key R&D policies, programs, and budgets of the Federal S&T agencies is improved, appropriate agencies work together to implement cross-cutting priorities and programs, and international aspects (e.g., domestic and international implications of domestic and international programs) are suitably addressed.
- OSTP is minimally effective in achieving this goal if some R&D policies, programs, and budgets of the Federal S&T agencies are coordinated, some agencies work together to implement some cross-cutting priorities and programs, and international aspects are recognized.

Goal 3: Promote Partnerships

Catalyze and promote effective partnerships among Federal, State, and local governments, other countries, the private sector, and the academic and scientific communities.

Performance on This Goal Will be Evaluated According to the Following Criteria:

- OSTP is successful in achieving this goal if the partnerships it catalyzes and promotes are grounded in S&T, have the potential to contribute substantially to achieving national goals, involve the appropriate parties, including Federal government involvement in partnership implementation, and are tracked to their successful conclusion.
- OSTP is minimally effective in achieving this goal if the partnerships it catalyzes are grounded in S&T, have the potential to contribute to achieving national goals, and involve most appropriate parties, including Federal government involvement in partnership implementation.

Goal 4: Assess and Report

Evaluate and report on the scale, quality, and effectiveness of the Federal effort in S&T.

Performance on This Goal Will be Evaluated According to the Following Criteria

- OSTP is successful in achieving this goal if the assessments and reports it prepares or participates in are factually accurate, cover the full range of relevant scientific, technical, and policy issues, and are written to be understood by decisionmakers who may not have scientific or technical training.
- OSTP is minimally effective in achieving this goal if the assessments and reports it prepares or participates in are factually accurate and cover the full range of relevant scientific, technical, and policy issues.

Verification and Validation

OSTP has asked PCAST to assess OSTP's performance.

The President appoints members to PCAST, which provides independent advice to the President on the Federal government's S&T policies and programs. PCAST will have complete discretion in formulating its assessment, and PCAST's independent views on how well OSTP has achieved or made progress toward the performance goal will be made available to the public.

Dated: June 14, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–15495 Filed 6–15–99; 9:21 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

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

June 10, 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 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Broadcast Auction Form Exhibits.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,380.

Estimated Time Per Response: 0.5 hours to 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 690 hours.

Total Annual Cost: $138,000.

Needs and Uses: Commission rules require that auction participants submit exhibits disclosing ownership, bidding agreements and engineering data. These data are used by Commission staff to ensure that applicnats are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if possible. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering data for non-table services enables the Commission to determine which applications are mutually exclusive.

OMB Control Number: 3060–XXXX.

Title: MDS and ITFS Two-Way Transmissions—Report and Order.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 115,953.

Estimated Time Per Response: 1 hour to 41 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 214,892 hours.

Total Annual Cost: $3,619,032.

Needs and Uses: The rules adoped in the Report and Order in MM Docket 97–217, allow two-way operations for MDS

and ITFS will simplify two-way licensing and provide greater flexibility in the use of the allotted spectrum to licensees. These changes will eliminate market entry barriers for small entities. The Commission will use this information to ensure that MDS and ITFS applicants, conditional licensees and licensees have considered properly the potential for harmful interference from their facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–15520 Filed 6–17–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement. The form is used by Federal departments and agencies to recruit members for the National Defense Executive Reserve (NDER) program.

SUPPLEMENTARY INFORMATION. The NDER program was established by the Defense Production Act of 1950, as amended. Under Executive Order 12919, National Defense Industrial Resources Preparedness, June 3, 1994, Part VI, Section 601, the Director of the Federal Emergency Management Agency coordinates the NDER program activities of departments and agencies that have NDER units. The NDER is composed of persons of recognized expertise from industry, organized labor, professional groups, and academia to serve in executive positions in the Federal Government during the event of an national emergency. FEMA may activate an NDER unit in whole or in part, upon the written determination that an national emergency affecting the national security or defense preparedness of the United States exists, and that the activation of the units is necessary to carry out the emergency program functions of departments or agencies.

Collection of Information

Title: The National Defense Executive Reserve Personal Qualifications Statement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0001.

Form Numbers: FEMA Form 85–3, National Defense Executive Reserve Personal Qualification Statement.

Abstract: The NDER is a Federal government program coordinated by FEMA. To become a member of the NDER, individuals with the requisite qualifications must complete an FEMA Form 85–3, National Defense Executive Reserve Personal Qualification Statement. FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application forms to ensure that the candidate meets all basic membership qualifications for the Executive Reservist; ensures that applicants are not already serving in a Federal department or agency sponsored unit; and in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 25 hours.

Estimated Cost: None.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Margaret B. Roberts, Program Manager, Preparedness, Training and Exercises Directorate, (202) 646–3564 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15555 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Capability Assessment for Readiness (CAR) which collects data on the capabilities of States to effectively respond to major disasters and emergencies.

SUPPLEMENTARY INFORMATION: The CAR program was established based on the requirement recognized by both the U.S. Congress and FEMA that an assessment of State capabilities was needed to determine the States' readiness to effectively respond to major disasters, and secondarily that FEMA financial assistance to the States is being effectively utilized. The answers to these questions are provided in the CAR assessment that involves detailed programmatic questions on mitigation, preparedness, response, and recovery activities.

Section 313 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, as amended) requires the President to ''conduct annual review of activities of Federal agencies and State and local governments in major disaster and

emergency assistance, in order to assure maximum coordination and effectiveness of such programs.''

Section 613 of the Stafford Act concerning financial contributions to States for necessary and essential State and local emergency preparedness personnel and administrative expenses provides that the State ''shall make such reports in such form and content as the Director may require.''

Collection of Information:

Title: Capability Assessment for Readiness (CAR).

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0272.

Form Numbers: Not Applicable.

Abstract. The CAR is needed by FEMA to determine that current capabilities of the States to respond to major disasters and emergencies. It is also an essential means of reporting to the United States Congress and the President on the degree to which States, as primary recipients of FEMA grants, are capable of performing their emergency management responsibilities. It provides a mechanism to evaluate the effectiveness of FEMA programs that are designed to help States attain a high level of achievement in mitigation, preparedness response and recovery programs. It can be used by States for: (1) developing strategic planning initiatives; (2) producing annual work plans for Federal grants based on areas requiring improvement that are identified in the CAR; (3) providing a basis for budget submissions to State legislatures; and (4) modifying CAR to establish an instrument to assess the capabilities of local jurisdictions.

Affected Public: State, Local, or Tribal Government (U.S. States and Territories).

Estimated Total Annual Burden Hours: 1,680 annually; 3,360 biennially.

FEMA forms	Number of Respondents (A)	Frequency of Response (B)	Hours per response (C)	Annual burden hours (A × B × C)
	56	Biennial	60	3,360.
Total	56	Biennial	60	3,360. 1,680 on an annual basis.

Estimated Cost. Cost to Federal Government is $470,500. The cost to the States is $87,360.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) determine an estimated cost of the proposed data collections to respondents; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) 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. Comments should be received on or before August 17, 1999.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, e-mail: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: For additional information contact Alfred J. Ranno, Preparedness, Training, and Exercises Directorate, at (202) 646–3137. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15556 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in the Office of Management and Budget (OMB) regulations 5 CFR 1320.13. FEMA is requesting that this collection be approved by June 8, 1999, for use through December 1999.

FEMA plans to follow this emergency request with a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation CFR 1320.10. To help us with the timely processing of both the emergency and normal paperwork clearance submissions to OMB, FEMA invites State and local governments to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c)(2)(A)). It seeks comments concerning the collection of information associated with financial and administrative reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Performance Partnership Agreements/Cooperative Agreements.

SUPPLEMENTARY INFORMATION: Cooperative Agreements under Performance Partnership Agreements are the vehicle for achieving the Federal Emergency Management Agency's strategic goal of establishing in concert with its partners, a national emergency management system that is comprehensive, risk-based and all hazards in approach. It focuses on integrating and achieving Federal and State goals and objectives for the four broad emergency management functions: Mitigtion (risk reduction), preparedness (operational readiness), response (emergency operations), and recovery. This collection of information is in accordance with the requirements of Title 44 of the Code of Federal Regulations (CFR) Part 13, Uniform Administrative Requirements for Grants and Cooperative agreements to State and Local Governments, Subpart B, section 13.10; Subpart C, sections 13.32, 13.33, 13.40, 13.41; and Subpart D, section 13.50. Under the Performance

Partnership Agreements, Federal funding is provided through Cooperative Agreements.

Collection of Information: This collection of information includes standard and FEMA forms and other reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Cooperatives Agreements.

Title: Financial and Technical Assistance under the Performance Partnership Agreements.

Type of Information Collection: Reinstatement, with change, of a previously approved collection.

OMB Number: 3067–0206.

Form Numbers: Standard Form 424, Application for Federal Assistance, hour burden—2 hours per response and recordkeeping hour burden—.2 hour per response;

Indirect Cost Agreement hour burden—50 hours per response and recordkeeping hour burden—.2 hour per response;

Budget Deviations, hour burden—5.8 hours per response and recordkeeping hour burden—.2 hour per response;

SF–SAC, Data Collection Form for Reporting Audits, hour burden—30 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–10, Financial Status Report, hour burden—9.8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–15, Budget Information—Construction Projects, hour burden—17 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–16, Assurances, hour burden—1.5 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–17, Outlay Report and Request for Reimbursement for Construction Programs, hour burden—17 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–18, Report of Government Property; hour burden—6 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–19, Report of Unobligated Balance of Federal Funds, Drawdowns, and Undrawn funds, 5 minutes per line, total 2 hours per sheet and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–20, Budget Information—Nonconstruction, hour burden—9.8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Program Narrative—Nonconstruction, hour burden—8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Program Narrative—Construction, hour burden—8 hours per response and recordkeeping hour burden—.2 hour per response;

FEMA Form 20–22, Performance Report—Nonconstruction, hour burden—8 hours per response and recordkeeping burden—.2 hour per response;

FEMA Form 20–22, Performance Report—Construction, hour burden—8 hours per response and recordkeeping burden—.2 hour per response;

FF 76–10a, Obligating Document for Awards/Amendments, hour burden—1.5 hours per response and recordkeeping .2 hour per response; and,

Reading, Understanding and Using the Performance Partnership Agreements/Cooperative Agreements Application; Awards/Amendments; Outlays, Performance Reporting, Budget Deviations, Property Management, and Close-out; and Audit Modules—hour burden—12 hours per response and recordkeeping hour burden—.2 hour per response.

Abstract: Performance partnerships are joint efforts by Federal, State and local governments and providers to design programs and measure results. The Federal Emergency Management Agency and the Governor or his/her authorized representative sign performance Partnership Agreements. Performance partnerships strive to streamline the traditional Federal government grant system by providing increased flexibility on how a program is run in exchange for increased accountability for results. The flexibility and accountability of performance partnerships contain several general objectives that are relevant to the development of a strong national emergency management partnership. The objectives of increased flexibility include consolidation of programs and funding streams, elimination of micro-management, devolved decision-making, and reduced wasteful paperwork and barriers to success. The objectives of increased accountability for results mean partners will develop agreed upon performance measures that use outcomes and outputs to measure progress toward national goals, create funding and other incentives to reward progress towards achievement of desirable results and create disincentives (such as flexibility and the reduction or termination of Federal funding) if efforts are not made to achieve the desired outcomes. The collection of information focuses on Standard and FEMA forms and other reporting and recordkeeping requirements that enable State and local governments to request from FEMA Federal financial and technical assistance through Performance Partnership Agreements/Cooperative Agreements. The burden hours for this collection only reflect the burden for Cooperative Agreement funding, reporting, and recordkeeping under Performance Partnership Agreements. As other FEMA functions and program activities funded by Federal grants and cooperative agreements re reviewed, the span of coverage for this collection will include burden for those programs as well.

Affected Public: State, Local, and Tribal Governments.

Number of Respondents: 56.

Estimated Burden Hours: 67,878.

Estimated Recordkeeping Burden Hours: 1,400.

Estimated Total Annual Burden Hours: 69,278.

Estimated Cost to the Federal Government: $400,000.00.

Comments: Written comments are solicited to:

(a) Evaluate whether the proposed data collections and reporting requirements are necessary for the proper performance of FEMA's functions and program activities, including whether the date have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed data collections and reporting requirements;

(c) Determine an estimated cost of the proposed data collections and reporting requirements to the respondents;

(d) Enhance the quality, utility, and clarity of the information to be collected; and,

(e) 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.

OMB should receive comments concerning the approval of this collection of information under OMB's emergency processing procedures within 30 days of the date of this notice. FEMA will, however, continue to accept comments concerning this collection of information through August 17, 1999.

ADDRESSES: Interested persons should submit written comments to the Office

of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503, or to the Federal Emergency Management Agency, Attn: Information Collections Officer, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Charles McNulty, Office of Financial Management, Room 350, Washington, D.C., at (202) 646–2976. For copies of the proposed collection of information contact Muriel B. Anderson at (202) 646–2625, FAX (202) 646–3524, or e-mail: muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15553 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Post Construction Elevation Certificate/Floodproofing Certification.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Abstract: The Elevation Certificate and Floodproofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others, with standardized documents that are readily needed.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provide the elevation data required to document conformance with floodplain management regulations and for the applicants, so that actuarial insurance rates can be charged. The elevation data is transmitted to the NFIP by the insurance applicant or agent with the appropriate NFIP policy forms.

The data is also used to assist FEMA in measuring the effectiveness of the NFIP regulations in eliminating or decreasing damage caused by flooding and the appropriateness of the NFIP premium charge for insuring property against the flood hazard.

Affected Public: Individuals and households, businesses or other For-profit, not-for-profit institutions, Farms, and state, Local or Tribal Governments.

Number of Respondents: 73,650.

Estimated Time per Respondent: FEMA Form 81,31, Elevation Certificate-2.25 hours; FEMA Form 81–65, Floodproofing Certificate for Non-Residential Structures-3.25 hours.

Estimated Total Annual Burden Hours: 166,362.

Frequency of Response: One per Building.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: June 4, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15554 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Reimbursement for Cost of Firefighting on Federal Property.

Type of Information Collection: Reinstatement with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0141.

Abstract. Under Section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*), fire services in any state may file claims for reimbursement for direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States.

Affected Public: State, local, or tribal government.

Number of Respondents: 4.

Frequency of Response: 4 times a year.

Estimated Time per Respondent: 1.5 Hours.

Estimated Total Annual Burden Hours: 24.

COMMENTS: Interested persons are invited to submit written comments on the proposed collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, 725 17th Street, NW, Room 10102, Washington, DC 20503. Comments should be submitted on or before July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, e-mail: muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15557 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Fire Suppression Assistance.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0066.

Abstract: FEMA provides assistance for fire suppression of forest or grassland fires, which threatens destruction to life/and improve property as would constitute a major disaster under Fire Suppression Assistance (FSA). In order for FEMA to provide the necessary assistance to States for the fire suppression program activities, the following forms are used to collect information: FEMA Form 90–58, Request for Fire Suppression Assistance, used by the State to provide information to support the need for Federal assistance. FEMA Form 90–91, Project Worksheet, prepared by the Principal Advisor, State Forester, and a FEMA representative upon termination of eligible fire suppression assistance. Standard Form 269A, Final Status Report, used by the State to submit the State's final claim for fire suppression assistance. Standard Form 270, Request for Advance or Reimbursement used by the State as an option to receive funds. In addition, under Section 420 of the Stafford Act there must be a FEMA-State Agreement. Also, a State Administrative Plan must be developed by the State for the Administration of a Fire Suppression Assistance Grant. The plan must designate the State agency that will be responsible for the administration of the program and ensure compliance with the law and regulation applicable to (FSA) grants and ensure the administrative plan is incorporated into the State Emergency Plan.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 27.

Estimated Time per Respondent: FEMA-Statement Agreement—5 minutes;

Standard Form 90–58, Request for Fire Suppression Assistance, hour burden—1 hour;

Standard Form 424, Application for Federal Assistance, hour burden—1 hour;

FEMA Form 90–91, Project Worksheet, hour burden—30 minutes;

Standard Form 269A, Final Status Report, hour burden—1 hour;

Standard Form 270, Request for Advance or Reimbursement (or Letter of Credit) hour burden—30 minutes; and,

State Administrative Plan—1 hour.

Estimated Total Annual Burden Hours: 137.5 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for FEMA, Room 10102, Washington, DC 20503 within July 19, 1999.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the collection of information contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: June 7, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–15558 Filed 6–17–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC Offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201052–001.

Title: Port of Oakland–MTC Marine Terminal Agreement.

Parties:

City of Oakland, Board of Port Commissioners Marine Terminals Corporation.

Synopsis: The proposed amendment revises the monthly compensation for the month-to-month holdover period of the agreement.

Agreement No.: 224–201079.

Title: SSA–Matson Cooperative Working Agreement.

Parties:

Stevedoring Services of America, Inc.
Matson Terminals, Inc.

Synopsis: Under the proposed agreement, the parties will establish SSA Terminals, LLC to provide container stevedore, terminal, and related services in ports on the U.S. West Coast. The parties agree, with certain exceptions, not to compete with the new entity, and Matson Terminals will cease its operations in the affected ports. The parties request expedited review.

Dated: June 14, 1999.

By Order of Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–15478 Filed 6–17–99; 8:45 am]

BILLING CODE 6730–01–M

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 2, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James M. Seneff, Winter Park, Florida; Robert A. Bourne, Winter Park, Florida; Phillip M. Anderson, Jr., Orlando, Florida; Brian H. Fluck, Maitland, Florida; James W. Kersey, Orlando, Florida; Edgar James McDougall, Maitland, Florida; Curtis B. McWilliams, Winter Park, Florida; Kelley P. Mossburg, Orlando, Florida; Jack L. Parker, Orlando, Florida; Lynn E. Rose, Orlando, Florida; Michael T.

Shepardson, Orlando, Florida; John T. Walker, Orlando, Florida; Beverly S. Walker, Orlando, Florida; and Jean A. Wall, Winter Park, Florida; all to acquire voting shares of Alliance Bancshares, Inc., Orlando, Florida, and thereby indirectly acquire voting shares of Alliance Bank, Orlando, Florida.

Board of Governors of the Federal Reserve System, June 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15493 Filed 6–17–99; 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 (12 U.S.C. 1843). 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 Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. HaleCo Bancshares, Inc., Plainview, Texas, and Commerce Bancshares, Inc., Dover, Delaware; to acquire approximately 55 percent of the voting shares of La Plata Bancshares, Inc., Hereford, Texas, and thereby indirectly acquire La Plata Delaware Bancshares, Inc., Dover, Delaware, and The First National Bank of Hereford, Hereford, Texas.

In connection with this application, La Plata Bancshares, Inc., Hereford, Texas, and La Plata Delaware Bancshares, Inc., Dover, Delaware, also have applied to become bank holding companies by acquiring 100 percent of the voting shares of The First National Bank of Hereford, Hereford, Texas.

Board of Governors of the Federal Reserve System, June 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15492 Filed 6–17–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, June 23, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Publication for comment of proposed amendments to Regulation B (Equal Credit Opportunity) (Advanced Notice of Proposed Rulemaking on Regulation B published earlier for public comment; Docket No. R–1008).

2. Proposed 2000 Federal Reserve Bank budget objective.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: June 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15664 Filed 6–16–99; 12:35 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:15 a.m., Wednesday, June 23, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15665 Filed 6–16–99; 12:35 pm]

BILLING CODE 6210–01–P

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Slightly Modified Form for Requesting Access to Executive Branch Public Financial Disclosure Reports and Other Covered Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of

Management and Budget (OMB) a slightly modified OGE Form 201 used by persons for requesting access to executive branch public financial reports and other covered records for three-year approval under the Paperwork Reduction Act. This proposed modified version of the form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by July 19, 1999.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman or Michael J. Lewandowski at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–523–6325. A copy of the proposed slightly revised OGE Form 201 may be obtained, without charge, by contacting Mr. Gressman or Mr. Lewandowski.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), a proposed slightly modified OGE Form 201 ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Records'' (OMB control # 3209–0002). On February 4, 1999, OGE published a ''first round'' paperwork notice of the proposed modified OGE Form 201 (see 64 FR 5657–5658). No public comments were received on that advance notice. Therefore, OGE has determined to proceed with submission of the proposed modified form without any additional changes. Once finally approved by OMB and adopted by OGE, the modified version of OGE Form 201 will replace the existing version of the form.

As noted in the first round **Federal Register** notice, OGE, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, is proposing to slightly modify and update the existing access form. That form, the OGE Form 201, collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. appendix, section 105(b) and (c), and 5 CFR 2634.603(c) and (f). For many years, OGE has disseminated to executive branch departments and agencies a locally reproducible uniform form to serve as the statutorily required written application to inspect or receive copies of SF 278 reports and other covered records. Departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms. See the discussion below.

This proposed slightly modified version of the OGE Form 201 will add express mention (in part III of the form) in the reference to those Ethics Act-qualified blind trust and diversified trust materials that are publicly available to any trust dissolution report (and the list of trust assets at that time) and the qualification that any trust instrument provisions relating to testamentary disposition of trust assets are not publicly available. See 5 CFR 2634.408(a)(1)(i), (a)(3) and (d). Also, OGE proposes to clarify somewhat the wording regarding the sixth numbered routine use under the Privacy Act statement on the reverse side of the form. The modified wording would more closely track the wording of the underlying routine use h. in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990). Further, in the form's public burden statement, OGE proposes to drop the reference to OMB as a further point of contact for information collection comments on the OGE Form 201. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for such comments for the form, on which OGE will coordinate with OMB if necessary.

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE will in the future adjust the referenced civil monetary penalty at the bottom of the first page for prohibited uses of an SF 278 to which access has been gained. The penalty, under section 105(c)(2) of the Ethics Act, 5 U.S.C. appendix, section 105(c)(2), will be raised from $10,000 to $11,000 once OGE and the Department of Justice issue their respective inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act. See 28 U.S.C. 2461 note. The OGE rulemaking will, in pertinent part, revise 5 CFR 2634.703 of the executive branch financial disclosure regulation. The Office of Government Ethics has requested permission from OMB to adjust the OGE Form 201 reference once that adjustment takes effect without further paperwork clearance, even if the adjustment occurs after reclearance of the slightly revised form (with notice to OMB and the agencies at that time). The so revised version of the form will be distributed to OMB and the agencies once that change takes effect. In addition, any periodic future adjustments to that civil monetary penalty (every three years or so), pursuant to further rulemakings by OGE and the Justice Department under the inflation adjustment laws, will also be reflected in future editions of the form.

Finally, OGE would also make a couple of minor stylistic changes to the form and show the 1999 edition date. The mark-up copy of the OGE Form 201 as proposed for slight revision, which is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), shows all the changes that would be made.

In light of OGE's experience over the past three years (1996–1998, with a total of 517 non-Federal access requests received), the estimate of the average number of access forms expected to be filed annually at OGE by members of the public (primarily by news media, public interest groups and private citizens) is proposed to be adjusted down from the current estimate of 275 to 172 (not counting access requests by other Federal agencies or Federal employees). The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the overall estimated annual public burden for the OGE Form 201 for forms filed at the Office of Government Ethics will decrease from 46 hours in the current OMB paperwork inventory listing (275 forms × 10 minutes per form—number rounded off) to 29 hours (172 forms × 10 minutes per form—number rounded off). Moreover, although OGE no longer asks executive branch departments and agencies on its annual ethics program questionnaire for their numbers of access requests, OGE estimates that the annual branchwide total is probably around 1,500 as in years past.

The Office of Government Ethics expects that the slightly revised form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies this summer. The OGE Form 201 as revised will be made available free-of-charge to departments and agencies in paper

form, as well as in a Portable Document Format (PDF) viewable and downloadable electronic image on OGE's Internet Web site (Uniform Resource Locator address: *http://www.usoge.gov,* under the Ethics Resource Library section) and in future editions of The Ethics CD–ROM. The Office of Government Ethics also will permit departments and agencies to photocopy or have copies printed of the form as well as to develop or utilize, on their own, electronic versions of the form, provided that they precisely duplicate the paper original to the extent possible. As noted above, agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on the form, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained therefor.

Public comment is invited on each aspect of the proposed slightly modified OGE Form 201 as set forth in this notice, including specifically views on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: June 14, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–15526 Filed 6–17–99; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0791]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1999 (64 FR 25045), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0405. The approval expires on November 30, 1999. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: June 11, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–15477 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a second public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act (DSHEA). This meeting is intended to give the public an opportunity to comment on the development of the strategy.

DATES: The public meeting will be held on July 20, 1999, from 9 a.m. to 5 p.m. Submit written comments by August 20, 1999.

ADDRESSES: The public meeting will be held at the Oakland Federal Bldg., third fl. auditorium, north tower, 1301 Clay St., Oakland, CA.

FOR FURTHER INFORMATION CONTACT: Janet B. McDonald, Office of Regulatory Affairs (HFR–PA–145), Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX 510–337–6708, ''e-mail jmcdonal@ora.fda.gov.''

SUPPLEMENTARY INFORMATION:

I. Introduction

This public meeting is the second of two meetings to seek stakeholder comments on the development of an overall strategy for achieving effective regulation of dietary supplements under the Federal Food, Drug, and Cosmetic Act, as amended by DSHEA. The first meeting was held on June 8, 1999, in Washington, DC. These two meetings build upon themes that emerged from a broader stakeholder meeting sponsored by CFSAN in June 1998. That meeting addressed the nonfood safety initiative programs that are managed by CFSAN and identified some basic themes including: (1) The need to maintain a credible FDA program, including compliance, enforcement, and consumer outreach activities that will help ensure consumer confidence in FDA regulated products; (2) the need to maintain a solid, science based program staffed with highly qualified scientists; and (3) the recognition that FDA's assistance to consumers and the regulated industry is important.

II. Registration and Requests for Oral Presentations

If you would like to attend the public meeting, you must register with the contact person (address above) by July 9, 1999, by providing your: Name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 510–337–6708. If you need special accommodations due to disability, please inform the contact person when you register.

If you wish to make an oral presentation during the meeting, you must inform the contact person of that desire when you register to attend and submit: (1) A brief written statement of the general nature of the evidence or arguments that you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation.

III. CFSAN's 1999 Program Priorities Document

The meeting announced in this notice, as well as the meeting that took place on June 8, 1999, in Washington, DC, are in response to CFSAN's 1999 Program Priorities document that calls for the development of an overall dietary supplement strategy in conjunction with other agency units and stakeholders. A copy of the priorities document is available on the Internet on FDA's Website at ''http://vm.cfsan.fda.gov/~dms/cfsan199.html''.

The priorities document states that the overall strategy should address all elements of the dietary supplement program including: (1) Boundaries between dietary supplements and conventional foods, between dietary supplements and drugs, and between dietary supplements and cosmetic products; (2) claims; (3) good manufacturing practices; (4) adverse event reporting; (5) laboratory capability; (6) research needs; (7) enforcement; and (8) resource needs. FDA's objective in developing this strategy is to ensure consumer access to safe dietary supplements that are truthfully and not misleadingly labeled. FDA intends to develop this strategy by following a process of openness, flexibility, efficiency, and commitment to public health.

FDA has identified four criteria for priority ranking the tasks encompassed in the strategy. These criteria are: (1) Enhancement of consumer safety, (2) development of health-related product labeling regulation, (3) improvement in efficiency of operation, and (4) closure on unresolved regulatory issues.

This meeting also addresses activity undertaken by the agency to solicit comments in accordance with section 406(b) of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393(b)).

IV. Agenda and Goals

To help focus comments for the July 20, 1999, meeting, FDA requests that oral and written input regarding an overall strategy for achieving effective regulation of dietary supplements address the following questions:

1. In addition to ensuring consumer access to safe dietary supplements that are truthfully and not misleadingly labeled, are there other objectives that an overall dietary supplement strategy should include?

2. Are the criteria for prioritizing the tasks within the supplement strategy appropriate? Which specific tasks should FDA undertake first?

3. What factors should FDA consider in determining how best to implement a task (i.e., use of regulations, guidance, etc.)?

4. What tasks should be included under the various dietary supplement program elements in the CFSAN 1999 Program Priorities document?

5. Are there current safety, labeling, or other marketplace issues that FDA should address quickly through enforcement actions to ensure, for example, that consumers have confidence that the products on the market are safe, truthfull, and not misleadingly labeled?

6. Toward what type or area of research on dietary supplements should FDA allocate its research resources?

7. Given FDA's limited resources, what mechanisms are available, or should be developed, to leverage FDA's resources to meet effectively the objective of the strategy?

V. Comments

Interested persons may, on or before August 20, 1999, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch via e-mail to ''FDA Dockets@bangate.fda.gov'' or via the FDA Website ''http://www.fda.gov''. You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website ''http://www.fda.gov''.''http://vm.cfsan.fda.gov/dms/cfsan199.html''.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–15476 Filed 6–17–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2039–FN]

RIN 0938–AJ41

Medicare Program; Recognition of the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for Hospices

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

ACTION: Final notice.

SUMMARY: This notice recognizes the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) as a national accreditation organization for hospices that request participation in the Medicare program. We believe that accreditation of hospices by JCAHO demonstrates that all Medicare hospice conditions of participation are met or exceeded. Thus, we grant deemed status to those hospices accredited by JCAHO. The proposed notice included the application from the Community Health Accreditation Program, Inc. (CHAP). The final notice recognizing CHAP as a national accreditation organization for hospices was published on April 20, 1999 at 64 FR 19376.

EFFECTIVE DATE: This final notice is effective June 18, 1999, through June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Berry, (410) 786–7233.

SUPPLEMENTARY INFORMATION:

I. Background

A. Laws and Regulations

Under the Medicare program, eligible beneficiaries may receive covered palliative services in a hospice provided certain requirements are met. The regulations specifying the Medicare conditions of participation for hospice care are located in 42 CFR part 418. These conditions implement section 1861(dd) of the Social Security Act (the Act), which specifies services covered as hospice care and the conditions that a hospice program must meet in order to participate in the Medicare program.

Generally, in order to enter into an agreement with Medicare, a hospice must first be certified by a State survey

agency as complying with the conditions or standards set forth in part 418 of the regulations. Then, the hospice is subject to routine surveys by a State survey agency to determine whether it continues to meet Medicare requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits ''accredited'' hospices to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Accreditation by an accreditation organization is voluntary and is not required for Medicare certification. Section 1865(b)(1) of the Act provides that, if a provider is accredited by a national accreditation body that has standards that meet or exceed the Medicare conditions, the Secretary can ''deem'' that hospice as having met the Medicare requirements.

We have rules at 42 CFR part 488 that set forth the procedures we use to review applications submitted by national accreditation organizations requesting our approval. A national accreditation organization applying for approval must furnish to us information and materials listed in the regulations at § 488.4. The regulations at § 488.8 (''Federal review of accreditation organizations'') detail the Federal review and approval process of applications for recognition as an accrediting organization. On April 26, 1996, however, new legislation entitled ''Omnibus Consolidated Rescissions and Appropriations Act of 1996'' (Pub. L. 104–134) was enacted.

Section 1865(b)(3)(A) of the Act, as amended by section 516 of Public Law 104–134, requires us to publish a notice in the **Federal Register** within 60 days after receiving an accreditation organization's written request that we make a determination regarding whether its accreditation requirements meet or exceed Medicare requirements. Section 1865(b)(3)(A) of the Act also requires that we identify in the notice the organization and the nature of the request and allow a 30-day comment period. This section further requires that we publish a notice of our approval or disapproval within 210 days after we receive a complete package of information and the organization's application.

B. Proposed Notice

On September 11, 1998, we published a proposed notice (63 FR 48735) announcing the requests of CHAP and JCAHO for our approval as national accreditation organizations for hospices. In the notice, we detailed the factors on which we would base our evaluation. (We inadvertently gave the citation for the regulations governing our evaluation as § 488.8, ''Federal review of accreditation organizations,'' rather than as § 488.4, ''Application and reapplication procedures for accreditation organizations.'') Under section 1865(b)(2) of the Act and our regulations at § 488.4, our review and evaluation of the JCAHO application were conducted in accordance with the following factors:

- A determination that JCAHO is a national accreditation body, as required by the Act.
- A determination of the equivalency of JCAHO's requirements for a hospice to our comparable hospice requirements.
- A review of JCAHO's survey processes to determine the following:
  - —The comparability of JCAHO's processes to those of State agencies, including survey frequency; its ability to investigate and respond appropriately to complaints against accredited facilities; whether surveys are announced or unannounced; and the survey review and decision-making process for accreditation.
  - —The adequacy of the guidance and instructions and survey forms JCAHO provides to surveyors.
  - —JCAHO's procedures for monitoring providers or suppliers found to be out of compliance with program requirements. (These procedures are used only when JCAHO identifies noncompliance.)
- The composition of JCAHO's survey team, surveyor qualifications, the content and frequency of the in-service training provided, the evaluation systems used to assess the performance of surveyors, and potential conflict-of-interest policies and procedures.
- JCAHO's data management system and reports used to assess its surveys and accreditation decisions, and its ability to provide us with electronic data.
- JCAHO's procedures for responding to complaints and for coordinating these activities with appropriate licensing bodies and ombudsmen programs.
- JCAHO's policies and procedures for withholding or removing accreditation from a facility that fails to meet its standards or requirements.
- A review of all types of accreditation status that JCAHO requests HCFA accept for deeming of hospices.
- A review of the pattern of JCAHO's deemed facilities (that is, types and duration of accreditation and its schedule of all planned full and partial surveys).
- The adequacy of JCAHO's staff and other resources to perform the surveys, and its financial viability.
- JCAHO's written agreement to—
  - —Meet our requirements to provide to all relevant parties timely notifications of changes to accreditation status or ownership, to report to all relevant parties remedial actions or immediate jeopardy, and to conform the organization's requirements to changes in Medicare requirements; and
  - —Permit the organization's surveyors to serve as witnesses for us in adverse actions against its accredited facilities.

We received no comments on our proposed notice.

II. Review and Evaluation

Our review and evaluation of the JCAHO application, which were conducted as detailed above, yielded the following information.

Differences between the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and Medicare Conditions and Survey Requirements

We compared Medicare requirements with (1) the standards contained in the JCAHO 1997–98 ''Comprehensive Accreditation Manual for Home Care'' (CAMHC); (2) the survey process outlined in JCAHO's guide entitled ''The Complete Guide to the 1997–98 Home Care Survey Process: Home Health, Personal Care, Support and Hospice'; and (3) JCAHO's training materials. We also evaluated the accuracy of JCAHO's cross walk [relational table] between JCAHO standards and Medicare standards. In 16 areas JCAHO has made the following revisions or clarifications:

- *Unannounced surveys.* Our policy requires that all deemed status surveys in Medicare-certified hospices be unannounced (that is, conducted with no advance notice). This policy includes initial accreditation surveys, re-surveys of any kind (regardless of the accreditation category for the deemed hospice service), focused surveys, and complaint surveys. The JCAHO policy for a routine announced, triennial survey of a home care company, including its hospice service, does not meet our requirement; a concurrent survey of the hospice service conducted at the same time as an announced triennial home care survey does not meet our requirement; and any survey with 24-hours advance notice, or any advance notice, does not meet our requirement. Thus, we requested written revision and acceptance of an

unannounced survey process. JCAHO, in response, has agreed that all deemed status hospice surveys will be unannounced:

No advanced notice of any survey will be provided to any hospice electing to use the Joint Commission's accreditation survey to meet Medicare provider requirements as a hospice. This includes all follow-up surveys and surveys to evaluate complaints. If a hospice seeking deemed status is part of a hospital, the hospice survey will be conducted unannounced and not in conjunction with the hospital survey. Specifically, the hospital survey will be announced, but the hospice survey unannounced and definitely not conducted on the dates of the hospital survey.

If a hospice seeking deemed status has other home care services within the hospice organization that are not seeking deemed status, the hospice survey will be unannounced and conducted first. The other home care services will be surveyed for Joint Commission accreditation following the completion of the survey.

• *Core services.* Medicare requires that substantially all core services (nursing care, medical social services, and counseling) be provided directly by hospice employees. Regulations allow for exceptions during times of peak patient loads or under extreme circumstances, and the Balanced Budget Act of 1997 provides exceptions for physicians' services. JCAHO clarified that CAMHC standards LD 2.2 and CC2 include this Medicare standard through cross reference and evaluation against § 418.202, which contains those provisions.

• *Notification issues.* JCAHO failed to clearly indicate in three instances when it would provide us with information regarding the failure of a hospice to meet or maintain Medicare conditions of participation:

—Violations of the Medicare conditions of participation, including routine core services (nursing care, medical social services, and counseling), as required by section 1861(dd)(1) of the Act.

—Changes in accreditation status, such as a decision to preliminarily non-accredit a facility, or any other accreditation status not recognized under this agreement.

—Changes in sites, corporate status, or services not in violation of the Medicare conditions of participation; withdrawal of a provider either voluntarily or involuntarily; and changes of ownership, hospice mergers, or hospice site expansions.

JCAHO clarified its required notification in these three instances, as well as its subsequent notification of us, as follows:

—Accredited organizations must notify JCAHO in writing within 30 days of any changes involving a violation of Medicare conditions of participation, including core services. JCAHO will forward this information in writing to us and to the relevant State agency within 10 days of receiving it.

—We will be notified within 30 days of a decision regarding changes in any accreditation status not accepted under this agreement.

—Accredited organizations must notify JCAHO in writing within 30 days of any changes to sites, corporate status, or services not in violation of the conditions of participation. JCAHO will immediately forward this information to us and to the State agency. JCAHO also stipulates that ''the Joint Commission would survey the organization for the changes reported within 30 days. HCFA would be notified within 10 days, and also receive the report of the surveyed changes within 30 days of the completion of the survey.''

• *No surveys prior to enrollment form verification.* State survey agencies do not conduct health and safety inspections until a hospice has submitted a ''Medicare and Other Federal Health Care Program General Enrollment Health Care Provider/Supplier Application'' (HCFA 855) that the servicing fiscal intermediary has reviewed and approved. JCAHO has specified that it will not conduct a deemed status survey for a hospice until it has received from the applicant either the Medicare provider number or written verification from the fiscal intermediary of submission and approval of HCFA 855.

• *Change of ownership.* Because of our recent experience with changes of ownership and the difficulty in recovering overpayments from facilities not transferring a provider ID from previous owners, we questioned when (that is, before or after making an accreditation award to the new owner of a home care company) JCAHO would survey a Medicare-certified hospice that is undergoing a change of ownership and that has not accepted assignment of the former owner's provider agreement (including Medicare-certified hospices that are part of an accredited home care company). Medicare providers that change ownership and do not accept assignment of the former owner's provider agreement are treated by us as new applicants to the Medicare program. JCAHO has stipulated in writing that ''when a new provider number is being issued, the Joint Commission would not transfer its accreditation of the old organization to the new. A complete new survey would have to be conducted.''

• *Survey process.* JCAHO's hospice program standards are a subset of the CAMHC, containing requirements for both home health agencies and hospices. These two facility types are often part of the same organization. It is possible that one facility would be under a deeming program and the other would not, resulting in one announced and one unannounced survey. Because of this combined presentation, we initially had some difficulty in understanding how JCAHO would conduct a hospice survey separate from a related home care organization. Therefore, we recommended that JCAHO develop a deemed status survey protocol for Medicare-certified hospices in the near future and indicate if and when this process would be completed. In the meantime, we held discussions with JCAHO to ensure that our expectations of hospice programs were verified by JCAHO's interpretation of its standards and procedures.

JCAHO provided us with written verification that its hospice survey process encompasses all sites of care, including inpatient and respite care, where hospice services are provided. JCAHO specified that it evaluates contracted organizations, including those providing pharmaceutical and home medical equipment services, during the hospice survey. If the contracted organization is already accredited by JCAHO, some standards that have already been evaluated during the facility's own JCAHO survey, such as performance improvement activities or environmental safety plan, may not be assessed during the on-site survey of the facility. The survey of the non-accredited organizations, as well as those accredited by another accreditor, consists of on-site evaluation of all applicable JCAHO standards and corresponding Medicare conditions of participation, including the Life Safety Codes.

JCAHO would conduct the deemed status survey of a Medicare-certified hospice separately and provide a separate report. If home care services other than hospice are part of the JCAHO survey, JCAHO would survey those other services for its purposes on separate days and would not conduct the survey concurrently with the hospice deemed status survey. JCAHO would conduct the hospice deemed status survey first, followed by a survey of the other home care services. The deemed status survey would remain unannounced. This is the current method used to conduct the JCAHO

deemed status process for home health agencies when the same organization also provides services that are not Medicare-certified.

For example, if a Medicare-certified hospice also had within its business a licensed home health organization that is not Medicare-certified, JCAHO would survey both for accreditation. According to JCAHO procedures, the survey provided might total 5 days, and the survey would be conducted as follows. The survey conducted for the entire organization would be unannounced. JCAHO would survey the hospice first, at the end of which time (in this scenario, let us assume 3 days), JCAHO would issue a report for only the hospice Medicare deemed status compliance. On the subsequent days, JCAHO would survey the licensed home health agency, and on the final survey day, JCAHO would present its report, comprising both the hospice and licensed agency, to the organization. JCAHO's detailed survey process can be found in its application under tab 3ii, and in Exhibit 5, ''The Complete Guide to the 1997–98 Home Care Survey Process: Home Health, Personal Care, Support and Hospice.''

• *Data systems.* We recommended that JCAHO provide assurance that it can and will produce a plan indicating when and how they will be able to produce validation data such as outcome trends, especially deficiency types for regions and States; resolution time frames for deficiencies; and complaints for comparative Medicare purposes. JCAHO provided the detail for all the data described in our recommendation, including outcome trends (deficiency types for regions and States) and time frames. These reports, tables, and other displays indicate that JCAHO has the capability of producing resolution time frames for deficiencies and complaints.

• *Conditional accreditation.* We were concerned about the JCAHO request to consider the category called Conditional Accreditation as acceptable for deemed status and certification of facilities under Medicare. To clarify how conditional accreditation might be applied to a Medicare-certified hospice, we asked the following questions:

—What is the meaning (with examples, if necessary) of the first part of the category's definition, which states that ''an organization is not in substantial compliance with Joint Commission standards?''

—What criteria would JCAHO use to determine that a Medicare-certified hospice would not be in ''substantial compliance'' with JCAHO standards and would be placed in this category called Conditional Accreditation?

—What is the meaning (with examples, if necessary) of the rest of the definition, which states that ''one or more adverse clinical events that potentially reflect underlying systems issues?''

—What are some ''worst case'' scenarios in which a Medicare-certified hospice could have had ''one or more adverse clinical events that potentially affect underlying systems issues,'' and would be placed in this category?

In response to these questions, JCAHO has indicated that it will not accept, for deeming purposes, hospices with a decision of conditional accreditation, with one exception: those cases in which the hospice was not found to be the cause of the conditional decision. JCAHO awards the lowest score given when an organization bridges more than one facility type. Thus, a provider-based hospice may receive a conditional accreditation based on a deficiency outside the scope of its survey. A specific example would be a hospice organization that also includes a home health agency that is not Medicare-certified. In this case, if the home health agency's compliance with the JCAHO standards creates the conditional decision, but the hospice is found in compliance with all Medicare conditions of participation, HCFA would determine that the hospice is eligible for deemed status. JCAHO has agreed to provide us with a letter explaining any conditional accreditation decision, in addition to a copy of the deemed status hospice report, so that ''HCFA may validate the status of compliance.'' JCAHO has also agreed to supply us with quarterly lists of all its home care customers and companies that include a deemed hospice service for validation to assure that all non-deemed hospices in these settings are subject to State agency survey.

• *Information sharing.* It is important that we be able to differentiate between JCAHO's regular home care customers and those that include a deemed hospice service, since regular home care customers with hospice services that have not elected the deemed status option still require the State agency survey. JCAHO has agreed that we should receive complete and timely lists of all deemed hospice services in an unambiguous format.

• *Electronic data exchange.*

—We requested a single contact who would have the authority to comply with requests for any new data and format revisions for validation submissions. JCAHO has supplied the names of contacts with the authority to make decisions regarding the release of validation information.

—Additionally, we requested JCAHO's plan to ensure that electronic exchanges and internal data collection can proceed uninterrupted into the Year 2000 (Y2K). JCAHO has appointed a corporate-wide task force of key staff and has assigned this task force the responsibility for monitoring the implementation of JCAHO's plans for Y2K compliance. A major national consulting firm is assisting the task force in this effort. To date, JCAHO's implementation plans are proceeding as scheduled.

—We required assurances from JCAHO that it has the ability to provide us with timely electronic survey data and requested validation of survey findings for all Medicare-certified hospices that have elected the deemed status option. JCAHO has provided a description of its data systems and has stipulated that it has the ability to provide us electronically with survey findings for validation.

• *Millennium updates.* We requested that JCAHO indicate how it plans to assure that deemed hospices maintain equipment and systems to sustain the quality of patient care through the millennium updates. JCAHO stipulates that in 1998 and 1999, initial and resurveys conducted for HCFA's hospice applicants include in the ''Management of Information'' chapter of the 1997–98 CAMHC several standards that are used to address Y2K issues: CAMHC IM 1, ''The organization plans and designs information-management processes to meet its internal and external information needs''; IM 2, ''Confidentiality, security and integrity of data and information are maintained''; and IM 3.1, ''The organization takes steps to ensure that the data are complete, reliable, valid, and accurate on an ongoing basis.'' Surveyors request information from the hospice to determine the organization's awareness of the Y2K issue and the steps being taken to assure compliance. In the year 2000, the compliance with these standards will be validated during the on-site survey process. Non-compliance that affects the quality of patient care would be addressed in other standards and could potentially lead to loss of accreditation.

• *JCAHO scoring of its standards.* We were concerned that JCAHO puts limits or ''caps'' on scores given to new requirements or standards for providers; that is, according to JCAHO policy, new requirements cannot be cited from level 3 (partial compliance) to level 5

(noncompliance). This practice often prevents new standards from being cited as deficiencies within JCAHO's system, which is computer-driven and aggregates scores within an area of performance. Scores from 3 to 5, as explained in the following table, are likely to result in the citing of a deficiency or type I recommendation, defined by JCAHO as ''a recommendation or group of recommendations that addresses insufficient or unsatisfactory standards compliance in a specific performance area.''

JCAHO SCORING SCALE/LEVELS OF COMPLIANCE

Score	Level of compliance	Definition
1	Substantial compliance.	The organization consistently meets all major provisions of the standard and its intent.
2	Significant compliance.	The organization meets most provisions of the standard and its intent.
3	Partial compliance.	The organization meets some provisions of the standard and its intent.
4	Minimal compliance.	The organization meets few provisions of the standard and its intent.
5	Noncompliance.	The organization fails to meet the provisions of the standard and its intent.

HCFA requires that scoring of all standards for hospices wishing to participate in Medicare, including any new standards that may be added to meet Medicare conditions of participation in this notice, be allowed through level 5. JCAHO has agreed that ''No hospice standards will be 'capped' and therefore all may be cited through all levels.'' JCAHO has also agreed to notify all currently accredited hospices through individual letters, and to notify the public through JCAHO's periodicals, website, and the next issuance of its manual, that the scoring of hospice standards will not be limited or capped.

• *Hospice medical director.* Medicare's conditions of participation require that the hospice medical director be a doctor of medicine or osteopathy. As written, the JCAHO standard reads only that qualified individuals be responsible for directing patient care and services. It was not clear to us that this standard met Medicare conditions of participation for hospices. JCAHO has assured us, however, that its deemed hospice standard cross references the Medicare requirement and that ''the Medicare condition would be evaluated as acceptable only if the medical director were a director of medicine or osteopathy.''

• *Interdisciplinary Group.*

—Medicare's standards require that the Interdisciplinary Group (IDG) provide or supervise the provision of care and participate in the establishment and periodic review of the patient's plan of care. JCAHO's standards include the appropriate composition of the IDG and the appropriate process for care planning, but do not appear to link the IDG with the care planning processes. JCAHO standards simply require the ''organization'' to be responsible for care planning. JCAHO clarified that its CAMHC standard TX 1 includes the requirement consistent with the Medicare standard that the IDG establishes and is responsible for the plan of care. TX–1.3 specifically requires the IDG to participate in the review and updating of this plan.

—We questioned whether JCAHO standards clearly indicate that the IDG is responsible for designating a registered nurse to coordinate the implementation of the plan of care, and thus meet Medicare standards. JCAHO demonstrated that CAMHC standard CC 4, which assigns ''appropriately qualified staff member(s) to coordinate patient care services,'' addresses and repeats this Medicare standard verbatim.

• *Volunteer staff.* The Medicare standard requires that hospices maintain a volunteer staff sufficient to provide administrative or direct patient care in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff. JCAHO stipulates that the intent of its standard at CAMHC HR 3.1 is that Medicare-certified providers must maintain and document that volunteer staff hours are equal to at least 5 percent of patient care hours.

• *Inpatient care.*

—The Medicare standard requires, at § 418.98(c), that inpatient care days may not exceed 20 percent of the total number of hospice days for this group of beneficiaries in any 12-month period preceding a certification survey. JCAHO clarified that this standard is met through CAMHC standard LD 5, which discusses patient care and services appropriate to the care plan, and standard LD 8, which, under 8.2, discusses the organization's compliance with the applicable law and regulation. JCAHO has specified that they—

have specifically listed 418.98(c) as a cross walked standard for deemed purposes. Instructions in the application indicate that in all circumstances for deemed surveys, the cross walked standards and conditions are utilized as an adjunct to the Joint Commission standard and intents. In other words, the Joint Commission surveyor evaluates compliance with all listed cross walked Medicare conditions of participation and standards when evaluating the referenced Joint Commission standard. Therefore, the requirement that any 12 month period preceding a certification survey for hospices may not exceed 20% of the total number of hospice days would be evaluated as the surveyor was surveying compliance with LD 5 and LD 8.

—Another Medicare standard requires at § 418.100(a) that hospices providing inpatient care directly provide 24-hour nursing services that are sufficient to meet total nursing needs and that are in accordance with the patient's plan of skilled care. JCAHO provided evidence that this standard was included in its requirements at CAMHC TX 1.2, which implements interventions identified in the care plan; at CC2, which provides for 24-hours-a-day, 7-days-a week registered nursing; and at LD 2.2, which discusses the use of systematic planning consistent with the patient's needs.

III. Results of Evaluation

We completed a standard-by-standard comparison of JCAHO's conditions or requirements for hospices to determine whether they met or exceeded Medicare requirements. We found that, after requested revisions were made, JCAHO's requirements for hospices did meet or exceed our requirements. In addition, we visited the corporate headquarters of JCAHO to validate the information it submitted and to verify that its administrative systems could adequately monitor compliance with its standards and survey processes and that its decision-making documentation and processes met our standards. We also observed a survey in real time to see that it met or exceeded our standards. As a result of our review of the documents and observations, we requested certain clarifications to JCAHO's survey and communications processes. These clarifications were provided as indicated above, and changes were made to the documentation in the applications. Therefore, we recognize JCAHO as a

national accreditation organization for hospices that request participation in the Medicare program, effective June 18, 1999, through June 18, 2003.

IV. Paperwork Reduction Act

This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation, codified in part 488, ''Survey, Certification, and Enforcement Procedures,'' are currently approved by OMB under OMB approval number 0938–0690, with an expiration date of August 31, 1999.

V. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). 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 effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice merely recognizes JCAHO as a national accreditation organization for hospices that request participation in the Medicare program. As evidenced by the following data for the cost of surveys, there are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In fiscal year 1996, there were 2,148 certified hospices participating in the Medicare program. We conducted 258 initial surveys, 322 recertification surveys (both at a cost of $634,904), and 145 complaint surveys.

In fiscal year 1997, there were 2,270 certified hospices. This was an increase of 122 facilities. We conducted 180 initial surveys, 354 recertification surveys (both at a cost of $330,686), and 237 complaint surveys. The increase in the number of facilities is less than the number of initial surveys because of mergers, withdrawals, and closures during the year.

In fiscal year 1998, there were 2,290 certified hospices. This was an increase of 20 facilities. We conducted 126 initial surveys, 196 recertification surveys (both at a cost of $360,783), and 201 complaint surveys. The increase in the number of facilities is less than the number of initial surveys because of mergers, withdrawals, and closures during the year.

As the data above indicate, the number of hospices and the cost for conducting hospice surveys by State agencies are increasing. There was a 6.6 percent increase in hospices within 3 years (fiscal years 1996 through 1998). Hospices accredited by JCAHO would be surveyed every 3 years. The numbers of participating providers continue to increase. In an effort to better assure the health, safety, and services of beneficiaries in hospices already certified, as well as to provide relief to State budgets in this time of tight fiscal constraints, we deem hospices accredited by JCAHO as meeting our Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 3, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–15500 Filed 6–17–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 11, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–15221 Filed 6–17–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Technical/Agency Draft Revised Puerto Rican Parrot (*Amazona vittata*) Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability for public review of the technical/agency

draft revised Puerto Rican parrot recovery plan. As the common name implies, the Puerto Rican parrot is a bird species endemic to the commonwealth of Puerto Rico. We solicit review and comment from the public on this draft plan.

DATES: We must receive comments on the draft recovery plan on or before a August 17, 1999 to receive consideration by us.

ADDRESSES: You may obtain a copy of the draft recovery plan by contacting Pablo Torres-Báez, Río Grande Field Office, U.S. Fish and Wildlife Service, P.O. Box 1600, Río Grande, Puerto Rico 00745 (telephone 787/887–8769). Send written comments and materials regarding the plan to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo Torres-Báez at the above address and telephone number (extension 226).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Despite intensive research and management efforts for more than 30 years, the survival of the Puerto Rican parrot is still perilous. Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the Puerto Rican parrot is possible. This draft recovery plan outlines a mechanism that provides for the protection, maintenance, and enhancement of the only known wild population and the establishment of new wild populations in the future. We officially listed the Puerto Rican parrot as an endangered species in 1967 (32 FR 4001). The wild population reached an all time low of about 13 individuals in 1973. The same year, anticipating the possibility of losing the wild population to a catastrophic event, we initiated a captive breeding program to ensure survival of the species. Historically, the once abundant and widespread Puerto Rican parrot suffered from the negative effects of habitat loss, hunting, deleterious biological interactions, and the impact of hurricanes. We will use comments and information provided during this review in preparing the final recovery plan.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 14, 1999.

Pablo Torres-Báez,

Acting Field Supervisor.

[FR Doc. 99–15505 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–00]

Notice of Meeting

AGENCY: Bureau of Land Management, (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting July 15, 1999 in Lame Deer, Montana at the Northern Cheyenne Tribal Headquarters starting at 8:00 a.m. Agenda topics include tribal concerns plus updates on access, travel management, and grazing permit renewals.

The meeting is open to the public and the public comment period is set for 10:00 a.m. on July 15. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59031, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 9, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–15422 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

June 10, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10 am, June 10, 1999. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 1 N.	R. 103 W.	6th PM	1162	September 14, 1998.
T. 1 N.	R. 104 W.	6th PM	1162	September 14, 1998.

Township	Range	Meridian	Group No.	Approval date
T. 8 S.	R. 97 W.	6th PM	1185	September 17, 1998.
T. 7 S.	R. 72 W.	6th PM	1200	September 29, 1998.
T. 8 S.	R. 72 W.	6th PM	1200	September 29, 1998.
T. 2 S.	R. 75 W.	6th PM	1149	September 29, 1998.

Donald W. Ashbaugh,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 99–15496 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

June 10, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10 a.m., June 10, 1999. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 7 N.,	R. 76 W.,	6th PM	1214	January 26, 1999.
T. 49 N.,	R. 8 W.,	NMPM	1201	February 23, 1999.
T. 4 S.,	R. 73 W.,	6th PM	690	February 25, 1999.
T. 35 N.,	R. 7 E.,	NMPM	1154	April 21, 1999.
T. 36 N.,	R. 7 E.,	NMPM	1154	April 21, 1999.
T. 35 N.,	R. 11 E.,	NMPM	1072	May 11, 1999.
T. 35 N.,	R. 10 E.,	NMPM	1072	May 11, 1999.
T. 1 N.,	R. 76 W.,	6th PM	1172	May 12, 1999.
T. 50 N.,	R. 8 W.,	NMPM	1205	June 8, 1999.
Supplemental Plats				
T. 13 S.,	R. 85 W.,	6th PM		January 7, 1999.
T. 1 N.,	R. 72 W.,	6th PM		March 8, 1999.
T. 1 S.,	R. 73 W.,	6th PM		March 24, 1999.
T. 1 S.,	R. 71 W.,	6th PM		April 1, 1999.
T. 36 N.,	R. 6 E.,	NMPM		April 21, 1999.
T. 49 N.,	R. 1 E.,	NMPM		May 6, 1999.

Donald W. Ashbaugh,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 99–15497 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Compensation Program Application Procedures

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park Dungeness crab commercial fishery compensation program application procedures; extension of application deadline.

SUMMARY: Section 123 (b) (1)–(3) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999Act (''the Act''), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–31 (05/21/99), authorizes compensation for qualifying fishermen with a history of commercial Dungeness crab fishing in designated wilderness waters of the Beardslee Islands or Dundas Bay in at least six of the years during the period of 1987 through 1998. This **Federal Register** notice serves to provide application instructions for individuals who believe they qualify for compensation as outlined by the Act. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before August 1, 1999.

DATES: Applications for the Dungeness crab commercial fishery compensation program will be accepted on or before August 1, 1999.

ADDRESSES: Applications for the Dungeness crab commercial fishery compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. A delivery address is located at 1 Park Road, in Gustavus.

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Chuck Young, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

SUPPLEMENTARY INFORMATION: The Act requires fishermen to provide certain information sufficient to determine their eligibility for compensation. Fishermen making application to NPS for compensation, as outlined by the Act, must provide the following information to the superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation in the Beardslee Island or Dundas Bay wilderness water commercial fisheries for Dungeness crab as a permit holder for at least 6 of 12 years during the period of 1987 through 1998. (3) A copy of the fisherman's current state of Alaska Dungeness crab commercial fishing permit. (4) Any available corroborating information—including sworn and notarized affidavits of witnesses or documentation of commercial Dungeness crab landings from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay—that

can assist in a determination of eligibility for compensation.

The superintendent will make a written determination on eligibility for compensation based on the information provided by the applicant. The superintendent will also make a written determination on the amount of compensation to be paid to an eligible applicant. The amount of compensation will depend on the compensation formula and options selected by the applicant and—as appropriate—the fair market values of the Dungeness crab commercial fishing permit and the fishing vessel and gear used in the fishery. The Act requires payment within six months from the date of application. If an application for compensation is denied, the superintendent will provide the applicant the reasons for the denial in writing. Any applicant adversely affected by the superintendent's determination may appeal to the regional director, Alaska region, within 60 days. Applicants must substantiate the basis of their disagreement with the superintendent's determination. The regional director will provide an opportunity for an informal oral hearing. After consideration of written materials and oral hearing, if any, and within a reasonable time, the regional director will affirm, reverse, or modify the superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

Dated: June 8, 1999.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 99–15498 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Placer County Water Agency American River Pump Station Project, Placer County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA) of 1970, as amended, the Bureau of Reclamation (Reclamation) and Placer County Water Agency (PCWA) intend to prepare a joint EIS/EIR for development of a year-round water supply diversion of up to 35,000 acre-feet annually (AFA) from PCWA's Middle Fork Project on the American River (MFP) with water entitlements from the North Fork of the American River. The proposed project, which is subject to review during the EIS/EIR process, consists of constructing a diversion and intake structure, pump station and associated facilities including: pipelines, access roads, power lines, and safety features. The proposed location of the diversion structure is approximately 150 feet upstream of the Auburn Dam bypass tunnel.

Reclamation and PCWA are negotiating a contract that will define the terms and conditions upon which ownership of the facilities would be transferred to PCWA, including responsibilities for operation, maintenance, and related activities for the project.

DATES: A public scoping meeting to help identify environmental concerns to be addressed in the EIS/EIR will be held on July 8, 1999, at 7:00pm at the Placer County Water Agency (see address below). Written comments on the scope of the EIS/EIR should be sent to Reclamation at the address below by July 30, 1999. Requests for special services at the meeting must be received no later than July 2, 1999 (see special services section for more details).

ADDRESSES: The scoping meeting will be held at Placer County Water Agency, American River Room, 144 Ferguson Road, Auburn, California.

Please send written comments on the scope of the EIS/EIR to Mr. Rod Hall, Environmental Specialist, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630–1799, by July 30, 1999. Please include your name and address so that Reclamation can contact you directly if clarification is needed.

FOR FURTHER INFORMATION CONTACT: Mr. Rod Hall, telephone: (916) 989–7279.

SUPPLEMENTARY INFORMATION:

Background

PCWA provides municipal and agricultural water to cities and landowners in western Placer County. PCWA holds appropriative rights to divert 120,000 AFA from the MFP under water right permit numbers 13856 and 13858, as authorized by the State Water Resources Control Board. In the late 1960's, PCWA built a 50 cubic feet per second (cfs) pump station on the North Fork of the American River to convey its MFP water supplies to the Auburn Ravine Tunnel for delivery to PCWA's service area. However, before pump station operations began, PCWA's pump station was removed by Reclamation, under a Land Purchase Contract as supplemented (Contract). Under certain terms and conditions, the Contract requires Reclamation to make water deliveries to PCWA. Reclamation has met these water delivery obligations through installation and removal of a seasonal pump station on an as-needed basis since 1977. Also, during initial construction of Auburn Dam, the river was diverted through a bypass tunnel away from the previous pump station site.

PCWA also has a contractual entitlement of Yuba/Bear River water supplies, under an agreement with Pacific Gas and Electric Company (PG&E). PCWA uses MFP supplies from the American River to supplement Yuba/Bear supplies and to provide backup supplies when PG&E's Yuba/Bear system is not operating.

Beginning in 1990, PCWA has required access to its American River supply every year to meet its system demands, and Reclamation has responded with the seasonal re-installation and removal of the pump station. In addition, PCWA's service area needs for water have exceeded the 100,000 AFA supply of the PG&E Yuba/Bear system, and the demand is projected to increase. By the early 2000's, PCWA will require access to its American River supply beyond the seasonal (July through October) operating period of the pumps. The seasonal pumps, however, have become increasingly expensive to install and maintain, and are limited in use to the summer and fall. High winter and spring riverflows sometimes inundate the site of the seasonal pump station and pipeline, rendering them unreliable for water diversions. Further, because of pumping capacity limitations (50 cfs), timing of seasonal diversions, demand patterns, and applicable permits and other requirements, the maximum diversion capacity for the seasonal pumps is approximately 20,000 AFA. As a result, Reclamation can no longer provide PCWA with a reliable water supply to meet PCWA's system demands in accordance with the Contract.

Alternatives Being Considered

In addition to the upstream diversion alternative described above, the EIS/EIR will include evaluation of a ''no project'' alternative of continuing the present seasonal pump station operation. Also evaluated will be a flood-proofing alternative, which involves raising the existing pump station to a higher elevation to reduce flooding risks and

allow Reclamation to meet its obligations under the Contract. In addition, an evaluation will be made of a mid-channel alternative of setting a permanent diversion intake structure within the currently de-watered portion of the river channel. The mid-channel alternative includes restoration of the de-watered river channel and closure of the bypass tunnel. The other alternatives do not include closure of the bypass tunnel, but would not preclude its possible closure in the future.

Environmental Issues

The EIS/EIR will address potential impacts to the environment that may result from construction, operation and maintenance of the project. PCWA and Reclamation have identified standard best management practices as part of the project, thereby minimizing potential construction-related impacts. These will also be discussed in the EIS/EIR.

In addition, the EIS/EIR will address potential impacts to the area watercourses associated with PCWA's exercise of its American River water entitlement. Historically, only a portion of PCWA's current entitlements have been diverted from the American River. Hydrologic impact analyses will consider the effects of PCWA's increasing its entitlement diversion under varying hydrologic conditions and the impacts of the diversions on the potentially affected hydrologic system, including the North Fork of the American River, Folsom Reservoir, lower American River, and other Central Valley Project (CVP) system components.

Potential impacts to water supplies, fisheries and other aquatic resources, wetland and riparian communities, special-status species, recreational activities, and flood control will be assessed. Also addressed will be growth inducement as a potential secondary impact associated with PCWA's exercise of its existing entitlements within the service area. The cumulative impacts of the proposed project and other ongoing and anticipated future projects on the environment, specifically upstream and downstream American River resources, will be examined in the EIS/EIR.

No adverse impacts to Indian Trust Assets are anticipated with this project. No disproportionately high or adverse human health or environmental impacts to minority or low-income communities are anticipated with this project.

Environmental Process

The lead agencies began evaluation of the environmental effects of the proposed project with an Environmental Assessment/Initial Study (EA/IS). They also held several public meetings for the EA/IS. Evaluation of this and other proposals within the CVP raised concerns of significant cumulative impacts on resources of the lower American River and other portions of the hydrologic system. In response to these concerns and potential significant impacts, the lead agencies decided to prepare an EIS/EIR. A draft version of the EIS/EIR is expected to be available for review and comment in the fall of 1999.

Special Services

If special services are required at the meeting, please contact Ms. Gay Howe at (530) 823–4889. Please notify Ms. Howe as far in advance of the meeting as possible, but no later than July 2, 1999, so that she will have time to secure the needed services. If a request cannot be honored, the requestor will be notified.

Dated: June 11, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–15378 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–94–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Abolishment of the U.S. International Development Cooperation Agency

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice.

SUMMARY: The Overseas Private Investment Corporation (''OPIC'') gives notice of the abolition of the U.S. International Development Cooperation Agency (''IDCA''). Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

DATES: Effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Eli Landy, Department of Legal Affairs, 202–336–8418, eland@opic.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277, IDCA was abolished, effective April 1, 1999.

Elsewhere in this issue of the **Federal Register** OPIC has amended chapter VII of title 22 of the Code of Federal Regulations to delete the reference to IDCA. The abolition of IDCA does not affect the status and validity of OPIC regulations, directives, rulings, policies; they continue in effect.

Charles D. Toy,

Vice President and General Counsel.

[FR Doc. 99–15503 Filed 6–17–99; 8:45 am]

BILLING CODE 3210–0–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1961–98]

Important Announcement for Class Members of American Baptist Churches v. Thornburgh (ABC) Regarding Change of Address Notification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice Regarding Change of Address Notifications for *ABC* Class Members.

SUMMARY: This notice informs class members of *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*) of a change in procedures for notifying the Immigration and Naturalization Service (Service) of an address change. It requests *ABC* class members to submit change of address notifications directly to the Asylum Offices that have jurisdiction over their asylum applications, rather than to the *ABC* Project Post Office Box in Washington, DC. This action will allow the Service to expedite action in response to a change in address and will be more convenient for the Service and *ABC* class members. However, the Service will continue to process change of address notifications sent to the *ABC* Project Post Office Box to ensure that Service records are updated for those class members who are unaware of this change in procedure.

DATES: This notice is effective June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663.

SUPPLEMENTARY INFORMATION:

Why Is the Service Requesting That Address Notifications No Longer Be Sent to the ABC Post Office Box?

The *ABC* Project Post Office Box in Washington, DC, has provided a centralized location for *ABC* class members to submit change of address forms. This was necessary in the past

because not all *ABC* class members who were eligible to seek benefits of the settlement agreement had applied for asylum or any other benefit with the Service. However, the deadlines by which *ABC* class members were required to apply for asylum in order to retain benefits of the settlement agreement have now passed. Guatemalan class members were required to apply for asylum on or before January 3, 1995. Salvadoran class members were required to apply for asylum on or before January 31, 1996 (with an administrative grace period to February 16, 1996). Because all *ABC* class members who are eligible for benefits of the settlement agreement have applied for asylum, a centralized location for change of address notification by *ABC* class members is no longer necessary or efficient.

Currently, the Service Office of International Affairs, based in Washington, DC, receives change of address notifications submitted to the *ABC* Project Post Office Box. The Office of International Affairs enters the change of address in the computer system when there is sufficient information in the notice to identify the correct record and make the change, or when necessary, asks the sender for additional information. The Office of International Affairs then forwards the notification to the appropriate Asylum Office for filing with the applicant's records. Many of the change of address notifications sent to the *ABC* Project Post Office Box are duplicates of notifications that *ABC* class members or their representatives have sent directly to the appropriate Asylum Offices, which have already updated the address in the computer system, thus creating duplicative efforts. Additionally, the Asylum Offices, which maintain the asylum application files, are in the best position to seek additional information or clarification from an applicant who submits a change of address notification that may require further action. For example, the Asylum Office may need to request or transfer the file when an applicant has moved to another jurisdiction. The unnecessary and additional step of first processing the change of address notification in Washington, DC, before it is sent to the appropriate Asylum Office delays such action. For these reasons, the Service believes that submission of change of address notifications directly to the Asylum Office that has jurisdiction over the asylum application will enhance efficiency, expedite action that needs to be taken in response to the address change, and generally be more convenient for both the Service and *ABC* class members.

How Should ABC Class Members Notify the Service of a Change of Address?

As it requires for all aliens within the United States, Section 265 of the Immigration and Nationality Act requires *ABC* class members to notify the Service within 10 days of any change of address. The change of address notification required from *ABC* class members should be sent to the Asylum Office that has jurisdiction over the class member's asylum application. Notification may be made on the Form I–855, *ABC* Change of Address Form, or a plain piece of paper containing the information requested in the Form I–855. The Form I–855 requests the class member's full printed name, date of birth, nationality, Alien Registration Number (A–Number), and the class member's previous address. The information should be clearly printed. Alternatively, *ABC* class members may use a Form AR–11 to notify the Service of a change of address and may send the form to the address specified on the card or to the Asylum Office that has jurisdiction over the class member's asylum application.

The Form I–855, Change of Address Form, directs individuals to send the completed form to the *ABC* Project Post Office Box. The form is being amended to instruct that the form be sent to the Asylum Office that has jurisdiction over the class member's asylum application, rather than to the *ABC* Project Post Office Box. Individuals who continue to use old copies of the Form I–855 should disregard the instruction to sent the notice to the *ABC* Project Post Office Box and should instead sent the form to the Asylum Office that has jurisdiction over the asylum application.

It is important that a class member notify the Service of address changes to ensure that the class member receives notice to his or her asylum interview. An *ABC* class member may lose the right to an *ABC* asylum interview, and the Service may deny his or her asylum application if the class member fails to appear for an interview and that failure to appear has not been excused for good cause.

What Will Happen to Change of Address Notifications That Are Sent to the ABC Project Post Office Box?

The Service will continue to process change of address notification sent to the *ABC* Project Post Office Box. However, for expediency and efficiency, the Service strongly encourages each *ABC* class member to send any change of address notification directly to the Asylum Office that has jurisdiction over the class member's asylum application.

Dated: May 28, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0197

ABC Change of Address Form

AVISO 18

AMERICAN BAPTIST CHURCHES

FORMULARIO PARA CAMBIO DE DIRECCIÓN
(Inglés y Español)

Yo he solicitado la Protección Provisional "TPS" o las disposiciones de *American Baptist Churches*, y mi dirección actual es distinta de la que puse en la solicitud.

Nombre y apellido _____

_____

Número de Archivo A- _____

Mi direcciòn ACTUAL de domicilio es:

_____

_____

Mi país de nacimiento es: _____

Fecha de nacimiento: _____

La última dirección que informé a INS es:

_____

_____

Firma _____ Fecha _____

Favor de llenar este formulario y enviarlo a la Oficina de Asilo donde su solicitud de asilo pende. Si usted no está seguro de cuál es la oficina donde su solicitud de asilo está pendiente, para obtener esta información por favor contacte la oficina de inmigración mas cercana a su residencia.

GUARDE COPIA DE ESTE FORMULARIO.

RECUERDE: SI SE CAMBIE DE DIRECCIÓN DE NUEVO, DEBE DE INFORMAR AL SERVICIO DE INMIGRACIÓN ("INS"). PUEDE USAR ESTE FORMULARIO. SI NO INFORMA AL INS SU CAMBIO DE DIRECCIÓN, PODRÍA PERDER SU DERECHO DE UNA NUEVA ENTREVISTA Y DECISIÓN DE ASILO.

NOTICE 18

AMERICAN BAPTIST CHURCHES

CHANGE OF ADDRESS FORM
(English and Spanish)

I have applied for TPS or for benefits under *American Baptist Churches* and have a different address from the address on my registration application.

Name _____

_____

A-Number A- _____

My NEW address is:

_____

_____

My country of birth is: _____

Date of birth: _____

The last address I reported to INS is:

_____

_____

Signature _____ Date _____

Fill out this form and send it to the INS Asylum Office where your asylum application is pending. If you are unsure where your asylum application is pending, please contact your local INS District Office to obtain that information.

KEEP A COPY OF THIS FORM.

REMINDER: IF YOUR ADDRESS CHANGES AGAIN YOU MUST INFORM INS. YOU MAY USE AN ABC CHANGE OF ADDRESS FORM. YOU CAN LOSE YOUR RIGHT TO A NEW ASYLUM INTERVIEW AND DECISION IF YOU DO NOT INFORM INS OF YOUR CHANGE OF ADDRESS.

Form I-855 (Rev. 11-10-98) N

[FR Doc. 99–15523 Filed 6–17–99; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the ''Development of Management Information Systems to Support Prison Classification'' project.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide assistance to correctional agencies making enhancements in their management information systems to provide data for analysis and improve the operation of the classification systems. No funds are transferred to state or local governments.

The Institute's Prisons Division will provide financial assistance in the form of a cooperative agreement to facilitate the development of a resource manual that will provide information for state correctional agencies to use in assessing their management information systems related to the essential and desirable elements that will enhance the analysis and operation of the classification system; provide descriptive information on MIS systems in 8 to 12 states that have developed leading classification and MIS systems, including advancements toward integrated justice information systems; tools, such as checklists, for agencies to use in conducting self-assessments; and resources that are available for funding produced in compliance with publication guidelines included in the application packet.

Assistance will be provided under this cooperative agreement to 6 to 8 agencies requesting technical assistance in assessing their management information systems pertaining to classification decision-making and in the operation of their classification systems. The recipient of the cooperative agreement will conduct onsite assessments of the information management and classification systems at participating agencies; provide assistance and oversight in revising the management information system and, as necessary, the classification instruments and operations; and provide technical assistance and training during implementation. Prison systems selected for participation will have the resources necessary to make management information system enhancements to provide data for classification system analysis and ensure the capacity to measure outcomes and impacts of the classifications systems implemented. A steering committee will be appointed by each agency to coordinate activities related to the project.

Background

Most state corrections systems use objective classification to assign inmates to appropriate prisons, and some have internal classification systems to guide housing, work, and program assignments. However, many systems lack the reliable data needed to fully assess and redesign their classification systems to adapt to increased demands and a changing environment. Management of offender data is a critical issue for every correctional agency's overall operations. With advances in the use of automated computer systems to manage data, management information system (MIS systems) have become a necessary component for prison management.

Classification systems need to become an integral part of the department's MIS system and the hub for the information system design. Data generated through the automated classification system can provide correctional managers with accurate, timely, and relevant information to plan and manage the offender population; better utilize resources; and assess risks and needs. Automation will reduce errors in scoring offenders for custody or security level and improve the system's ability to monitor the housing of offenders according to the classification system. It will also allow evaluations to be conducted on a regular basis to increase the system's performance.

Classification systems should to be monitored and periodically evaluated. This is done to ensure the system is working as designated. Classification systems should also be validated to determine what impact the system has had on inmate operations and overall performance. Automation of the classification system is required to conduct evaluations efficiently. Furthermore, there are operational issues in the daily management of offenders and the classification process that also depend on automation of classification data. These issues include: transfers and bed space management, housing decisions within facilities, disciplinary actions, scheduling and documenting classification reviews, calculating release and eligibility dates, and much more.

Planning for automation is an on-going process that should incorporate incremental improvements to increase the system's utility through innovative technological changes. These improvements should include integration of information within the agency to operate more effectively and eliminate redundancy. Improvements must also anticipate the need to plan for the automation to involve the integration of criminal justice information with other agencies.

Currently, the NIC Prisons Division through the NIC Information Center is conducting a survey of prison MIS systems to assess the MIS capabilities in correctional agencies. Survey questions are directed to issues that relate to prison classification systems. The results of the survey will be published later this year. This survey will provide information to guide the work under this project by identifying correctional agencies that have developed MIS systems that enhance the classification process, as well as correctional agencies that have the potential to benefit from technical assistance and/or resource material developed through this funding.

NIC has announced the availability of technical assistance through the annual Program Plan and will send letters to agency directors advising them that their agencies can apply for assistance through this project. A selection of states will be made by MIC and the cooperative agreement awardee. The selections will be based on criteria that will be established to find correctional agencies with the interest, need and resources for this type of assistance.

Purpose

The National Institute of Corrections is seeking applications for a cooperative agreement to do the project management to assist correctional agencies making enhancements in their management information systems to provide data for analysis of classification systems and improving the operation of the classification system; develop a resource manual that will guide agencies through planning and assessment of their MIS systems; and produce advancements in the development of comprehensive classification systems.

Authority: Public Law 93–415.

Funds Available

The award will be limited to a maximum total of $75,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project.

This project will be a collaborative venture with the NIC Prisons Division.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications

Applications must be postmarked by Friday July 30, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, N.W., Washington, D.C. 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: Requests for the application kit, which will include the survey form, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Sammie D. Brown at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 126, or by E-mail via *sbrown@bop.gov*. Information may also be obtained through the NIC website: *http://www.nicic.org.*

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, or individual.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Applications Number: 99P10. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–15511 Filed 6–17–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,634A]

Gould Electronics, Inc. Now Known as Ga-Tek, Inc./Gould Electronics, Inc. Circuit Protection Group El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 1998 applicable to all workers of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51607).

At the request of the State agency, the Department reviewed the amended certification for workers of the subject firm. The workers are engaged in the production of electrical fuses. New information shows that Ga-Tek, Inc. is the parent firm of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas and is ''now known as GA-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group'', El Paso, Texas. The company reports that some workers separated from employment at Gould Electronics, Inc., Circuit Protection Group had their wages reported under a separate unemployment insurance (UI) tax account for Ga-Tek, Inc., now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

Accordingly, the Department is amending the certification determination to correctly identify the new title name to read ''Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./ Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

The intent of the Department's certification is to include all workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who were adversely affected by increased imports of electrical fuses.

The amended notice applicable to TA–W–34,634A is hereby issued as follows:

All workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who became totally or partially separated from employment on or after June 12, 1997 through July 7, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15578 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Ithaca Industries, Incorporated; TA–W–35,525B, Vidalia, Georgia; TA–W–35,525C, Swainsboro, GA Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 12, 1999, applicable to workers of Ithaca Industries, Inc., Vidalia, Georgia. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of ladies and men's undergarments, and provides raw materials, distribution center and apparel management center. New information shows that worker separations will occur at Ithaca's Swainsboro, Georgia facility when it closes in July, 1999. The workers are engaged in the production of men's and boys' undergarments. Based on these new findings, the Department is amending the certification to cover workers at the Swainsboro, Georgia facility.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,525 is hereby issued as follows:

All workers of Ithaca Industries, Inc., Vidalia, Georgia (TA–W–35,525B), and Swainsboro, Georgia (TA–W–35,525C) who

became totally or partially separated from employment on or after January 11, 1998, through April 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15575 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Omimex Energy, Inc. TA–W–35,889 Mason, MI etc; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 1, 1999, applicable to all workers of Omimex Energy, Inc., located in Mason, Michigan. The notice was published in the **Federal Register** on May 21, 1998 (64 FR 27811).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the Forth Worth, Post and Placedo, Texas locations of Omimex Energy, Inc. The workers are engaged in activities related to the production and sale of crude oil and natural gas.

The intent of the Department's certification is to include all workers of Omimex Energy, Inc. adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover workers of Omimex Energy, Inc., Fort Worth, Post and Placedo, Texas.

The amended notice applicable to TA–W–35,889 is hereby issued as follows:

All workers of Omimex Energy, Inc., Mason, Michigan (TA–W–35,880), Forth Worth, Texas (TA–W–35,889B), Post Texas (TA–W–35,889C) and Placedo, Texas (TA–W–35,889D) who became totally or partially separated from employment on or after March 8, 1998 through April 1, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15577 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,599]

Perfection Pad Co., Inc. a/k/a Consolidated Contractors a/k/a New York Pad; Buffalo, New York; Revised Determination on Reopening

On June 1, 1999, the Department, on its own motion, reopened its investigation for the former workers of the subject firm. The workers were engaged in employment related to the production of shoulder pads and sleeveheads used by clothing manufacturers.

The initial investigation resulted in a negative determination issued on May 7, 1999, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The denial notice will soon be published in the **Federal Register**.

Further analysis of the customer survey conducted by the Department revealed that a customer of the subject firm increased import purchases of shoulders pads while discontinuing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with those produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad, Buffalo, New York, who became totally or partially separated from employment on or after January 7, 1998 through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15576 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,220]

Wyeth-Ayerst Laboratories Div. of American Home Products Corp. Bound Brook, NJ Including Leased Workers of Decco Engineering Co., Inc. Middlesex, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1998, applicable to all workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey. The notice was published in the **Federal Register** on April 3, 1998 (63 FR 16574).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp. were leased from Decco Engineering Co., Inc., to provide engineering and nursing function services for the production of bulk intermediate chemicals; Methazolamide and Acetazolamide at the Bound Brook, New Jersey facility. Worker separations occurred at Decco Engineering Co., Inc. as a result of worker separations at Wyeth-Ayerst Laboratories, Div. of American Home Products Corp.

Based on these findings, the Department is amending the certification to include workers of Decco Engineering Co., Inc., Middlesex, New Jersey leased to Wyeth-Ayerst Laboratories, Div. of American Home Products Corp, Bound Brook, New Jersey.

The intent of the Department's certification is to include all workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp. adversely affected by imports.

The amended notice applicable to TA–W–34,220 is hereby issued as follows:

All workers of Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey and leased workers of Decco Engineering Co., Inc., Middlesex, New Jersey engaged in employment related to providing engineering and nursing function services for the production of bulk intermediate chemicals; Methazolamide and Acetazolamide at Wyeth-Ayerst Laboratories, Div. of American Home Products Corp., Bound Brook, New Jersey who became totally

or partially separated from employment on or after January 21, 1997 through March 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15579 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Acting Director of OTAA not later than June 28, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than June 28, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Jahmpasa (Wkrs)	Vass, NC	04/28/1999	NAFTA–3,140	Shirts.
Fina Oil and Chemical (Wkrs)	Midland, TX	05/03/1999	NAFTA–3,141	Oil Refinery.
Gerber Childrenswear (Wkrs)	Ballinger, TX	05/03/1999	NAFTA–3,142	Babies blanket sleepers.
Briggs (GMP)	Robinson, IL	05/03/1999	NAFTA–3,143	Toilets.
ADC Solitra (Wkrs)	Hutchinson, MN	05/03/1999	NAFTA–3,144	Communication equipment.
Consolidated Paper (Co.)	Niagara, WI	05/03/1999	NAFTA–3,145	Coated groundwood printing papers.
Cooper Industries (IUE)	Elizabethtown, KY	04/29/1999	NAFTA–3,146	Circuit protection products (fuses).
Armenian American Exploration (Co.).	Irving, TX	05/06/1999	NAFTA–3,147	Oil and gas.
Hamilton Beach-Proctor Silex (Co.).	Southern Pines, NC	05/04/1999	NAFTA–3,148	China.
Lighthouse Electric (Co.)	Middlesex, NC	05/05/1999	NAFTA–3,149	Electric transformers.
Acorn Products (Co.)	Hampden, NE	05/04/1999	NAFTA–3,150	Slippers, boots, socks and footwear.
Homemaker Industries (Co.)	North Charleston, SC	05/06/1999	NAFTA–3,151	Braided rugs.
Johansen Brothers (UNITE)	Harrisburg, AR	05/07/1999	NAFTA–3,152	Shoes.
Waterford Irish Stoves (Wkrs)	West Lebanon, NH	04/26/1999	NAFTA–3,153	Gas fireplaces.
Applied Molded Products ()	Watertown, WI	05/06/1999	NAFTA–3,154	Components.
B.J, Service Co (Wkrs)	Houston, TX	05/10/1999	NAFTA–3,155	Oilfield Services.
Chippen Hook Corp (Wkrs)	McAllen, TX	05/10/1999	NAFTA–3,156	Jewelry Boxes.
St. Paul Companies (The) (Comp)	St. Paul, MN	05/07/1999	NAFTA–3,157	Property and Casualty Insurances.
Jahmpasa, USA (Wkrs)	Vass, NC	04/28/1999	NAFTA–3,158	Shirts.
Holiday Products, Inc (Comp)	El Paso, TX	05/11/1999	NAFTA–3,159	Christmas Products.
Livingston Rebuild Center (Co.)	Livingston, MT	05/07/1999	NAFTA–3,160	Rebuilds locomotives.
Levi Strauss and Co (Comp)	Morrilton, AR	05/11/1999	NAFTA–3,161	Dockers, Jeans, Distribution.
Stroh Brewery Company (The) (Co.).	Seattle, WA	05/05/1999	NAFTA–3,162	Beer beverages.
Tarkett (PACE)	Whitehall, PA	05/13/1999	NAFTA–3,163	Vinyl flooring.
Richbar Processing	Bethlehem, PA	05/14/1999	NAFTA–3,164	
SMS Textiles—Fab Industries (Wkrs).	Allentown, PA	05/14/1999	NAFTA–3,165	
Reef Chemical (Co.)	Midland, TX	05/18/1999	NAFTA–3,166	Oilfield chemicals.
Oxford Automotive (Co.)	Hamilton, IN	04/26/1999	NAFTA–3,167	Leaf springs.
Continental Apparel Sales (Co.)	Defuniak Spings, FL	05/06/1999	NAFTA–3,168	Childrens denim jeans and shorts.
Minnesota Mining & Manufacturing (3M) (Wkrs).	Chico, CA	05/13/1999	NAFTA–3,169	Electronic parts.
C and D Technologies-L.H. Research (Co.).	Costa Mesa, CA	05/10/1999	NAFTA–3,170	Standard AC to DC power supplies.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Rosemount Analytical (Co.)	Anaheim, CA	05/10/1999	NAFTA–3,171	Analytical and measurement equipment.
California Webbing Industrial (Wkrs).	Los Angeles, CA	05/12/1999	NAFTA–3,172	Nylon, polyester, cotton webbing.
Mitel (Co.)	Ogdensburg, NY	05/10/1999	NAFTA–3,173	Telecommunication dialers.
Under and Fabric (Wkrs)	Los Angeles, CA	05/12/1999	NAFTA–3,174	Brand name clothing.
White Knight Healthcare (Wkrs)	Douglas, AL	05/13/1999	NAFTA–3,175	Gowns, drapes.
Actown Electro Coil (Wkrs)	Spring Grove, IL	05/10/1999	NAFTA–3,176	Neon sign and lighting.
C and J Manufacturing (Co.)	Blytheville, AR	05/12/1999	NAFTA–3,177	Women's dresses and skirts.
Southern Glove-Banner Elk Glove (Co.).	Conover, NC	05/17/1999	NAFTA–3,178	Cotton work gloves.
Bend Wood (Wkrs)	Bend, OR	05/14/1999	NAFTA–3,179	Wood products.
Ederal Mogul (Wkrs)	Manila, AR	05/18/1999	NAFTA–3,180	Brake system components.
Fasco Motors Group (Co.)	Russellville, AR	05/18/1999	NAFTA–3,181	Electric Motors.
Bariod Drilling (PACE)	Potosi, MO	05/18/1999	NAFTA–3,182	Ore barium sulfate.
Russell Corporation (Co.)	Wetumpka, AL	05/12/1999	NAFTA–3,183	Yarn.
McCulloch Corporation (Co.)	Tucson, AZ	05/24/1999	NAFTA–3,184	Chain saw, blowers, trimmers.
3M (Co.)	Winadale, IL	05/20/1999	NAFTA–3,185	Heart monitoring electrodes.
Smurfit Stone (Wkrs)	Laporte, IN	05/24/1999	NAFTA–3,186	Corrugated containers.
Master Lock (UAW)	Milwaukee, WI	05/24/1999	NAFTA–3,187	Laminated padlocks.
Philips Components (Co.)	Saugerties, NY	05/24/1999	NAFTA–3,188	Electronic transformers.
Allergan (Co.)	Lenoir, NC	05/20/1999	NAFTA–3,189	Surgical kits.
Beltex Corporation (Co.)	Belmont, NC	05/21/1999	NAFTA–3,190	T-shirts.
Medtronic (Co.)	Parker, CO	05/21/1999	NAFTA–3,191	Therapeutic disposable products.
Perfection Pad Consolidated Contractors (UNITE).	Buffalo, NY	05/20/1999	NAFTA–3,192	Shoulder pads.
OXY USA—Permian Asset Group (Wkrs).	Midland, TX	05/20/1999	NAFTA–3,193	Crude oil.
Tubby's Auto Service (Co.)	Houston, TX	05/20/1999	NAFTA–3,194	Rebuildable car's and parts.
Acutus Gladwin (Co.)	Blytheville, AR	05/18/1999	NAFTA–3,195	Molds, ladles, tundish car.
Sunset Time (Co.)	Pacomia, CA	05/17/1999	NAFTA–3,196	Clock assembly.
Royce Hoisery Mills (Wkrs)	Conover, NC	05/18/1999	NAFTA–3,197	Socks.
General Motors Locomotive Group—Delco (Co.).	Goleta, CA	05/13/1999	NAFTA–3,198	Turret system.
Thomas and Betts (Co.)	Lyons, GA	05/25/1999	NAFTA–3,199	Safety switches, meter center, etc.
Anderson Brothers and Johnson (Wkrs).	Wausau, WI	05/25/1999	NAFTA–3,200	Rough blocks, slabs, finished granite.
Lockheed Martin (Wkrs)	Ft. Worth, TX	05/25/1999	NAFTA–3,201	Harnesses.
Robertshaw Controls Company (Co.).	Ft. Collins, Co	05/25/1999	NAFTA–3,202	Gas controls, fire place controls.
Cominco American (Co.)	Spokane, WA	05/24/1999	NAFTA–3,203	Accounting functions.
Amp (Wkrs)	Harrisburg, PA	05/20/1999	NAFTA–3,204	Electrical connectors.
Wyman Gordon (Wkrs)	Albany, OR	05/27/1999	NAFTA–3,205	Castings, aircraft parts.
Federal Mogul (Wkrs)	Manila, AR	05/18/1999	NAFTA–3,206	Brake system components.
Bombardier Motor Corp. of America (Wkrs).	Wausau, WI	05/28/1999	NAFTA–3,207	Snowmobile and watercraft.
Alta Gold (Wkrs)	Ely, NV	05/27/1999	NAFTA–3,208	Gold.
GMI Super Steel Schenectady (Wkrs).	Glenville, NY	05/24/1999	NAFTA–3,209	Cab locomotive equipping, cab finishing.
ABB Daimler Benz Transportation (Co.).	Elmira Heights, NY	05/28/1999	NAFTA–3,210	Mass transit rail vehicles.
Ayers Manufacturing (Co.)	Coward, SC	05/26/1999	NAFTA–3,211	Knit shirts.
Crouzet Corporation (Co.)	Carrollton, TX	05/26/1999	NAFTA–3,212	Industrial electronics.
Associated Spring (Wkrs)	Arden, NC	05/24/1999	NAFTA–3,213	Compression springs.
Wheaton Glass (GMPPA)	Millville, NJ	05/27/1999	NAFTA–3,214	Glass containers.
Ingersoll Dresser (Wkrs)	Phillipsburg, NJ	05/25/1999	NAFTA–3,215	Pumps for oil gas refining industry.
Burlington Industries Unifi Joint (Wkrs).	Greensboro, NC	05/26/1999	NAFTA–3,216	Textured polyester.

[FR Doc. 99–15574 Filed 6–17–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedure to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. RI990004 dated March 12, 1999.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. RI990002. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA990001 (Mar. 12, 1999)
MA990002 (Mar. 12, 1999)
MA990003 (Mar. 12, 1999)
MA990008 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)
MA990020 (Mar. 12, 1999)
Rhode Island
RI990001 (Mar. 12, 1999)
RI990002 (Mar. 12, 1999)
RI990003 (Mar. 12, 1999)

Volume II

District of Columbia
DC990001 (Mar. 12, 1999)
DC990002 (Mar. 12, 1999)
DC990003 (Mar. 12, 1999)
Maryland
MD990034 (Mar. 12, 1999)
MD990035 (Mar. 12, 1999)
MD990036 (Mar. 12, 1999)
MD990046 (Mar. 12, 1999)
MD990047 (Mar. 12, 1999)
MD990048 (Mar. 12, 1999)
MD990056 (Mar. 12, 1999)
MD990057 (Mar. 12, 1999)
Virginia
VA990022 (Mar. 12, 1999)
VA990025 (Mar. 12, 1999)
VA990039 (Mar. 12, 1999)
VA990048 (Mar. 12, 1999)
VA990052 (Mar. 12, 1999)
VA990058 (Mar. 12, 1999)
VA990063 (Mar. 12, 1999)
VA990078 (Mar. 12, 1999)
VA990092 (Mar. 12, 1999)
VA990099 (Mar. 12, 1999)

Volume III

Georgia
GA990032 (Mar. 12, 1999)
GA990039 (Mar. 12, 1999)
GA990050 (Mar. 12, 1999)
GA990053 (Mar. 12, 1999)
GA990065 (Mar. 12, 1999)
GA990087 (Mar. 12, 1999)
GA990093 (Mar. 12, 1999)
GA990094 (Mar. 12, 1999)

Volume IV

Illinois
IL990003 (Mar. 12, 1999)
Michigan
MI990001 (Mar. 12, 1999)
MI990002 (Mar. 12, 1999)
MI990003 (Mar. 12, 1999)
MI990004 (Mar. 12, 1999)
MI990005 (Mar. 12, 1999)
MI990007 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
MI990030 (Mar. 12, 1999)
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MI990049 (Mar. 12, 1999)
MI990059 (Mar. 12, 1999)
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MI990062 (Mar. 12, 1999)
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MI990078 (Mar. 12, 1999)
MI990079 (Mar. 12, 1999)
MI990080 (Mar. 12, 1999)
MI990081 (Mar. 12, 1999)
MI990082 (Mar. 12, 1999)
MI990083 (Mar. 12, 1999)
MI990084 (Mar. 12, 1999)

Volume V

Iowa
IA990005 (Mar. 12, 1999)
IA990009 (Mar. 12, 1999)
IA990012 (Mar. 12, 1999)
IA990016 (Mar. 12, 1999)
IA990024 (Mar. 12, 1999)
IA990080 (Mar. 12, 1999)
Kansas
KS990002 (Mar. 12, 1999)
KS990004 (Mar. 12, 1999)
KS990005 (Mar. 12, 1999)
KS990043 (Mar. 12, 1999)
KS990056 (Mar. 12, 1999)
KS990067 (Mar. 12, 1999)

Volume VI

Oregon
OR990001 (Mar. 12, 1999)
OR990017 (Mar. 12, 1999)
Washington
WA990001 (Mar. 12, 1999)
WA990003 (Mar. 12, 1999)
WA990005 (Mar. 12, 1999)
WA990006 (Mar. 12, 1999)
WA990023 (Mar. 12, 1999)

Volume VII

California
CA990001 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 11th day of June 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–15241 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 8.13, ''Instruction Concerning Prenatal Radiation Exposure,'' has been revised to provide information to pregnant women, and other licensee personnel, to help make decisions regarding radiation exposure during pregnancy.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2289. Recently published regulatory guides are also on the NRC's web site at <*WWW.NRC.GOV*> in the Reference Library under Regulatory Guides. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

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

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–15509 Filed 6–17–99; 8:45 am]

BILLING CODE 7590–01–M

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, CA; Identification of the Preferred Alternative for the Draft Supplemental Environmental Impact Statement and Extension of the Public Comment Period

AGENCY: The Presidio Trust.

ACTION: Identification of the ''Digital Arts Center'' (Alternative 5) as the Presidio Trust's (Trust) preferred alternative for the purposes of the draft supplemental environmental impact statement (SEIS) for new development and uses within the Letterman Complex, The Presidio of San Francisco (Presidio) (EIS No. 990143). The draft SEIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio. The Trust is extending the public comment period to 45 days after the publication of this notice to provide full opportunity for the public to make their views known on the action.

SUMMARY: The Trust has prepared and circulated for review a draft SEIS for the development and occupancy of approximately 900,000 square feet of new, low- to mid-rise mixed-use space within 23 acres of the 60-acre Letterman Complex, located in the northeast corner of the Presidio (64 FR 22662–63 (April 27, 1999)). For the purposes of the draft SEIS, six alternatives were evaluated at a comparable level of analysis for development and occupancy of the site: a ''Science and Education Center'' (the Updated Presidio GMPA Alternative, or Alternative 1); a ''Sustainable Urban Village'' (Alternative 2); a ''Mixed Use Development'' (Alternative 3); a ''Live/Work Village'' (Alternative 4); a ''Digital

Arts Center'' (Alternative 5) and ''Minimum Management'' (the No Action Alternative, or Alternative 6). Of the six alternatives discussed in the draft SEIS, the Trust has preliminarily determined that the ''Digital Arts Center'' (Alternative 5) would best fulfill its statutory mission and responsibilities under the Presidio Trust Act (Pub. L. 104–333), giving consideration to economic, environmental, technical and other factors.

Identification of a preferred alternative at this time does not imply that the Trust has made a final determination regarding the viability of Alternatives 1, 2, 3, 4 and 6. The Trust invites public comment on all of the alternatives described in the draft SEIS, including the Trust's preferred alternative.

Media coverage of the preferred alternative selection process conducted by the Trust may have resulted in public confusion regarding the continuing viability of Alternatives 1, 2, 3, 4 and 6. For this reason, the Trust has chosen to extend the public comment period to April 27–August 2, 1999 to accommodate a full 45-day comment period for the draft SEIS, as updated by this **Federal Register** notice, which will also enable the public to review and comment on the Trust's selection of Alternative 5 as the Trust's preferred alternative.

Public Meeting

The Trust will receive additional oral comment on the draft SEIS at the July 20, 1999 meeting of the Citizens' Advisory Commission of the Golden Gate National Recreation Area. The meeting will be held at Park Headquarters, Building 201, Fort Mason, San Francisco, California at 7:30 p.m.

Comments

Comments on the draft SEIS must be received by August 2, 1999. Written comments on the draft SEIS must be sent to: NEPA Compliance Coordinator—Attn: Letterman Complex, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Fax: 415–561–5315, E-mail: planning@presidiotrust.gov.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Reference: 40 CFR 1502.14(e)

Dated: June 14, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99–15507 Filed 6–17–99; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–23870; 813–182]

Monitor Investors, L.P., et al.; Application

June 11, 1999.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act except section 9, sections 17 (other than provisions of paragraphs (a), (d), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and other pooled investment vehicles formed for the benefit of key employees of The Monitor Company, Inc. (the ''Company'') from certain provisions of the Act. Each partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicants: Monitor Investors, L.P. (the ''Investor Partnership''), Monitor Coinvestors, L.P. (the ''Coinvestor Partnership'' and together with the Investor Partnership, the ''Initial Partnerships''), and subsequent pooled in investment vehicles identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors, or a subset of the same class of investors, to whom interests in the Initial Partnerships will be offered (the ''Subsequent Investment Partnerships'' and together with the Initial Partnerships, the ''Investment Partnerships''), and the Company.

FILING DATES: The application was filed on December 18, 1997, and amended on November 10, 1998 and June 11, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1999 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the Request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 25 First Street, Cambridge, Massachusetts 02141.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company is an international strategy and business consulting firm which provides customized analysis, advice and implementation assistance to major corporations.

2. The Initial Partnership are Delaware limited partnerships created by the Company. Each Investment Partnership will be formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a non-diversified, closed-end investment. The Investment Partnerships will be established for the benefit of certain key employees of the Company to reward and retain these employees and to facilitate the Company's recruitment efforts.

3. Each Investment Partnership will have at least one general partner (the ''General Partner''), which will be owned and controlled by the chief executive officer and another senior officer of the Company. The General Partner will manage and control each of the Investment Partnerships. Monitor GP, Inc., a Delaware corporation, is the General Partner of the Initial Partnerships. The General Partner will have a capital commitment to each Initial Partnership equal to at least 1% of the Initial Partnership's aggregate capital commitments. The General Partner will not charge the Initial Partnerships a management fee, nor will it be entitled to a performance-based fee or ''carried interest.'' The General Partner will register as an investment adviser if it is required to do so under

the Investment Advisers Act of 1940 (''Advisers Act'').

4. Limited partner (''Limited Partner'') interests in the Investment Partnerships (''Interests'') will be offered and sold by the Investment Partnerships to Eligible Participants (as defined below) in reliance on section 4(2) of the Securities Act of 1933 (''Securities Act'') or Regulation D under the Securities Act, and will be sold without a sales load or any similar fee. Eligible Participants consist of: (a) Eligible Employees (as defined below), (b) trusts and other investment vehicles of which the trustees, grantors and/or beneficiaries are Eligible Employees or of which the beneficiaries are immediate family members (including only spouses, parents, children, spouses of children, brothers, sisters, and grandchildren) of Eligible Employees, including self-directed retirements plan vehicles (including individual retirement accounts) (''Eligible Trust''), (c) partnerships, corporations or other entities the voting power of which is controlled by Eligible Employees, and (d) the Company. Interests will be offered directly to Eligible Participants described in (b) and (c) above only if they are accredited investors for purposes of Regulation D under the Securities Act.

5. ''Eligible Employees'' include (a) members of the professional staff of the Company who are accredited investors meeting the income requirements of rule 501(a)(6) of Regulation D under the Securities Act, including director, global account managers, and case team leaders, (b) former members of the professional staff of the Company who are accredited investors meeting the income requirements of Rule 501(a)(6) of Regulation D and who provide to the Company more than thirty hours per week, on average, for services as sub-contractors, and (c) members of the administrative staff of the Company who are accredited investors meeting the income requirements of Rule 501(a)(6) of Regulation D. Eligible Employees will be experienced professional in the leveraged buyout, venture capital, investment banking or management consulting business, or in related administrative, financial, accounting or operational activities. Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risk of participating in the Investment Partnership without the benefit of regulatory safeguards. No Eligible Employee will be required to invest in an Investment Partnership.

6. Monitor Clipper Partners, Inc. (''MCP''), a Delaware corporation, was formed in 1997 by certain senior employees of the Company and certain members of the Clipper Group, a private equity investment firm. MCP has established, and will establish from time to time, private equity investment funds in reliance on section 3(c)(1) of the Act (collectively, the ''Initial Investment Funds'') which will be involved in different types of investments, including leveraged buyout and venture capital transactions, and which will invest in a variety of securities. MCP, as the manager of the Initial Investment Funds, will perform the day-to-day investment and administrative operations for the Initial Investment Funds. Each Initial Investment Fund will pay MCP a management fee based on the total capital subscriptions to such Initial Investment Fund. Monitor Clipper Partners, L.P. (''MCP, L.P.'') will serve as general partner of the Initial Investment Funds and will receive a ''carried interest'' on the profits of the Initial Investment Funds.[1] MCP, L.P. is exempt from registration under the Act in reliance on section 3(c)(1) of the Act.

7. The Company has formed the Investor Partnership to invest as a limited partner in MCP, L.P., and has formed the Coinvestor Partnership to invest as a limited partner in the Initial Investment Funds. The General Partner has the sole discretion to determine which Eligible Employees may participate in either the Investor Partnership or the Coinvestor Partnership. All of the Limited Partners of the Investor Partnership also are Limited Partners of the Coinvestor Partnership, but not all of the Limited Partners of the Coinvestor Partnership are Limited Partners of the Investor Partnership. Subsequent Partnerships may be established by the Company to make private equity and other investments, both directly and through investments in limited partnerships and other pooled investment vehicles, including investments in public companies and investments in registered investment companies. No Investment Partnership, however, will acquire any security issued by a registered investment company if, immediately after such acquisition, the Investment Partnership would own more than 3% of the outstanding voting stock of the registered investment company. The specific investment objective and strategies of an Investment Partnership will be set forth in the organizational documents with respect to the Investment Partnership, and each Eligible Participant will receive a copy prior to investment in the Investment Partnership.

8. Management of the Investor Partnership will be vested in the General Partner. The Investor Partnership, as a limited partner of MCP, L.P., will participate in the carried interest paid by the limited partners of the Initial Investment Funds to MCP, L.P. The term of the Investor Partnership terminates on the same day as the term of MCP, L.P. The Investor Partnership will make allocations and distributions on an investment-by-investment basis in proportion to each partner's distributive share with respect to that investment (the ''Investment Distributive Share''). A Limited Partner's Investment Distributive Share with respect to a particular investment will be 50% vested when that investment is made, and will be 100% vested when that investment is sold. No Limited Partner will have the right to withdraw from the Investor Partnership. A Limited Partner whose employment with the Company or any of its affiliates is terminated for any reason, however, shall be deemed to have withdrawn from the Investor Partnership as of the date of termination and the unvested portion of such Limited Partner's Interest will be automatically forfeited. A Limited Partner's vested Interest in the Investor Partnership is not subject to forfeiture and can only be repurchased if the Limited Partner's employment is terminated for cause. The purchase price for such vested Interest will not be less than the lower of (a) the actual capital contributions made by the Limited Partner to acquire the vested Interest, and (b) the fair market value, determined at the time of repurchase in good faith by the General Partner, of such vested Interest. The vesting and forfeiture provisions, and the events that trigger such provisions, will be fully disclosed to Eligible Participants prior to investment in the Investor Partnership.

9. The Coinvestor Partnership's investment strategy will be primarily to invest as a limited partner in the Initial Investment Funds. The term of the Coinvestor Partnership terminates on the same day as the Initial Investment Fund of which it is a limited partner. The Coinvestor Partnership generally does not have to pay the carried interest which the other limited partners of the Initial Investment Funds are required to

[1] A ''carried interest'' is an allocation to the general partner based on the net gains of an investment program and is in addition to the amount that is allocable to the general partner with respect to its capital contributions. Any ''carried interest'' charged by a registered investment adviser will be structured to comply with section 205 of the Advisers Act.

pay.[2] Allocations of net income or net loss attributable to investments in the Coinvestor Partnership will be proportionate to capital contributions with respect to each investment. Limited Partners in the Coinvestor Partnership are fully vested in each investment when it is made. A Limited Partner of the Coinvestor Partnership whose employment with the Company or one of its affiliates terminates is not automatically required to withdraw from the Coinvestor Partnership. In general, a departed employee will continue as a Limited Partner of the Coinvestor Partnership and will be required to fund such Limited Partner's capital commitment to the Partnership. However, the General Partner will have the right, but not the obligation, to terminate the unfunded portion of the limited Partner's capital subscription, on such terms as set forth in the partnership agreement. If the General Partner exercises this right, the Limited Partner would retain his Interest in the Coinvestor Partnership to the extent of the capital contributions that the Limited Partner has made prior to the termination of the Limited Partner's employment with the Company, but would not be permitted to make any future capital contributions to the Coinvestor Partnership.

10. A Limited Partner's Interest in an Investment Partnership is nontransferable, except that a Limited Partner may: (a) with the consent of the General Partner, which may be granted or withheld in the General Partner's sole discretion, transfer all or a portion of his Interest in the Partnership to another Eligible Participant; or (b) with the prior written consent of the General Partner, which shall be based on criteria specified in the partnership agreement of the Partnership, transfer all or a portion of his Interest to certain Eligible Participants.

11. Each Investment Partnership will send its Limited Partners an annual report regarding its operations, which will contain audited financial statements. Within 90 days after the end of each fiscal year of an Investment Partnership or as soon as practicable thereafter, the Investment Partnership will send to each Limited Partner a report indicating his share of the income or losses of the Investment Partnership for federal income tax purposes.

12. The Company may perform consulting services for the Initial Investment Funds and the portfolio companies of the Initial Investment Funds, and may be paid by these entities for its services and for related disbursements and charges. The Initial Investment Funds (or the portfolio companies of the Initial Investment Funds) in which the Investment Partnership invests will pay the Company in cash or in the form of securities of a portfolio company. The Company may retain such securities or transfer them to Monitor Consulting, P.L., a limited partnership whose limited partners are certain employees of the Company, and whose general partner is Monitor G.P., Inc. Monitor Consulting, L.P. will dispose of the securities that it owns in accordance with the ''lock-step'' procedures described in condition 3 below.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned by (a) current or former employees, or persons on retainer, of one or more affiliated employers, (b) immediate family members of those persons, or (c) the employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from section 7 of the Act, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Investment Partnerships from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

3. Section 17(a) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the registered investment company. Applicants request an exemption from section 17(a) to permit: (a) the Investment Partnerships to make their initial purchase of partnerships interests in MCP, L.P. and the Initial Investment Fund; (b) a purchase by an Investment Partnership, directly or indirectly, from any affiliated person (as defined in section 2(a)(3) of the Act) (''affiliated person'') of an Investment Partnership or of the Company of securities or other property previously acquired for the account of the affiliated person; (c) a sale by an Investment Partnership to another Investment Partnership, the Company, or any affiliated person of an Investment Partnership of securities or other property previously acquired by the Investment Partnership; (d) a direct or indirect investment by an Investment Partnership in securities of issuers for which the Company, another Investment Partnership or any affiliated person of the Company or of an Investment Partnership have performed services and from which they may have received fees, including portfolio companies of the Initial Investment Funds; (e) a direct or indirect investment in or a transaction with any individual, company, or other investment vehicle in which the Company, its officers, directors or employees, or any other affiliated person of the Company (including MCP or the Initial Investment Funds) own 5% or more of the voting securities; and (f) a sale by an Investment Partnership as a selling security holder in public offering in which the Company, MCP, or any affiliated person of the Company or MCP acts as member of the selling group.

4. Applicants assert that the community of interest among the partners of the Investment Partnerships and the Company will serve to reduce the risk of abuse in transactions

[2] The Coinvestor Partnership is required to pay a carried interest with respect to the portion of the coinvestment of each of its Limited Partners that exceeds either (a) if such Limited Partner is also a Limited Partner of the Investor Partnership, the lesser of (i) $1,500,000 less the commitment, if any, of such Limited Partner to the Investor Partnership, or (ii) the commitment of such Limited Partner to the Coinvestor Partnership; or (b) if such Limited Partner is not a Limited Partner of the Investor Partnership, the lesser of (i) $1,250,000, or (ii) the commitment of such Limited Partner to the Coinvestor Partnership. Any Eligible Employee that does not wish to be subject to a carried interest can choose to make a commitment below the applicable threshold. As of the date of the application, only one Eligible Employee that is not a Limited Partner of the Investor Partnership has made a commitment to the Coinvestor Partnership that is large enough to be subject to a carried interest.

involving an Investment Partnership and the Company or any affiliated persons of the Investment Partnership or the Company. Applicants also acknowledge that any transactions subject to section 17(a) for which exemptive relief has not been requested would require specific approval by the SEC.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit: (a) portfolio investments made by the Initial Investment Funds that might result, in certain limited circumstances, in the Investor Partnership earning a carried interest on the profits attributable to the Coinvestor Partnership; (b) an investment by one or more Investment Partnerships in a security (i) in which another Initial Investment Fund, the Company, MCP, another Investment Partnership or an affiliated person of any of the Initial Investment Funds, the Company, MCP, or an Investment Partnership, or a transferee of one of these is a participant or becomes a participant, or (ii) with respect to which MCP or any affiliated person of MCP is entitled to receive fees or compensation of any kind, including, but not limited to, transaction fees, consulting fees, or other economic benefits or interests; and (c) an investment by one or more Investment Partnerships in an investment vehicle sponsored, offered, or managed by MCP, the Company, another Investment Partnership, or any affiliated person of the Company or an Investment Partnership.

6. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that, in light of the Company's purpose of establishing the Investment Partnerships so as to reward Eligible Participants and to attract highly-qualified personnel to the Company, the possibility is minimal that an affiliated-party investor will enter into a transaction with an Investment Partnership with the intent of disadvantaging the Investment Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause an Investment Partnership to forego investment opportunities simply because a partner of the Investment Partnerships, the Company, MCP, or another affiliated person of the Investment Partnership made a similar investment.

7. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request an exemption from section 17(f) of the Act and rule 17f–2 under the Act to permit the following exceptions from the requirements of rule 17f–2: (a) compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Company; (b) for purposes of paragraph (d) of the rule, (i) employees of the Company will be deemed employees of the Investment Partnerships, (ii) officers and directors of an Investment Partnership will be deemed to be officers of such Investment Partnership, and (iii) the directors of an Investment Partnership will be deemed to be the board of directors of such Investment Partnership; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Company. Applicants expect that almost all of the Investment Partnership's investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates which could be misappropriated. Applicants assert that these instruments are most suitably kept in the Company's files, where they can be referred to as necessary.

8. Section 17(g) of the Act and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit each Investment Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the board of directors of the General Partner who are not interested persons take such actions and make such approvals and request instead that the actions and approvals be take by the directors, regardless of whether they are interested persons. Applicants state that, because it is likely that all directors would be considered interested persons in the Investment Partnerships, the Investment Partnerships could not comply with rule 17g–1 without the request relief. Applicants state that they will comply with all other requirements of rule 17g–1.

9. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of security held or to be acquired by a registered investment company. Rule 17j–1 also requires every registered investment company to adopt a written code of ethics and every access person of a registered investment company to report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are burdensome and unnecessary as applied to the Investment Partnerships. Applicants state that requiring the Investment Partnerships to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive and would serve little purpose of light of the community of interests among the partners of the Investment Partnerships by virtue of their common association with the Company.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under these sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Investment Partnerships and would entail administrative and legal costs that outweigh any benefit to the partners of the Investment Partnerships. Applicants request exemptive relief to the extent necessary to permit each Investment Partnership to report annually to its partners. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the directors and any other persons who may be deemed to be members of an advisory board of an Investment Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') with respect to their ownership of interests in the Investment Partnerships. Applicants assert that, because there is no trading market for the interests of the Investment Partnerships and the transfers will be severely restricted, these filings are unnecessary for the

protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction described in the application otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act (the ''Section 17 Transactions'') will be effected only if the board of directors of the General Partner determines that: (a) The terms of the transaction, including the consideration to paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching with respect to the Investment Partnership or its Limited Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Investment Partnership's organizational documents, and the Investment Partnership's reports to its Limited Partners.

In addition, the board of directors of the General Partner will record and preserve a description of the Section 17 Transactions, their findings, the information or materials upon which their findings are based and the basis thereof. All such records will be maintained for the life of the Investment Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff. Each Investment Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the board of directors of the General Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Investment Partnerships, or any affiliated person or such person, promoter, or principal underwriter.

3. A General Partner will not invest the funds of any Investment Partnership in any investment in which an ''Affiliated Co-Investor,'' as defined below, has or proposes or acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1, in which the Investment Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Investment Partnership has the opportunity to dispose of the Investment Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' means the Company, and any person who is (a) an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Investment Partnership; (b) a shareholder of the Company, or other entity controlled by a shareholder of the Company; or (c) any entity with respect to which a General Partner of such Investment Partnership or another shareholder of the Company acts as a general partner or in a similar capacity or has a similar capacity to control the sale or other disposition of such entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family members; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act.

4. Each Investment Partnership and its General Partner will maintain and preserve, for the life of each such Investment Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the partners, and each annual report of such Investment Partnership required by the terms of the applicable Investment Partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff. Each Investment Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

5. In any case where purchases or sales are made from or to an entity affiliated with an Investment Partnership by reason of a 5% or more investment in such entity by a director, officer, or shareholder of the Company or any of its affiliates, such individual will not participate in the applicable General Partner's determination of whether or not to effect the purchase or sale.

6. The General Partner of each Investment Partnership will send audited financial statements for that Investment Partnership to each of the partners of the Investment Partnership who had an interest in that Investment Partnership at any time during the fiscal year then ended. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Investment Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Investment Partnership. In addition, within 90 days after the end of fiscal year of each of the Investment Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person that was a partner of such Investment Partnership at any time during such fiscal year, setting forth such tax information as shall be necessary for the preparation by such partner of his federal and state income tax returns and a report of the investment activities of the Investment Partnership during such year.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15483 Filed 6–17–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27036]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 11, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. all interested persons are referred to the application(s) and/or declaration(s) for

complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by July 6, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 6, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AES Corporation (70–9465)

The AES Corporation (''AES''), Arlington, Virginia, a Delaware corporation not currently subject to the Act, has filed an application under section 3(a)(5) of the Act. AES requests an order exempting it from all provisions of the Act except section 9(a)(2) upon consummation of the transaction described below.

AES is a United States-based multinational electric power generation and energy distribution company with operations in 16 countries worldwide. AES is engaged principally in the development, ownership and operation of electric generating plants and electric and gas distribution companies, all of which are, or are owned by, exempt wholesale generators as defined in section 32 of the Act, foreign utility companies as defined in section 33 of the Act, or qualifying facilities under the Public Utility Regulatory Policies Act. Revenues from electric generation and distribution activities accounted for over 95% of revenues in 1997 and in 1998. Other activities include the sale of steam and other commodities related to AES' cogeneration operations, as well as operational, construction and project development services, and gas and power marketing.[1] AES does not currently have any public-utility subsidiary or affiliate.

Since AES was founded in 1981, it has grown to become one of the largest, if not the largest, global electricity suppliers. AES currently owns and/or operates, entirely or in part, a diverse international portfolio of electric power plants with a total project capacity of 26,466 megawatts (''MW''), including plants that are part of distribution companies in which AES has an interest. On a total project basis, 20,017 MW of this generating capacity is located outside the United States. On a net equity basis, *i.e.,* pro-rated to reflect AES' actual ownership interests, AES has 17,618 of capacity, of which 11,194 is foreign-based.

AES also owns partial interests (both majority and minority) in companies that distribute and sell electricity directly to commercial, industrial, governmental and residential customers. AES has majority ownership in three distribution companies in Argentina, one in Brazil, one in the country of Georgia, one in Kazakhstan and one in El Salvador; and less than majority ownership in three additional distribution companies in Brazil. AES also recently acquired the right to purchase a 50% interest in a distribution company in the Dominican Republic and expects to close on the purchase soon. These eleven companies serve a total of approximately 13.6 million foreign customers with sales of nearly 107,000 gigawatt hours. On a net equity basis, AES' ownership in these companies will represent approximately 3.6 million foreign customers following the closing of the Dominican Republic acquisition and sales of approximately 29,000 gigawatt hours by the end of 1999.

The application states that AES has grown rapidly throughout this decade.[2] In 1990, the year before it went public, AES had total assets of $1.1 billion, operating revenues of $190.2 million and net income of $15.5 million, all determined in accordance with Generally Accepted Accounting Principles (''GAAP''). By the end of 1998, AES' total assets, gross revenues and net income, determined in accordance with GAAP, were $10.8 billion, $2.4 billion and $311 million, respectively.

AES has continued its fast-paced growth in 1999. Combining 101 power plants currently in operation or projected to begin operations and plants to be acquired, AES expects to have a minimum of 27,798 MW of total project generating capacity by the end of 1999, of which 20,017 MW will be foreign. On a net equity basis, AES is expected to have a generating capacity of 18,950 MW by year end 1999, of which 11,194 MW will be foreign. As a result, the power generation capacity of companies in which AES has an interest will have grown by 3,027% on a total project basis and 2,093% on a net equity basis in the eight years from 1991 to 1999.

The growth of AES' distribution business in 1999 also has been fast-paced. In 1996, AES purchased its first interests in a distribution company. By the end of 1998, companies in which AES had an interest served approximately 13 million customers and sold over 102,000 gigawatt-hours of power (approximately 3.1 million customers and 25,000 gigawatt-hours on a net equity basis). Thus far in 1999, AES has acquired the interests or rights to acquire interests in distribution companies in Georgia and the Dominican Republic, mentioned above, and the right to increase its ownership interests in two Brazilian distribution companies.

AES' market capitalization has mirrored its growth over the decade. AES' public offering in 1991 valued the company at $750 million. At present, AES' market capitalization has risen to approximately $10 billion, an increase of 1,233% in approximately eight years.

As part of this growth, AES intends to acquire CILCORP Inc. (''CILCORP''), an Illinois public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2. Through the acquisition, AES would acquire CILCORP's Illinois public-utility subsidiary, Central Illinois Light Company (''CILCO'').[3]

CILCORP had consolidated assets, revenues and net income for the year ending December 31, 1997 of $1.335 billion, $558 million and $16.4 million, respectively. For 1998, CILCORP's consolidated assets, revenues and net income were $1.313 billion, $559 million and $16.3 million, respectively.

CILCO is engaged in the generation, transmission, distribution and sale of electric energy in an area of approximately 3,700 square miles in central and east-central Illinois, and the

[1] AES Power, a wholly owned subsidiary that engages in power marketing, generated less than 1% of AES' 1998 net income.

[2] In the eight-year period between year end 1990 and 1998, AES' growth in total assets, revenues and net income was 882%, 1,162% and 1,906%, respectively.

[3] CILCORP is also the parent of three first-tier nonutility subsidiaries: QST Enterprises Inc., a company formed to facilitate CILCORP's expansion into nonregulated energy and related services businesses; CILCORP Investment Management Inc., which invests in leveraged leases, energy-related projects and affordable residential housing; and CILCORP Ventures Inc., which primarily invests in energy-related products and services.

purchase, distribution, transportation and retail sale of natural gas in an area of approximately 4,500 square miles in central and east-central Illinois. As of December 31, 1998, CILCO served approximately 253,000 customers: 189,000 retail electric customers and 197,000 gas customers, including 837 industrial, commercial and residential gas transportation customers.[4] CILCO is subject to regulation by the Illinois Commerce Commission (''Illinois Commission'').

For the year ended December 31, 1997, CILCO had total assets, operating revenues and net income of $1.023 billion, $546.9 million and $50.3 million, respectively. Electric utility assets were $723.8 and gas utility assets were $290.5. In 1997, electric utility revenues were $338.1 million (625% of total operating revenues) and gas utility revenues were $208.8 million (38% of total operating revenues).

At the end of 1998, CILCO had total assets, operating revenues and net income of $1.024 billion, $532.3 million and $41 million, respectively. Electric utility assets were $729.1 million and gas utility assets were $286.2 million. In 1998, CILCO earned $360 million in electric utility revenues (68% of total operating revenues) and $172.3 million in gas utility revenues (32% of total operating revenues).

Under a Merger Agreement dated November 22, 1998 between AES and CILCORP, Midwest Energy, Inc. (''Midwest Energy''), a wholly owned Illinois subsidiary of AES, will be merged with and into CILCORP, with CILCORP as the surviving corporation (the ''Transaction''). Following the Transaction, CILCORP will be a direct subsidiary of AES and CILCORP's subsidiaries will maintain their current structure as direct or indirect subsidiaries, as the case may be, of CILCORP.

CILCORP's shareholders approved the Merger Agreement at a special meeting held on May 20, 1999. The merger also requires approval by the Federal Energy Regulatory Commission and is subject to the notification and reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The Transaction does not require approval under section 9(a)(2) of the Act, because AES will acquire only one public-utility company through the Transaction.[5]

The Illinois Commission approved the reorganization with respect to the gas utility operations of CILCO by order dated March 10, 1999.[6] As contemplated by section 33(a)(2) of the Act, the Illinois Commission has informed the Commission, by letter dated March 10, 1999, that it has the authority and resources to protect Illinois consumers in accordance with Illinois law, and intends to exercise its authority.

AES request an exemption from registration under section 3(a)(5) of the Act following the Transaction. AES states that it will be a holding company that ''is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.'' The application further states that CILCORP will continue to qualify for exemption under section 3(a)(1) of the Act following the Transaction because both it and CILCO will be ''predominantly intrastate in character'' and will ''carry on their business substantially in'' Illinois, the state in which both are organized.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15482 Filed 6–17–99; 8:45 am]

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[4] Of the 253,000 individual customers served by CILCO, some take electric service only, some take gas service only, and some take both.

[5] *See Coral Petroleum, Inc.*, Holding Co. Act Release No. 21632 (June 19, 1980).

[6] *Central Illinois Light Co.*, order approving petition pursuant to section 16–111(g) of the Public Utilities Act, Dkt. No. 98–0882 (Mar. 10, 1999). Under the Illinois Public Utilities Act, the Illinois Commission does not have pre-approval jurisdiction over the Transaction with respect to CILCO's electric operations. Illinois restructuring legislation removed the state commission's authority over the sale or other transfer of electric assets to affiliated or unaffiliated entities until January 1, 2005.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41509; File No. SR–CBOE–99–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Increasing the Maximum Order Size on the Dow Jones High Yield Select 10 Index Eligible for Automatic Execution

June 10, 1999.

I. Introduction

On February 10, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index eligible for automatic execution. Notice of the proposed rule change appeared in the **Federal Register** on May 10, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add an interpretation to CBOE Rule 6.8 allowing the appropriate Floor Procedure Committee (''FPC'') to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index (''Index'')[4] eligible for execution through the CBOE's Retail Automated Execution System (''RAES'') from 20 to 100 contracts.

The Exchange believes that the proposal will enhance the depth and liquidity of the market for options on the Index.[5] Additionally, the Exchange believes that the proposal will increase the number of timely and cost-effective executions, enhance information gathering through the audit trail, enhance fill reporting and price reporting, increase customer confidence, and increase the efficiency in handling non-RAES orders by reducing the number of transactions executed manually on the trading floor.

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.[6] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5),[7] in that it is designed to promote just and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41357 (April 30, 1999), 64 FR 25091.

[4] The Index is comprised of the ten highest yielding stocks from the Dow Jones Industrial Average. *See* Securities Exchange Act Release No. 39453 (December 6, 1997), 62 FR 67101 (December 23, 1997).

[5] The Exchange expects that increasing the order size limit to up to 100 contracts for Index options will enhance liquidity by accommodating through RAES larger institutional and public customer orders for Index options. Telephone conversation between Debora E. Barnes, Senior Attorney, CBOE, and John C. Roeser, Attorney, Division of Market Regulation, Commission, on March 16, 1999.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Commission finds that the proposal will facilitate transactions in securities and protect investors and the public interest. The Commission believes that increasing to up to 100 the maximum number of options contracts on the Index executable through RAES should enable the Exchange to more effectively and efficiently manage order flow in options on the Index consistent with its obligations under the Act. Further, the Commission believes that the RAES order size limit of 100 contracts for the Index should result in the efficient and timely execution of customer orders. The Commission notes that it has approved similar proposals by the Exchange increasing the number of option contracts eligible for automatic execution to a maximum of 100 contracts.[8]

Based on representations from the CBOE, the Commission believes that increasing the size of orders on the Index eligible for execution through RAES will not expose the CBOE's options markets to risk of failure or operational breakdown. Specifically, the CBOE represents that the proposal will not impose any significant burden on the operation, security, integrity, or capacity of RAES.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–99–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15487 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Securities Exchange Act Release No. 38169 (January 14, 1997), 62 FR 3547 (January 23, 1997) (order approving an increase to the maximum size of interest rate option orders eligible for automatic execution to up to 100 contracts); Securities Exchange Act Release No. 39202 (October 3, 1997), 62 FR 53358 (October 14, 1997) (order approving proposal to allow the Exchange discretion to set the eligible order size for RAES orders to up to 100 contracts for options on the Dow Jones Industrial Average).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41519; File No. SR–NASD–99–02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Application of Certain NASD Rules to Limited Offerings Under SEC Rule 504, Securities Exempted Under the Securities Exchange Act of 1934, and Intra-State-Only Offerings

June 11, 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 January 13, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. NASD Regulation amended the proposed rule change on May 24, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, to Joshua Kans, Attorney, Division of Market Regulation (''Division''), Commission, dated May 21, 1999 (''Amendment No. 1''). Amendment No. 1 modified the proposed rule change to in response to the Commission's recent amendment of Securities Act Rule 504, *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999) (adopting amendment to Rule 504 under Regulation D, 17 CFR 230.504).

The NASD and the Commission clarified the purpose of this proposed rule change, the scope of the rules impacted by the proposed rule change, and the NASD's response to the Commission's amendment of Securities Act Rule 504 during telephone conversations between Suzanne Rothwell, NASD Regulation, and Joshua Kans, Commission, on February 1, February 8, May 12 and June 10, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Conduct Rules IM–2110–1, 2710, and 2720 to clarify their application to offerings of securities made in reliance on the SEC's limited offering exemption provided by Rule 504 of Regulation D.[4] The proposed amendments also would modify Rules 2710 and 2720 in other ways, and will affect the interpretation of several other NASD Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM–2110–1. ''Free-Riding and WIthholding''

* * * * *

(I) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

(1) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC Rule 504*, and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 *if the securities are ''restricted securities'' under SEC Rule 144(a)(3)* [(unless considered a public offering in the states where offered)], Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, and debt securities (other than debt securities convertible to common or preferred stock) and financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary offerings by an issuer, or any security holder of the issuer, of actively-traded securities

* * * * *

[4] 17 CFR 230.504.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1)–(7) No change.

(8) Exempt Offerings

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and Rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A) securities exempt from registration with the Commission pursuant to the provisions of Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are ''restricted securities'' under SEC Rule 144(a)(3),* Rule 505, or Rule 506 adopted under the Securities Act of 1933, as amended;

* * * * *

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A)–(C) No change.

(D) securities exempt from registration with the Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended[, which is considered a public offering in the state where offered];

(E) securities exempt from registration with the Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, [which is considered a public offering in the states where offered] *unless the securities are ''restricted securities'' under SEC rule 144(a)(3);*

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) General No change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1)–(13) No change.

(14) Public offering—any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, *offerings pursuant to SEC rule 504,* and all other securities distributions of any kind whatsoever, except any offerings made pursuant to an exemption *from registration* under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933, as amended, or pursuant to SEC Rule 504 [(unless considered a public offering in the states where offered)] *if the securities are ''restricted securities'' under SEC Rule 144(a)(3),* SEC Rule 505, or SEC Rule 506 adopted under the Securities Act of 1933, as amended. *The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act.*

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

Background: The term ''public offering'' is expressly defined in two NASD Rules: the Free-Riding and Withholding Interpretation, Rule IM–2110–1, and the Conflicts-of-Interest Rule, Rule 2720.[5] The definition of ''public offering'' found in Rule 2720 not only determines which offerings are subject to that rule, but also in part determines which offerings must be filed with the NASD for pre-offering review under the Corporate Financing Rule, Rule 2710, and the Direct Participation Programs Rule, Rule 2810.[6] In addition, the NASD generally relies upon the definition in Rule 2720 to interpret the scope of other provisions of its rules that reference the term ''public offering'' or ''public offering price.''[7]

Currently, the definitions of ''public offering'' in IM–2110–1 and Rule 2720 include only offerings made in reliance on Securities Act Rule 504 if the offering is ''considered a public offering in the states where offered.'' Moreover, paragraphs (b)(8) and (9) of Rule 2710 require the filing of Rule 504 offerings only under such circumstances. Also, because the scope of Rule 2810 is based on the scope of Rule 2710, Rule 2810 applies to Rule 504 offerings only under such circumstances.

Proposed Rule Change: NASD Regulation proposes to amend the definition of ''public offering'' in IM–2110–1 and Rule 2720 to clarify that the definition encompasses all offerings of securities exempt from SEC registration under Securities Act Rule 504, except for Rule 504 offerings of securities that would be deemed ''restricted securities'' under Securities Act Rule 144(a)(3).[8] NASD Regulation further proposes that

[5] The Free-Riding and Withholding Interpretation, Rule IM–2110–1, requires NASD members and associated persons to make a bona fide public distribution, at the public offering price, of any securities of a public offering which trade at a premium in the secondary market when the secondary market begins.

The Conflicts-of-Interest Rule, Rule 2720, governs the ability of NASD members and associated persons to participate in distributing a public offering of the securities of an NASD member, or to participate in distributing a public offering of the securities of a company with which the member and/or its associated persons, parent or affiliates has a conflict of interest.

[6] The Corporate Financing Rule, Rule 2710, prevents NASD members and associated persons from participating in the public offering of certain securities subject to Rules 2710, 2720 and 2810 unless documents relating to the public offering are filed with the NASD for review, and the NASD provides an opinion that it has no objection to the proposed underwriting and other terms and arrangements. Rule 2710 also prevents NASD members and associated persons from participating in the public offering of subject securities if the underwriting or other terms or arrangements are unfair or unreasonable.

The Direct Participation Programs Rule, Rule 2810, governs the ability of NASD members and associated persons to participate in the public offering of a direct participation program (a program which provides for flow-through tax consequences, such as a partnership).

Rule 2710 explicitly incorporates the definitions contained in Rule 2720. *See* Rule 2710(a). Although Rule 2810 does not explicitly adopt those definitions, its scope is based on the scope of Rule 2710.

The definition of the term ''public offering'' included in the Free-Riding and Withholding Interpretation, Rule IM–2110–1, is limited to the application of that Interpretation. *See* Endnote 1 in NASD Notice to Members 98–48 (July 1998).

[7] *See* NASD Rules 0120(h) (general definition of ''fixed price offering''), 0120(p) (general definition of ''selling group''), 0120(q) (general definition of ''selling syndicate''), 2750 (transactions with related persons), 2830 (investment company securities), 3350 (short sale rule), 3370 (prompt receipt and delivery of securities) and 6410(e) (definition of ''initial public offering'' in NASD systems and programs rules). As a matter of policy, the NASD interprets those provisions in the context of Rule 2720's definition of ''public offering.'' Those provisions do not specifically reference Rule 2720, however.

[8] Securities Act Rule 144(a)(3), 17 CFR 230.144(a)(3), defines the term ''restricted securities'' to include, *inter alia,* securities that are subject to resale restrictions under 17 CFR 230.502(d) of Regulation D.

The filing requirements of Rule 2720 are broader than and take precedence over those of Rule 2710. *See* NASD Rule 2710(b)(7) (describing offerings exempt from filing requirements ''unless subject to the provisions of Rule 2720''); 2720(n) (discussing ''predominance'' of Rule 2720 provisions over any other provisions or interpretations of NASD by-laws or rules).

Rules 2710(b)(8) and (9), which specify which offerings are exempt from Rule 2710 and which offerings are required to be filed under that rule, be amended to clarify that the Rule 2710 filing requirement applies to all Rule 504 offerings, except for offerings of securities that would be deemed Rule 144(a)(3) ''restricted securities.'' Accordingly, all Rule 504 offerings, other than offerings of securities that would be deemed Rule 144(a)(3) ''restricted securities,'' are to be subject to the requirements in Rules 2710, 2720, and 2810, as applicable. In addition, other provisions of NASD rules that refer to ''public offerings'' would be interpreted to include Rule 504 offerings, except for Rule 504 offerings of securities that would be deemed to be Section 144(a)(3) ''restricted securities.''

The Commission recently amended Rule 504.[9] As amended, all Rule 504 offerings are now subject to Rule 502(c) limitations on the manner of offering[10] and to Rule 502(d) limitations on resale,[11] unless the Rule 504 offering satisfies certain state law registration requirements or state law exemptions.[12] Because Securities Act Rule 144(a)(3) defines ''restricted securities'' to include securities subject to Rule 502(d) resale limitations, the scope of the term ''restricted securities'' therefore would encompass all Rule 504 offerings that do not satisfy the state law registration requirements or exemptions.

The purpose of the proposed rule change is to apply IM–2110–1 and Rules 2710, 2720 and 2810 to those Rule 504 offerings that lack limitations on the manner of offering or limitations on resale, in a way that is consistent with the treatment of other types of ''exempt'' offerings, such as Regulation A offerings (which lack limitations on the manner of offering or limitations on resale, and are subject to IM–2110–1 and Rules 2710, 2720 and 2810). NASD Regulation believes that it is appropriate to treat as ''public offerings'' all Rule 504 offerings that are not subject to limitations on the manner of offering or limitations on resale because those offerings share the characteristics of other public offerings.

NASD Regulation also proposes other amendments to the definitions of ''public offering'' in Rules IM–2110–1 and 2720 to make them consistent and easier to read. Moreover, the proposed rule change would amend the definition of ''public offering'' in Rule 2720 to exempt securities that fall within Section 3(a)(12) of the Act's[13] definition of ''exempted securities.'' Offerings of those securities already are exempt from Rule 2720, as well as Rules 2710 and 2810, pursuant to the language of Rule 2710(b)(8)(B).

Finally, the proposed rule change would amend the provision in Rule 2710(b)(9) to delete the language stating that an offering relying on Section 3(a)(11) of the Securities Act of 1933[14] (the ''intra-state exemption'') must be filed only when it is ''considered a public offering in the state where offered.'' The Association is proposing to eliminate this language so that Rule 2710(b)(9) is consistent with the definitions of ''public offering'' in IM–2110–1 and Rule 2720, which encompass all intra-state offerings exempt from SEC registration.[15] Consequently, all Section 3(a)(11) securities offerings would be filed with the Corporate Financing Department for review.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[16] in that clarification of whether offerings relying on Securities Act Rule 504 are subject to Rule IM–2110–1, Rule 2710, Rule 2720, and Rule 2810 (and are interpreted to be within the concept of ''public offering'' in other rules of the Association) will promote just and equitable principles of trade and will protect investors and the public. NASD Regulation further believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act[17] in that the proposed rule change will promote compliance by members with the rules of the NASD that are applicable to, or reference, public offerings of securities. Moreover, amendments that make the filing requirement consistent for offerings exempt from filing under Section 3(a)(11) of the Securities Act and make the definitions in Rule 2720 more consistent with IM–2110–1 will promote just and equitable principles of trade, protect investors and the public, and enforce compliance by members with the rules of the NASD as required by Sections 15A(b)(2) and 15A(b)(6) of the Act.

B. 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chance 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, 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 NASD. All submissions should refer to File No. SR–NASD–99–02 and should be submitted by July 9, 1999.

[9] *See* Securities Act Release No. 7644 (February 25, 1999), 64 FR 11090 (March 8, 1999).

[10] 17 CFR 230.502(c). Rule 502(c) prevents Regulation D offerings from being offered by any form of general solicitation or general advertising.

[11] 17 CFR 230.502(d). Rule 502(d) prevents securities acquired in Regulation D offerings from being resold without being registered under the Securities Act or being exempted from registration.

[12] *See* 17 CFR 230.504(b)(1).

[13] 15 U.S.C. 78c(a)(12).

[14] 15 U.S.C. 77c(a)(11).

[15] The definitions of ''public offering'' in IM–2110–1 and Rule 2720 include ''all securities distributions of any kind whatsoever'' and do not exclude any type of intra-state offering.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15484 Filed 6–17–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41499; File No. SR–NASD–99–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Level 1 Market Data Fees

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 17, 1999,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On May 28m, 1999 Nasdaq submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On May 3, 1999, Nasdaq filed a similar proposed rule change, SR–NASD–99–24. On May 14, 1999, Nasdaq withdrew this filing because of procedural issues. *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated May 3, 1999.

[4] In Amendment No. 1, Nasdaq amended the proposed rule change to remove a provision conditioning participation in the pilot program on a participant guaranteeing to pay, at a minimum, 75% of that participant's fee assessment associated with its December 1998 per level query usage and non-professional population. *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Thomas P. Moran, Assistant General Counsel, Office of General Counsel, Nasdaq, dated May 27, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed a proposed rule change to amend Rule 7010 of the National Association of Securities Dealers, Inc. Under the proposal, Nasdaq will establish a 1 year pilot program, commencing with the April 1, 1999 billing period,, to reduce by 50% the fees for Nasdaq Level 1 market data delivered to non-professional users o9n either a per query or monthly basis.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq has consistently supported the broadest, most effective dissemination of market information to public investors To that end, Nasdaq is proposing a 1 year pilot program to reduce by 50% the fees for Level 1 market data delivered to non-professional users on either a per query or monthly basis. Under the proposed pilot, the per query fee would be reduced from $.01 to $0.005 per query and the non-professional per user fee would be reduced from $4 to $2 per month.

Reducing these market data fees unequivocally demonstrates Nasdaq's commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, reduced Nasdaq rates will lessen the costs to NASD member firms of supplying real-time market data to their customers through automated means and is also likely to encourage current delayed-data vendors to offer increased access to real-time Level 1 data to their subscribers.

[5] The pilot expires April 1, 2000. If, after assessing the pilot's viability, the NASD decides to make those fees a permanent part of its fee structure, the Commission expects that the NASD will file the proposal for approval. *See NASD Manual*, charges for services and equipment, Rule 7100(b).

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[6] of the Act in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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 Nasdaq. All submissions should refer to File No. SR–NASD–99–25 and should be submitted by July 9, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act[7] and the rules and regulations thereunder

[6] 15 U.S.C. 78o–3(b)(5).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

applicable to the NASD.[8] Specifically, the proposed rule change is consistent with Section 15A(b)(5)[9] in that the proposal should provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

Recent technological developments have allowed vendors to provide their customers with more efficient and cost effective methods of executing securities transactions. The Commission expects that by reducing market data access fees the investor will further benefit by a reduction in costs of executing these transactions. For the investor to make sound, financial decisions, efficient and inexpensive access to market data information is vital. Thus, the Commission believes that reducing the market data fees by 50% should enhance investor access and may encourage increased investor participation in the securities markets.

Pursuant to Section 19(b)(2),[10] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the NASD to expeditiously implement the pilot program to reduce market data fees without any unnecessary delay and should confer a benefit upon those firms that provide real-time data to their customers and subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended, (SR–NASD–99–25) is hereby approved on an accelerated basis, for the pilot period ending April 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15488 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41515; File No. SR–NYSE–99–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications and Content Outline for the Front Line Specialist Clerk Qualification Examination (Series 21)

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 May 14, 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.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has file the Content Outline and Examination Specifications for the Front Line Specialist Clerk Qualification Examination (''Series 21'').

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 35 requires that employees of members and member organizations must be registered with, qualified by, and approved by the Exchange prior to admittance to the Trading Floor. Currently, the registration process for Floor employees functioning as Front Line Specialist Clerks (''FLS Clerks'') primarily consists of submission of a completed Form U–4 (''Uniform Application for Securities Industry Registration or Transfer'') and Fingerprints. Under a proposed interpretation to Rule 35, which has been filed separately with the Commission as a proposed rule change (SR–NYSE–99–19), these FLS Clerks will also have to be qualified by taking and passing an appropriate qualification examination and by meeting appropriate training requirements.

The Front Line Specialist Clerk Qualification Examination (''Series 21'') and Content Outline were developed by the Exchange, in conjunction with a Committee of Floor representatives (members, Specialists, and FLS Clerks) in order to qualify FLS Clerks pursuant to proposed amendments to Rule 35. The Series 21 examination will ensure that FLS Clerks have the basis knowledge, skills, and abilities necessary to perform their duties, which include assisting Floor Specialists. The Series 21 examination is the second step in a program to ensure that Floor employees are appropriately qualified. The first step was implementation of the Series 25 Trading Assistant Qualification Examination.[1]

The Content Outline, which may be examined at the places specified in Item IV below, details the coverage of the Series 21 examination. The Series 21 examination is a 90-minute test consisting of 65 questions. A fee of $200 will be imposed per exam administration. This fee will be the subject of a separate rule filing at a later date. Implementation of the examination is scheduled to take place 90 days after its approval by the Commission.

The requirement to take and pass the Series 21 examination in order to qualify as an FLS Clerk will apply to both current and prospective FLS Clerks. The separately-filed, proposed new interpretation to Rule 35 (SR–NYSE–99–19) will establish that individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 qualification examination is a prerequisite, but no training program will be required for these individuals since they are already acting in the capacity of FLS Clerks. Prospective FLS Clerks will be required to complete, at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36); Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3329 (January 21, 1999) (SR–NYSE–98–35).

a minimum, a six month training program upon passing the Series 25 examination in order to become eligible for the Series 21 examination. The training program will consist of ''on-the-job'' experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an ''unsupervised'' FLF Clerk, *i.e.,* functioning without the specialized supervision required during the training period.

2. Statutory Basis

The statutory basis for Series 21 Examination is Section 6(c)(3)(B) of the Act.[3] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge. In addition, under Section 6(c)(3)(B), the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Front Line Specialist Clerks have attained specified levels of competence and knowledge.

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

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 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, 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 Exchange. All submissions should refer to File No. SR–NYSE–99–20 and should be submitted by July 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15485 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(c)(3)(B).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41514; File No. SR–NYSE–99–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Interpretation to Rule 35 (''Floor Employees To Be Registered'')

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 May 14, 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 a new interpretation with respect to the administration of Exchange Rule 35 (''Floor Employees to be Registered''). The new interpretation prescribes the requirements for Front Line Specialist Clerks (''FLS Clerks''), which include a qualifying examination (''Series 21'') for all current and prospective FLS Clerk and a supervised training period requirement which will apply only to prospective FLS Clerks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed new interpretation to Rule 35 is to prescribe the qualification requirements (*i.e.,* training and examination) for Front Line Specialist Clerks. In addition to dictating the terms under which employees of members or member organizations may be admitted to the Exchange Trading Floor, Rule 35 mandates compliance by both employer and employee with such requirements as the Exchange may determine. The proposed interpretation to Rule 35 will require FLS Clerks to pass a new examination, developed by the Exchange in cooperation with a committee of Floor representatives (members, Specialists, and FLS Clerks) called the Front Line Specialist Clerk

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Qualification Examination (''Series 21''). The examination will ensure that FLS Clerks have the basic knowledge and skills necessary to perform their duties, which include assisting Floor Specialists. The Series 21 examination is the second step in a program to ensure that Floor employees are appropriately qualified. The first step was implementation of the Series 25 Trading Assistant Qualification Examination.[1]

The Series 21 examination is a 90-minute test consisting of 65 questions. Implementation of the examination is scheduled to take place 90 days after its approval by the SEC. The examination specifications, content and fee (*i.e.*, $200 per exam administration) will be more specifically addressed in separate filings. Though the requirements to take and pass the proposed Series 21 examination will apply to all prospective and current FLS Clerks, qualification requirements will differ as follows:

Current FLS Clerks

Individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 qualification examination is a prerequisite, but no training program will be required for these individuals since they are already acting in the capacity of FLS Clerks.

Prospective FLS Clerks

Individuals not currently functioning as FLS Clerks will also be required to pass the Series 25 qualifying examination as a Series 21 prerequisite. Upon passing the Series 25, the prospective FLS Clerk must complete a training program to become eligible for the Series 21 examination. The training program shall consist of a minimum of six months ''on-the-job'' experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an ''unsupervised'' FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[3] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. In addition, under Section 6(c)(3)(B), the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Front Line Specialist Clerks have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) 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, 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 Exchange. All submissions should refer to File No. SR–NYSE–99–19 and should be submitted by July 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15486 Filed 6–17–99; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR–NYSE–98–36); Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3329 (January 21, 1999) (SR–NYSE–98–35).

[3] 15 U.S.C. 78f(c)(3)(B).

[4] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of SSA's notices. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of these notices.

1. *Report on Individual with Mental Impairment—0960–0058.* Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical

directors, medical record librarians and other health professionals.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 36 minutes.

Estimated Annual Burden: 30,000 hours.

2. *Report of Student Beneficiary at End of School Year—0960–0089.* The information collected on Form SSA–1388 is used by SSA to verify a student's full-time attendance at an approved educational institution. The respondents are secondary school student beneficiaries or claimants who are enrolled full time.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 33,333 hours.

3. *Request for Claimant Conference—0960–NEW.* As part of SSA's disability redesign effort, SSA is testing modifications to the disability determination procedures. One aspect of the tests includes notifying claimants when the initial determination of disability by the State agency will be less than fully favorable. The State agency making the determination must send a written notice to the claimant offering him or her the opportunity to have a conference with the Disability Adjudicator and to provide an opportunity to submit additional evidence. The claimant can respond by either completing and returning the form (SSA–378) enclosed with the notice or by telephoning the Disability Adjudicator. Based on the reply, the Disability Adjudicator can schedule a conference, request additional medical evidence, and/or await the receipt of additional evidence or complete the processing of the claim. The respondents are claimants for title II and title XVI disability benefits whose claims will receive a less than fully favorable determination.

Number of Respondents: 163,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 4,075 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Application for Mother's or Father's Insurance Benefit-0960–0003.* The information collected on Form SSA–5 is used by the Social Security Administration (SSA) to determine an applicant's eligibility for mother's or father's insurance benefits. The respondents are individuals who wish to file an application for such benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 12,500 hours.

2. *Missing and Discrepant Wage Reports Letter and Questionnaire—0960–0432.* SSA uses the information on Forms SSA–L93, SSA–95 and SSA–97 to secure the employer information missing from its records (or discrepant with Internal Revenue Service (IRS) records) by contacting the involved employers. When secured, SSA is able to properly post the employee's earnings records. Compliance by employers with SSA requests facilitates proper posting of employees' wage records. SSA makes two efforts to obtain wage information from the employer before the case is turned over to the IRS for penalty assessments. The respondents are employers with missing or discrepant wage reports.

Number of Respondents: 360,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 180,000 hours.

3. *Medical Report on Adult with Allegation of Human Immune Deficiency Virus Infection and Medical Report on Child with Allegation of Human Immune Deficiency Virus Infection—0960–0500.* SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to obtain information from a medical source concerning an individual who has filed for Supplemental Security Income (SSI) disability benefits with an allegation of Human Immune Deficiency Virus (HIV) infection. The information is necessary for SSA field office personnel to determine whether the individual meets the requirements for a presumptive disability payment. The respondents are medical sources of individuals who apply for SSI disability benefits.

	SSA–4814–F5	SSA–4815–F6
Number of Respondents	46,200	12,900
Frequency of Response	1	1
Average Burden Per Response (minutes)	10	10
Estimated Annual Burden (hours)	7,700	2,150

4. *Self-Employment—Corporate Officer Questionnaire—0960–0487.* Form SSA–4184 is used by SSA to develop earnings and to corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The respondents are self-employed individuals and corporate officers.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 16,667 hours.

5. *Coverage of Employees of State and Local Governments—0960–0425.* This current rule contains reporting and recordkeeping requirements in 20 CFR Part 404 (see table below). The regulation sections cited require State and/or interstate instrumentalities to provide certain information to SSA that is needed to extend Social Security coverage to public sector workers for pre-1987 tax years, and to maintain accurate records of social security agreements. SSA would not be able to provide coverage to these workers and would be in violation of the statute requiring coverage if the information were not collected. This rule applies to 52 State agencies who could submit modifications to their Social Security coverage agreements and 3 interstate instrumentalities who could submit agreements for coverage, and one or two potential annual responses for each. In actuality, SSA may receive any number of reports from a few States and no reports from the remainder. From experience, SSA anticipates that no error modifications will be filed for tax years prior to 1987, nor wage reports and contributions payments for an error

situation where wages have never been reported for those years. In addition, the reporting requirements in sections 404.1242, .1251 and .1271(a) and (c) no longer exist so we are showing no public reporting burden for these sections. SSA plans to publish a Notice of Proposed Rulemaking to eliminate the obsolete reporting requirements from these sections. For the remaining sections, SSA is basing the public burden estimates on the total number of respondents that could potentially report to us, although we anticipate the actual number will be less.

Section	Number of States	Frequency of response	Individual burden	Annual burden (hours)
404.1203(a)	52	1	1 hour	52
404.1204(a) & (b)	52	1	30 minutes	26
404.1214(d)	[1]3	1	1 hour	3
404.1215	52	1	1 hour	52
404.1216(a) & (b)	52	1	1 hour	52
404.1220(b) & (c)	52	1	5 minutes	4
404.1225(a) & (b)	52	1	1 hour	52
404.1237(a), (b) & (c); .1239; .1243(a), (b), (c)	52	1	1 hour	52
404.1242	0	0	0	0
404.1247	52	1	1 hour	52
404.1249(a), (b) & (c)	52	1	1 hour	52
404.1251	0	0	0	0
404.1265	3	1	1 hour	3
404.1271(a) & (c)	0	0	0 hour	0
404.1271(b)	2	2	4 hours	16
404.1272	3	1	1	3
404.1292	3	1	5	15
Total				434

[1] Interstate Instrumentalities.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: June 11, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–15539 Filed 6–17–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 3063]

International Joint Commission; Boundary Waters Treaty of 1909

The International Joint Commission (IJC) will hold a public hearing to receive comment on the review of its Orders for the management of dams on Rainy and Namakan lakes prior to deciding on whether to amend the Orders.

The public hearing will be held at the following time and place: 6:00 p.m.–10:00 p.m., Wednesday, July 7, 1999, La Place Rendez-Vous Hotel, 1201 Idylwild Dr., Fort Frances, Ontario.

A draft final report from the IJC's International Rainy Lake Board of Control making recommendations on the management of Rainy and Namakan Lake water levels is available at the following address on the Internet: http://www.mvp-wc.usace.army.mil/ijc/rainylake/reports.html.

Written comments may also be submitted by July 30, 1999 to either of the following addresses:

Secretary, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1, Fax 613.993.5583, Email Commission@ottawa.ijc.org

Secretary, United States Section, 1250 23rd Street NW, Suite 100, Washington, DC 20440, Fax 202.736.9015, Email Commission@washington.ijc.org

The International Joint Commission is an independent international organization established under the Boundary Waters Treaty of 1909. Three members are appointed by the President of the United States and three by the Canadian Governor General in Council. The IJC's Orders for Rainy and Namakan Lakes were issued pursuant to the 1938 Rainy Lake Convention.

Dated: June 14, 1999.

James G. Chandler,

Legal Advisor, United States Section.

[FR Doc. 99–15552 Filed 6–17–99; 8:45 am]

BILLING CODE 4710–14–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical corrections to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (the USTR) is modifying the Harmonized Tariff Schedule of the united States (HTS) as set forth in the annex to this notice, pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 (Trade Act) and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These modifications will correct errors resulting from various proclamations, make conforming changes that were inadvertently omitted from prior actions, correct typographical errors and make technical rectifications to the HTS to ensure that the intended tariff treatment is accorded to the products at issue.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Affairs, (202) 395–5097, or William Busis, Associate General Counsel, (202) 395–3150.

Explanation of Technical Corrections

This notice makes several technical corrections to and rectifications of the HTS to remedy omissions, misspellings, or other errors included in previously issued proclamations, or to make conforming changes in HTS provisions to reflect previously proclaimed modifications to the HTS and to otherwise rectify the HTS to ensure that the previously proclaimed tariff treatment is accorded. The modification made in each provision of the annex is explained in turn.

The action designated as section A modifies the HTS effective on 1/1/89 to correct a typographical error.

The action designated as section B modifies the HTS effective on 6/7/91 by deleting obsolete provisions proclaimed pursuant to an action under section 201 of the Trade Act (on wood shakes and shingles) set forth in Proclamation 5498 of June 6, 1986. The date of the termination of the temporary duty increases was June 6, 1991.

The action designated as section C modifies the HTS effective on 1/1/94 to correct an omission in a **Federal Register** notice of December 29, 1997. The notice redesignated subparagraph (d) of U.S. note 3 to subchapter II of chapter 98 as subparagraph (e), but it failed to modify the article description of subheading 9802.00.60 which refers to ''U.S. note 3(d)''.

The action designated as section D modifies the HTS effective on 1/1/95 (to correct actions originally proclaimed in Proclamation 6763 of December 23, 1994 (Uruguay Round Proclamation)) as follows: The action in subparagraph (1) deletes the sugar quota quantities set forth in additional U.S. note 7(a)(i) of chapter 17, as the quantities do not accurately reflect the quotas, which are established and published in the **Federal Register** by USDA and USTR for each fiscal year.

The action in subparagraph (2) deletes the chemical name ''4,4-Benzidine-2,2′-disulfonic acid'' from subheading 2921.42.36. The current provision is both an erroneous spelling and inappropriate tariff classification of that chemical. The correct spelling for the chemical is ''4,4′-Benzidine-2,2′-disulfonic acid.'' This chemical is already provided for in the appropriate subheading 2921.59.17 with no change in duty rate.

The action in subparagraph (3) corrects the nomenclature of the HTS to properly provide for the classification of a chemical ''dl-Hydroxy analog of dl-methionine''. The chemical is currently provided for in subheading 2930.90.70, which provides duty-free treatment for this chemical and other chemical that in the hierarchal system of the HTS are defined as not being acids. However, ''dl-Hydroxy * * *'' is an acid and should be classified in subheading 2930.90.45. To continue to provide for duty-free treatment for this chemical, subheadings 2930.90.45 and subheading 2930.90.70 are modified to properly classify this chemical.

The action in subparagraph (4) corrects a typographical error.

The action in section E modifies the HTS effective on 1/1/96 (to correct actions originally proclaimed in Proclamation 6857 of December 11, 1995) as follows: The action in subparagraph (1) corrects a typographical error.

The action in subparagraph (2) corrects an omission of a conforming change in the article description of subheading 8540.99.40. The proclamation renumbered subheadings 8540.41 through 8540.49 as 8540.71 through 8540.79, but failed to modify the article description of subheading 8540.99.40, which refers to ''subheadings 8540.41 through 8540.49''.

The action designated as section F modifies the HTS effective on 7/15/96 by deleting provisions of an action under section 301 of the Trade Act (concerning an EC meat hormone directive) set forth in Proclamation 5759 of December 24, 1987. The USTR terminated these actions effective July 15, 1996 when the United States initiated proceedings in the World Trade Organization (WTO) to pursue the issue.

The action designated as section G modifies the HTS effective on 10/31/96 to correct an omission of a conforming change in the language of general note 15(e). Proclamation 6948 of October 29, 1996 modified the HTS by providing for six additional subheadings 9903.52.21 through 9903.52.26 following 9903.52.20 but failed to modify general note 15(e), which refers to ''subheadings 9903.52.00 through 9903.52.20, inclusive.''.

The action designated as section H modifies the HTS effective on 5/31/97 to provide for Generalized System of Preference (GSP) status for Least Developed Beneficiary Developing Countries (LDBDC) in the Rates of Duty-1 Special subcolumn for subheading 2930.90.49. Section D(3) of this annex, effective January 1, 1995, renumbers subheading 2930.90.45 as 2930.90.49. Subheading 2930.90.45 was granted GSP LDBDC preferential status on May 31, 1997. This section continues the same preferential treatment to subheading 2930.90.49.

The action designated as section I modifies the HTS effective on 7/1/97 to correct an error in the Rates of Duty-1 Special subcolumn for subheading 8507.90.75. Proclamation 7011 of June 30, 1997 modified the HTS by subdividing subheading 8504.90.70 into subheadings 8504.90.65 and 8504.90.75. Subheading 8504.90.75 was indicated incorrectly as being eligible for duty-free treatment under the Agreement on Trade in Civil Aircraft. Subheading 8504.90 is not covered by that Agreement.

The action designated as section J modifies the HTS effective on 1/1/98 to delete obsolete provisions in subchapter VI of chapter 99. These provisions provided for temporary duty-free treatment for Mexican NAFTA goods for subheadings in chapters 1 through 97 which were subject to Mexican NAFTA staging. On 1/1/98 the appropriate subheadings in chapter 1 through 97 became free of duty for Mexico under NAFTA.

The action designated as section K modifies the HTS effective on 8/1/98 to correct an omission of a conforming change. Proclamation 7113 of July 1, 1998 deleted subheadings 9906.55.02 and 9906.56.01, which made U.S. notes 26 to 27 to subchapter VI of chapter 99 unnecessary.

The action designated as section L modifies the HTS effective on 12/3/98 to correct an omission of a conforming change in the Rates of Duty-1 Special subcolumn for subheadings 9603.10.50 and 9603.10.60. Proclamation 7154 of December 3, 1998 terminated the temporary duties on imports of broom corn brooms and restored Normal Trade Relations (NTR) and NAFTA treatment, but failed to restore explicitly the duty-free treatment under CBERA, Andean Trade Preference Act and for the LDBDC's under GSP.

The action designated as section M modifies the HTS effective on 1/1/99 as follows: The action in subparagraph (1) deletes provisions and countries in general note 4(d) which are no longer valid as country exclusions under the GSP because the provisions became NTR free on 1/1/99. All special program preferences for such provisions pursuant to general note 3(c)(iv) of the HTS have been deleted.

The action in subparagraph (2) modifies additional U.S. note 3 to chapter 2 to reflect the status of Argentina and Uruguay as being eligible to import certain quota amounts of beef.

The action in subparagraph (3) corrects an omission of a conforming change. Proclamation 7011 of June 30, 1997 modified the nomenclature of the HTS for certain subheadings, but failed

to modify additional U.S. note 1 to chapter 84 to reflect the modifications.

The action in subparagraph (4) deletes obsolete provisions in subchapter VI of Chapter 99. These provisions provided for temporary duty-free treatment for Mexican NAFTA goods for subheadings in chapters 1 through 97 which were subject to Mexican NAFTA staging. On 1/1/99 the appropriate subheadings in chapter 1 through 97 became free of duty for Mexico under NAFTA.

The action in subparagraph (5) deletes obsolete provisions in subchapter VII of chapter 99. These provisions provided for temporary duty-free or reductions of the NTR rate for subheadings in chapters 1 through 97 which were subject to Uruguay Round staging. On 1/1/99 the NTR rate for the appropriate subheadings in chapter 1 through 97 became equivalent to the provision in subchapter VII of chapter 99, thereby making the provisions in chapter 99 unnecessary.

The action designated as section N modifies the HTS, effective upon publication of this notice, to reclassify and continue to provide duty-free treatment to certain PC/TV printed circuit boards. Proclamation 7011 of June 30, 1997 provided duty-free treatment for the subject PC/TV printed circuit boards (cards). Pursuant to previous rulings, Customs has classified the subject PC/TV cards in subheading 8473.30.40 (now subheading 8473.30.10) as accessories of automatic data processing machines. It has since been concluded, however, that the PC/TV cards should instead be classified in subheading 8528.12.96. This action will continue the duty-free treatment currently provided these products.

Ambassador Charlene Barshefsky,

United States Trade Representative.

Annex—Technical Rectifications to the Harmonized Tariff Schedule of the United States (''HTS'')

Effective on the dates as listed in this Annex, the HTS is modified as provided for in the sections of this Annex.

Section A. Effective January 1, 1989, the article description of heading 7314.00 is modified by deleting ''Stranded wire cables, plaited bands'' and inserting ''Stranded wire, cables, plaited bands'' in lieu thereof.

Section B. Effective June 7, 1991, subchapter III to chapter 99 is modified by deleting subheadings 9903.44.10, 9903.44.24, 9903.44.28 and 9903.44.32 and the superior text to subheading 9903.44.10 which reads ''Wood shingles and shakes of western red cedar provided for in subheading 4418.50:''.

Section C. Effective January 1, 1994, the article description of subheading 9802.00.60 is modified by deleting ''defined in note 3(d) of this subchapter'' and inserting ''defined in note 3(e) of this subchapter'' in lieu thereof.

Section D. Effective January 1, 1995:

(1) Additional U.S. note 7(a)(i) to chapter 17 of the HTS is modified by deleting '', not less than 1,117,195 metric tons,'' and by deleting '', not less than 22,000 metric tons,''.

(2) The article description of subheading 2921.42.36 is modified by deleting the chemical name ''4,4-Benzidine-2,2'-disulfonic acid''.

(3) The HTS is modified by deleting subheadings 2930.90.45 and 2930.90.70 and inserting the following as provided in this paragraph. These provisions supersede matter now in the HTS. Bracketed matter is included to assist in the understanding of proclaimed modifications. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designed ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively.

	[Orange-sulfur compounds:]			
	[Other:]			
	[Other:]			
	[Other:]			
	''Acids:			
2930.90.46	*dl*-Hydroxy analog of *dl*-methionine	Free		25%
2930.90.49	Other	4.2%	Free (CA, E, IL, J, K, MX)	25%''
	[Other:]			
''2930.90.71	Dibutylthiourea	Free		25%''

(4) The Intermediate Chemicals For Dyes Appendix to the HTS is modified by deleting ''Benzeneamine, 2-(triflouromethyl)-'' and inserting ''Benezeneamine, 2-(trifluoromethyl)-'' in lieu thereof.

Section E. Effective January 1, 1996:

(1). Note 7(A) to chapter 48 of the HTS is modified by deleting ''Headings 4801, 4802, 4804 to 4808 and 4811'' and inserting ''Headings 4801, 4802, 4804 to 4808, 4810 and 4811'' in lieu thereof.

(2) The article description of subheading 8540.99.40 is modified by deleting ''of subheadings 8540.41 through 8540.49'' and inserting ''of subheadings 8540.71 through 8540.79'' in lieu thereof.

Section F. Effective July 15, 1996, subchapter III of chapter 99 is modified by:

(1) Deleting ''subheadings 9903.23.10, 9903.23.14, and 9903.23.18,'' from the language of U.S. note 5; and

(2) Deleting subheadings 9903.23.00 through 9903.23.35, inclusive, including the superior text to subheading 9903.23.00 and the superior to subheading 9903.23.17.

Section G. Effective October 31, 1996, general note 15(e) to the HTS is modified by deleting ''9903.52.20'' and inserting ''9903.52.26'' in lieu thereof.

Section H. Effective May 31, 1997, the Rates of Duty 1-Special subcolumn for subheading 2930.90.49 is modified by inserting the symbol ''A+,'', in alphabetical order, in the parentheses following the ''Free'' rate of duty in such subcolumn.

Section I. Effective July 1, 1997, the Rates of Duty 1-Special subcolumn for subheading 8504.90.75 is modified by deleting the symbol ''C,'' in the parentheses following the ''Free'' rate of duty in such subcolumn.

Section J. Effective January 1, 1998, subchapter VI to chapter 99 is modified by:

(1) Deleting the following subheadings:

9906.29.03
9906.29.21
9906.29.22
9906.29.23
9906.29.33
9906.64.01
9906.87.03
9906.87.04

(2) Deleting the superior text to subheading 9906.87.01 which reads ''Provided for in subheading 8704.10.50, 8704.22.50, 8704.23.00, 8704.32.00 or 8704.90.00:'' and inserting ''Provided for in subheading 8704.22.50, 8704.23.00, 8704.32.00 or 8704.90.00:'' in lieu thereof.

(3) Deleting the superior text to subheading 9906.87.03 which reads ''Provided for in subheading 8704.21.00 or 8704.31.00:''.

Section K. Effective August 1, 1998, subchapter VI to chapter 99 is modified by deleting U.S. notes 26 and 27.

Section L. Effective December 3, 1998, the Rates of Duty 1-Special subcolumn for subheadings 9603.10.50 and 9603.10.60 is modified by inserting, in alphabetical order, the symbols ''A+'', ''E'' and ''J'' in the parentheses following the ''Free'' rate of duty in such subcolumn.

Section M. Effective January 1, 1999:

(1) General note 4(d) to the HTS is modified, by deleting the following provisions and the countries set out opposite such provisions:

0303.77.00	Argentina
0304.20.50	Argentina
1604.16.10	Argentina
1605.10.20	Thailand
2608.00.00	Peru
2811.19.30	India
2825.90.75	India
2829.90.05	India
2829.90.25	India
2901.10.30	India
2901.29.50	India; South Africa
2902.50.00	India
2906.13.10	India
3302.10.10	Argentina; India
3302.10.20	Argentina; India
3302.90.10	Argentina; India

3302.90.20 India
3303.00.20 India
3303.00.30 Argentina; India
3304.10.00 India
3304.20.00 Argentina; India
3304.30.00 India
3304.91.00 India
3304.99.50 Argentina; India
3305.10.00 Argentina; India
3305.20.00 India
3305.30.00 India
3305.90.00 Argentina; India
3306.10.00 India
3306.20.00 India
3306.90.00 India
3401.11.10 Argentina; India
3401.11.50 India
3401.19.00 India
3401.20.00 India
3405.10.00 India
3405.20.00 India
3405.30.00 India
3405.40.00 India
3405.90.00 India
3406.00.00 India
3507.90.70 India
3822.00.50 Argentina; India
4015.11.00 Thailand
4016.99.30 Thailand
4016.99.35 Thailand
4107.29.30 Argentina
4107.29.60 Argentina
4303.90.00 Argentina
4409.10.40 Chile
4410.11.00 Argentina
4410.19.00 Argentina
4411.11.00 Argentina; Brazil
4411.19.20 Brazil
4411.21.00 Brazil
4411.29.60 Brazil
4412.13.05 Indonesia
4412.22.50 Indonesia
4421.90.50 Brazil
6406.10.65 Brazil; Dominican Republic
6406.99.60 Argentina
7206.90.00 Trinidad and Tobago
7401.10.00 India
7402.00.00 Chile
7419.99.50 Argentina
8413.91.90 Argentina
8414.30.80 Brazil
8419.90.20 Brazil
8422.30.90 Argentina
8429.11.00 Brazil
8429.20.00 Brazil
8429.30.00 Brazil
8431.49.10 Argentina
8431.49.90 Brazil
8471.49.29 Thailand
8471.60.35 Indonesia
8471.60.45 Thailand
8479.20.00 Argentina
8521.10.60 Thailand
8524.31.00 Argentina
8524.32.00 Argentina
8524.60.00 Argentina
8524.91.00 Argentina
8528.12.04 Indonesia
8802.30.00 Brazil
9006.62.00 Thailand
9018.11.60 Argentina
9018.90.10 Argentina
9018.90.80 Dominican Republic; Pakistan
9025.11.20 India
9401.30.40 Croatia; Slovenia
9401.61.40 Croatia; Slovenia

Section M. Effective January 1, 1999 (con.):

(1) General note 4(d) to the HTS is modified, by deleting the following provisions and the countries set out opposite such provisions (con.):

9401.69.40 Indonesia
9401.69.60 Croatia; Slovenia
9401.90.40 Croatia; Slovenia
9403.20.00 Argentina
9403.50.90 Argentina
9403.60.80 Argentina; Indonesia
9506.61.00 Philippines

(2) Additional U.S. note 3 to chapter 2 is modified by:

(a) Deleting the ''*'' symbol following the quantity for Argentina and the quantity for Uruguay.

(b) Deleting the last paragraph in this note beginning with an ''*'' symbol.

(3) Additional U.S. note 1 to chapter 84 is modified by:

(a) Deleting ''subheadings 8479.89.10, 8479.89.65, 8479.97, 8479.90.40 and 8479.90.95,'' and inserting ''subheadings 8479.89.65 and 8479.89.97,'' in lieu thereof.

(b) Deleting ''the following articles and parts:'' and inserting ''the following articles:'' in lieu thereof.

(c) Deleting ''thrust reversers; air humidifiers and dehumidifies.'' and inserting ''thrust reversers.'' in lieu thereof.

(4) Subchapter VI to chapter 99 is modified by:

(a) Deleting the following subheadings:

9906.61.01
9906.61.05
9906.61.09
9906.61.19
9906.61.21
9906.61.22
9906.61.23
9906.61.24
9906.61.25
9906.61.26
9906.61.27
9906.62.02
9906.62.03
9906.62.05
9906.62.07
9906.62.08
9906.62.10
9906.62.12
9906.62.13
9906.62.14
9906.62.15
9906.62.16
9906.62.17
9906.62.18

(b) Deleting the superior texts to subheading 9906.61.22 which read ''Other garments, knitted or crocheted:'' and ''Of cotton (provided for in subheading 6114.20.00):''.

(c) Deleting the superior texts to subheading 9906.61.24 which read ''Of man-made fibers:'' and ''Garments other than tops, body suits or body shirts (provided for in subheading 6114.30.3):''.

(d) Deleting the superior texts to subheading 9906.62.07 which read ''Women's or girls' singlets and other undershirts, briefs, panties, negligees, bathrobes, dressing gowns and similar articles:'' and ''Of man-made fibers (provided for in subheading 6208.92):''.

(e) Deleting the superior texts to subheading 9906.62.12 which read ''Women's or girls' track suits and other garments, of cotton (provided for in subheading 6211.42.00):'' and ''Coveralls, jumpsuits and similar apparel:''.

(f) Deleting the superior text to subheading 9906.62.14 which reads ''Other:''.

Section M. Effective January 1, 1999 (con.):

(5) Subchapter VII to chapter 99 is modified by:

(a) Deleting U.S. note 2;

(b) Deleting ''or 3811.29'' from the article description for heading 9907.38.01; and

(c) Deleting the following headings:

9907.40.01
9907.56.01
9907.66.01
9907.71.01
9907.73.01
9907.84.01
9907.84.02
9907.84.03
9907.84.04
9907.84.05
9907.84.06
9907.84.07
9907.84.08
9907.84.09
9907.84.10
9907.84.11
9907.84.12
9907.84.13
9907.84.14
9907.84.01
9907.85.02
9907.87.01
9907.87.02
9907.90.01
9907.95.01

Section N. Effective upon publication of this notice, the HTS is modified as provided below, with bracketed matter included to assist in understanding. The following supersedes matter now in the HTS. Subheading 8528.12.96 is deleted from the HTS and the following new provisions are inserted in numerical sequence in lieu thereof:

[Reception...:].
[Reception...:].
[Color:].
[Other:].
[Other:].
[Other:].

''8528.12.93	Printed circuit assemblies incorporating a tuner, of a kind used with data processing machines of heading 8471	Free		35%
8528.12.97	Other	5%	Free (A+, B, CA, E, IL, J, MX)	35%''

[FR Doc. 99–15453 Filed 6–17–99; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–162 and WTO/DS–136]

WTO Dispute Settlement Proceeding Regarding the Antidumping Act of 1916

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request by the Government of Japan for the establishment of dispute settlement panels under the Marrakesh Agreement Establishing the World Trade Organization (''WTO'') to examine the Antidumping Act of 1916 (''the 1916 Act''). On February 1, 1999, a separate WTO dispute settlement panel was established at the request of the European Communities (''EC'') to examine the same matter. Japan and the EC both allege that this statute is inconsistent with obligations of the United States under the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') and the Agreement on Implementation of Article VI of GATT 1994 (''the Antidumping Agreement''). The USTR invites written comments from the public concerning the issues raised in these disputes.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 15, 1999, to be assured of timely consideration by the USTR.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: DS162 and DS 136 Disputes, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rhona Schnare, Assistant General Counsel, 202–395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on February 1, 1999, a WTO dispute settlement panel was established at the request of the European Communities to examine the Antidumping Act of 1916 and that, on June 3, 1999, the Government of Japan submitted a separate request for the establishment of a dispute settlement panel to examine the same matter.

Major Issues Raised and Legal Basis of the Complaint

Both the EC and Japan allege that the 1916 Act is inconsistent with Article III:4 of GATT 1994 which requires that imported products shall be accorded treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, etc. The EC and Japan also assert that the 1916 Act is inconsistent with Article VI of GATT 1994 and various provisions of the Antidumping Agreement. Specifically, Japan alleges that the 1916 Act is inconsistent with Article VI:2 and 18.1 of the Antidumping Agreement, which Japan asserts permits the imposition of antidumping duties as the only possible remedy for dumping. Japan also alleges that the 1916 Act is inconsistent with Articles 1, 2, 3, 4, 5, 9 and 11 of the Antidumping Agreement and Article XI of GATT 1994.

The EC alleges that the 1916 Act is inconsistent with Article VI:2 of GATT 1994, which the EC asserts provides the sole remedy for dumping. The EC also asserts that the 1916 Act is inconsistent with Articles 1, 2, 3, 4, 5 of the Antidumping Agreement and Article VI:1 of GATT 1994.

Finally, both the EC and Japan assert that the United States has failed to comply with Article XVI:4 of the Marrakesh Agreement establishing the World Trade Organization (''WTO'') which requires that Members bring their laws into compliance with their obligations under the WTO agreements.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in these disputes. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on these dispute settlement proceedings, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–162 or WTO/DS–136 United States—Antidumping Act of 1916) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon

and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–15454 Filed 6–17–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Proposed Commuter Rail Project Between Tacoma and Lakewood, Washington

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). Sound Transit will ensure that the EIS also satisfies the requirements of the Washington State Environmental Policy Act (SEPA). The FTA will be the NEPA lead agency. Sound Transit will be the SEPA lead agency.

The EIS will evaluate the Tacoma-Lakewood Commuter Rail Project, including station locations, a light maintenance and layover facility location, park-and-ride facility alternatives, and track design variations along an approximately 11-mile long corridor between Tacoma and just south of Lakewood, Washington. The project will generally be located in existing Burlington Northern Santa FE Railway (BNSF) and Tacoma Eastern (TE) rights-of-way. A short new rail connection will be needed to connect the BNSF and TE lines proposed to the used for the project. The EIS will evaluate route alternatives for this new at-grade track, which will be approximately 0.8 miles long. The EIS will evaluate the no-build alternative and any new reasonable alternatives within the corridor generated through the scoping process. Corridor alternatives were evaluated in a SEPA plan-level EIS (1993) and in a federally required Major Investment Study (1997).

The proposed Commuter Rail Project is intended to provide peak-hour commuter rail service between Tacoma and Lakewood, key activity centers along the corridor. The commuter rail line will extend the proposed Tacoma-Seattle commuter rail service. It will connect to the Tacoma Light Rail Transit line. It will also connect ultimately, with the proposed Central Light Rail Transit line between SeaTac and Seattle, Washington.

The project was originally the subject of a proposed environmental assessment (EA) under NEPA. FTA and Sound Transit determined that preparation of a NEPA EIS is appropriate after reviewing information developed through the public involvement and preliminary environmental review processes. The Commuter Rail facility at the Tacoma Dome Station was evaluated in a separate EA for which a Finding of No Significant Impact was issued on April 6, 1999. The EIS also will evaluate alternatives and impacts for a related Sound Transit project to provide additional parking capacity in the vicinity of, or at the existing, SR512 Park-and-Ride Lot in Lakewood.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, regional and local agencies. A public scoping meeting will be held. See **DATES** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Sound Transit by August 10, 1999. See **ADDRESSES** below. Oral comments should be made at the public scoping meeting scheduled below. *Scoping Meeting Dates:* Public scoping meetings will be held on the following days and locations:

Monday, July 26, 1999 South Park Community Center, 4851 South Tacoma Way, Tacoma, 5:00 p.m.–8:00 p.m.

Tuesday, July 27, 1999 Pierce Transit Lakewood Training Center, Colonial Center, 6132 Motor Avenue, Lakewood, 5:00 p.m.–8:00 p.m.

The locations for the scoping meetings are accessible to people with disabilities. People with special needs (such as individuals needing a language translator) should contact Sound Transit at the address below or by calling (206) 398–5000. A TDD number is also available: (206) 398–5086.

The scoping meetings will be held in an ''open-house'' format. Project representatives will be available to discuss the project throughout the entire meeting. Informational displays and written materials will also be available throughout the entire meeting. In addition to written comments, which may be made at the meeting or as described below, individual oral comments will be recorded at the meeting.

ADDRESSES: *Written comments on the project scope should be sent to:* Desmond Brown, SEPA Responsible Official, Sound Transit, 1100 Second Avenue, Suite 500, Seattle, WA 98101–3423; fax number (206) 398–5222.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Morse, Federal Transit Administration, Region X, 915 Second Avenue, Room 3142, Seattle, WA 98174; phone number: (206) 220–7964.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Sound Transit invite interested individuals, organizations, and federal, state, regional, and local agencies and tribal governments to participate in defining the alternatives relating to the track alignment and corridor improvements, commuter rail parking, expanded park-and-ride lot capacity for Sound Transit Express, Pierce Transit and Intercity Transit bus services, and light maintenance and layover facility and in identifying any significant, social, economic, or environmental issues related to the alternatives. Scoping comments may be made orally at the public scoping meeting or in writing. See **DATES** above for location and time, and see the **ADDRESSES** section above for written comments. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are more cost-effective or have fewer environmental impacts while achieving similar transportation objectives.

Scoping materials will be available at the scoping meetings or in advance of the meetings by contacting Sound Transit at (206) 398–5000. If you wish to be placed on the mailing list to receive further information as the project proceeds, please contact the following at Sound Transit: John L. Hubbard, AICP at (253) 581–8137.

II. Description of Study Area and Project Need

The Tacoma-Lakewood Commuter Rail Project consists of an approximately 11 mile long rail corridor between Tacoma and just south of Lakewood, Washington. The project will include a group of physical and operational improvements to existing tracks and rights-of-way, along with station facilities and systems in order to provide commuter rail service. Service is expected to operate during peak commute periods, with a total of 9 train trips in each direction. Trains will consist of 4 to 10 passenger cars pulled by a diesel locomotive.

The commuter rail facility at the Tacoma Dome station is proposed to serve the project. Proposed improvements to that facility are the subject of separate environmental review. Two additional commuter rail stations will be developed as part of this project to serve the South Tacoma and Lakewood communities and the surrounding areas. Stations are proposed at the following locations: South Tacoma and Lakewood.

Station improvements will generally consist of a platform(s) that conforms to Americans with Disabilities Act (ADA) train boarding and deboarding requirements. The platforms will have overhead canopies, wind screens, and pedestrian railings. Bus access will be provided at all stations. In addition, parking facilities will be provided. The proposed South Tacoma station will include park-and-ride facilities for 200 to 250 vehicles. The proposed Lakewood station will include park-and-ride facilities for up to 2,000 vehicles, which could include both commuter rail parking and expanded park-and-ride capacity for Sound Transit Express, Pierce Transit and Intercity Transit (Olympia Express) bus services.

Track and other right-of-way improvements will be made to allow commuter rail to operate along the corridor, all of which is used for freight operations. In addition, a new 0.8 mile rail connection will be constructed in order to connect the BNSF and TE rights-of-way for commuter rail use. A new siding will also be constructed to connect the mainline to the light maintenance and layover facility. The EIS will analyze alternative locations and designs for such facilities to minimize or a avoid adverse environmental impacts.

The proposed commuter rail project will provide an alternative to the automobile in the congested Interstate 5 (I–5) corridor. Project need is described in the Documentation of Major Investment Study, Sound Transit, March 12, 1997. This document is available from Sound Transit by calling (206) 398–5000.

III. Alternatives

The proposed Tacoma-Lakewood Commuter Rail Project would largely be implemented in existing BNSF and TE railroad rights-of-way, except for new trackage needed to connect the existing rail lines and the proposed station and parking facilities. Alternatives relating to alignment location and mode were previously considered and documented in the state environmental review (1993) and Major Investment Study (1997). The prior planning history and plan-level screening of alternatives will be summarized. This EIS will be project-specific and will focus on alternative station and associated parking facility locations, and alternative locations and/or designs for improved and new track facilities that minimize or avoid adverse environmental impacts.

Station locations and alternatives proposed for study in the EIS are located in South Tacoma and Lakewood. The South Tacoma and Lakewood station locations will each include the development of associated park-and-ride facilities. Space for approximately 200 to 250 vehicles will be developed in conjunction with the South Tacoma station. Space for up to 2,000 vehicles may be developed as part of the Lakewood station.

In addition to stations, other track improvements will be made to allow operation of commuter rail in a freight corridor. These railroad track improvements may also be used in the future by state-funded high speed passenger rail service, which is separate from Sound Transit commuter rail service.

The No-Build alternative, which involves no change to transportation services or facilities in the corridor beyond those currently programmed, will also be evaluated in the EIS.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and Sound Transit plan to evaluate in the EIS all significant, social, economic and environmental impacts of the alternatives. The EIS is being prepared largely to evaluate the potential environmental impacts on natural resources associated with track improvements and the construction of new stations and associated park-and-ride facilities, and the new rail right-of-way that will be used to connect the BNSF and TE lines. Other environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, traffic circulation, visual impacts, contaminated soils, health and safety impacts, impacts on historic, cultural and archaeological resources, impacts on utilities, and noise and vibration impacts. The impacts on natural areas, rare and endangered species, and earth, air and water quality, will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operations. Reasonable measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The EIS process will assess the social, economic, and environmental impacts of alternative station locations and associated park-and-ride facilities, a light maintenance and layover facility, the development of a new railroad right-of-way that will connect the existing BNSF and TE lines, and track designs to minimize and mitigate adverse impacts. A draft EIS will be published and made available for public and agency review and comment, and public hearing(s) will be held. On the basis of the draft EIS and the comments received, Sound Transit will complete the final EIS.

Issued on: June 15, 1999.

Linda M. Gehrke,

Deputy Regional Administrator.

[FR Doc. 99–15508 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Vesta Fire Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36112, July 1, 1998.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone

(202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 8, 1999.

Michael C. Salapka,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–15449 Filed 6–17–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990-EZ, Short Form Return of Organization Exempt From Income Tax.

DATES: Written comments should be received on or before August 17, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax-exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax-exempt organizations are operating within the limitations of their tax exemption.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 124,184.

Estimated Time Per Respondent: 57 hours, 4 minutes.

Estimated Total Annual Burden Hours: 7,087,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–15572 Filed 6–17–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120-F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before August 17, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120-F.

Abstract: Form 1120-F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120-F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Current Actions: On page 1 of Form 1120-F, a checkbox was added to Item D. The change was made to aid in determining when a foreign corporation should file Form 1120-F. The time for filing the return depends on whether the foreign corporation has an office or place of business in the U.S. (IRC Section 6072).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 21,618.

Estimated Time Per Respondent: 224 hours, 37 minutes.

Estimated Total Annual Burden Hours: 4,855,619.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 9, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–15573 Filed 6–17–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 117
Friday, June 18, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–011–0071; FRL–6229–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; North Coast Unified Air Quality Management District and Northern Sonoma County Air Pollution Control District

Correction

In rule document 99–2793 beginning on page 6223, in the issue of Tuesday, February 9, 1999, make the following correction:

§ 52.220 [Corrected]

On page 6226, in the first column, in § 52.220(c)(254)(i)(B)(*1*), ''130'' should be added after ''Rule''.

[FR Doc. C9–2793 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–01; AZA 25991]

Arizona: Notice of Realty Action; Bureau Motion Recreation and Public Purposes Classification; La Paz County, AZ

Correction

In notice document 99–12445, beginning on page 27006 in the issue of Tuesday, May 18, 1999, make the following corrections:

1. On page 27006, in the second column, under **Gila and Salt River Meridian, Arizona**, in ''Sec. 15'', in the fourth line, ''N½SW¼SW,¼,'' should read ''N½SW¼SW¼,''.

2. On the same page, in the same column, under **Gila and Salt River Meridian, Arizona**, in ''Sec. 20'', in the second line, ''N½SE¼SE,¼, SW¼SE¼SE,¼,'' should read ''N½SE¼SE¼, SW¼SE¼SE¼,''.

3. On the same page, in the third column, under **Gila and Salt River Meridian, Arizona**, in ''Sec. 23'', in the third line, ''SE¼SW¼SW¼SE,¼,'' should read ''SE¼SW¼SW¼SE¼,''.

4. On the same page, in the same column, under **Gila and Salt River Meridian, Arizona**, in ''Sec. 26'', in the tenth line, ''S¼NW¼NW¼NE¼,'' should read ''S½NW¼NW¼NE¼,''.

[FR Doc. C9–12445 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-41453A, International Series Release No. 1198A, File No. S7-4-99]

RIN 3235-AH68

Exemption of the Securities of the Kingdom of Sweden Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities; Correction

Correction

In rule document 99–14866, appearing on page 31493, in the issue of Friday, June 11, 1999, make the following correction:

PART 240 [CORRECTED]

On page 31493, in the second column, in amendment 2., in the sixth line, ''(a)(1)(xix)'' should read ''(a)(1)(xxi)''.

[FR Doc. C9–14866 Filed 6-17-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ACE-26]

Amendment to Class E Airspace; Rolla/Vichy, MO

Correction

In rule document 99–14605, beginning on page 31118, in the issue of Thursday, June 10, 1999, make the following correction:

§ 71.1 [Corrected]

On page 31119, in the first column, under the heading **ACE MO E5 Rolla/Vichy, MO [Revised]**, in the 10th line, ''the 6.6-mile'' should read ''the 6.6-mile radius''.

[FR Doc. C9–14605 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (99-02-U-00-CBE) to Use the Revenue From a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Wiley Ford, West Virginia

Correction

In notice document 99–12142 appearing on page 25952 in the issue of Thursday, May 13, 1999, make the following correction(s):

On page 25952, in the third column, in the 14th line, ''1994'' should read ''1999''.

[FR Doc. C9–12142 Filed 6–17–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
June 18, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 14 and 17

Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 14 and 17

[Docket No. FAA–1998–4379; Amendment No. 14–0317–01]

RIN 2120–AG19

Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations

ACTION: Final rule.

SUMMARY: This document provides regulations for the conduct of protests and contract disputes under the Federal Aviation Administration Acquisition Management System (AMS). Also, the Federal Aviation Administration (FAA) regulations governing the application for, and award of, Equal Access to Justice Act (EAJA) fees are amended to include procedures applicable to the resolution of protests and contract disputes under the AMS, and to conform to the current EAJA statute.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney, and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 8332, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–6400.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 703–321–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on and advice about compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If your organization is a small entity and you have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (888) 551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following internet address: 9–AWA–SBREF@faa.gov.

Background

Statement of the Problem

In accordance with Congressional mandate, the FAA procures, acquires, and develops services as well as material in support of its mission of safety in civil aviation. Prior to April 1, 1996, several major FAA acquisitions under the Government-wide acquisition system were substantially behind schedule and experienced large cost over runs. Both the Administration and the Congress became concerned that the safety mission of the FAA might suffer from the inefficiency of the then existing acquisition system, including its dispute resolution system.

In the Fiscal Year 1996 Department of Transportation Appropriations Act, Public Law 104–50, 109 Stat. 436 (November 15, 1995), the Congress directed the FAA ''to develop and implement, not late than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum, provided for more timely and cost effective acquisitions of equipment and materials.'' In that Act, the Congress gave the FAA authority to create a new acquisition system, ''notwithstanding provisions of Federal Acquisition law.'' In addition, Congress specifically instructed the FAA not to use certain provisions of federal acquisition law. In response, the FAA developed the AMS for the management of FAA procurement. The AMS is a system of policy guidance that maximizes the use of agency discretion in the interest of best business practice.

As part of the AMS, the FAA created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator's review of procurement protests and contract disputes. Notice of establishment of the ODRA was published on May 14, 1996, in the **Federal Register** (61 FR 24348). In that notice, the FAA stated it would promulgate rules of procedure governing the dispute resolution process. Currently, procedures and other provisions related to dispute resolution are negotiated and included or referenced in all FAA Screening Information Requests (SIRs) and contracts. The FAA has determined that it will be more effective and efficient to establish by rulemaking the dispute resolution procedures that apply to protests concerning SIRs and contract awards, and to disputes arising from established contracts. The rule is designed to contain the minimum procedures necessary for efficient and orderly resolution of protests and contract disputes arising under the AMS.

The FAA Dispute Resolution Process, and the procedures implementing that process, are based upon the powers Congress delegated to the Administrator of the FAA under Title 49, United States Code, Subtitle VII (49 U.S.C. 40101, *et seq.*). These delegated powers include the administrator's power to procure goods and services, and to investigate and hold hearings regarding any matter placed under the Administrator's authority. In the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264 (October 9, 1996), the Congress amended 49 U.S.C. 106(f) to make the Administrator of the FAA the final authority over the FAA acquisition process and FAA acquisitions.

These FAA dispute resolution procedures encourage the parties to protests and contract disputes to use Alternative Dispute Resolution (ADR) as the primary means to resolve protests and contracts disputes, in consonance with Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under these procedures, the ODRA actively encourages parties to consider ADR techniques such as case evaluation,

mediation, arbitration, or other types of ADR.

The procedures for protests and contract disputes anticipate that, for a variety of reasons, certain disputes are not amenable to resolution through ADR. In other cases, ADR may not result in full resolution of a dispute. Thus, there is provision for a Default Adjudicative Process. The EAJA, 5 U.S.C. 504, can apply in instances where an eligible protester or contractor prevails over the FAA in the Default Adjudicative Process. Title 14 of the Code of Federal Regulations (CFR), Part 14 is amended to provide guidance for the conduct of EAJA applications under the dispute resolution regulations promulgated in 14 CFR part 17.

Discussion of Comments

Two comments were received on the proposed rule from the American Bar Association Section of Public Contract Law (ABA) and the Associated General Contractors of American (AGC). The ABA submitted both draft and final comments.

The comments of both the ABA and AGC generally supported the goals of the proposed rule and endorsed its emphasis on ADR techniques. The comments of the AGC raised only two points and, with respect to those two points, indicated general agreement with the comments filed by the ABA. The two points raised by the AGC pertain to sections of the proposed rule that had dealt with matters of contract administration—the obligation to continue work pending resolution of a contract claim, and the accrual of interest on a contract claim. The ABA, in addition to addressing those points, sets forth a variety of comments outlining concerns with the proposed rule. These pertain to, among other things: (1) Whether the ODRA has exclusive jurisdiction over protests and contract disputes under the AMS, and the continued applicability of both the Tucker Act and the Contract Disputes Act (CDA); (2) procurement suspensions in the context of a bid protest; (3) discovery; (4) the opportunity for a hearing; (5) time limitations for the filing of contract disputes; and (6) basic definitions. The ABA comments are discussed in detail below. Some of the ABA comments seek within the rule further elaboration and guidance regarding the ODRA's practices. The FAA agrees that further guidance as to ODRA practices would foster predictability in the FAA's protest and contract dispute procedures. Additional guidance to the public on ODRA procedures will be published on the Internet or otherwise, and may be revised by the ODRA as it deems necessary, to conform to and more accurately describe current dispute resolution practices employed by the ODRA. The ODRA publishes a guide on its Website, which is accessible through the FAA Homepage (http://www.faa.gov).

Applicability of the Tucker Act and the Contract Disputes Act

The ABA urges that the ODRA dispute resolution process is not exempt from either the Tucker Act (28 U.S.C. 1491) or the Contract Disputes Act (41 U.S.C. 601–613), and suggests that the rule limit its applicability to protests and disputes brought before the ODRA, without implying any jurisdictional exclusivity.

FAA Response: The FAA disagrees. Section 348 of the FY 1996 Department of Transportation Appropriation Act, Public Law 104–50, 109 Stat. 436 (November 15, 1995) (the ''1996 Act'') did not merely list specific statutes that were not to apply to the FAA AMS. Rather, in calling for the establishment of the new AMS, Congress, in the 1996 Act, called more generally for the Administrator of the FAA to ''develop and implement'' the new AMS ''notwithstanding provisions of Federal acquisition law.'' Congress established the FAA Administrator as the final authority for all acquisition activity necessary to carry out the Agency's functions (49 U.S.C. 106(f)(2), 49 U.S.C. 46101, *et.seq.,* and Pub. L. 104–50). For dispute resolution purposes, the Administrator's authority was expressly delegated to the ODRA on July 29, 1998, with the exception of final decision-making authority, other than for dismissals arising from settlements or voluntary withdrawals; or final authority to stay awards or contract performance (63 FR 49151).

The FAA views the CDA as falling into the general category of ''Federal acquisition law''. Indeed, like the Competition in Contracting Act (CICA), the CDA is widely regarded as one of the basic elements of the current system of ''Federal acquisition law.'' The 1996 Act specifically requires that the Federal Acquisition Streamlining Act (FASA) not apply. Several sections of the CDA were amended under the FASA in 1994. For example, Section 605 of the CDA was amended by the FASA to include for the first time a six (6) year statute of limitation on the submission of contract claims under the CDA. The FASA also raised the CDA claim certification threshold from $50,000 to $100,000. In addition, it added to Section 605 of the CDA a provision regarding termination of ADR efforts to resolve CDA claims. Given the express inapplicability of the FASA to FAA procurements, the ABA position would require the FAA either to conform the AMS dispute resolution process the pre-1994 (pre-FASA) version of the CDA or to disregard the express direction of Congress regarding non-applicability of FASA.

Furthermore, the Congress clearly intended the AMS to be free of more than just those statutes enumerated in section 348. Section 348(a)(8) contains a ''catch all'' for any other unnamed acquisition related statutes, exempting the AMS from ''(t)he Federal Acquisition Regulation and any laws not listed (above in) this section providing authority to promulgate regulations in the Federal Acquisition Regulation.'' The CDA authorizes implementation through the promulgation of regulations in the Federal Acquisition Regulation (FAR), in that it authorizes guidelines to be promulgated by the Office of Federal Procurement Policy (OFPP). The OFPP promulgates such guidelines as part of the FAR under the authority of the OFPP Act. The OFPP Act also was expressly made inapplicable to the AMS by the 1996 Act.

As previously discussed, in 1996 Congress made the FAA Administrator the final authority for all matters related to ''the acquisition and maintenance of property and equipment of the Administration.'' 49 U.S.C. 106. Further, under 49 U.S.C. 46110, any person with a substantial interest in an order issued by the Administrator may appeal exclusively to the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals for the circuit in which the person resides or has its principal place of business. The FAA believes, based on all of the above, that the only reasonable reading of the 1996 Act is that it rendered the CDA inapplicable to the FAA's new AMS.

The same statutory provisions, 49 U.S.C. 106 and 46110, resolve the question of Tucker Act jurisdiction. For purposes of judicial review of final acquisition-related decisions of the FAA Administrator, the specific, exclusive jurisdictional authority granted to the United States Court of Appeal in 49 U.S.C. 46110 controls and takes precedence over the non-exclusive, general authority over a variety of disputes afforded the United States Court of Federal Claims and Federal District Courts under the Tucker Act. *See* 28 U.S.C. 1491. In order to clarify when judicial review may be had, § 17.43 has been modified to expressly recognize the availability of such review, only after exhaustion of

administrative remedies through the FAA dispute resolution process.

Definition of ''Compensated Neutral''

The ABA recommends that § 17.3(f), the definition of ''Compensated Neutral,'' provide for the possibility of alternative sharing formulas regarding the costs associated with engaging a Compensated Neutral. The proposed rule had called for equal sharing of such costs.

FAA Response: The FAA agrees. Additional language has been incorporated in § 17.3(f) of the final rule, to allow for the possibility that the costs associated with a Compensated Neutral be shared between the parties.

Definition of ''Discovery''

The ABA recommends striking the definition or removing the permissive language ''may, when allowed'' in § 17.3(i). It notes further that ''due process required sufficient discovery in each case to permit a party to prove its case and challenge the other party's evidence.''

FAA Response: The FAA agrees in principle that discovery should be allowed in order to provide an adequate record for the finder of fact. However, in order to maintain the efficient resolution timeframes established by the rules, the management of discovery must be left to the discretion of the ODRA. To indicate that discovery is voluntary in the first instance and to clarify that an appropriate level of discovery is an integral component of the ODRA dispute resolution process, § 17.3(i) has been revised to read ''may, either voluntarily or to the extent directed by the ODRA.''

Definition of ''Office of Dispute Resolution for Acquisition''

The ABA recommends that the definition in § 17.3(n) either be struck or, in the alternative, defined ''solely in terms of (the ODRA's) authority with respect to bid protests or disputes filed with it.'' The comment relates back to the ABA's stated position regarding the continued applicability of both the Tucker Act and the CDA.

FAA Response: The FAA disagrees. As indicated above, the FAA believes that the ODRA has exclusive jurisdiction over all AMS protests and contract disputes.

Filing and Computation of Time

The ABA notes that proposed § 17.7(b) would be ''unworkable given the short time frames for resolving protest,'' by reason of its permitting submissions after initial filings to be made by regular mail.

FAA Response: The FAA agrees that the use of regular mail after initial filings would not be consistent with a prompt, efficient bid protest process. Therefore, the final rule provides for delivery of such subsequent filings only by overnight delivery, hand delivery, or by facsimile.

Protective Orders

The ABA suggests that the rule provide for the ODRA to develop and publish a standard protective order along the lines of the model order contained in the GAO Guide to GAO Protective Orders.

FAA Response: The FAA disagrees that such a rule is necessary. The ODRA has already developed and published such a standard order as part of its Website. That order was based, in great measure, on the wording of the GAO's model order.

Simultaneous Pursuit of ADR

The ABA observes that proposed §§ 17.13, 17.27 and 17.31(c) contemplate a sequential process, whereby adjudication is done only after completion of ADR efforts. The ABA also notes that the current practice of the ODRA frequently includes the use of ADR techniques concurrently with an on-going adjudication, and that this practice has produced favorable results in many instances. Accordingly, the ABA suggests that the proposed rule be modified to conform to the current practice.

FAA Response: The FAA agrees. Section 17.31(c) has been modified to add language which allows for informal ADR techniques (neutral evaluation and mediation efforts) to be undertaken simultaneously with adjudication under the Default Adjudicative Process. Section 17.13(d) has been revised to conform to this change. Likewise, a new § 17.27(d) has been added to clarify that the submission of statements indicating that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques during the course of adjudication.

Binding Arbitration

The ABA takes issue with the language of § 17.33(f), which permits the FAA Administrator a limited amount of time within which to ''opt-out'' of an arbitrator's decision in binding arbitration, arguing that such a provision conflicts with the policies enunciated in the Administrative Dispute Resolution Act of 1996. Accordingly, the ABA recommends deletion of such language.

FAA Response: The FAA disagrees. Under 5 U.S.C. 575(c), any binding arbitration undertaken by a Federal agency must be in accordance with guidance issued by the head of the agency in consultation with the Attorney General, i.e, the Department of Justice (DoJ). As of this time, DoJ has advised that federal agencies, including the FAA, may not engage in any form of binding arbitration without the kind of ''opt-out'' provision described in proposed § 17.33(f). The language with which the ABA takes issue does not mandate this form of binding arbitration, but merely makes it a permissible form. Since any form of ADR will require the concurrence of both parties, the FAA does not see any necessity for eliminating this alternative and has not done so in the final rule. The language of the first sentence of § 17.33(f) would allow for binding arbitration without such an ''opt out'' provision, pursuant to 5 U.S.C. 575 (a), (b), and (c), so long as the arbitration process is consistent with current DoJ guidance and ''applicable law.'' Thus, if DoJ modifies its guidance to the agencies so as to allow such binding arbitration, the FAA would not need to revise § 17.33 in order to pursue such a dispute resolution option.

Proposed Appendix A to Part 17

The ABA states that it endorses the proposed Appendix A to Part 17 and suggests that it be enhanced with additional information concerning ADR experience at the ODRA.

FAA Response: The FAA disagrees that additional information concerning ODRA's ADR experiences should be contained in the rule. The FAA believes information of this type should be published in the ODRA Website Guide, rather than as part of a procedural regulation.

Distribution of Decisions

The ABA proposes that the rule contain language requiring the distribution of final decisions and suggests that language in 4 CFR 21.12, pertaining to the distribution of GAO decisions, be used for that purpose.

FAA Response: The FAA concurs with the ABA's comment, and has incorporated language concerning the public dissemination of ODRA findings and recommendations relating to both protests and contract disputes, as part of §§ 17.37(l) and 17.39(l), respectively. Currently, ODRA findings and recommendations and final orders of the Administrator regarding protests and contract disputes are promptly published on the ODRA Website.

Retroactivity

The ABA points out that the proposed rules are silent on the issue of retroactive applicability and recommends that the final rule identify the contracts to which the new regulations will apply.

FAA Response: The FAA agrees. Section 17.1, Applicability, has been modified to indicate that the rule will apply to all protests and contract disputes on or after the effective date of these regulations, with the exception of contract disputes relating to pre-AMS contracts.

Definition of ''Interested Party''

The ABA recommends that § 17.3(k) incorporate the same definition of ''interested party'' as is contained in the GAO bid protest regulations.

FAA Response: The FAA agrees. The definition of ''interested party'' in § 17.3(k) has been modified to incorporate language based upon the definition of ''protester'' in Appendix C to the AMS. That language was patterned after the GAO's definition of ''interested party.''

Intervention

The ABA suggests that the definition of ''intervenor'' in § 17.3(l) should state that the awardee of a contract be given ''intervenor'' status as a matter of right, that the definition include a deadline for requests for intervention, and that a five-day period be used.

FAA Response: The FAA agrees that the awardee of a contract should be given ''intervenor'' status as a matter of right but disagrees that a five-day period be used as a deadline for requesting intervenor status. Section 17.3(l) has been modified to mandate that contract awardees be allowed intervention as a matter of right. The definition has also been clarified to state that for post-award protests, other than the awardees, no other interested parties will be allowed to participate as intervenors. This conforms to an ODRA interlocutory decision in the Protests of *Camber Corp. and Information Systems of Networks Corp.*, 98–ODRA–00079 and 98–ODRA–00080 (Consolidated) and is consistent with GAO procedures regarding intervention in protests.

Proposed § 17.15(f) had already established a deadline of two business days for requests of intervenor status. The two day period has not been increased to five days, in light of the ODRA's policy of providing expedited adjudication and dispute resolution.

Parties

The ABA notes that the definition of ''Parties'' under § 17.3(o) uses the word ''protester'' in the singular, implying that only one protester may be involved in a protest before the ODRA. The ABA suggests the use of the plural.

FAA Response: The FAA agrees with the ABA's comment and has modified the definition under § 17.3(o) accordingly.

Screening Information Request

The ABA finds the current definition of ''Screening Information Request'' in § 17.3(q) to be vague, and suggests alternative language along the lines found in the AMS definition of that term.

FAA Response: The FAA agrees and has incorporated AMS language into § 17.3(q) similar to that offered by the ABA.

Matters Not Subject to Protest

The ABA finds proposed § 17.11, which identifies matters that are not subject to protest, to be overly broad. The ABA contends that this section prevents parties from protesting such matters in any other alternative forum.

FAA Response: The FAA disagrees that this section is overly broad. The AMS does not contemplate such matters to be protestable in any forum.

Commencement of the Protest

The ABA questions the use of the word ''cannot'' in Proposed §§ 17.13(d) and 17.17(d) when those sections refer to the use of ADR, stating that it implies that the parties can only resort to the Default Adjudicative Process where ADR is not possible. The ABA suggests that the phrase ''will not'' be substituted for ''cannot'', so as to allow the parties more flexibility for the use of adjudication under the Default Adjudicative Process.

FAA Response: The FAA agrees. It was not the FAA's intent to limit the Default Adjudicative Process to cases where ADR is not possible. ADR, in all instances, must be voluntary, in order to be successful. By the same token, the ODRA's procedures are structured so as to assure that ADR techniques are given adequate consideration. The FAA has modified the language of the two sections as recommended by the ABA.

Suspension of Procurement

AMS § 3.9.3.2.1.6 contains a presumption that procurement activities will not be suspended during the pendency of a protest, unless there is a compelling reasons to do so. The AMS authorizes the ODRA to recommend to the Administrator that all or part of such activities be suspended when a protest is filed. The proposed rule at § 17.13(g) contains similar provisions. The ABA urges that the ''regulatory presumption'' against suspension be dropped, arguing that permitting performance to proceed during the pendency of a protest precludes an effective remedy.

In the alternative, the ABA suggests that protesters be allowed to respond to the agency's position regarding a requested suspension. It further recommends that the rule contain authority for the ODRA to ''tailor the suspension to the specific exigencies of the protest by providing for consideration of limited or partial suspensions.'' Finally, the ABA questions the effectiveness of the authority for suspension being lodged at the Administrator's level and suggests that such authority be provided at the ODRA, so as to assure expeditious handling of suspension requests.

FAA Response: The FAA agrees in part and disagrees in part. One of the major features of the Competition in Contracting Act (CICA) is its automatic procurement stay provision pertaining to bid protests filed with the General Accounting Office. Section 348 of Public Law 104–50 mandated the creation of the AMS to provide for the ''unique needs'' of the FAA. By enacting this law, Congress sought in part to remedy unacceptable delays that had been encountered with FAA procurement. In Public Law 104–50, the Congress expressly exempts the FAA and its new AMS from the provision of statutes governing procurements at other Federal agencies, including notably with CICA. Thus, it was the intent of Congress that the CICA's automatic procurement should not be made part of the process for resolution of bid protests under the AMS. The presumption that contract performance be permitted to proceed, absent compelling reasons, gives effect to the intent of Congress that the FAA implement a system under which acquisitions are accomplished expeditiously. For this reason, the FAA will not adopt the ABA's suggestion that the presumption be dropped.

However, the final rule does adopt other ABA suggestions regarding suspension. It permits a protester to provide a response to the agency position, prior to the ODRA deciding on whether or not it will recommend suspension to the Administrator. Also, the final rule makes clear that suspensions may be tailored such that they are limited or partial suspension. As to the suggestion that suspension authority be delegated by the Administrator to the ODRA, it should be noted that, by delegation of July 29, 1998, the Administrator delegated to the ODRA Director the authority to issue

temporary stays for up to ten (10) business days, pending any Administrator's decision on a more permanent stay. That delegation was published in the **Federal Register** on September 14, 1998 (**Federal Register** Vol. 63, No. 177, at pp. 49151–49152). A copy may be found on the ODRA Website. The FAA believes that this delegation is sufficient to provide expeditious treatment of suspension requests.

Product Team Response

The ABA raises several issues regarding the Product Team Response required by § 17.17(f) of the proposed rule. (It should be noted that the term ''Product Team'' has been substituted for the term ''Program Office'' throughout the final rule, so as to be more consistent with terminology used in the FAA's AMS, and has been defined so as to conform to the AMS). First, the ABA objects to the language which requires the Response to include all documents which the Product Team ''deem(s) relevant,'' urging that an ''objective'' standard for relevance should be applied. Second, the ABA suggests that, to assure that all relevant documents are provided, the Product Team be required to furnish, in advance of the Response submission, a list of documents to be included with the Response. Third, the ABA points out that the proposed rule fails to require the submission of a Product Team Response in the event the matter proceeds to ADR and the ADR is unsuccessful.

FAA Response: The FAA agrees that an objective standard of relevance is needed and that the rule needs to require the submission of a Product Team Response in the event ADR is unsuccessful. The language of § 17.17(f) has been modified to require simply the provision of ''all relevant documents''—thus invoking an ''objective'' standard of relevance. As to the matter of requiring submission of a Product Team Response in the event ADR is unsuccessful, the new § 17.17(h) satisfies this concern.

As to the ABA suggestion regarding the furnishing of a list of documents in advance of the Product Team Response, the FAA does not concur with this suggestion. Such a requirement would mean one more written submission in a process that is to be focused on expediting dispute resolution and eliminating unnecessary paperwork.

Dismissal or Summary Decision of Protests—Opportunity to Respond

The ABA suggests that a new section be inserted into the rule to permit parties against whom a dismissal or summary decision is to be entered the opportunity of submitting to the ODRA a response, before the ODRA acts to recommend dismissal or summary decision.

FAA Response: The FAA agrees. A new § 17.19(e) has been included, which contains the suggested language.

Default Adjudicative Process for Protests—Discovery

The ABA finds absent from the proposed language of § 17.37(f) guidance regarding the standard to be employed by the Dispute Resolution Officer (DRO) or Special Master when considering the necessity for and scope of discovery in conjunction with protests. The proposed rule is criticized for lack of ''predictability.'' The ABA suggests substitute language for § 17.37(f).

FAA Response: The FAA has adopted most, but no all of the suggested language for § 17.37(f). Although ''predictability'' is certainly a laudable goal, to achieve the major FAA goal of expeditious dispute resolution, significant flexibility in the process must also be maintained. What may be an appropriate level of discovery in one case may be wholly unwarranted in another. Accordingly, the language of the final rule, while providing additional guidance as to the types of discovery that may be allowed, continues to authorize the DRO or Special Master to exercise broad discretion in terms of managing discovery in each case.

Comments on Product Team Response

The ABA points out that the proposed rule omits any procedure for allowing comments by protesters and intervenors on the Product Team Response.

FAA Response: The FAA agrees. This omission was inadvertent and contrary to current ODRA practice. Section 17.37(c) of the final rule requires the submission of such comments within five (5) business days of the filing of the Product Team Response.

Hearings

The ABA notes that proposed § 17.37(g) speaks of ''oral presentation'' and does not distinguish between hearings and oral argument. The ABA suggests language that would provide additional guidance on when hearings would be conducted. Such language, the ABA urges, is needed to establish ''predictability'' regarding the ODRA process.

FAA Response: The FAA agrees. The final rule has been modified regarding ODRA hearings. More specifically, the final rule states that they are to be held ''where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on an assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts.'' In addition, the final rule permits any party to a protest to request the ODRA to conduct a hearing and, in connection with any such request, provides that the ODRA shall conduct a hearing whenever one is requested, unless it finds that one is not necessary and that neither party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. The final rule makes clear that all witnesses at such hearings will be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

Commencement of Default Adjudicative Process

The ABA takes issue with the provisions of proposed § 17.37(a) calling for the Default Adjudicative Process to commence on the later of (1) the filing of the Product Team Response, or (2) the submission to the ODRA of a joint notification that the ADR process has not resolved all outstanding issues, or that the 20 business day ADR period has or will expire with no reasonable probability of the parties achieving a resolution. The ABA states that this formulation creates a ''significant disincentive for any protester to elect to proceed with the ADR process,'' since, once ADR is elected, the Default Adjudicative Process cannot start for at least 20 business days. The ABA urges that either party be permitted to ''trigger'' the Default Adjudicative Process at any time during ADR and recommends that the commencement of the Default Adjudicative Process be measured from the filing of a Product Team Response in all instances.

FAA Response: The FAA concurs that ADR is not intended to be and should not be an obstacle to efficient case resolution. Therefore, under new § 17.17(g), any party will be able to ''trigger'' the Default Adjudicative Process by notifying the ODRA that the parties have failed to achieve a complete resolution of the protest via ADR. Joint notification is no longer being required. Under § 17.37(a) of the final rule, the commencement of the Default Adjudicative Process is marked in all cases by the filing of the Product Team Response. The language regarding expiration of the 20 business day period has been deleted entirely.

Use and Definition of the Term ''Contract Dispute''

The ABA suggests that the term ''contract dispute'' be changed to ''contract claim'' in various sections of the proposed rule and that separate definitions be provided for both ''contract claim'' and ''contract dispute.''

FAA Response: The FAA agrees. The definition of ''contract dispute'' has been clarified in the final rule. The term ''claim'' has now been incorporated within that definition. Additional language has been inserted into the definition of ''contract dispute'' in order to clarify that the term includes situations where (1) parties to contracts pre-dating the AMS elect generally to make such contracts ''subject to the AMS,'' including the ODRA dispute resolution process; and (2) parties to such contracts, even where they do not make such a general election, agree to permit the ODRA to employ ADR techniques to resolve disputes under those contracts.

''Accrual'' of a Contract Dispute

The ABA believes that the definition of ''accrual of a contract dispute'' is ambiguous and recommends that the FAA adopt a definition used by the Court of Federal Claims under the Tucker Act, or alternatively, adopt the definition of accrual that is incorporated into FAR § 33.201.

FAA Response: The FAA agrees. The FAA has adopted the Court of Federal Claims definition of ''accrual of a contract claim'' and has included it in § 17.3(b) of the final rule. Minor changes have been made to the ABA's proposed language so as to clarify that the determination as to whether there has been ''active concealment or fraud'' or facts ''inherently unknowable'' will rest with the ODRA (and, ultimately, with the Administrator).

Informal Resolution

The ABA finds confusing the provision in § 17.23(d) regarding an extension of the time under § 17.27 for the filing of a joint statements, in particular, whether the parties are entitled to only one extension.

FAA Response: The FAA agrees that the provision is confusing. The FAA has clarified the provision in proposed § 17.23(d) making plain that extensions for up to twenty (20) business days will be allowed by the ODRA, if informal resolution of the contract disputes appears probable.

Continued Performance

The ABA and AGC seek clarification as to the provision of proposed § 17.23(f) regarding the requirement for continued performance, pending resolution of a contract dispute. They also suggest that the FAA consider providing financing for such continued performance.

FAA Response: The FAA has decided to eliminate the provision in question from the final rule, since it relates to a matter of contract administration, rather than to procedures before the ODRA. The issues involved will be governed by the express terms of the pertinent FAA contract.

Filing Contract Disputes

The ABA suggests that FAA-initiated contract disputes not be considered as having been ''filed'' until they are received by the contractor from the contracting officer. The ABA perceives § 17.25(a) and (b) as pertaining only to contractor initiated disputes.

FAA Response: The FAA disagrees. The sections, as drafted, were intended to cover both contractor-initiated and FAA-initiated disputes. In order for the ODRA to manage the dispute resolution process properly, the time for commencement in either case must be measured by the ODRA's receipt of the contract dispute. Just as there need not be an initial submittal of a claim to an FAA contracting officer (CO) and the issuance of a CO final decision as prerequisites to the contractor filing a contract dispute with the ODRA, the same must be true for claims against contractors by FAA product teams. Any concern regarding the contractor having adequate notice of the FAA's claim is satisfied by the provision of § 17.25(d), which requires service if a copy of the contract dispute by means reasonably calculated to be received on the same day as the contract dispute is filed with the ODRA.

Six Months' Time Limit

The ABA questions the six month time limitation specified by § 17.25(c) for the filing of contract disputes and suggests that the limitation be extended to six years, so as to conform to that established by the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, 108 Stat. 3243 (1994)(''FASA'') for claims under the CDA. The ABA further suggests that the time limitation be identical for both contractor and FAA claims. Proposed § 17.25(c) concerns the possibility of different time limitations established by contract provision, and the requirement that such provisions govern over the limitation period set forth in the rule. The ABA proposes that, if the contract specified period is less than six years, it will only be enforced on the contractor if agreed to, and if the failure to agree does not constitute grounds for denying contract award. The ABA suggests language for § 17.25(c) to address this modification. Finally, with regard to the exception of the time limitation for FAA-initiated claims relating to warranty, fraud, or latent defects, the ABA suggests that that exception be conditioned on there being a limitation imposed on the FAA for filing of such claims. Specifically, the ABA would bar any such claims if filed more than six years after the FAA knows or should have known of the ''warranty issues, fraud or latent defects.''

FAA Response: The FAA agrees that the limitation period should be identical for both contractor and government claims. However, the FAA does not accept the suggestion that that period should be six years. The FASA, which amended the CDA to implement a six year time limitation, is a statute which is expressly excluded from applicability to the AMS. The FAA believes that the two (2) year limitation period incorporated in the final rule (subject only to different periods specified in contracts entered into prior to the effective date of this rule) would be less disruptive to the operations of the FAA's product teams. Such a time limitation would allow adequate opportunity for resolution of contract claims at the contracting officer level and would not necessitate the filing of protective litigation.

The FAA does agrees that there should be some limitation on contract disputes before the ODRA relating to FAA claims against contractors for gross defects amounting to fraud and/or latent defects. Accordingly, the final rule provides for the same two (2) year time limitation to apply to such contract disputes, the two (2) year period to begin from the point when the FAA knew or should have known of the fraud or latent defects. Regarding warranty claims, the time limitation for asserting such claims would be that specified in any contract warranty provision. As for any potential variations in time limitations established by contract provision, the final rule allows such variances only in terms of longer time limitations. The two (2) year period thus is established as a minimum.

Right to an Adjudicative Hearing

The ABA urges that a hearing be provided as a matter of right in all contract disputes under the Default Adjudicative Process and opines that such a hearing would be essential to ensure due process of law.

FAA Response: The FAA disagrees that a hearing must be provided

automatically as a matter of right in every case. Even so, the FAA is committed to providing fair and complete consideration of all relevant evidence pertaining to the contract disputes before the ODRA. Accordingly, the final rule, while emphasizing that the ODRA DRO or Special Master will have discretion as to whether a hearing will be conducted in any given case, provides guidance as to when hearings will be conducted. More specifically, § 17.39(h) now calls for hearings ''where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts.'' The final rule also permits any party to a contract dispute to request the ODRA to conduct a hearing and calls for the ODRA to conduct a hearing and calls for the ODRA to conduct hearings whenever requested, unless it finds specifically that the lack of a hearing will not result in prejudice to either party. The final rule makes clear that all witnesses at such hearings will be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

Discovery

The ABA suggests that the Default Adjudicative Process for contract disputes fails to afford participants the opportunity for ''full discovery'' and takes issue with the language of proposed § 17.39(e)(1), which calls for DRO or Special Master to determine the ''minimum amount of discovery required to resolve the dispute.'' Further, the ABA asserts that the matter of discovery should be left to the control of each party, ''subject only to the long-established rules of reasonableness and relevance.''

FAA Response: The FAA agrees. The final rule at § 17.39(e)(1) was revised to speak of the ''appropriate amount of discovery required to resolve the dispute.'' This language addresses the ABA's concern regarding the sue of the term ''minimum.'' As to the matter of who controls the discovery process, the definition of discovery in the final rule, § 17.34(i), in addition to contemplating ODRA management and direction as to discovery, was revised to provide for voluntary discovery by the parties.

Interest

The ABA and AGC take issue with the proposed § 17.34(m), which deals with the recovery of interest on contractor claims, and suggests that the FAA would be subject to the payment of interest under the CDA. They recommend, ''at a minimum, the FAA provide, by regulation, entitlement to interest.''

FAA Response: The FAA disagrees that the CDA has applicability to contract claims under the AMS. In any event, because the payment of interest would be a matter of contract administration, rather than ODRA procedure, the provision in question has been eliminated from the final rule. The issue of interest is to be governed by the terms of FAA contract documents.

Procedural Predictability and Efficiency

The ABA generally raised concerns regarding the rule's ''clarity and predictability'', claiming that the rule should strive to minimize litigation over procedural issues. The ABA asserts that the rules must afford ''adequate administrative and judicial processes and remedies that provide for the independent, impartial, efficient and just resolution of controversies.''

FAA Response: The FAA agrees. To promote the goal of minimizing litigation over procedural issues, and to provide clarity and predictability, several sections of the rule were revised. Section 17.13(d) now calls for status conference for protests to be mandatory (using the work ''shall'' rather than ''may''), in order to satisfy process predictability concerns. Likewise, § 17.5(b) has been clarified so as to indicate that the ODRA has authority, within its delegation from the Administrator, to ''impose sanctions or [take] other disciplinary actions'' in furtherance of the ''efficient resolution of disputes.''

For the sake of clarity, § 17.13(c) was revised to include additional language, making clear that the ODRA may extend for good cause specified time limitations other than for the initial protest filing. Proposed § 17.13(e), which seemed to allow the ODRA to waive the limitation regarding initial protest filings, has been deleted to eliminate an apparent ambiguity regarding such waiver.

A new § 17.13(e) has been inserted to state what had initially been contained in proposed § 17.17(a), that the ODRA Director will designate either Dispute Resolution Officers (DROs) or Special Masters for protests. Inclusion of this new section is consistent with the ABA's goal of process predictability. The additional reference to ''Special Masters'' in § 17.17 (e) and (f) was to clarify that DROs are not used in every case.

New § 17.17(a) (former § 17.17(b)) includes the words ''as part of protest'' to clarify that the request for a suspension is to be part of the protest document itself. Section 17.17(b)(50 of the final rule (formerly § 17.17(c)(5)) adds the clarifying language ''or arrange for';' to the word ''conduct'' to cover situations where an outside neutral has been agreed upon to handle ADR proceedings, including the provision of early neutral evaluation. This section likewise has been revised by inserting for that purpose the words ''or other Neutral or Compensated Neutral, at the discretion of the ODRA, and/or based upon the agreement of the parties or request of any party(ies) seeking such evaluation.'' This clarifying language foster process predictability.

Section 17.17(c)(1) has been clarified to call for a joint statement where the parties have decided to ''pursue ADR proceedings in lieu of adjudication in order to resolve the protest'' (instead of merely referring to their decision to ''pursue ADR to resolve the protest''). The phrase ''A joint written explanation'' in § 17.17(c)(2) has been clarified to read ''Joint or separate written explanations,'' to recognize the possibility that the parties may not agree to a joint submission. The balance of that paragraph has been revised to eliminate reference to the term ''parties,'' since intervenors (included within the definition of ''parties'') do not participate in the decision to pursue ADR. Sections 17.17 (d) and (e) of the final rule use the phrases ''Product Team and protester'' and ''Product Team or protester'' for this same reason.

Section 17.17(d) has been clarified to explicitly state that ''Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.'' Section 17.17(e) has also been clarified to state that the ODRA may alter the schedule for filing of the Product Team response, in order to accommodate requirements of a particular protest. These clarifying revision support the goal of minimizing litigation over procedural issues.

Section 17.17(f) clarifies the time for circulating to other parties copies of the Product Team Response and requires a more specific format for the information to be provided as part of the Product Team Response. The timing for provision of copies of the Product Team response to the protester and intervenor has been clarified to require that such copies be furnished on the same date as it is filed with the ODRA, if practicable, but in any event no later than one (1) business day after such filing. Similarly, § 17.25(a) specifies more explicitly the format to be used for contract dispute filings for those reasons. Section 17.19(a)(2) clarifies the basis for

possible dismissal or summary dismissal of a protest to state that such dismissal may be done if the protest is ''frivolous, without basis in factor law, or (fails) to state a claim upon which relief may be had.''

Two potential protest remedies previously grouped (recompetition and termination for convenience) are stated separately in § 17.21(a) of the final rule, to clarify an ambiguity as to whether the ODRA may recommend one or both of these remedies in any given case. Section 17.23(a) of the final rule has been clarified to include the phrase ''subject to the AMS, ''rather than ''entered into pursuant to the AMS,'' in order to cover situations where parties to a pre-AMS contract opt to subject the contract to the AMS and its ODRA dispute resolution process. Again, these changes foster process predictability.

A substitute § 17.23(f) has been inserted (in lieu of the deleted § 17.23(f), which had dealt with the obligation to continue performance pending resolution of a dispute). The substitute section provides a remedies section for contract disputes. This section parallels the remedies section for bid protests and serves to make the provisions of the rule consistent.

Section 17.27(a) is revised to allow the parties twenty (20) business days to submit a joint statement in order to promote expeditious resolution. It also uses the phrases ''joint or separate statements'' and ''written explanation(s,)'' in recognition of the possibility that parties may not be willing to agree to a joint submission section information 17.27(d) has been revised by deleting the word ''joint'' for the same reason. However, when speaking of a request for ADR, § 17.27(b)(1) specifies that such request must be ''joint.'' This is in recognition that ADR is a voluntary process that must be mutually entered into by the parties.

To foster predictability of the process, § 17.31(b) was revised to insert language clarifying that in all cases the parties will be expected to explore ADR. Additional clarifying language was included in that section to address the assignment by the ODRA of a DRO to explore ADR options with the parties and to arrange for early neutral evaluation of the merits of a case, at a party's request. The final rule has been revised to delete § 17.359c), which had provided for the automatic appointment of a DRO for small dollar value matters or matters involving simplified acquisitions, so long as such appointment was not objected to by the parties. Specifying the automatic use of ADR in this context was inconsistent with the balance of the ADR section of the rule and was considered contrary to the basis concept that ADR is to be a completely voluntary process.

Section 17.37(b) clarifies that it is the Director of the ODRA who selects the DRO or Special Master to conduct fact findings; thus serving the interest of process predictability. Section 17.37(j) has been clarified to state only that, in arriving at findings and recommendations relating to protests, DROs and Special Masters are to ''consider'' whether or not the Product Team actions in question had a rational basis, and whether or not the Product Team decision under question was arbitrary, capricious or an abuse of discretion.

Finally, a new § 17.45 has been added to address concerns regarding predictability in the relationship of this rule to changes in future FAA policy. This section requires all amendments to the AMS, standard contract forms and clauses,and any guidance to FAA contracting officials, to conform with the provisions of the final rule.

Additional Clarifying Changes in the Final Rule

In addition to the revisions of the proposed rule made in response to comments received, the FAA has made a number of revisions in order to clarify the language of the rule and to correct awkward language without substantive changes. More specifically, 14 CFR Part 14, § 14.05(b) was modified to add the language ''or such rate as prescribed by 5 U.S.C. 504,''in order to include any subsequent rate adjustments that might be permitted for attorneys' fees and other costs under revisions to the EAJA. Section 14.05(e) was modified to provide EAJA recovery for attorneys' fees and costs incurred in the Default Adjudicative Process under 14 CFR part 17 and the AMS.

Section 17.7(d) was deleted and its language combined with similar language in § 17.43. Section 17.11, which had previously made non-protestable ''FAA purchased from or through federal * * * governments'' now reads ''FAA purchases from or through other federal agencies.'' Section 17.13(c) was revised to add the word ''protest'' in describing filing time limitations, for the sake of clarity. Section 17.13(c) was revised to correct a mistaken reference to § 17.17 (now referring to § 17.15). Section 17.13(d) has been modified to eliminate redundancy with other sections and now merely makes cross-reference to those sections.

The words ''for adjudication'' were included in § 17.17(f) for the sake of clarity. Section 17.15(a)(3) has been revised to clarify ambiguities in the language regarding protest filing timeliness. The wording of § 17.15(f) has been rearranged and the language ''if known'' added to the requirement for notifying other interested parties of the existence of a protest, so as to clarify the obligation of the FAA Contracting Officer. Former § 17.17(a) has been eliminated, since its content had been inserted as new § 17.13(e).

The word ''part'' in § 17.23(a) has been revised to read ''subpart,'' to clarify that the covered contract disputes are to be resolved under subpart C of the rule, entitled ''Contract Disputes.'' Rather than have a redundant provision for the ODRA's granting of time extensions, § 17.27(a) of the final rule merely contains a cross-reference to § 17.23(d). In § 17.29(d) of the final rule, the words ''or the Administrator's delegee'' have been added to conform to other references to Administrator's orders within the rule. To avoid confusion, the words ''Associate Chief Counsel and'' were deleted from both §§ 17.37(l) and 17.39(l).

Former § 17.37(m) was eliminated as redundant to Subpart F regarding final orders. In its stead, the final rule contains a clarifying provision with respect to ODRA time extensions. This same substitution was made for former § 17.39(m) as well. Besides eliminating redundancies in the rule, these substitutions also satisfy the ABA's concern for predictability of the process. A new § 17.39(k) was inserted to allow the ODRA Director to confer with the DRO or Special Master during the pendency of adjudication of contract disputes. This insertion was to make the process for contract disputes consistent with that specified for protests. The new § 17.39(k) is virtually identical to the language regarding adjudication of protests and the role of the ODRA Director contained in § 17.37(h). Finally, in § 17.43, the words ''FAA Chief Counsel'' were substituted for ''Product Team attorney'' so as to provide consistency with other FAA regulations.

Paperwork Reduction Act

Information collection requirements in the amendment of 14 part 14 and the addition of part 17 to the Code of Federal Regulations (14 CFR parts 14 and 17) have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0632.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Federalism Implications

The regulations 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 rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify an existing regulation after consideration of the expected benefits to society and the expected costs. The order also requires Federal agencies to assess whether a final rule is considered a ''significant regulatory action.'' Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4, Department of Transportation Appropriations Act (November 15, 1995), requires Federal agencies to assess the impact of any Federal mandates on State, Local, Tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule will generate cost-savings that will exceed any costs, and is not ''significant'' as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal will not have a significant impact on a substantial number of small entities. Furthermore, this proposal will not impose restraints on international trade. Finally, the FAA has determined that the proposal will not impose a Federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Executive Order 12866 and DOT's Policies and Procedures

Under Executive Order 12866, each Federal agency shall assess both the costs and the benefits of final regulations while recognizing that some costs and benefits are difficult to quantify. A final rule is promulgated only upon a reasoned determination that the benefits of the final rule justify its costs.

In this final rule, the establishment of procedures for protests and contract disputes by the Office of Dispute Resolution for Acquisition (ODRA), under the FAA's new Acquisition Management System, will provide a cost savings to the private sector (protesters and contractors). To resolve protests and contract disputes with the FAA, offerors and contractors will realize a cost savings of $1,000 to $1 million per case, and the FAA will realize an average cost savings of $2,300 per protest case and $4,400 per contract dispute. Costs for this final rule are estimated to be about $500 or less per case for the private sector to abide by the procedures of the ODRA, and no additional costs will be attributed to the FAA for implementing such procedures. Therefore, the FAA concludes that not only do the benefits justify the costs, but that benefits actually exceed the costs.

The final rule will also not be considered a significant regulatory action because (1) it does not have an annual effect of $100 million or more or adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local or Tribal governments or communities; (2) it does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) it does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; and (4) it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or principles set forth in the Executive Order. Because the final rule is not considered significant under these criteria, it was not reviewed by the Office of Management and Budget (OMB) for consistency with applicable law, the President's priorities, and the principles set forth in this Executive Order nor was OMB involved in deconflicting this final rule with ones from other agencies.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that and to explain the rationale for their actions, the Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

However, if an agency determines that a final rule is not expected to have a significant economic impact on a substantial number of entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities (protesters and contractors). Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: the final rule will provide an estimated cost savings of $1,000 to $1 million per case in resolving protests and disputes with the FAA, while requiring about 4500 or less per case per entity to resolve the issue. For small entities, the FAA estimates that cost savings per case will be closer to $1,000 than $1 million and concludes there will be no significant economic impact on small entities. The FAA solicited comments from affected entities with respect to this finding and determination in the Notice of Proposed Rulemaking, and no comments were received.

Final International Trade Impact Assessment

The FAA has determined that the final rule will neither affect the sale of aviation products and services in the United States nor the sale of U.S.

products and services in foreign countries.

Final Unfunded Mandates Reform Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act) enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, Local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, Local, and Tribal governments on a final ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Reform Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, Local, and Tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year.

Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore the requirements of the Reform Act do not apply.

List of Subjects

14 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

14 CFR Part 17

Administrative practice and procedure, Alternative Dispute Resolution (ADR), Protests, Authority delegations (Government agencies), Government contracts, Government procurement.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 14 and adds part 17 of Title 14, Chapter I, Code of Federal Regulations as follows:

PART 14—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 504; 49 U.S.C. 106(f), 40113, 46104 and 47122.

2. Amend § 14.02 by revising paragraph (a) as follows:

§ 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA under 49 CFR part 17 and the Acquisition Management System (AMS). These are adjudications under 5 U.S.C. 554, in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. 46301, 46302, and 46303 and to the Default Adjudicative Process under part 17 of this chapter and the AMS.

* * * * *

3. Amend § 14.03 by revising paragraph (a) and (f) to read as follows:

§ 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 504(b)(1)(B) and 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart.

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the ALJ or adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the ALJ or adjudicative officer may determine that financial relationships of the applicant, other than those described in this paragraph, constitute special circumstances that would make an award unjust.

* * * * *

4. Amend § 14.05 by revising paragraphs (b), (c), and (e) to read as follows:

§ 14.05 Allowance of fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under this part may exceed $125 per hour, or such rate as prescribed by 5 U.S.C. 504. No award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the ALJ or adjudicative officer shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

* * * * *

(e) Fees may be awarded only for work performed after the issuance of a complaint, or in the Default Adjudicative Process for a protest or contract dispute under part 17 of this chapter and the AMS.

5. Amend § 14.11 by revising paragraph (c) to read as follows:

§ 14.11 Net worth exhibit.

* * * * *

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of the net worth exhibit, or any part of it, may submit that portion of the exhibit directly to the ALJ or adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information.

(1) The motion shall describe the information sought to be withheld and explain, in detail, why it should be exempt under applicable law or regulation, why public disclosure would adversely affect the applicant, and why

disclosure is not required in the public interest.

(2) The net worth exhibit shall be served on the FAA counsel, but need not be served on any other party to the proceeding.

(3) If the ALJ or adjudicative officer finds that the net worth exhibit, or any part of it, should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the FAA's established procedures.

6. Amend § 14.20 by revising paragraphs (a) and (c) to read as follows:

§ 14.20 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case later than 30 days after the FAA Decisionmaker's final disposition of the proceeding, or service of the order of the Administrator in a proceeding under the AMS.

* * * * *

(c) For purposes of this part, final disposition means the later of:

(1) Under part 17 of this chapter and the AMS, the date on which the order of the Administrator is served;

(2) The date on which an unappealed initial decision becomes administratively final;

(3) Issuance of an order disposing of any petitions for reconsideration of the FAA Decisionmaker's final order in the proceeding;

(4) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(5) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

7. Revise § 14.21 to read as follows:

§ 14.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.11(b) for confidential financial information. Where the proceeding was held under part 17 of this chapter and the AMS, the application shall be filed with the FAA's attorney and with the Office of Dispute Resolution for Acquisition.

8. Amend § 14.22 by revising paragraph (b) to read as follows:

§ 14.22 Answer to application.

* * * * *

(b) If the FAA's counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the ALJ or adjudicative officer upon request by the FAA's counsel and the applicant.

* * * * *

9. Revise § 14.24 to read as follows:

§ 14.24 Comments by other parties.

Any party to a proceeding other than the applicant and the FAA's counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the ALJ or adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

10. Amend § 14.26 by revising paragraph (a) to read as follows:

§ 14.26 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the ALJ or adjudicative officer assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

* * * * *

11. Revise § 14.27 to read as follows:

§ 14.27 Decision.

(a) The ALJ shall issue an initial decision on the application within 60 days after completion of proceedings on the application.

(b) An adjudicative officer in a proceeding under part 17 of this chapter and the AMS shall prepare a findings and recommendations for the Office of Dispute Resolution for Acquisition.

(c) A decision under paragraph (a) or (b) of this section shall include written findings and conclusions on the applicant's eligibility and status as prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FAA's position was substantially justified, or whether special circumstances make an award unjust.

12. Revise § 14.28 to read as follows:

§ 14.28 Review by FAA decisionmaker.

(a) In proceedings other than those under part 17 of this chapter and the AMS, either the applicant or the FAA counsel may seek review of the initial decision on the fee application. Additionally, the FAA Decisionmaker may decide to review the decision on his/her own initiative. If neither the applicant nor the FAA's counsel seeks review within 30 days after the decision is issued, it shall become final. Whether to review a decision is a matter within the discretion of the FAA Decisionmaker. If review is taken, the FAA Decisionmaker will issue a final decision on the application or remand the application to the ALJ who issue the initial fee award determination for further proceedings.

(b) In proceedings under part 17 of this chapter and the AMS, the adjudicative officer shall prepare findings and recommendations for the Office of Dispute Resolution for Acquisition with recommendations as to whether or not an award should be made, the amount of the award, and the reasons therefor. The Office of Dispute Resolution for Acquisition shall submit a recommended order to the Administrator after the completion of all submissions related to the EAJA application. Upon the Administrator's action, the order shall become final, and may be reviewed under 49 U.S.C. 46110.

13. Add new part 17 to 14 CFR Chapter I, Subchapter B, to read as follows:

PART 17—PROCEDURES FOR PROTESTS AND CONTRACTS DISPUTES

Subpart A—General

Sec.

17.1 Applicability.
17.3 Definitions.
17.5 Delegation of authority.
17.7 Filing and computation of time.
17.9 Protective orders.

Subpart B—Protests

17.11 Matters not subject to protest.
17.13 Dispute resolution process for protests.
17.15 Filing a protest.
17.17 Initial protest procedures.
17.19 Dismissal or summary decision of protest.
17.21 Protest remedies.

Subpart C—Contract Disputes

17.23 Dispute resolution process for contract disputes.
17.25 Filing a contract dispute.
17.27 Submission of joint or separate statements.

17.29 Dismissal or summary decision of contract disputes.

Subpart D—Alternative Dispute Resolution

17.31 Use of alternative dispute resolution.
17.33 Election of alternative dispute resolution process.
17.35 Selection of neutrals for the alternative dispute resolution process.

Subpart E—Default Adjudicative Process

17.37 Default adjudicative process for protests.
17.39 Default adjudicative process for contract disputes.

Subpart F—Finality and Review

17.41 Final orders.
17.43 Judicial review.
17.45 Conforming amendments.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

Authority: 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

Subpart A—General

§ 17.1 Applicability.

This part applies to all protests or contract disputes against the FAA that are brought on or after June 28, 1999, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996.

§ 17.3 Definitions.

(a) *Accrual* mean to come into existence as a legally enforceable claim.

(b) *Accrual of a contract claim* means that all events relating to a claim have occurred which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on such equitable grounds as where the office of Dispute Resolution for Acquisition determines that there has been active concealment or fraud or where it finds that the facts were inherently unknowable.

(c) *Acquisition Management System* (AMS) establishes the policies, guiding principles, and internal procedures for the FAA's acquisition system.

(d) *Administrator* means the Administrator of the Federal Aviation Administration.

(e) *Alternative Dispute Resolution* (ADR) is the primary means of dispute resolution that would be employed by the FAA's Office of Dispute Resolution for Acquisition. See Appendix A of this part.

(f) *Compensated Neutral* refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the Office of Dispute Resolution for Acquisition. The parties pay equally for the services of a Compensated Neutral, unless otherwise agreed to by the parties. A Dispute Resolution Officer (DRO) or Neutral cannot be a Compensated Neutral.

(g) *Contract Dispute,* as used in this part, means a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes for purposes of ADR only may also involve contracts not subject to the AMS.

(h) *Default Adjudicative Process* is an adjudicative process used to resolve protests or contract disputes where the parties cannot achieve resolution through informal communication or the use of ADR. The Default Adjudicative Process is conducted by a DRO or Special Master selected by the Office of Dispute Resolution for Acquisition to serve as ''adjudicative officers,'' as that term is used in part 14 of this chapter.

(i) *Discovery* is the procedure where opposing parties in a protest or contract dispute may, either voluntarily or to the extent directed by the Office of Dispute Resolution for Acquisition, obtain testimony from, or documents and information held by, other parties or non-parties.

(j) *Dispute Resolution Officer* (DRO) is a licensed attorney reporting to the Office of Dispute Resolution for Acquisition. The term DRO can include the Director of the Office of Dispute Resolution for Acquisition, Office of Dispute Resolution for Acquisition staff attorneys or other FAA attorneys assigned to the Office of Dispute Resolution for Acquisition.

(k) *An interested party,* in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not ''interested parties'' within this definition and are not eligible to submit protests to the Office of Dispute Resolution for Acquisition.

(l) An *intervenor* is an interested party other than the protester whose participation in a protest is allowed by the Office of Dispute Resolution for Acquisition. For a post-award protest, the awardee of the contract that is the subject of the protest shall be allowed, upon request, to participate as an intervenor in the protest. In such a protest, no other interested parties shall be allowed to participate as intervenors.

(m) *Neutral* refers to an impartial third party in the ADR process chosen by the Office of Dispute Resolution for Acquisition to act as a facilitator, mediator, arbitrator, or otherwise to resolve a protest or contract dispute. A Neutral can be a DRO or a person not an employee of the FAA who serves on behalf of the Office of Dispute Resolution for Acquisition.

(n) The *Office of Dispute Resolution for Acquisition* (ODRA), under the direction of the Director, acts on behalf of the Administrator to manage the FAA Dispute Resolution Process, and to recommend action to be the Administrator on matters concerning protests or contract disputes.

(o) *Parties* include the protester(s) or (in the case of a contract dispute) the contractor, the FAA, and any intervenor(s).

(p) *Product Team,* as used in these rules, refers to the FAA organization(s) responsible for the procurement activity, without regard to funding source, and includes the Contracting Officer (CO) and assigned FAA legal counsel, when the FAA organization(s) represent(s) the FAA as a party to a protest or contract dispute before the Office of Dispute Resolution for Acquisition. The CO is responsible for all Product Team communications with and submissions to the Office of Dispute Resolution for Acquisition through assigned FAA counsel.

(q) *Screening Information Request* (SIR) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA. The purpose of a SIR is for the FAA to obtain information needed for it to proceed with a source selection decision and contract award.

(r) A *Special Master* is an attorney, usually with extensive adjudicative experience, who has been assigned by the Office of Dispute Resolution for Acquisition to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Default Adjudicative Process.

§ 17.5 Delegation of authority.

(a) The authority of the Administrator to conduct dispute resolution proceedings concerning acquisition matters, is delegated to the Director of the Office of Dispute Resolution for Acquisition.

(b) The Director of the Office of Dispute Resolution for Acquisition may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as is deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions or other disciplinary actions.

§ 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A protest or contract dispute is considered to be filed on the date it is received by the Office of Dispute Resolution for Acquisition during normal business hours. The Office of Dispute Resolution for Acquisition's normal business hours are from 8:30 a.m. to 5 p.m. est or edt, whichever is in use. A protest or contract dispute received via mail, after the time period prescribed for filing, shall not be considered timely filed even though it may be postmarked within the time period prescribed for filing.

(b) Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a contract dispute may be accomplished by any means available in paragraph (a) of this section. Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a protest may only be accomplished by overnight delivery, hand delivery or facsimile.

(c) The time limits stated in this part are calculated in business days, which exclude weekends and Federal holidays. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

§ 17.9 Protective orders.

(a) The Office of Dispute Resolution for Acquisition may issue protective orders addressing the treatment of protected information, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the Office of Dispute Resolution for Acquisition's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the Office of Dispute Resolution for Acquisition. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the Office of Dispute Resolution for Acquisition, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant's admission shall be raised within two (2) days of the application, although the Office of Dispute Resolution for Acquisition may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions or the taking of the actions as the Office of Dispute Resolution for Acquisition deems appropriate.

(e) The parties are permitted to agree upon what material is to be covered by a protective order, subject to approval by the Office of Dispute Resolution for Acquisition.

Subpart B—Protests

§ 17.11 Matters not subject to protest.

The following matters may not be protested before the Office of Dispute Resolution for Acquisition:

(a) FAA purchases from or through, state, local, and tribal governments and public authorities;

(b) FAA purchases from or through other federal agencies;

(c) Grants;

(d) Cooperative agreements;

(e) Other transactions which do not fall into the category of procurement contracts subject to the AMS.

§ 17.13 Dispute resolution process for protests.

(a) Protests concerning FAA SIRs or contract awards shall be resolved pursuant to this part.

(b) The offeror initially should attempt to resolve any issues concerning potential protests with the CO. The CO, in coordination with FAA legal counsel, will make reasonable efforts to answer questions promptly and completely, and, where possible, to resolve concerns or controversies.

(c) Offerors or prospective offerors shall file a protest with the Office of Dispute Resolution for Acquisition in accordance with § 17.15. The protest time limitations set forth in § 17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in § 17.15 for the filing of protests, the Office of Dispute Resolution for Acquisition retains the discretion to modify any time constraints imposed in connection with protests.

(d) In accordance with § 17.17, the Office of Dispute Resolution for Acquisition shall convene a status conference for the protest. Under the procedures set forth in that section, the parties generally will either decide to utilize Alternative Dispute Resolution (ADR) techniques to resolve the protest, pursuant to subpart D of this part, or they will proceed under the Default Adjudicative Process set forth in subpart E of this part. However, as provided in § 17.31(c), informal ADR techniques may be utilized simultaneously with ongoing adjudication.

(e) The Office of Dispute Resolution for Acquisition Director shall designate Dispute Resolution Officers (DROs) or Special Masters for protests.

(f) Multiple protests concerning the same SIR, solicitation, or contract award may be consolidated at the discretion of the Office of Dispute Resolution for Acquisition, and assigned to a single DRO or Special Master for adjudication.

(g) Procurement activities, and, where applicable, contractor performance pending resolution of a protest shall continue during the pendency of a protest, unless there is a compelling reason to suspend or delay all or part of the procurement activities. Pursuant to §§ 17.15(d) and 17.17(b), the Office of Dispute Resolution for Acquisition may recommend suspension of award or delay of contract performance, in whole or in part, for a compelling reason. A decision to suspend or delay procurement activities or contractor performance would be made in writing by the FAA Administrator or the Administrator's delegee.

§ 17.15 Filing a protest.

(a) Only an interested party may file a protest, and shall initiate a protest by filing a written protest with the Office of Dispute Resolution for Acquisition

within the times set forth below, or the protest shall be dismissed as untimely:

(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation;

(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.

(b) Protest shall be filed at:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW, Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400;

or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A Protest shall be in writing, and set forth:

(1) The protester's name, address, telephone number, and facsimile (FAX) number;

(2) The name, address, telephone number, and FAX number of a person designated by the protester (Protester Designee), and who shall be duly authorized to represent the protester, to be the point of contact;

(3) The SIR number or, if available, the contract number and the name of the CO;

(4) The basis for the protester's status as an interested party;

(5) The facts supporting the timeliness of the protest;

(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;

(7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;

(8) The remedy or remedies sought by the protester, as set forth in § 17.21;

(9) The signature of the Protester Designee, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension or delay of the procurement, in whole or in part, and believes there are compelling reasons that, if known to the FAA, would cause the FAA to suspend or delay the procurement because of the protested action, the protester shall:

(1) Set forth each such compelling reason, supply all facts supporting the protester's position, identify each person with knowledge of the facts supporting each compelling reason, and identify all documents that support each compelling reason.

(2) Clearly identify any adverse consequences to the protester, the FAA, or any interested party, should the FAA not suspend or delay the procurement.

(e) At the same time as filing the protest with the Office of Dispute Resolution for Acquisition, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the CO on the same day as it is to be received by the Office of Dispute Resolution for Acquisition. The protest shall include a signed statement from the protester, certifying to the Office of Dispute Resolution for Acquisition the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall inform the Office of Dispute Resolution for Acquisition of the names, addresses, and telephone and facsimile numbers of the awardee and/or other interested parties, if known, and shall, in such notice, designate a person as the point of contact for the Office of Dispute Resolution for Acquisition by facsimile. The CO shall also notify the awardee and/or interested parties in writing of the existence of the protest the same day as the CO provides the foregoing information to the Office of Dispute Resolution for Acquisition.

(g) The Office of Dispute Resolution for Acquisition has discretion to designate the parties who shall participate in the protest as intervenors. For awarded contracts, only the awardee may participate as an intervenor.

§ 17.17 Initial protest procedures.

(a) If, as part of a protest, the protester requests a suspension or delay of procurement, in whole or in part, pursuant to § 17.15(d), the Product Team shall submit a response to the request to the Office of Dispute Resolution for Acquisition within two (2) business days of receipt of the protest. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same two (2) business days. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within an additional period of two (2) business days. Based on its review of such submissions, the Office of Dispute Resolution for Acquisition, in its discretion, may recommend such suspension or delay to the Administrator or the Administrator's designee.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the Office of Dispute Resolution for Acquisition shall convene a status conference to—

(1) Review procedures;

(2) Identify and develop issues related to summary dismissal and suspension recommendations;

(3) Handle issues related to protected information and the issuance of any needed protective order;

(4) Encourage the parties to use ADR;

(5) Conduct or arrange for early neutral evaluation of the protest by a DRO or Neutral or Compensated Neutral, at the discretion of the Office of Dispute Resolution for Acquisition and/or based upon the agreement or request of any party(ies) seeking such evaluation; and

(6) For any other reason deemed appropriate by the DRO or by the Office of Dispute Resolution for Acquisition.

(c) On the fifth business day following the status conference, the Product Team and protester will file with the Office of Dispute Resolution for Acquisition—

(1) A joint statement that they have decided to pursue ADR proceedings in lieu of adjudication in order to resolve the protest; or

(2) Joint or separate written explanations as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed..

(d) Should the Product Team and protester elect to utilize ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an Office of Dispute Resolution for Acquisition-designated Neutral or a Compensated Neutral of their own choosing) pursuant to § 17.33(c), and shall execute and file with the Office of Dispute Resolution for Acquisition a written ADR agreement within five (5) business days after the status conference. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate at the status conference that ADR proceedings will not be used, then within ten (10) business days following the status conference, the Product Team will file with the Office of Dispute Resolution for Acquisition a Product Team Response to the protest. The Office of Dispute Resolution for Acquisition may alter the schedule for filing of the Product Team Response to accommodate the requirements of a particular protest.

(f) The Product Team Response shall consist of a written chronological statement of pertinent facts, and a written presentation of applicable legal or other defenses. The Product Team Response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed and tabbed. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the Office of Dispute Resolution for Acquisition, if practicable, but in any event no later than one (1) business day after the date if it is filed with the Office of Dispute Resolution for Acquisition. In all cases, the Product Team shall indicate the method of service used.

(g) Should the parties pursue ADR proceedings under subpart D of this part and fail to achieve a complete resolution of the protest via ADR, the Office of Dispute Resolution for Acquisition, upon notification of that fact by any of the parties, shall designate a DRO or Special Master for purposes of adjudication under subpart E of this part, and the DRO or Special Master shall convene a status conference, wherein he/she shall establish a schedule for the filing of the Product Team Response and further submissions.

(h) Upon submission of the Product Team Response, the protest will proceed under the Default Adjudicative Process pursuant to § 17.37.

(i) The time limitations of this section maybe extended by the Office of Dispute Resolution for Acquisition for good cause.

§ 17.19 Dismissal or summary decision of protests.

(a) At any time during the protest, any party may request, by motion to the Office of Dispute Resolution for Acquisition, that—

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, if the protester fails to establish that the protest is timely, or that the protester has no standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if:

(i) The undisputed material facts demonstrate a rational basis for the Product Team action or inaction in question, and there are no other material facts in dispute that would overcome a finding of such a rational basis; or

(ii) The undisputed material facts demonstrate, that no rational basis exists for the Product Team action or inaction in question, and there are no material facts in dispute that would overcome a finding of the lack of such a rational basis.

(b) In connection with any request for dismissal or summary decision, the Office of Dispute Resolution for Acquisition shall consider any material facts in dispute, in a light most favorable to the party against whom the request is made.

(c) Either upon motion by a party or on its own initiative, the Office of Dispute Resolution for Acquisition may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the Office of Dispute Resolution for Acquisition by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the Office of Dispute Resolution for Acquisition, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

§ 17.21 Protest remedies.

(a) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful protest that are consistent with the AMS and applicable statutes. Such remedies may include, but are not limited to one or more, or a combination of, the following—

(1) Amend the SIR;

(2) Refrain from exercising options under the contract;

(3) Issue a new SIR;

(4) Require recompetition;

(5) Terminate an existing contract for the FAA's convenience;

(6) Direct an award to the protester;

(7) Award bid and proposal costs; or

(8) Any combination of the above remedies, or any other action consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the Office of Dispute Resolution for Acquisition should consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the cost of any proposed remedy to the FAA; the urgency of the procurement; and the impact of the recommendation on the FAA.

(c) Attorney's fees of a prevailing protester are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1)(EAJA).

Subpart C—Contract Disputes

§ 17.23 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contractors shall file contract disputes with the Office of Dispute Resolution for Acquisition and the CO pursuant to § 17.25.

(c) After filing the contract dispute, the contractor should seek informal resolution with the CO:

(1) The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud;

(2) The parties shall have up to twenty (20) business days within which to resolve the dispute informally, and may contact the Office of Dispute Resolution for Acquisition for assistance in facilitating such a resolution; and

(3) If no informal resolution is achieved during the twenty (20)

business day period, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition pursuant to § 17.27.

(d) If informal resolution of the contract dispute appears probable, the Office of Dispute Resolution for Acquisition shall extend the time for the filing of the joint statement under § 17.27 for up to an additional twenty (20) business days, upon joint request of the CO and contractor.

(e) The Office of Dispute Resolution for Acquisition shall hold a status conference with the parties within ten (10) business days after receipt of the joint statement required by § 17.27, or as soon thereafter as is practicable, in order to establish the procedures to be utilized to resolve the contract dispute.

(f) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful contract dispute, that are consistent with the AMS and applicable law.

§ 17.25 Filing a contract dispute.

(a) Contract disputes are to be in writing and shall contain:

(1) The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;

(2) The contract number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the contract dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(b) Contract disputes shall be filed by mail, in person, by overnight delivery or by facsimile at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW, Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400;
or

(2) Other address as shall be published from time to time in the **Federal Register**.

(c) A contract dispute against the FAA shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with The Office of Dispute Resolution for Acquisition which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the Office of Dispute Resolution for Acquisition a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the Office of Dispute Resolution for Acquisition.

§ 17.27 Submission of joint or separate statements.

(a) If the matter has not been resolved informally, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition no later than twenty (20) business days after the filing of the contract dispute. The Office of Dispute Resolution for Acquisition may extend this time, pursuant to § 17.23(d).

(b) The statement(s) shall include either—

(1) A joint request for ADR, and an executed ADR agreement, pursuant to § 17.33(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(c) Such statements shall be directed to the following address:

(1) Office of Dispute Resolution for Acquisition, AGC–70, Federal Aviation Administration, 400 7th Street, SW., Room 8332, Washington, DC 20590, Telephone: (202) 366–6400, Facsimile: (202) 366–7400;
or

(2) Other address as shall be published from time to time in the **Federal Register.**

(d) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques with the Office of Dispute Resolution for Acquisition (neutral evaluation and/or informal mediation) concurrently with ongoing adjudication under the Default Adjudicative Process, pursuant to § 17.31(c).

§ 17.29 Dismissal or summary decision of contract disputes.

(a) Any party may request, by motion to the Office of Dispute Resolution for Acquisition, that a contract dispute be dismissed, or that a count or portion of a contract dispute be stricken, if:

(1) It was not timely filed with the Office of Dispute Resolution for Acquisition;

(2) It was filed by a subcontractor;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the Office of Dispute Resolution for Acquisition.

(b) In connection with any request for dismissal of a contract dispute, or to strike a count or portion thereof, the Office of Dispute Resolution for Acquisition should consider any material facts in dispute in a light most favorable to the party against whom the request for dismissal is made.

(c) At any time, whether pursuant to a motion or request or on its own initiative and at its discretion, the Office of Dispute Resolution for Acquisition may—

(1) Dismiss or strike a count or portion of a contract dispute;

(2) Recommend to the Administrator that the entire contract dispute be dismissed; or

(3) With delegation from the Administrator, dismiss the entire contract dispute.

(d) An order of dismissal of the entire contract dispute, issued either by the Administrator or by the Office of Dispute Resolution for Acquisition where delegation exists, on the grounds set forth in this section, shall constitute

a final agency order. An Office of Dispute Resolution for Acquisition order dismissing or striking a count or portion of a contract dispute shall not constitute a final agency order, unless and until such Office of Dispute Resolution for Acquisition order is incorporated or otherwise adopted in a decision of the Administrator or the Administrator's delegee.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to a proposed dismissal or summary decision.

Subpart D—Alternative Dispute Resolution

§ 17.31 Use of alternative dispute resolution.

(a) The Office of Dispute Resolution for Acquisition shall encourage the parties to utilize ADR as their primary means to resolve protests and contract disputes.

(b) The parties shall make a good faith effort to explore ADR possibilities in all cases and to employ ADR in every appropriate case. The Office of Dispute Resolution for Acquisition will encourage use of ADR techniques such as mediation, neutral evaluation, or minitrials, or variations of these techniques as agreed by the parties and approved by the Office of Dispute Resolution for Acquisition. The Office of Dispute Resolution for Acquisition shall assign a DRO to explore ADR options with the parties and to arrange for an early neutral evaluation of the merits of a case, if requested by any party.

(c) The Default Adjudicative Process will be used where the parties cannot achieve agreement on the use of ADR; or where ADR has been employed but has not resolved all pending issues in dispute; or where the Office of Dispute Resolution for Acquisition concludes that ADR will not provide an expeditious means of resolving a particular dispute. Even where the Default Adjudicative Process is to be used, the Office of Dispute Resolution for Acquisition, with the parties consent, may employ informal ADR techniques concurrently with and in parallel to adjudication.

§ 17.33 Election of alternative dispute resolution process.

(a) The Office of Dispute Resolution for Acquisition will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually Compensated Neutral, if the parties agree as to how the costs of any such Compensated Neutral are to be shared.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition within five (5) business days after the Office of Dispute Resolution for Acquisition conducts a status conference pursuant to § 17.17(c). The Office of Dispute Resolution for Acquisition may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition as part of the joint statement specified under § 17.27.

(d) The parties to a protest or contract dispute who elect to use ADR must submit to the Office of Dispute Resolution for Acquisition an ADR agreement setting forth:

(1) The type of ADR technique(s) to be used;

(2) The agreed-upon manner of using the ADR process; and

(3) Whether the parties agree to use a Neutral through The Office of Dispute Resolution for Acquisition or to use a Compensated Neutral of their choosing, and, if a Compensated Neutral is to be used, how the cost of the Compensated Neutral's services will be shared.

(e) Non-binding ADR techniques are not mutually exclusive, and may be used in combination if the parties agree that a combination is most appropriate to the dispute. The techniques to be employed must be determined in advance by the parties and shall be expressly described in their ADR agreement. The agreement may provide for the use of any fair and reasonable ADR technique that is designed to achieve a prompt resolution of the matter. An ADR agreement for non-binding ADR shall provide for a termination of ADR proceedings and the commencement of adjudication under the Default Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the Office of Dispute Resolution for Acquisition in informal ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication, pursuant to § 17.31(c).

(f) Binding arbitration may be permitted by the Office of Dispute Resolution for Acquisition on a case-by-case basis; and shall be subject to the provisions of 5 U.S.C. 575(a), (b), and (c), and any other applicable law. Arbitration that is binding on the parties, subject to the Administrator's right to approve or disapprove the arbitrator's decision, may also be permitted.

(g) For protests, the ADR process shall be completed within twenty (20) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(h) For contract disputes, the ADR process shall be completed within forty (40) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition, unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(i) The parties shall submit to the Office of Dispute Resolution for Acquisition an agreed-upon protective order, if necessary, in accordance with the requirements of § 17.9.

§ 17.35 Selection of neutrals for the alternative dispute resolution process.

(a) In connection with the ADR process, the parties may select a Compensated Neutral acceptable to both, or may request the Office of Dispute Resolution for Acquisition to provide the services of a DRO or other Neutral.

(b) In cases where the parties select a Compensated Neutral who is not familiar with Office of Dispute Resolution for Acquisition procedural matters, the parties or Compensated Neutral may request the Office of Dispute Resolution for Acquisition for the services of a DRO to advise on such matters.

Subpart E—Default Adjudicative Process

§ 17.37 Default adjudicative process for protests.

(a) Other than for the resolution of preliminary or dispositive matters, the Default Adjudicative Process for protests will commence upon the submission of the Product Team Response to the Office of Dispute Resolution for Acquisition, pursuant to § 17.17.

(b) The Director of the Office of Dispute Resolution for Acquisition shall select a DRO or a Special Master to conduct fact-finding proceedings and to provide findings and recommendations concerning some or all of the matters in controversy.

(c) The DRO or Special Master may prepare procedural orders for the proceedings as deemed appropriate; and may require additional submissions from the parties. As a minimum, the protester and any intervenor(s) must submit to the Office of Dispute Resolution for Acquisition written comments with respect to the Product Team Response within five (5) business days of the Response having been filed with the Office of Dispute Resolution for Acquisition or within five (5) business days of their receipt of the Response, whichever is later. Copies of such comments shall be provided to the other participating parties by the same means and on the same date as they are furnished to the Office of Dispute Resolution for Acquisition.

(d) The DRO or Special Master may convene the parties and/or their representatives, as needed, to pursue the Default Adjudicative Process.

(e) If, in the sole judgment of the DRO or Special Master, the parties have presented written material sufficient to allow the protest to be decided on the record presented, the DRO or Special Master shall have the discretion to decide the protest on that basis.

(f) The parties may engage in voluntary discovery with one another and, if justified, with non-parties, so as to obtain information relevant to the allegations of the protest. The DRO or Special Master may also direct the parties to exchange, in an expedited manner, relevant, non-privileged documents. Where justified, the DRO or Special Master may direct the taking of deposition testimony, however, the FAA dispute resolution process does not contemplate extensive discovery. The DRO or Special Master shall manage the discovery process, including limiting its length and availability, and shall establish schedules and deadlines for discovery, which are consistent with time frames established in this part and with the FAA policy of providing fair and expeditious dispute resolution.

(g) The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings will be conducted:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the protest, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties' written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(h) The Director of the Office of Dispute Resolution for Acquisition may review the status of any protest in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(i) Within thirty (30) business days of the commencement of the Default Adjudicative Process, or at the discretion of the Office of Dispute Resolution for Acquisition, the DRO or Special Master will submit findings and recommendations to the Office of Dispute Resolution for Acquisition that shall contain the following:

(1) Findings of fact;

(2) Application of the principles of the AMS, and any applicable law or authority to the findings of fact;

(3) A recommendation for a final FAA order; and

(4) If appropriate, suggestions for future FAA action.

(j) In arriving at findings and recommendations relating to protests, the DRO or Special Master shall consider whether or not the Product Team actions in question had a rational basis, and whether or not the Product Team decision under question was arbitrary, capricious or an abuse of discretion. Findings of fact underlying the recommendations must be supported by substantial evidence.

(k) The DRO or Special Master has broad discretion to recommend a remedy that is consistent with § 17.21.

(l) A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, only upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the protest, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

(m) The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

§ 17.39 Default adjudicative process for contract disputes.

(a) The Default Adjudicative Process for contract disputes will commence on the latter of:

(1) The parties' submission to the Office of Dispute Resolution for Acquisition of a joint statement pursuant to § 17.27 which indicates that ADR will not be utilized; or

(2) The parties' submission to the Office of Dispute Resolution for Acquisition of notification by any party that the parties have not settled some or all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) Within twenty (2) business days of the commencement of the Default Adjudicative Process, the Product Team shall prepare and submit to the Office of Dispute Resolution for Acquisition, with a copy to the contractor, a chronologically arranged and indexed Dispute File, containing all documents which are relevant to the facts and issues in dispute. The contractor will be entitled to supplement such a Dispute File with additional documents.

(c) The Director of the Office of Dispute Resolution for Acquisition shall assign a DRO or a Special Master to conduct fact-finding proceedings and provide findings and recommendations concerning the issues in dispute.

(d) The Director of the Office of Dispute Resolution for Acquisition may delegate authority to the DRO or Special Master to conduct a Status Conference within ten (10) business days of the commencement of the Default Adjudicative Process, and, may further delegate to the DRO or Special Master the authority to issue such orders or decisions to promote the efficient resolution of the contract dispute.

(e) At any such Status Conference, or as necessary during the Default Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required to resolve the dispute;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to § 17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(f) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make final submissions to the Office of Dispute Resolution for Acquisition and to the DRO or Special Master, which submissions shall include the following:

(1) A joint statement of the issues;

(2) A joint statement of undisputed facts related to each issue;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, to pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(g) Each party shall serve a copy of its final submission on the other party by means reasonable calculated so that the other party receives such submissions on the same day it is received by the Office of Dispute Resolution for Acquisition.

(h) The DRO or Special Master may decide the contract dispute on the basis of the record and the submissions referenced in this section, or may, in the DRO or Special Master's discretion, allow the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues. The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings on the record shall be conducted by the ODRA:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(i) The DRO or Special Master shall prepare findings and recommendations within thirty (30) business days from receipt of the final submissions of the parties, unless that time is extended by the Officer of Dispute Resolution for Acquisition for good cause. The findings and recommendations shall contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, a recommendation for a final FAA order, and, if appropriate, suggestions for future FAA action.

(j) As a party of the findings and recommendations, the DRO or Special Master shall review the disputed issue or issues in the context of the contract, any applicable law and the AMS. Any finding of fact set forth in the fundings and recommendation must be supported by substantial evidence.

(k) The Director of the Office of Dispute Resolution for Acquisition may review the status of any contract dispute in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(l) A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the contract dispute, a redacted version of the findings and recommendations omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personal shall be provided copies of the unredacted findings and recommendation.

(m) The time limitations set forth in this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

Subpart F—Finality and Review

§ 17.41 Final orders.

All final FAA orders regarding protests or connect disputes under this part are to be issued by the FAA Administrator or by a delegee of the Administrator.

§ 17.43 Judicial review.

(a) A protestor or contractor may seek of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the Office of Dispute Resolution for Acquisition and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.

§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

Appendix A to Part 17—Alternative Dispute Resolution (ADR)

A. The FAA dispute resolution procedures encourage the parties to protests and contract disputes to use ADR as the primary means to resolve protests and contract disputes, pursuant to the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320, 5 U.S.C. 570–579, and Department of Transportation and FAA policies to utilize ADR to the maximum extent practicable. Under the procedures presented in this part, the Office of Dispute Resolution for Acquisition would encourage parties to consider ADR techniques such as case evaluation, mediation, or arbitration.

B. ADR encompasses a number of processes and techniques for resolving protests or contract disputes. The most commonly used types include:

(1) *Mediation.* The Neutral or Compensated Neutral ascertains the needs and interests of both parties and facilitates discussions between or among the parties and an amicable resolution of their differences, seeking approaches to bridge the gaps between the parties' respective positions. The Neutral or Compensated Neutral can meet with the parties separately, conduct joint meetings with the parties' representatives, or employ both methods in appropriate cases.

(2) *Neutral Evaluation.* At any stage during the ADR process, as the parties may agree, the Neutral or Compensated Neutral will provide a candid assessment and opinion of the strengths and weaknesses of the parties' positions as to the facts and law, so as to facilitate further discussion and resolution.

(3) *Minitrial.* The minitrial resembles adjudication, but is less formal. It is used to provide an efficient process for airing and resolving more complex, fact-intensive disputes. The parties select principal representatives who should be senior officials of their respective organizations, having authority to negotiate a complete settlement. It is preferable that the principals be individuals who were not directly involved in the events leading to the dispute and who, thus, may be able to maintain a degree of impartiality during the proceeding. In order to maintain such impartiality, the principals typically serve as ''judges'' over the mini-trial proceeding together with the

Neutral or Compensated Neutral. The proceeding is aimed at informing the principal representatives and the Neutral or Compensated Neutral of the underlying bases of the parties' positions. Each party is given the opportunity and responsibility to present its position. The presentations may be made through the parties' counsel and/or through some limited testimony of fact witnesses or experts, which may be subject to cross-examination or rebuttal. Normally, witnesses are not sworn in and transcripts are not made of the proceedings. Similarly, rules of evidence are not directly applicable, though it is recommended that the Neutral or Compensated Neutral be provided authority by the parties' ADR agreement to exclude evidence which is not relevant to the issues in dispute, for the sake of an efficient proceeding. Frequently, minitrials are followed either by direct one-on-one negotiations by the parties' principals or by meetings between the Neutral/Compensated Neutral and the parties' principals, at which the Neutral/Compensated Neutral may offer his or her views on the parties' positions (*i.e.*, Neutral Evaluation) and/or facilitate negotiations and ultimate resolution via Mediation.

Issued in Washington, DC, on June 10, 1999.

Jane F. Garvey,

Administrator.

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Part III

Environmental Protection Agency

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–7]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed action, response to comment, and request for additional comment.

SUMMARY: In a **Federal Register** Notice on October 9, 1996, the Environmental Protection Agency (''EPA'') requested comment on how it calculates the economic benefit that regulated entities obtain as a result of violating environmental requirements; EPA makes this calculation to establish an appropriate penalty for settlement purposes. This Notice provides both responses to the public comments and advance notice of the changes EPA proposes to make to its benefit recapture approach and to its BEN computer model (which is used by EPA to calculate economic benefit for purposes of settlement). EPA also requests comment on these proposed changes. After the comment period closes, the Agency plans to review all of the comments and revise its benefit recapture approach as appropriate.

DATES: EPA urges interested parties to comment in writing on its proposed changes to the BEN model and to the Agency's benefit recapture approach. Comments must be received by EPA at the address below by July 30, 1999.

ADDRESSES: Written comments should be submitted in triplicate to: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248–A, 401 M Street, SW., Washington, DC 20460, and should reference this docket. EPA will maintain a record of all written comments submitted pursuant to this Notice. Copies of the comments may be reviewed at the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, Washington, DC 20004. Persons interested in reviewing the comments must make advance arrangements to do so by calling (202) 564–2235.

FOR FURTHER INFORMATION CONTACT: Copies of the BEN computer model and the BEN User's Manual may be obtained from the National Technical Information Service by calling (800) 553–6847. Callers should request order number PB98–500382GEI. Electronic copies of these items are also downloadable through the Office of Enforcement and Compliance Assurance's World Wide Web site on the Internet (http://www.epa.gov/oeca/datasys/dsm2.html). Government users (federal, state, or local) can also obtain copies of the model and manual through the Agency's toll-free enforcement economics helpline at (888) ECONSPT. For further information, contact Jonathan Libber, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564–6102, or through electronic mail at libber.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Notice is organized as follows:

I. Background

A. Overview

B. EPA Policy and Guidance on Recapturing the Economic Benefit of Noncompliance

1. Policy Background
2. BEN Calculates the Economic Benefit From Delayed and Avoided Pollution Control Expenditures
3. Current Model Usage and Applicability

C. How a Firm Obtains an Economic Benefit From Delaying or Avoiding Compliance Costs

1. The Components of Economic Benefit Measured by the BEN Model
2. Taking Indirect Costs Into Account

II. Proposed Changes

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN
2. Illegal Competitive Advantage

B. The BEN Model's Calculation Methodology

1. Investment Tax Credit and Low-Interest Financing
2. Depreciation Method
3. Tax Rates
4. Differences in On-Time and Delay Scenarios
5. Replacement Cycles for Capital Equipment
6. Inflation Treatment
7. Discount Rate
8. Discounting Methodology

C. Improving the BEN Model's User Friendliness

1. Is BEN Too Complex to Operate?
2. Is the Information BEN Needs Difficult or Expensive to Obtain?

III. Response to Comments

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN
2. Illegal Competitive Advantage

B. The BEN Model's Calculation Methodology

1. Discount Rate
2. Inflation Rate
3. Other Technical Aspects

C. Improving the BEN Model's User-Friendliness

1. Is BEN Too Complex to Operate?
2. Is the Information BEN Needs Difficult or Expensive to Obtain?
3. Other Issues Affecting Use of BEN

D. General Comments on the Public Comment Process

I. Background

A. Overview

One of EPA's most important responsibilities is to ensure that regulated entities comply with federal environmental laws. These laws—and their implementing regulations—set minimum standards for protecting human health and welfare and for achieving environmental protection goals, such as clean air and clean water. EPA upholds these laws through vigorous enforcement actions that correct the violations and appropriately penalize violators.

A cornerstone of the EPA's civil penalty program is recapturing the economic benefit that a violator may have gained from illegal activity. Recapture helps level the economic playing field by preventing violators from obtaining an unfair financial advantage over their competitors who made the necessary expenditures for environmental compliance. Penalties also serve as incentives to protect the environment and public health by encouraging the prompt compliance with environmental requirements and the adoption of pollution prevention and recycling practices. Finally, appropriate penalties help deter future violations by both the penalized entity and by similarly situated regulatees.

EPA has promulgated a generic civil penalty policy, as well as specific penalty policies tailored to suit the needs of particular regulatory programs. For example, one civil penalty policy specifically addresses violations of the Clean Water Act. There are usually two components to the civil penalties sought by EPA: gravity and economic benefit. The gravity component reflects the seriousness of the violation and is generally determined through the application of the appropriate EPA civil penalty policy.

The economic benefit component, on the other hand, focuses on the violator's economic gain from noncompliance, which may occur in three basic ways. The violator can: (1) Delay necessary pollution control expenditures; (2) avoid necessary pollution control expenditures; or (3) gain an illegal competitive advantage during the period of noncompliance. This competitive advantage may occur, for example, if a company sells banned products or captures additional market share by selling its products at a lower cost than its complying competitors.

The Agency designed the BEN computer model to calculate—primarily

for settlement purposes—the economic benefit from these first two types of economic gain. BEN may not be appropriate for all cases. The EPA's regional offices can use an alternative approach that can produce reasonably accurate benefit calculations; however, the Agency believes that BEN is by far the best approach available for calculating economic benefit derived from delayed and avoided costs. The Agency does not have a computer model for calculating the benefit gained from an illegal competitive advantage. EPA considers such gains on a case-by-case basis.

B. EPA Policy and Guidance on Recapturing the Economic Benefit of Noncompliance

Since the BEN computer model's development in 1984, EPA staff have used BEN extensively in generating penalty figures for settlement purposes that reflect the economic benefit a violator derived from delaying or avoiding compliance with environmental statutes.

1. Policy Background

Calculating a violator's economic benefit using the BEN computer model is usually the first step in developing a civil settlement penalty figure under the Agency's Policy on Civil Penalties (PT.1–1) February 16, 1984, and A Framework for Statute-Specific Approaches to Penalty Assessments (PT.1–2) February 16, 1984. The Agency developed the BEN computer model to assist in fulfilling one of the main goals of the Policy on Civil Penalties: recovery—at a minimum—of the economic benefit derived from noncompliance.

The BEN computer model is a tool that is primarily intended to be used in calculating economic benefit for purposes of developing a settlement penalty. In presenting economic benefit testimony at judicial trial or in an administrative hearing, the Agency relies on an expert to provide an independent financial analysis of the economic benefit the violator obtained as a result of its violations. This independent financial assessment reflects the expert's own analytical approach as applied to the particular facts of that case. Use of an expert in a trial or hearing allows the parties the opportunity to examine more closely the analysis applied to the facts at issue than would be possible through reliance solely on a computer model. [1]

2. BEN Calculates the Economic Benefit From Delayed and Avoided Pollution Control Expenditures

The BEN model is designed to calculate two types of economic benefit: those gained from delaying and those gained from avoiding required environmental expenditures. Delayed costs can include capital investments in pollution control equipment, remediation of environmental damages (e.g., removal of unpermitted fill material and restore wetlands), or one-time expenditures required to comply with environmental regulations (e.g., the cost of setting up a reporting system, or purchasing land). Avoided costs include operation and maintenance costs and/or other annually recurring costs (e.g., off-site disposal of fluids from injection wells). BEN does not calculate the third type of economic benefit: that gained from a violator's competitive advantage associated with noncompliance.

3. Current Model Usage and Applicability

The BEN model can be used in all cases that have delayed or avoided compliance costs. (The only exception is Clean Air Act Section 120 enforcement actions, which require the application of a specific computer model.) EPA designed BEN to be easy to use for people with little or no background in economics, financial analysis, or computers. Because the program contains standard values for many of the variables needed to calculate the economic benefit, BEN can be run with only a small number of inputs from the user. The program also allows the user to replace those standard values with user-specific information. Table 1 below lists the inputs to the BEN model. The optional inputs listed in Table 1 are those for which the model has standard default values.

The BEN model can estimate economic benefit for many types of organizations: corporations, partnerships, sole proprietorships, not-for-profit organizations, and municipalities. The BEN model has two sets of standard values: one applies to for-profit business violators, and the other applies to not-for-profit organizations. The BEN inputs listed in Table 1 are discussed in detail in Chapter 4 of the BEN User's Manual for both for-profit and not-for-profit organizations.

Table 1.—Inputs for BEN

Required Inputs

(1) Case Name, Profit Status, and Filing Status.
(2) Capital Investment.
(3) One-Time Nondepreciable Expenditure.
(4) Annual Expenses.
(5) Date of Noncompliance.
(6) Date of Compliance.
(7) Date of Penalty Payment.

Optional Inputs (Standard Values That May Be Modified):

(8) Useful Life of Pollution Control Equipment.
(9) Marginal Income Tax Rate for 1986 and Before.
(10) Marginal Income Tax Rate for 1987 to 1992.
(11) Marginal Income Tax Rate for 1993 and Beyond.
(12) Inflation Rate.
(13) Discount Rate.

C. How a Firm Obtains an Economic Benefit From Delaying or Avoiding Compliance Costs

An organization's compliance with environmental regulations usually entails a commitment of financial resources, both initially (in the form of a capital investment or one-time expenditure) and over time (in the form of continuing, annually recurring costs). These expenditures should result in better protection of public health or environmental quality, but they are unlikely to yield any direct economic benefit (*i.e.*, net gain) to the organization. If these financial resources are not used for compliance, then they presumably are invested in projects with an expected direct economic benefit to the organization. This concept of alternative investment—that is, the amount the violator would normally expect to make by not investing in pollution control—is the basis for calculating the economic benefit of noncompliance.

As part of the Civil Penalty Policy, the Agency uses its penalty authority to remove or neutralize the economic incentive to violate environmental regulations. In the absence of enforcement and appropriate penalties, it is usually in an organization's best economic interest to delay the commitment of funds for compliance with environmental regulations and to avoid certain associated costs, such as operation and maintenance expenses.

1. The Components of Economic Benefit Measured by the BEN Model

A violator may gain economic benefit from either delaying or avoiding compliance costs. By delaying

[1] EPA designed the BEN model as a flexible tool for use in settlement negotiations; it is not used, nor was it ever intended to function, as a rule. An expert witness testifying for the government may use the new Windows version of BEN in court, but the responsibility to determine the economic benefit still resides with the expert. That expert may choose to use whatever analytical tool (*e.g.*, customized computer spreadsheets, the BEN model, or even a calculator) he or she deems appropriate for the particular calculations necessary in the case.

compliance, the violator can earn a return on the delayed capital investment or one-time expenditures required for pollution control compliance. In other words, violators have the opportunity to invest their funds in projects other than those required to comply with environmental regulations. These other investments are ordinarily expected to yield a monetary return at the violator's marginal rate of return on capital. But environmental expenditures typically yield no direct economic benefit. Thus, by delaying compliance, the violator benefits by the amount of earnings that could be expected from alternative investments.

A violator can also gain an economic benefit from avoiding pollution control costs. Avoided costs typically include the continuing, annually recurring costs that a violator would have incurred if it had complied with environmental regulations on time (*e.g.*, the costs of labor, raw materials, energy, lease payments and any other expenditures directly associated with the operation and maintenance of the pollution control equipment). Unlike capital investments and one-time expenditures that are only postponed, annual expenditures are avoided altogether. The resulting benefits to the violator are the total avoided annual costs as well as the return that could be expected on these avoided costs.

2. Taking Additional Factors Into Account

EPA's BEN model evaluates economic benefit in terms of the effect that delayed or avoided pollution control costs have on an entity's cash flows. Cash flow analysis is a standard and widely accepted technique for evaluating costs and investments. In essence, cash flow calculations focus on the real, ''out-of-pocket'' cash effects resulting from an expenditure. Thus, noncash expenditures, such as depreciation, are considered only to the extent that they affect cash income or expenses. The three additional factors the model considers are taxation, inflation, and the time value of money.

a. After-Tax Cash Flows. The BEN model computes economic benefit in after-tax terms to account for certain financial impacts associated with environmental expenditures. For example, one important impact of these expenditures is a reduction in income tax liability. Depreciation, one-time expenditures, and annual costs all effectively reduce taxable income and thereby reduce income tax payments. Also, depending upon the tax year, the original purchase of equipment might have resulted in an investment tax credit. To account for these tax effects, BEN calculates the economic benefit using after-tax cash flows.

b. Inflation. Inflation is another factor for which BEN accounts. The BEN model initially converts all costs to dollars of the noncompliance year and then compares the cost of complying on time with the cost of complying late. The model uses the inflation rate to adjust the current or future cost of compliance into dollars from the year noncompliance began. The BEN User's Manual (see pages 4–27 to 4–29 and Appendix A of the manual) contains a more detailed discussion of the inflation adjustment.

c. Time Value of Money. A third factor relates to the timing of the cash flows, because cash flows occurring in different years are not directly comparable. A basic concept of financial theory is ''present value.'' This concept is based on the principle that ''A dollar today is worth more than a dollar a year from now,'' because today's dollar can be invested immediately to earn a return over the coming year. (Alternatively, a dollar last year is worth more than a dollar today because investment opportunities existed for last year's dollar.) Therefore, the earlier a cost (or benefit) is incurred, the greater its economic impact. BEN accounts for this ''time value of money'' effect by adjusting all estimated cash flows to their ''present value'' equivalents. To accomplish this, BEN first ''discounts'' all cash flows back to the noncompliance date, then calculates an initial economic benefit as of this date, and finally ''compounds'' the economic benefit forward to the penalty payment date. BEN uses a rate that reflects the time value of money (known as a discount rate or compounding rate) to adjust the cash flows for both discounting and compounding.[2] The selection of the appropriate discounting methodology is a significant issue in the BEN model. The *BEN User's Manual* (see pages 4–30 to 4–35 and Appendix A of the manual) contains a more detailed discussion of the discounting and compounding that BEN performs for its present value calculations.

II. Proposed Changes

In its October 9, 1996, **Federal Register** Notice, the Agency sought comment on three categories of issues: (1) Broad economic benefit recapture questions, (2) the BEN model's calculation methodology and assumptions, and (3) the model's user-friendliness.

First, we invited comment on some fundamental questions that the benefit recapture approach has raised: Can an approach both more simple and more accurate than BEN measure the economic benefit of delayed and avoided pollution control expenditures? How should EPA evaluate the economic benefit that companies receive as a result of any illegal competitive advantage stemming from noncompliance?

Second, we invited comment on the BEN model's calculation methodology. While the Agency is confident that the BEN model's overall approach is theoretically sound, we welcomed constructive and documented comment on alternative approaches. In addition, EPA is aware of substantial differences of opinion with respect to the basis of some of the model's assumptions, particularly with respect to the discount rate and inflation rate. EPA requested comment on the BEN model's calculation methodology, or any other aspect of the model's assumptions or methodology.

Third, we requested comment on the model's user-friendliness. The Agency had heard concerns that the model is too difficult to use, particularly regarding BEN's ease of operation and the difficulty of obtaining the necessary data. Because EPA had never been presented with any concrete evidence in support of these assertions, the Agency wanted either to substantiate the problems and address them or to put these issues to rest.

In the following sections, we address the changes that EPA proposes to make in each of the areas on which we requested comment.

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

a. Background. EPA requested comment on whether an approach both more simple and more accurate than BEN could measure the economic benefit of delayed and avoided pollution control expenditures. EPA designed the BEN model to calculate the economic benefit of noncompliance in settlement of the vast majority of its civil penalty enforcement cases. Although BEN has effectively served this purpose, the Agency recognizes that it should be improved or even replaced if a better alternative exists or could be developed easily. This concern is particularly relevant because an increasing number of state and local

[2] For the sake of simplicity, the Agency generally refers to present value adjustments in either direction as ''discounting,'' although we acknowledge that a more precise term for adjusting the initial economic benefit forward is ''compounding.''

government enforcement personnel use the BEN model regularly. Any alternative approach must meet EPA's policy objective of ensuring that violators are put on an even financial footing with those regulated entities that comply on time. Alternatives must also be reasonably accurate, simple to use, and readily understandable to the vast majority of the BEN model's users, as these federal, state and local government enforcement officials usually have limited knowledge of financial economics or accounting.

b. Proposed Changes. Many commenters expressed various criticisms on different aspects of the BEN model. These criticisms, however, focused on suggestions for improving BEN. No commenter proposed an alternative approach to a stand-alone computer model that performs net present value calculations. Therefore, the Agency plans to continue its use of BEN, although it does propose significant revisions (see following sections).

2. Illegal Competitive Advantage

a. Background. Since 1984, EPA's civil penalty policy has maintained that any given penalty should be structured, at a minimum, to recover the economic benefit a violator has enjoyed as a result of its noncompliance. In addition to this economic benefit component, EPA assesses a gravity component that reflects the seriousness of the violation. This gravity component is designed to ensure that the penalty puts the violator in a worse position than those in the regulated community who complied with the law. The economic benefit component of EPA's civil penalty policy focuses specifically on identifying and recovering the gain to a violator in order to remove any economic incentive to violate environmental regulations. The policy does not address incidental and/or indirect losses or gains to society that might result from a violation. For example, consumers may enjoy an economic gain if a violator is able to reduce product prices.

The BEN model calculates the savings from the delayed and avoided costs that the violator realizes through its noncompliance and uses this measure as a proxy for the total economic gain it accrued. This approach represents the lower bound of the total economic gain associated with noncompliance. For example, given a new environmental standard, if all firms in the market except the violator comply by investing in pollution abatement technology, the market price for the product will rise to reflect the higher marginal costs borne by the producers. The violator has a cost advantage and could (a) charge the market price and pocket the avoided costs, (b) charge a lower price than its competitors in order to gain market share, or (c) combine strategies (a) and (b). BEN is designed to calculate only the delayed and avoided costs of noncompliance regardless of which strategy the company pursues. BEN, therefore, implicitly assumes that the violator follows strategy (a), and does not address the potential market impacts associated with the violator's lower marginal costs (*i.e.*, strategy (b) or (c)).

Illegal competitive advantage is an estimate of the total economic gain that the violator enjoys in the market as a result of the violation. Illegal competitive advantage focuses on how delaying and avoiding compliance allows violators to manufacture and sell products in the marketplace more cost-effectively, and also examines violators' short-term and long-term economic advantages associated with improved market position. Note that marginal cost differences are key to illegal competitive advantage: if a company's violation affects only fixed costs, then BEN can generally capture the entire economic benefit from noncompliance. A violator need not demonstrate an intent to improve its market position in order for it to enjoy an illegal competitive advantage.

Illegal competitive advantage can occur in a number of different ways, including:

Violator Sells Products at Below Market Price: A violator might be able to sell its products at a lower price than its complying competitors because it does not incur environmental compliance costs. Depending on market conditions (*i.e.*, elasticity of market demand) the violator may then secure a bigger share in that particular market, with the profit from the extra market share constituting the economic benefit. Some key questions are: how do we assess and prove what share of the market resulted from underpricing, and how do we determine the value of that market share?

Example: A metal finishing company fails to install pollution abatement equipment that would insure compliance with its wastewater discharge permit in order to keep costs low. A competitor producing the same product for the same market cannot compete with the price charged by the metal finisher in noncompliance and, as a result, exits the market. The violator now gains market share. BEN will capture the violator's delayed and avoided costs while in noncompliance, but will not calculate the added profits that the violator realizes from its increased market share.

Example: An auto shop using illegal disposal methods charges the same prices as its competitors and spends its avoided costs on advertising. It builds a larger customer base than it otherwise would have. BEN does not capture the full dimension of economic benefit from the auto shop's expanded customer base.

- *Violator Sells Products that Were Prohibited by Law:* Many EPA regulations prohibit the sale of certain products, either permanently or until EPA reviews and approves them.[3] If the violator produces and sells the prohibited product, the violator will achieve an economic benefit by: (1) making money directly from the sale of the product; and (2) capturing the market for the product, particularly if the product is new.

Example: A company mixes overstock of a restricted agricultural chemical into one of its ''improved'' popular lawn care products. Sales of the product are strong and customer brand identification and approval is high. BEN does not calculate the economic benefit the company has obtained through its illegal sales of the product nor the benefit that will accrue in the future from customer brand loyalty.

- *Violator Initiates Construction or Operation Prior to Government Approval:* Some regulatory requirements prohibit construction or operation until EPA or another government agency grants a permit. When a violator initiates construction or operation prior to this approval, it can begin operating earlier than it would have been able to had it complied with the law (*e.g.*, if operation begins nine months earlier than it should have, the violator can generate sales it should not have made and thereby gain a head start in developing its market). The violator may be partly motivated by the desire to gain an ''early mover'' advantage in a new market. (Note that in many of these cases, the violator will obtain governmental approval anyway. In such cases, no environmental damage has occurred. A penalty is nevertheless necessary, as EPA's policy is designed to maintain incentives to comply promptly with regulations.)

If the violator is operating in a new or rapidly evolving market, it may benefit

[3] Note that this differs from a company that produces an approved product through a prohibited process when the final product possesses all the same characteristics from the consumer's point of view, regardless of the production process (*e.g.*, oil sold from a noncompliant underground storage tank, or a metal part finished with an illegal coating). The economic benefit in such cases would be based on the pollution control costs that the violator delayed and/or avoided by producing the approved product through the prohibited process (*e.g.*, the delayed costs of proper tank inspection or the avoided incremental costs of a legal—and presumably more expensive—coating).

from an ''early mover advantage.'' For example, by signing long-term supply contracts with buyers at prices lower than from other potential entrants (who plan to comply with environmental regulations), the violator may forestall competition in the market. An ''early mover'' may also benefit by building a customer base before other entrants. If decreasing costs are associated with the size or scale of production, the ''early mover'' could also enjoy a long-term cost advantage over its competitors. Presumably an ''early mover'' could then parlay relatively thin profits (or even losses) in the early periods with higher profits in later periods.

One key issue in determining economic benefit is that new businesses often expect to lose money in the first few years of operation. Thus, if a firm starts operating one year earlier than it should have, and EPA examines gross income minus expenses only for that first year, then the violator might argue that its economic benefit is zero even though this was part of the violator's plan. A more appropriate measure of the violator's economic benefit may be the difference in the present value of expected cash flow over the life cycle of the facility from operating under compliance (*i.e.,* delayed opening) and in violation (*i.e.,* actual opening date).

Example: A telephone cable company needed to obtain a dredging permit to lay cable between the mainland and an island. Because of competitive pressures to be the first to offer fiber optics cable services on the island, the company proceeded on an accelerated schedule. Had the company gone through the permitting process, it would have been delayed by eight months. A competitor in the same market is within eight months of being permitted. One of two scenarios is possible here:

The violating company lays the cable and gains the first mover advantage, preventing the other company from being able to enter the market profitably. In this case, illegal competitive advantage includes both the profits the company receives during its eight months of operation that were the result of noncompliance, and also any monopoly profits the company enjoys after this time.

The violating company lays the cable and enters the market with other competitors selling the same service. In this case, illegal competitive advantage includes the profits the company receives during its eight months of operation that were the result of noncompliance. In the absence of this company's entrance, the remaining companies would have expanded to meet demand and would have earned the profits.

In both of these cases, BEN will not estimate the current and future benefits that the company realized from being the first to market.

• *Violator Operates at Higher Capacity:* A firm may be able to comply with applicable environmental regulations by maintaining its output or throughput below a given threshold level. A violator might produce above this threshold level in order to take advantage of high product prices. Alternatively, a violator might realize its lowest unit production costs at an output level that exceeds the level at which it can maintain environmental compliance.

Example: A paper mill can comply with the terms of its wastewater permit as long as its daily output does not exceed 200 tons per day. In order to reap the benefits of a market surge in paper prices, the mill produces an average of 240 tons per day over a six-month period. BEN does not capture the profits realized by the violator from the additional 40 tons per day produced on average over the period of noncompliance.

Example: A cheese manufacturer is committed to purchase the total output of 55 dairy farms through long-term ''take or pay'' contracts. Milk production from the farms exceeds the level that the manufacturer can process while staying within the regulatory limits of its wastewater permit for a three month period. Rather than pay for milk that it does not process, the manufacturer chooses to operate at a level that causes it to exceed its permit levels. The manufacturer enjoyed economies of scale due to noncompliance. That is, the manufacturer's production costs of the additional units are lower while it is in noncompliance because there is no additional cost associated with pollution control.

In summary, EPA is examining the recovery of illegal competitive advantage in cases where the BEN model fails to assess adequately the total economic benefit that the violator enjoys as a result of the violation. The proper evaluation of illegal competitive advantage in EPA policy will involve either identifying the incremental benefit enjoyed by the violator and not addressed by the BEN model, or applying a different analytic tool than BEN for the entire economic benefit calculation.

b. Proposed Changes. The Agency does not believe that a stand-alone computer model analogous to BEN (or an add-on module to BEN) could easily and reliably determine the economic benefit from the widely varying examples of illegal competitive advantage described above. To examine the potential market repercussions of noncompliance clearly involves a significantly greater effort than calculating the benefit from delayed and avoided costs. Tracing the probable use of the avoided cost savings by the violator, investigating the specific conditions of the market or markets in which the violator operates, and determining the resulting impacts of noncompliance on the market dynamics are all usually time-intensive tasks. The Agency proposes to assist enforcement staff in measuring economic benefit in such cases by developing a module for the BEN model that alerts the user to situations in which illegal competitive advantage may be significant and to develop guidance to assist enforcement staff in their calculation of illegal competitive advantage.

EPA proposes to have the BEN model query users regarding a series of conditions that might characterize situations where significant economic benefit from illegal competitive advantage could exist. Whenever the user creates a case, the model would prompt the user to provide answers to a series of questions. Depending on the user's answers to these questions, the model would advise the user to seek assistance in assessing the possible existence and magnitude of the economic benefit gained from illegal competitive advantage. The following questions target certain types of violations that may result in illegal competitive advantage. They are designed to require only a basic knowledge of the company's products and markets. An example of the types of questions to be included in this module (with interpretations of positive responses in parentheses) are as follows:

1. Violator Initiates Construction or Operation Prior to Government Approval

a. Did violator's failure to obtain the appropriate review/permits allow it to begin production or sales sooner than it should have? (If ''yes,'' then the violator may have received early mover advantage.)

2. Violator Sells Products Prohibited by Law

a. Did violator sell prohibited products? (If ''yes,'' then go to next question. If ''no,'' then this is not an issue.)

b. Does the violator plan to continue selling similar products in same market after coming into compliance? (If ''yes,'' then possible lasting market share effects may result from the illegal action.)

3. Violator Sells Products Below Market Price

a. Are the required compliance costs significant enough for the violator to have been able to undercut its competitors during the noncompliance period? (If ''yes,'' then the violator may have benefitted from market share gains, as it may have been able to undercut its competitors through its price advantage from noncompliance.)

b. Does violator market products that can develop ''brand loyalty'' or high switching costs? (*e.g.*, computer software, service such as auto maintenance.) (If ''yes,'' then price advantage could have long-term market distribution effects that benefit the violator.)

c. Has violator developed or marketed new products while in noncompliance? (If ''yes,'' than violator may gain ''early mover'' market share and discourage competitors by keeping prices low.)

4. Violator Operated at Higher Output

a. Could the violator have operated within the law cost-effectively by reducing its output/throughput to a certain level? (If it could have done so, but did not, the violator's gain from the incremental output above the level at which it would have been in compliance should be examined.)

EPA seeks comment on these questions and suggestions for other questions that would be necessary to assess sufficiently whether the economic benefit beyond avoided or delayed costs a violator gains from noncompliance are likely to be significant.

For situations where the model advises the user to assess the possible existence and magnitude of the economic benefit gained from illegal competitive advantage, EPA proposes to develop a guidance document to assist enforcement staff in evaluating illegal competitive advantage. The goal of this document is not to provide a fixed approach to calculating the economic benefit from illegal competitive advantage. Rather, the goal is to educate enforcement staff on the types of illegal competitive advantage that may arise in enforcement actions, as well as to provide a framework for EPA analysts and outside experts who perform the actual calculations. This guidance will eventually be incorporated into a revision of the 1984 ''Guidance for Calculating the Economic Benefit of Noncompliance for a Civil Penalty Assessment.'' EPA proposes the following general outline for the content of the illegal competitive advantage guidance document:

1. Definition of Illegal Competitive Advantage

2. Situations in Which Competitive Advantage May Be Significant

a. The violator has an early mover potential in a changing industry (*i.e.*, has opened facility early).

b. The violator is one of a few members in an industry that dominate that particular industry.

c. The violator has been the low-price producer and gained market share during non-compliance.

d. The violator could have operated within the law cost-effectively by reducing its output/throughput to a certain level, but instead operated above that level and that conduct made the violator more profitable.

3. Situations Where It Is Reasonable To Assess

What is the appropriate threshold value for use by EPA? (*E.g.*, how large does the potential economic benefit beyond avoided or delayed cost need to be to warrant EPA's closer scrutiny?)

4. Guidance Principles

EPA needs to keep information collection and analysis as simple and quick as possible.

5. Avoiding Potential Double Counting

a. Use of an integrated approach that constructs compliance on time and delay compliance scenarios, incorporating the relevant cash flows from delayed/avoided compliance costs and illegal competitive advantage.

b. Potential for recapture of both the benefits from savings and illegal competitive advantage in cases where the economic benefit from illegal competitive advantage is additive to the traditional BEN analysis.

c. Cases in which either the traditional BEN analysis or the illegal competitive advantage analysis drops out of the economic benefit calculation.

EPA seeks comment on the suggested approach and outline for this guidance document.

B. The BEN Model's Calculation Methodology

Over the years, the BEN model has received criticism for alleged flaws in its calculation methodology. The two issues with the greatest potential impact on economic benefit estimates involve the model's discount rate and its inflation rate. The Agency requested substantive and constructive comments on how the BEN model handles these two issues. In addition, EPA invited comment on all aspects of BEN's calculation methodology. The Agency asked commenters to address whether their proposed changes would add any complexity to the computer model, and if so, why the benefit of the change justified the added complexity.

1. Investment Tax Credit and Low-Interest Financing

a. Background. Economic benefit calculations for cases with noncompliance dates prior to the mid-1980s must account for two important tax-code effects: the investment tax credit (ITC) and low-interest financing (LIF).

Prior to 1986, the Federal government allowed companies an ITC on capital investments.[4] The ITC effectively reduced the after-tax cost of a capital investment. Complicated—and changing—rules governed the depreciation basis for a capital investment with an associated ITC.

BEN accounts for the ITC that was available on projects completed before January 1, 1986, but does not do so for the transition years of 1986 and 1987. The transitional rules allowed companies to obtain an ITC for projects completed after December 31, 1985, if the project met one of three criteria regarding the level of planning and construction that had occurred by that date.[5] Because the allowance of the ITC in these years was far from automatic (although still possible), BEN warns the user about this issue if the noncompliance date is between January 1, 1986, and June 30, 1987. If further research and analysis shows that the granting of an ITC was likely in a particular case, then a financial analyst can adjust the BEN result through an ''off-line'' calculation.

Prior to 1987, LIF was available for a business's investment in pollution control. An earlier version of the BEN model included a variable that accounted for LIF. The 1993 version removed this variable because it was relevant only for cases with noncompliance dates before 1987. BEN issues a warning to the user about LIF if the noncompliance date is before January 1, 1987. If further research and analysis show that LIF was probably available in a particular case, then a financial analyst can adjust the BEN result through an off-line calculation.

b. Proposed Changes. As a few commenters suggested, EPA could revise the BEN model to allow an option for ITCs during the 1986–87 transition years, as well as to account for LIF in years prior to 1987. These revisions

[4] Note that this and other tax-related adjustments are irrelevant for municipalities and other not-for-profit entities because their marginal tax rate is equal to zero.

[5] The criteria are: ''1. It is constructed, reconstructed, or acquired under a written contract binding on December 31, 1985; 2. it is constructed or reconstructed by the taxpayer, construction was begun by December 31, 1985, and the lesser of $1 million or five percent of the cost was incurred or committed by December 31, 1985; or 3. it is an equipped building or plant facility, construction was begun by December 31, 1985, under a written specific plan, and more than one-half of its cost was incurred or committed by December 31, 1985.'' (Commerce Clearing House, Inc., *Explanation of Tax Reform Act of 1986*, page 328.)

would, however, add considerable complexity to the model. Furthermore, the Agency did not receive any comments documenting recent instances in which an off-line calculation was necessary to account for ITCs or LIF. This is not surprising—EPA Headquarters has received only one call in the last two years in response to the BEN model's current warning about LIF. Furthermore, the already low likelihood of the need to account for ITCs or LIF continues to decline with the passage of time, as EPA is not likely to see many enforcement actions now in the late-1990s for violations that began in the early to mid-1980s.

EPA instead proposes that the revised BEN model not accept noncompliance dates before July 1, 1987. This will ensure that BEN's omission of ITCs and LIF is not leading to incorrect economic benefit estimates in instances where users do not heed the current model's current warning. EPA will provide assistance in performing the necessary calculations for cases that actually involve noncompliance dates before July 1, 1987.

The Agency welcomes comment on this proposed change. We are particularly interested in how often BEN users have recently analyzed cases with noncompliance dates before July 1, 1987, and how often they anticipate doing so after June of 1999, the expected introduction of the revised BEN model.

2. Depreciation Method

a. Background. The BEN model calculates depreciation for capital investments, as the tax deduction for accounting depreciation charges provides a real after-tax positive cash flow to businesses.[6] BEN calculates depreciation using a five-year straight-line methodology for capital investments made before January 1, 1987, and a seven-year Modified Accelerated Cost Recovery System for capital investments made after January 1, 1987. These assumptions represent the most rapid depreciation periods available for typical pollution control investments, thereby producing the positive depreciation cash flow effects as early as possible. These particular depreciation methods generally result in a conservative economic benefit calculation (*i.e.,* lower than would otherwise be calculated) because they minimize out-of-pocket costs to the violator. Therefore, BEN is often producing economic benefit figures that are very conservative.[7]

For capital equipment that has a very short useful life, the selection of alternative depreciation schedules might be available and also more beneficial to a business. In unusual cases where the violator can demonstrate that an alternative depreciation schedule would be both available and beneficial, then more detailed calculations by a financial analyst in lieu of the BEN model are necessary.

b. Proposed Changes. A revised BEN model could conceivably allow users the option of assuming an alternative depreciation schedule, but we believe the drawbacks of the added complexity and potential user confusion outweigh the gains from addressing a rare circumstance. The Agency welcomes feedback from BEN users on how often violators have asserted that a different depreciation schedule would be both available and beneficial, and how often off-line calculations have been necessary.

3. Tax Rates

a. Background. BEN uses three marginal tax rates: a rate for 1986 and before, one for 1987 through 1992, and one for 1993 and beyond. Users can accept the standard values—which incorporate national averages of state tax rates—or modify the inputs to reflect specific state values.[8]

b. Proposed Changes. EPA proposes that the revised BEN model require the user to enter the state in which the violator is located. The model will then automatically reference an internal database of state tax rates and perform the necessary calculations for the violator's combined federal and state tax rate.[9] EPA also proposes that BEN calculate the tax rate for each separate year of noncompliance, to allow for annual changes in the relevant state tax rate (even when the federal rate remains constant). Users will have the additional option of entering year-by-year combined federal and state rates in a spreadsheet-like format.[10]

Although these options may sound complex, the only data required of the user would be the violator's state. The other screens for additional data entry and modification would appear only to those users who selected such advanced options. The Agency welcomes comments on the added flexibility and applicability that would result from these proposed changes.

4. Differences in On-Time and Delay Scenarios

a. Background. The BEN model assumes that the violator would have used the same technology and approach in the hypothetical on-time compliance as it did in the actual delayed compliance scenario. The only allowed differences are in the two scenarios' exact costs of compliance, which BEN's inflation rate adjusts automatically. But technological, legal, or other relevant changes between the on-time and delay scenarios can conceivably alter the components of the compliance scenarios, increasing or decreasing the compliance costs by a rate other than general price inflation. Where the delay case costs are substantially less than the on-time case costs (*e.g.,* a technological breakthrough in control equipment), BEN will understate the benefit. Where the delay costs are substantially higher (*e.g.,* regulations become more strict, but with ''grandfather'' clauses for already-compliant firms), BEN will overstate the benefit.

Where the on-time and delay compliance scenarios are significantly different, BEN's normal assumption of two identical scenarios is inappropriate. More sophisticated calculations are necessary.[11]

b. Proposed Changes. Modifying BEN to accommodate such circumstances is possible, and we believe the gains from the model's consequently enhanced applicability outweigh the drawbacks of the added complexity and potential user

[6] The IRS does not allow companies to write off completely a capital investment in the year of purchase. Companies must spread the expense of the investment over several years using the appropriate depreciation schedule.

[7] The IRS requires that many types of pollution control equipment be depreciated over a longer period than assumed in the BEN model. Were EPA to tailor the depreciation to account for that longer period, the result would be a higher economic benefit calculation.

[8] Users might also wish to modify the tax rates to reflect a business whose low net income entails a tax bracket other than the highest one assumed in the standard values. Note though that BEN's assumption of the *highest* marginal tax rate produces a *lower* economic benefit estimate (because a higher tax rate decreases the after-tax value of the compliance costs).

[9] The model will also offer the option of the national average of all the state tax rates for cases in which it is unclear to what state the violator pays taxes.

[10] This option would allow users to account for—among other situations—a company whose profitability (and hence tax bracket) was highly variable over different years. (As noted before, BEN's assumption of the highest marginal tax rate throughout the noncompliance period results in a lower economic benefit estimate.) This option could allow users to account for the 1987 transition year in the federal tax rate change, but this is a moot point if the BEN model is changed (as proposed in a previous section) to require noncompliance dates after June 30, 1987.

[11] A similar problem arises when no technologically feasible method of compliance is available. In that case, the only possible compliance method is to cease all production, with the economic benefit calculation requiring a lost-profits approach, which is beyond the scope of the BEN model.

confusion. EPA, therefore, proposes to change the BEN model to allow users to enter separate on-time and delayed compliance costs.

It should be noted that the standard operation of the model would still entail only a single compliance scenario, and the other screens for additional data entry and modification would appear only to those users who select such advanced options. The availability of more advanced options would also enhance the model's ability to account for such atypical situations such as valid pre-compliance expenditures and credits for salvaged capital equipment, thus decreasing the need for off-line calculations. The Agency welcomes comments on this proposed change and how significantly it will enhance the model's flexibility and applicability.

5. Replacement Cycles for Capital Equipment

a. Background. One of the three types of compliance costs BEN analyzes is the capital investment, which represents depreciable pollution control equipment. As the name implies, depreciable equipment wears out with usage and the passage of time. BEN, therefore, asks the user if the violator will need to replace the equipment at some point in the future. If the user specifies that the investment in capital equipment is recurring, then the user can accept the standard value of 15 years for the useful life of the capital equipment, or enter another value.

If the cost of capital equipment is recurring, then a violator receives more than one benefit from delaying the purchase of capital equipment. The violator first receives a benefit from delaying the purchase of the initial capital equipment, and then receives further benefits from delaying the purchase of the replacement capital equipment for each future recurring cycle.

b. Proposed Changes. Some commenters stated that BEN's option of recurring capital equipment replacement cycles is ''speculative,'' as these cycles have yet to occur in the typical case. Although BEN makes an assumption about the future, this assumption is essentially a baseline one: BEN assumes that future pollution control requirements will be neither more stringent nor more lax than current requirements, and that the cost of the replacement equipment will increase by no more and no less than the projected rate of inflation. Therefore, the Agency proposes to keep the option of replacement cycles.

Some commenters argued that BEN should not offer infinitely recurring replacement cycles. The modeling of infinite cycles might at first seem excessive, but all future costs are ''discounted'' back to their present values (see following sections for an explanation of discounting). The result is that any cycle after the first one typically has a negligible impact upon the economic benefit estimate. Therefore, the Agency proposes that the revised BEN model use a default value of one replacement cycle, and offer users a choice of anywhere from zero to five replacement cycles. This approach is in contrast to the current choice of zero or infinite replacement cycles, with no intermediate option.

6. Inflation Treatment

a. Background. The first step in the economic benefit calculation is to determine the compliance costs—for both the on-time and delay scenarios—as of the year in which they were actually incurred (or should have been incurred). Therefore, BEN adjusts the compliance costs from the date they were estimated to the date the costs will be incurred to account for the effects of inflation.

To adjust for inflation, BEN currently uses a standard-value rate calculated from the appropriate ten years of monthly inflation data from the Plant Cost Index (PCI) in the magazine Chemical Engineering. This simple inflation rate adjusts the initial compliance cost estimates, both back in time into noncompliance- and compliance-year dollars, and then forward in time into future-year dollars (typically for capital equipment replacement cycles). The PCI is particularly appropriate for adjusting the costs for inflation that are typically associated with pollution control technology.

b. Proposed Changes. Despite the Agency's specific request for comment on BEN's inflation adjustment, we received almost none. The issues that the few commenters did raise were:

(1) The use of a single inflation rate for both actual and projected inflation,

(2) The basis for the actual inflation rate, and

(3) The basis for the projected inflation rate.

The Agency proposes to change the BEN model to allow two separate inflation adjustments. One adjustment would be for cash flows incurred during the period of historical noncompliance, and then a separate rate for projected inflation which would adjust for future replacement cycles (and other future compliance costs in cases where the violator has not yet come into compliance).

For actual historical inflation, the Agency proposes that BEN adjust each cash flow from the date of the cost estimate to the date on which it is incurred by referencing a look-up table of cost index values.[12] The default cost index would be the PCI. This particular index may not be appropriate for every single case, but we have yet to encounter any other cost index that would form a better basis for a standard value. EPA also proposes that the revised BEN model allow the user to select from multiple look-up tables representing different cost indices—including the Building Cost Index, Construction Cost Index, Consumer Price Index, and the Employment Cost Index—and the option of selecting different indices for different compliance components.[13] The user would also be able to override BEN's inflation adjustments for the capital investment and one-time nondepreciable expenditure, and instead enter separate estimates for these compliance costs as of the noncompliance date, compliance date, and the initial recurring cycle start dates. This customized data entry could represent another alternative cost index, case-specific inflation assumptions, or entirely different actions for on-time and delayed compliance.

[12] The model would not apply an explicit inflation *rate*, although an annualized rate could be imputed from the model's data. For example, suppose a $200 cost estimate from 1991 must be adjusted for inflation to the same day in 1992. The 1991 cost index value is 100, whereas the 1992 index value is 103. The calculation the model performs is $\$200 \times 103/100 = \$206$ (*i.e.*, multiplying the original cost estimate by the ratio of the cost index values from the date on which the cost is actually incurred, and the date on which the estimate is made). The index change from 1991 to 1992 does represent an annual inflation rate of three percent (*i.e.*, $103/100 = 1.03 - 1 = 0.03$), although the model would not directly apply this rate. The calculation that uses the ratio of the index values is both more precise and more simple than calculating multiple annual inflation rates over different periods for historical costs.

[13] See the following table, Different Cost Indicies.

DIFFERENT COST INDICIES

Abbreviation and full name	Description	Typical applications
BCI—Building Cost Index	Building costs; based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber, 68.38 hrs. skilled labor.	General construction costs, especially structures.
BEN—Current BEN model's constant inflation rate.	Average of PCI's last 10 years; *i.e.,* a *constant* 1.8% increase each year.	Replication of results from current BEN model.
CCI—Construction Cost Index	Construction costs; same as BCI, except 200 hrs. common labor.	General construction projects, especially where labor costs are a high proportion of total costs.
CPI—Consumer Price Index	Representative consumer goods	Compliance involves use of consumer goods.
ECIM—Employment Cost Index: Manufacturing	Employment costs for the manufacturing industry.	One-time nondepreciable expenditures or annual costs; mainly labor costs.
ECI—Employment Cost	Employment costs for white collar labor	Same as ECIM, except pro-fessional labor (*e.g.,* permits).
W—Index: White Collar		
PCI—Plant Cost Index	Plant equipment costs	Standard value.

The Agency welcomes suggestions for other cost indices that the BEN model should offer. Commenters' suggestions should not merely list various indices, but also provide a sufficient rationale for the inclusion of each index, including its components, relevance to pollution control costs, and both historical and future availability.

For projected future inflation, the Agency proposes that the model use a simple, uniform rate. The model will provide a separate standard value for each cost index. (As explained above, users will be able to override the entire inflation adjustments for the capital investment and one-time nondepreciable expenditures as of the initial recurring cycle start date, as well as any compliance dates that are expected to occur in the near future.) The model will also use a separate projected inflation rate for additional recurring cycles, and allow the user to specify an alternative value for this rate.

The Agency proposes using a projected value for each index. (This is a more sophisticated approach than the DOS version of BEN.) However, because published forecasts are generally not available for specialized cost indices, we propose to start with an average of published forecasts for the Consumer Price Index (CPI) because such forecasts are widely available. We would then multiply the average CPI projection by the ratio of the CPIs to the relevant cost index's respective ten-year historical averages. Each of the alternative indices would have its own default future inflation rate, calculated in a similar manner. (Note that the user would not perform this calculation, nor would the model; instead, the Agency would perform the calculations each year to update the standard value, and the model would contain a single, simple projected inflation rate.) We welcome suggestions for other methods of calculating a projected future inflation rate.

The standard operation of the model would still entail absolutely no input whatsoever from the user who is satisfied with BEN's default values. The other screens for additional data entry and modification would appear only to those users who selected more advanced options. EPA welcomes comment from BEN users on whether the proposed changes will enhance the model's accuracy, flexibility, and adaptability.

7. Discount Rate

a. Background. Once the compliance cost estimates are adjusted for inflation, and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the date of noncompliance. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date to determine the final economic benefit. A single rate to adjust all present values both backward and forward in time.[14] This section addresses only the calculation of BEN's standard value for this single discount rate, which is currently based upon a ten-year after-tax weighted average cost of capital (WACC), with the inputs representing averages across all industries.[15]

The WACC is the average of the cost of debt and the cost of equity, weighted by the portions of debt and equity out of total financing. The WACC is first calculated for each year, and then these annual values are averaged over the most recent ten-year period. The (after-tax) cost of debt is the average return on corporate bonds averaged across all industries, and then multiplied by one minus the average corporate tax rate (state and federal combined). The cost of equity is based upon the widely used Capital Asset Pricing Model (CAPM), and is equal to a risk-free rate component plus the expected equity risk premium (*i.e.*, the difference of the arithmetic means of stock market returns and risk-free rates since 1926).

b. Proposed Changes. We propose that the BEN model automatically tailor the standard value discount rate to the period from the noncompliance date to the penalty payment date.[16] The standard value will reference a look-up table, averaging the annual values over the relevant years. Each individual annual calculation will be similar to the standard value's current methodology, as displayed in Exhibit 4–7 of the *BEN User's Manual.*[17]

[14] The Agency received many comments on the use of a single rate as opposed to two different rates. The Notice addresses this issue in section B(8), Discounting Methodology.

[15] The discount rate standard value for not-for-profits is based upon municipal bond yields, averaged across the four investment-quality ratings of Aaa, Aa, A, and Baa. The only comment EPA received on the not-for-profit discount rate was a suggestion that municipal economic benefit be calculated using a discount rate for private entities that perform similar functions (*e.g.*, on a municipal Clean Water Act case, the discount rate would be the average WACC for privately owned wastewater treatment plants). However, because the Agency is trying to calculate the economic benefit that the municipality and its residents or rate payers have actually gained, the Agency prefers to use an estimation of the municipal government's opportunity cost of financing projects, which is equal to the interest rate on the municipality's bonds. This debt rate—which forms the basis for the BEN model's not-for-profit standard value discount rate—will almost always be substantially lower than the private-sector-equivalent cost of capital.

[16] Although the following discussion focuses on the for-profit discount rate, the tailoring of the discount rate to the relevant time period would also apply to not-for-profit cases.

[17] We propose two minor changes to the annual calculation of the WACC. First, we propose replacing the standard value that currently applies the most recent figure for the expected equity risk premium to all prior years' calculations. Instead,

The model will also perform additional customizing automatically, or with minimal input from the user. Because we have already proposed that BEN have an input for the violator's state (thereby customizing the tax rate for compliance costs), we propose using that same customized tax rate for the after-tax debt cost component of the WACC. The model will even select the individual tax rate if the company is not organized as a C-corporation (as profits and losses from S-corporations, partnerships, and sole proprietorships flow through the owners' individual tax returns).

The standard operation of the model would still entail absolutely no input whatsoever from the user who is satisfied with BEN's default values. The other screens for additional data entry and modification would appear only to those users who selected such advanced options. EPA welcomes comment from BEN users on how the proposed changes will enhance the model's accuracy, flexibility, and adaptability.

8. Discounting Methodology

a. Background. As stated in the previous section, once the compliance cost estimates are adjusted for inflation, and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the noncompliance date. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date in order to determine the final economic benefit. BEN uses a single interest rate to adjust all present values both backward and forward in time. Because BEN uses the same rate for going both backward and forward, this calculation is computationally equivalent to bringing all cash flows—both past and future—directly to the penalty payment date at the WACC rate.

The comments fell into three categories. Some thought the WACC rate was too high and especially that the compounding part of the calculation should be based on a risk-free rate. Some agreed with EPA's approach. Others commented that EPA's discount rate was too low and should instead be based on financing pollution control investments with 100% equity.

Several commenters claimed that BEN's use of a WACC-based rate in all parts of the benefit calculation yielded inappropriately high economic benefit calculations. They claimed that future cash flows represent uncertainty and risk, while past cash flows are known, certain and riskless. Thus, they generally agreed that discounting future cash flows should be done with a WACC-based rate or some other risk-free rate, but felt that compounding past cash flows forward should be done with a riskless rate. They cited selected academic literature from economic and financial analysis of commercial damages in torts cases, proposing two alternative methodologies:

- (A) Use BEN's intermediate figure for the economic benefit as of the noncompliance date (*i.e.*, bring all cash flows, irrespective of when they occur, back to the noncompliance date at a rate reflecting risk), but then bring this intermediate economic benefit figure forward to the penalty payment date at a risk-free rate.
- (B) From the perspective of the *penalty payment date*, bring all future cash flows back in time at a rate reflecting risk (*e.g.*, the WACC) and bring all past cash flows forward in time at a risk-free rate (*e.g.*, the after-tax return on short-term U.S. Treasury securities).

Both of these methodologies produce significantly lower economic benefit estimates than the BEN model. A range for the magnitude of the typical differences is difficult to provide because of the many different types of cases, but alternative B will often produce negative economic benefit estimates for the capital investment portion of the compliance scenario.

The second group of commenters agreed that the WACC was appropriate for discounting all future costs back to the noncompliance date, and then compounding the initial economic benefit forward to the penalty payment date.[18] The third group commented that BEN's use of the WACC is incorrect and leads to economic benefit estimates that are too low. These commenters instead favored a company's higher cost of equity capital, rather than the weighted average of the relatively higher-cost equity capital and the relatively lower-cost debt capital. Their rationale was that excess returns flow to a company's equity holders, not to a mixture of its debt and equity owners.

b. Proposed Changes. Although both the conceptual bases and results of the two risk-free rate methodologies contradict each other, they share a similar rationale: cash flows that have yet to occur in the future are uncertain and risky, whereas cash flows that have occurred in the past are certain and riskless. These methodologies, therefore, apply to future cash flows a rate that includes a risk premium (*e.g.*, a company's WACC or some other risk-adjusted rate) and apply to past cash flows a risk-free rate (*e.g.*, the return on short-term Treasury securities). As discussed below, the Agency believes that even if this approach were justified in the context of calculating damages owed to plaintiffs in certain types of tort cases, it is entirely inappropriate in economic benefit calculations for enforcement actions. The goal in the tort damages approach is to make the plaintiff whole by compensating him for his losses. The fundamentally different goal in enforcement actions is to deter future violations by both the defendant we are suing and by other similar situated defendants.

By contrast, the third approach to calculating interest rates advocates the use of an equity-based discount rate. This approach is more reasonable than the risk-free rate alternatives. Not only is it more persuasive, but there have been several court decisions that adopted an equity-based discount rate and rejected a risk free rate approach. Nevertheless, the Agency still believes that using the WACC throughout all aspects of the calculation is the most reasonable and preferable approach.

(i) Risk-Free Rate Forward: Theoretical Issues. The goal in a tort action is to make the plaintiff ''whole.'' The settlement or court determination ultimately should place the plaintiff in the same financial position as if the wrong had not occurred. The first step in such a case is to calculate the necessary compensation at the time of the actual wrong. The next step is to adjust the compensation calculated at the time of the actual wrong to the time

each year's calculation will employ the figure that was actually available in that year.

Second, we propose altering the horizon for the equity risk premium. The standard value currently combines the long-term Treasury security rate with the long-horizon equity risk premium, the latter being equal to the difference of the arithmetic means of stock market returns and the corresponding-maturity risk-free rate. Because the WACC calculation combines the equity risk premium with the risk-free rate of the same maturity that is used initially to calculate the premium, the issue of which horizon premium to use is largely moot. (The expected deviations of the resulting WACC will thereby be both small and nonsystematic.) We propose to switch to the intermediate-horizon risk premium (and the corresponding risk-free rate) as a simple compromise between the long-horizon and short-horizon.

[18] One commenter agreed with compounding the initial benefit forward at the WACC rate, but only to the compliance date, after which a lower compounding rate would be appropriate. His rationale was that a company then must set aside specific funds to pay a penalty; therefore, the economic benefit estimate should be compounded either at the actual interest rate on an escrow account or at the company's debt rate (which reflects its risk of going out of business, resulting in an inability to pay a penalty).

at which such compensation is to be made. Certain authors writing about tort damages have advocated bringing such compensation forward at a risk-free rate.[19] Otherwise, the plaintiff would be ''having-its-cake-and-eating-it-too'': the initial compensation has essentially been invested at the time of the actual wrong at a rate reflecting risk taking, yet the plaintiff is now granted the compensation which grew at that rate, without ever bearing the accompanying risk. (In contrast, the regular investor would have made the investment and then had to stand by nervously as the investment's value either grew or fell). Some commenters thought BEN should employ such a risk-free rate approach.

While the appropriate focus in a tort damage action is on compensating the victim (*i.e.*, plaintiff), this is not appropriate in an enforcement action. The enforcement agency is not suing for damages it has suffered. The goal is not to make the plaintiff whole (*i.e.*, to restore to it the amount by which it was damaged). The goal of the economic portion of a civil penalty is to return the defendant to the position it would have been in had it complied, and thus disgorge from it the amount it wrongfully gained. If civil penalties, composed of the economic benefit and gravity components, effectively allow the violator to gain an economic advantage from its violations, other companies will see an advantage in similar noncompliance. This is a fundamentally different perspective from a tort case, and demands a fundamentally different view of discounting.

The appropriate discount rate for economic benefit calculations is a company's opportunity cost of capital, reflecting the financing costs for pollution control investments or the value of investment opportunities foregone because of pollution control purchases. The opportunity cost of capital is the incremental expected rate of return a company must earn to pay back its lenders (*i.e.*, bond holders) and owners (*i.e.*, stockholders), which is the weighted-average cost of capital (WACC).

The risk-free rate methodologies use short-term U.S. Treasury bill rates that are unrelated to a company's opportunity cost of capital. Only the Treasury of the United States of America is able to borrow at the U.S. Treasury bill rate.[20] Companies lack the advantage of such low financing rates. To finance additional projects, they must either issue debt at higher interest rates, and/or issue equity, which requires returns of even higher rates.

Applying the risk-free rate to a company's cash flows presumes an unattainably low borrowing rate and an insufficient return on investments. (With the exception of mutual funds, a company whose main business was investing in T-bills would not be in business for very long.) The true opportunity cost of capital for a company far exceeds the T-bill rate. The risk-free rate will therefore systematically understate the economic benefit of pollution control noncompliance. Penalties based solely on economic benefit calculated with a T-bill rate would allow a defendant to retain a potentially substantial gain. Because of the precedent of this retained gain, other regulated companies might see an economic advantage in similar noncompliance, and the penalties based on a risk-free rate approach will fail to deter potential violators.

(ii) Risk-Free Rate Forward: Practical Implications. Not only are the theoretical underpinnings of the risk-free rate forward methodologies flawed, but their practical implications are also troubling. Specifically, the use of the risk-free rate fails to achieve the overriding goal of economic benefit recapture: to make the violator financially indifferent between compliance and noncompliance, which in turn constitutes a critically important element of deterrence.[21] An example helps to illustrate this point.

Suppose a company is deciding whether to purchase pollution control equipment this year (*i.e.*, 1999), or to wait until the same month in the next year (*i.e.*, 2000). The company is not necessarily contemplating a willful violation of the law—perhaps the law's interpretation is unclear, and the company would like to know the financial consequences of not purchasing the equipment, and then later being found to be in noncompliance. The company, therefore, wants to know how much better or worse off it will be by delaying the purchase one year.

The company performs three sets of economic benefit calculations. First, it calculates the economic benefit as of the present time (*e.g.*, June 1999). This lets the company know how much better off it will be by delaying the purchase (*i.e.*, until June 2000), in the absence of any penalty. Second, it calculates the economic benefit as of one year later (*i.e.*, June 2000, when it would otherwise purchase the equipment, and also pay any penalty), and then discounts the calculated economic benefit back to the present (*i.e.*, June 1999). This lets the company know the present value of any economic benefit based penalty that is calculated and paid the following year in 2000. Third, it subtracts the second result from the first result to determine the net amount by which it is better or worse off (*i.e.*, the economic benefit of its noncompliance, minus the present discounted value of the economic-benefit-based penalty it can expect to pay in 2000).

The first economic benefit calculation yields the same result regardless of which economic benefit methodology is used, because all the cash flows occur in the future.[22] In this example, the only compliance measure is a one-time capital investment of $10 million.[23] The company calculates that it is financially better off now in 1999 by $494,314 from a projected one-year compliance delay.

The company also needs to know how much better off it will be on net should the enforcement agency assess a penalty in 2000 equal to the calculated economic benefit from its delayed compliance. Assuming that the agency uses BEN, the economic benefit is brought forward one year by an estimate of the company's WACC (in this case 10 percent), so the economic-benefit-based portion of the penalty the company will pay is $543,745.[24] But because the company will pay the penalty a year in

[19] No consensus exists, however, and many other authors have advocated other approaches. Judges in tort cases have arrived at rulings that mandate many different rates, with many different values and rationales.

[20] This is a very favorable rate, because of the U.S. Treasury's over two-century default-free record, its ability to create money, and also the state tax-free status of its debt instruments.

[21] Because benefit recapture by itself merely makes the violator indifferent between compliance and noncompliance, only a total penalty amount that exceeds the economic benefit (by incorporating a gravity component) can achieve actual deterrence. Therefore, a civil penalty should always be at least equal to the economic benefit calculation plus some non-trivial gravity component.

[22] The results might be slightly different depending on what ''risk-adjusted rate'' the risk-free rate forward methodologies use for the future cash flows in their calculations. Different practitioners have used different ''risk-adjusted rates'' in different cases, including the same WACC-based discount rate that the BEN model uses. Therefore, for the purposes of the examples that follow, we assume that the alternative methodologies also use the WACC for future cash flows. If, instead, they were to use a different rate, the exact figures for the results would be slightly different, but the overall implications would remain the same.

[23] Other inputs include a 40-percent tax rate, 2.2-percent inflation rate, and 10-percent discount rate.

[24] Because the time between the noncompliance date and the penalty payment is only one year, the compounding takes the form of simply multiplying the initial economic benefit by the sum of one plus the discount/compound rate (*i.e.*, $494,314 × (1 + 0.10) = $543,745).

the future, it must discount that amount back to the present. If it discounts the penalty at the same rate that BEN used to compound the penalty forward to the penalty payment date, the present discounted value of the future penalty will always be equal to the economic benefit the company calculates for itself (in this case, $494,314). The company can therefore expect to have any economic benefit disgorged from itself, which makes the company financially indifferent between compliance and noncompliance. The column in the exhibit below labeled ''BEN''summarizes these calculations.

Economic benefit	BEN	Alternative A	Alternative B
1. Penalty Payment Date of 6/1/1999	$494,314	$494,314	$494,314
2a. Penalty Payment Date of 6/1/2000	543,745	507,166	(175,797)
2b. Result 2a discounted back to 6/1/1999	494,314	461,060	0
3. Net Result (*i.e.*, 1 − 2b)	0	33,254	494,314

Perhaps, however, the enforcement agency uses one of the alternative methodologies. Under alternative A, as described in Section II B(8)(a), above, the initial economic benefit as of the noncompliance date is calculated with BEN, but is then compounded forward at the after-tax risk-free rate. In this case, compounding the initial economic benefit forward from 1999 to 2000 at an illustrative risk-free rate of 2.6 percent yields $507,166. The company discounts this future penalty back to the present (*i.e.*, 1999) at its WACC, and arrives at $461,060.[25] Because this is less than the current economic benefit of $494,314, the company realizes a net gain of $33,254. This approach fails to make the company indifferent between compliance and noncompliance and, in the absence of any additional gravity-based penalty components, the company will have an incentive to delay compliance.

If the enforcement agency instead uses alternative B, as described in Section II B(8)(a), the economic benefit as expected to be calculated a year from now in 2000 is a negative $175,797.[26] The company realizes that an enforcement agency using this approach will conclude a year from now in 2000 that no economic benefit has been gained, and therefore the economic benefit-based portion of the penalty will be zero. But the company currently calculates its economic benefit in 1999 to be a positive $494,314. At the time of initial noncompliance in 1999, the company concludes that delaying the equipment purchase will result in an economic gain, but that it will never have to pay any economic-benefit-based portion of the penalty. Once again, a risk-free approach fails to make the company indifferent between compliance and noncompliance and, therefore, in the absence of any additional gravity-based penalty components, the company will have a significant incentive to delay compliance.

(iii) Equity Rate Approach. By contrast, an approach that employs a company's equity rate focuses solely on the company's equity owners, as opposed to its other stakeholders (who hold the company's debt). Because the company's cost of equity capital will always exceed or at least be equal to a company's WACC, the economic benefit estimate—with all other assumptions held constant—will be higher or at least the same.[27] While the Agency believes that a reasonable argument supports the use of equity, we nevertheless prefer the WACC, because it better represents firms' total capital structures and their own typical business decision-making practices.

(iv) Proposed Change: Use WACC, Except for a Possible Early Penalty Payment. For the above reasons, the Agency believes that the current basic discounting methodology is appropriate and should not be changed, with one exception: If a company pays to the United States the benefit portion of the penalty while the case is still in litigation, EPA will cut off the compounding rate at the date of payment. Thus, there will no longer be any dispute in that case over the appropriate compounding rate from the date of payment into the future. In appropriate cases, the United States may consider allowing the violator to escrow funds for the economic benefit portion of the penalty demand (whether at the compliance date or at any other time). Then, when EPA runs the BEN model, it will use the date the funds were escrowed as the penalty payment date. The violator would have to furnish proof that it established the escrow account, as well as placed on the account appropriate restrictions (*e.g.*, all accrued interest would go to the Agency).[28] In cases where the period from the initial noncompliance date to the escrow date is short, this will eliminate much of the deviation in results between the competing economic benefit methodologies. We propose that BEN incorporate this guidance into its on-line help system and user's manual.

C. Improving the BEN Model's User Friendliness

EPA understands that some users find the BEN model difficult to use. While that has not been EPA's experience, the Agency expressed its interest in learning of any difficulties users encountered when running the model. The Agency particularly requested suggestions for realistic alternatives that would preserve the model's degree of precision.

[25] Even if the company were to discount the future penalty back at a rate lower than its WACC, this rate would still exceed the risk-free rate that alternative A uses to compound the economic benefit forward, and therefore the discounted future penalty would still exceed the currently calculated economic benefit.

[26] A negative economic benefit result for the capital investment portion of compliance is typical for alternative B. In many recent cases, practitioners implementing this approach have arrived at negative economic benefit results for delayed capital investments, despite no changes in technological or legal requirements over time between the dates of noncompliance and compliance. Applying the combination of an extremely low risk-free rate for past cash flows and a higher risk-adjusted rate for future cash flows to delayed capital investments (with their past cash outflows for the actual investment and their future cash inflows for depreciation tax shields) can produce aberrant results that defy common sense. These perverse negative economic benefit estimates do not reflect any real economic losses because of the expenditure delay. Furthermore, even if the parameters in this example were different, the economic benefit—although perhaps positive—would still be much smaller than even under alternative A, and would similarly fail to make the company indifferent between compliance and noncompliance.

[27] The WACC will equal the equity cost of capital if the company has no long-term debt. Note also that an economic benefit calculation using the equity rate should first net out any cash flows attributable to debt financing, as the focus in such a calculation is on the returns to the company's equity holders only.

[28] Should the escrowed amount exceed the benefit component, then the interest on the amount that exceeded the economic benefit component would accrue to the violator.

1. Is BEN Too Complex To Operate?

a. Background. EPA invited comments on whether any aspect of BEN's operation or the BEN User's Manual is too complex. Although the Agency designed BEN to be straightforward and easy to use, we welcomed any suggestions to make the model and manual easier to use without compromising BEN's degree of precision.

b. Proposed Changes. Many commenters thought that although the BEN model is generally easy to use, certain aspects of its operation are cumbersome. These concerns largely stem from the model's original programming for a mainframe computer environment and its current existence in the DOS operating environment. Because nearly all computer users are now accustomed to the Windows™ operating environment, the Agency proposes to reprogram the model for Windows™. The switch to the Windows™ operating environment should make basic data entry and runs much easier to perform, as well as allow the addition of various advanced features without burdening the user with additional complexity.

Furthermore, EPA has now established a toll-free helpline for federal, state, and local government enforcement staff who need additional assistance in using the BEN model. The helpline provides federal, state, and local environmental enforcement agencies with advice regarding financial issues that impact enforcement cases. The main types of inquiries EPA is addressing with this helpline are:

- The calculation of a violator's economic benefit from noncompliance;
- The evaluation of a violator's claim that it cannot afford to comply, clean up, or pay a civil penalty, and the application of the three computer models—ABEL, INDIPAY, and MUNIPAY [29]—that address these issues; and
- The calculation of the after-tax net present value of a supplemental environmental project, and the application of the computer model—PROJECT [30]—that addresses this issue.

Callers can obtain copies of the BEN model and BEN User's Manual, copies of the previously mentioned other key models, as well as relevant policies and guidance documents. In addition, callers can obtain advice on how to access training courses on the models and related subjects. Inquiries regarding the interpretation of federal statutes and EPA policies will be referred to the EPA, as will inquiries from non-governmental employees.

The toll-free helpline phone number is 888-ECONSPT (326–6778), and is staffed by a contractor, Industrial Economics, Incorporated, located in Cambridge, Massachusetts. The helpline is in operation from 8:00 AM to 6:00 PM Eastern time and will accept voice mail messages when it is not in operation. In addition, the contractor is providing a companion e-mail address: benabel@indecon.com. When requesting help, enforcement staff should identify the government entity for which they are working.

2. Is the Information BEN Needs Difficult or Expensive To Obtain?

a. Background. One of the main breakthroughs BEN achieved over its predecessor model was its streamlining of the data needed to operate the model. While the model requires a minimum of seven and a maximum of only eighteen pieces of data, some users apparently feel the data is difficult to obtain. This has not been EPA's experience, as most (if not all) of the required data inputs are based on facts that are already or should be known to the litigation team as the data are important to other parts of the settlement. Nevertheless, the Agency welcomed any suggestions on how to make this data easier to obtain as long as we can still preserve the model's degree of precision.

b. Proposed Changes.—The Agency received a wide range of responses on this issue. Most users thought the necessary data was easy to obtain; others thought it was prohibitively difficult to obtain. EPA did not receive any specific suggestions on how to streamline the model's data requirements even further. The Agency did receive suggestions that the BEN model incorporate some basic, generic compliance data.

The Agency is in the process of developing a computerized data base for RCRA compliance costs, based on the current RCRA compliance cost handbook. This data base should enable the user to look up the appropriate RCRA compliance costs easily, and then use them in the BEN model to calculate an economic benefit figure. Although this database will not be a substitute for case-specific data, it will at least provide a starting point and a reasonably accurate estimate when a violator refuses to provide any detailed cost information. The Agency welcomes comment on which statutes would benefit the most from similar databases, and what specific compliance components most often need cost estimates.

Also, as noted at end of Section II C (1) (b), above, EPA has established a toll-free helpline to provide assistance to government enforcement personnel regarding financial economics issues in environmental enforcement cases. Helpline staff can provide suggestions on how to obtain the necessary data to run the BEN model.

III. Response to Comments

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

Comment: One commenter stated that the BEN result should be adjusted for the violator's probability of detection and prosecution.

Response: The commenter's suggestion that the penalty should be multiplied by the inverse of the chance of detection and prosecution finds solid support in the literature on deterrence and economics. In brief, the theory underlying the comment is that a reasonable economic actor will weigh its willingness to violate against the size of the penalty that will be assessed, multiplied by the inverse chance of getting caught. For instance, if preventing a violation would cost a person $100, and the penalty that would be assessed if the person is prosecuted is $200, then the person will elect to violate, all other things being equal, unless the chance of getting caught is at least 50%. Nonetheless, despite the validity of the commenter's premise, the comment is beyond the scope of the current public notice. The Agency has asked for comments only on the method for calculating economic benefit, not on the broader deterrent effect of penalties generally.

Comment: One commenter thought BEN understates the economic benefit of noncompliance because the model defines benefit as the income earned from investing the funds that otherwise would have been used to pay compliance costs. The real economic benefit, according to the commenter, is the producer's surplus obtained during the noncompliance period. The commenter proposed that EPA obtain estimates of how people value pollution reductions to estimate a demand curve from which to determine the supply-demand framework facing the violator.

Response: This comment misunderstands the Agency's task, which is to calculate the economic benefit that an individual firm has

[29] ABEL, INDIPAY and MUNIPAY evaluate inability to pay claims from for-profit entities, individuals and municipalities, respectively.

[30] As most supplemental environmental projects (SEP's) are tax deductible and completed long after the cases are settled, any stated SEP cost is usually far above the actual cost to the violator. PROJECT determines a violator's actual out-of-pocket costs for a SEP.

gained (whether from mere delay of compliance costs or larger issues of market share gains), not the benefit the society gains from pollution level changes. The commenter might also be confusing the economic benefit to the violator (which the Agency is trying to measure) with the monetized value of environmental damages that result from noncompliance (which in this context the Agency is not trying to measure).

2. Illegal Competitive Advantage

Comment: One commenter maintained that if EPA decides to pursue illegal competitive advantage (that is, focusing on issues such as illegal profits or market share), then it must establish the appropriate analytic tools that conform to both mainstream financial and economic theory (considering items such as price effects, elasticities, and economies of scale), while keeping BEN relatively user-friendly.

Response: The Agency generally agrees with these sentiments. Nevertheless, keeping BEN relatively user friendly is a nonissue as the model cannot be modified to calculate a benefit based upon illegal competitive advantage.

Comment: Several commenters thought that revenues from the sale of prohibited products were too complicated to include in the BEN model.

Response: The Agency believes that the concept of capturing the revenues or profits from the sale of prohibited products is relatively uncomplicated. Nevertheless, the Agency agrees that it could not modify the BEN model to perform this calculation and remain sufficiently user-friendly for its intended audience. Therefore, the Agency is proposing guidance to address this question as well as the other illegal competitive advantage questions. In addition, the Agency is proposing adding some questions to the BEN model to alert users to these issues.

Comment: One commenter stated that if the prohibited product is the only product produced by a company, then the after-tax net profit is the best measure of the economic benefit of noncompliance. If the prohibited product is one of several produced, then one should allocate the costs and revenues among the products to determine the profit per product. In this case, the commenter concluded, the after-tax profit on only those products that are prohibited should be included in the economic benefit of noncompliance.

Response: The Agency agrees that one factor which it should consider is whether the company is a single-product company or a multi-product company in recapturing any benefit from producing a prohibited product. However, a clear distinction does not always exist between products, product lines, or even companies and divisions within corporations. Where possible in such cases, the analyst may have to evaluate several similar products and make a reasonable judgment regarding the per-unit or per-division after-tax profits that were unlawfully gained.

Comment: One commenter thought that to calculate the benefit a violator gains from selling illegal products, one should calculate the net profit gained by sales of that product, augmented by interest and discounted over time. According to this commenter, net profit equals gross profit less the proportion of gross expenses and overhead attributed to sales of that product, which BEN can already calculate.

Response: The Agency is in agreement that this is a conceptually valid method for calculating the economic benefit from the sale of an illegal product. But the correct allocation of incremental overhead to a specific product is a difficult task, and one for which the BEN model is irrelevant.

Comment: Several commenters thought that the benefit of noncompliance in cases in which losses are reported in the first year of the business's operation is too complicated for the BEN model to address. Another commenter thought that the benefit in such cases equals the future tax benefit received from these net operating losses. However, because the business may choose not to apply these losses for some time, it is difficult to calculate.

Response: The Agency agrees that the BEN model is unable to address the situation in which start-up costs lead to initial losses, even though future profits may be significant.

Comment: One commenter thought another kind of benefit that EPA does not recognize is ''advantage of risk,'' which is the benefit a company gains by putting off expenses in the hopes that future events will render the expenses unnecessary.

Response: EPA already addresses this advantage: the economic benefit calculation can reflect whether events after the noncompliance date (NCD) have rendered the expenses unnecessary. In such a situation, it is necessary to analyze the expenses the company has not merely delayed, but instead has avoided entirely (which increases the resulting benefit). The current BEN model requires an off-line calculation to arrive at the correct result, although the revised BEN model may be able to add flexibility to perform such a calculation internally.

Comment: Several commenters thought that the issue of competitive advantage cannot be adequately calculated in terms of an economic benefit penalty. For example, one person noted that a given market edge may grow over the years, or may be the deciding factor determining whether the violator could stay in business, making it difficult to calculate a benefit figure. Others noted that BEN is inapplicable to cases involving illegal market share gains from violating concentration limits or cap limits in permits. Another suggested that EPA should develop a protocol or give more guidance for illegal competitive advantage cases, including source-specific factors agencies could use to calculate illegal profits or market share gained.

Response: The Agency agrees that there are a number of complex factors to consider in many analyses of illegal competitive advantage. The Agency plans to issue guidance that will aid analysts in such situations.

Comment: One commenter noted that EPA should develop a punitive penalty to discourage violators from achieving a competitive advantage, instead of trying to determine the economic benefit from competitive advantage. Similarly, one person thought that the profit associated with illegal competitive advantage should be a non-negotiable portion of the gravity component of a penalty. Another person thought that when illegal competitive advantage has been proven, companies should be financially punished to a point at which they are worse off (not equal to) their industrial counterparts.

Response: The total penalty comprises two components: economic benefit and the gravity (of the violation). The recapture of economic benefit is designed to place all firms on a ''level playing field'' so that no firm can benefit by avoiding or delaying the necessary compliance expenditures. It is not punitive in nature, but rather is ''no-fault.'' Competitive advantage is a component of economic benefit, and, therefore, should be analyzed in a ''no-fault'' framework. But the presence of competitive advantage could indicate the existence of certain other factors (*e.g.*, recalcitrance) that can enter into the gravity calculation. Once the full economic benefit is recaptured, the Agency then imposes a significant gravity component to ensure that the violator will be worse off than its competitors.

Comment: A few commenters asserted that the competitive advantage gained by delaying or avoiding compliance

costs does not exist after collecting a penalty equal to the BEN-calculated economic benefit. For example, the disadvantages of ''predatory'' underpricing by a company of its products may outweigh the temporarily enhanced market share. Therefore, pursuing illegal competitive advantage would be a form of double recovery. Another commenter stated that ''lost profits'' and ''illegal competitive advantage'' measure the same thing (*i.e.*, the economic benefit from noncompliance), and that EPA is not authorized to collect both.

Response: The apparent disagreement would again appear to stem from wording issues. EPA does not intend to ''double count'' economic benefit, but instead seeks different conceptual terms to approach economic benefit calculations in different situations. As stated previously, EPA's intention is to determine fairly what economic benefit is, and then recapture it as part of an overall penalty, including a significant gravity component reflecting the seriousness of the violation. Alternative approaches such as calculating illegal competitive advantage are meant to add flexibility and are not necessarily additive. Nevertheless, should EPA determine that it needs to consider both types of economic benefit in a particular case, it will do so. Predatory pricing may sometimes be counterproductive, but in certain situations the enhanced market share may constitute an addition to the economic benefit.

Comment: One commenter stated that any marginally increased deterrent effect from trying to capture any illegal competitive advantage would be more than offset by the complications and controversy involved in performing such a calculation. Similarly, some commenters asserted that because evidence suggests that the BEN model is meeting its goal of deterring noncompliance, adding new complications to the model is not justified. Others warned that adding another dimension of economic benefit to measure would make BEN less attractive for states to use, decreasing the usage of BEN in even simpler cases.

Response: Measuring illegal competitive advantage may add complexity to the economic benefit calculation. In some cases it may be worth dealing with the additional complexity if there is only a small increase in economic benefit. In other cases, however, the presence of significant illegal competitive advantage will cause the BEN model to miss most of the economic benefit, and therefore the additional efforts are necessary.

Comment: One commenter contended that EPA's ''illegal competitive advantage'' proposal is driven at least in part by a desire to avoid any possible reductions in fines resulting from proposed changes to the BEN model.

Response: EPA's goal since the establishment of the benefit recapture requirement has been to determine accurately—within reason—the violator's economic benefit of noncompliance from all sources, including illegal competitive advantage. In pursuing that goal, EPA has never reached its various decisions on modifying the BEN model based on keeping annual penalty assessments at a certain level. If that were the case, EPA would never have changed its discount rate assumptions from the equity cost of capital to the weighted average cost of capital (WACC), which—all else being equal—would lower penalty assessments. With regard to illegal competitive advantage, EPA is concerned that its penalty assessments are missing a major component of economic benefit by ignoring illegal competitive advantage. Therefore, EPA is committed to calculating the benefit from illegal competitive advantage in appropriate cases regardless of what other modifications are made to the BEN model.

Comment: One commenter expressed the view that all illegal competitive advantage situations cannot be grouped under the heading of ''illegal competitive advantage,'' and noted that removing such an advantage is only one reason for the economic benefit component of the penalty. The commenter further noted that a violator can receive an economic benefit even without competitive advantage; *i.e.*, when all the firms in an industry are simultaneously out of compliance.

Response: The Agency believes that any apparent disagreement on this issue stems mainly from wording issues. The Agency agrees that many different types of economic benefit exist outside of avoided and delayed pollution control expenditures, but uses the term ''illegal competitive advantage'' as a convenient catch-all. The Agency also agrees that economic benefit can exist even if all firms in an industry are not in compliance.

B. The BEN Model's Calculation Methodology

1. Discount Rate

Comment: Several commenters stated that the discount rate for future cash flows and the compounding rate for past cash flows (*i.e.*, the rate at which the initial economic benefit as of the noncompliance date (NCD) is brought forward to the penalty payment date (PPD)) should continue to be the same. One person noted that using a discount rate that is larger than the compounding rate would underestimate economic benefit. One commenter stated that the reason the weighted average cost of capital (WACC) is the appropriate rate to use as the for-profit entity discount rate is that it represents the fairest and most realistic rate available. Several commenters similarly stated that the WACC should be used for both compounding and discounting, if the EPA wants to ensure that companies do not profit from the additional funds available through noncompliance, as the WACC accurately reflects the opportunity return of alternative investments.

Response: EPA agrees with these positions, as the WACC is the minimum rate that one would expect companies to return to their investors in order for those companies to continue to operate in their current lines of business.

Comment: Some of the commenters expressed concern that the BEN model is essentially flawed by using only one rate—the WACC—for both discounting future cash flows (back to the NCD) and compounding the initial economic benefit (from the NCD to the PPD). These commenters contended that a proper calculation should use two different rates.

Response: The Agency believes that using one rate for compounding and discounting cash flows is soundly based in financial and economic theory. (See Section II.B(8) above.) The use of one rate also maintains an internal consistency within each cash flow that using two different rates could not achieve. For example, assume that a $100 after-tax cash flow was incurred a year after NCD. These commenters would advocate discounting the $100 back to the NCD at a rate of, for example, 10 percent, which would give the cash flow a present value of approximately $91 as of the NCD. But the commenters would then compound the $91 forward to the PPD at a lower rate of, for example, 4 percent. The resulting cash flow would have a present value of approximately $95 as of one year after the NCD (as it is brought forward to the PPD), even though the actual cash flow as of that time was really $100. This result is clearly inconsistent with reality and common sense. (This is an entirely different situation than one in which the violator is already in compliance and has either paid the benefit portion to the United States or escrowed (at the discretion of the government) funds for the economic

benefit portion of the penalty demand. If the benefit portion is paid, then the benefit portion will immediately cease accruing any interest. In the escrow situation, the economic benefit portion will accrue interest at the escrow fund's interest rate, but all the interest will accrue to the United States. In either situation, when EPA runs the BEN model it should use the date the funds were paid or escrowed as the penalty payment date.)

Comment: Several commenters stated that the compounding rate should account only for the ''time value of money,'' and that the after-tax risk-free rate is the correct rate to use. They further contended that since no risk is borne by shifting the net economic benefit forward in time, BEN's use of the company's WACC is wrong because it reflects a risk premium. Another commenter similarly stated that noncompliance, while representing a benefit to the firm, is essentially a new project deserving its own project-specific cost of capital, which is equal to the risk-free rate or the company's debt rate (which reflects its risk of going out of business and hence its inability to pay a penalty).

Response: The process of recapturing the economic benefit of noncompliance is not merely an exercise in moving disembodied cash flows through time to account for the time value of money. Bringing cash flows forward in time (compounding) at a risk-free rate fails to capture the reasonable benefit the company could earn from alternative internal or external investments. The Agency believes that using a risk-free rate would fail to make the violator indifferent to noncompliance.

Comment: One commenter stated that using the equity cost of capital to determine the correct compounding rate lacks support within the mainstream of modern financial theory. Several commenters alternatively argued that the cost of equity was the best rate for bringing the economic benefit forward in time, because excess funds available from noncompliance have a very wide investment opportunity horizon that is best reflected in the equity market rates. Another commenter stated that using equity was preferable because it is simple, fair, easily calculated, and not as prone to a ''battle of the experts'' as is the WACC.

Response: The Agency believes that the use of WACC best captures a violator's benefit. Nevertheless, the Agency also believes that a reasonable argument supports the use of equity, as the equity rate reflects the economic benefit earned by the company's equity owners. The Agency disagrees that using equity would significantly diminish the contentiousness surrounding expert witness analysis in negotiation. If anything, it would probably make it even greater.

Comment: Several commenters asserted that future cash flows should be discounted at an after-tax risk-adjusted rate that is less than a company's WACC, because capital investment in pollution control equipment usually involves a lower degree of risk than in other capital investment projects.

Response: Because investments in pollution control equipment allow a company to remain in business, they are essentially investments in the company as a whole. Therefore, these types of investments have the same degree of risk as other capital investment projects and are financed at the company's overall cost of capital (*i.e.,* the WACC).

Comment: One commenter thought the default discount rate is too general and results in incorrect economic benefit results. The commenter thought that EPA should instead require a case-specific input for the discount rate. Another commenter thought that while default values are sufficiently accurate for most cases, BEN could be improved by adding an option that allows the user inputting current and historical data to calculate a discount rate specific to the time period during which noncompliance occurred.

Response: The model's default rates (for the discount rate and certain other inputs) allow enforcement staff with little knowledge of financial economics to perform reasonably accurate analyses. This is one of BEN's significant improvements upon its predecessor (CIVPEN), whose many required inputs limited its applicability and utility. In the vast majority of cases, the default rates do not differ significantly from case-specific inputs, and EPA is always open to good-faith efforts by a violator to supply case-specific inputs. Furthermore, the revised BEN model for the Windows operating environment will incorporate look-up data tables that will be able to provide more tailored default rates without any input from users.

Comment: One commenter stated that the initial economic benefit should be brought forward from NCD to the compliance date (CD) at the WACC, and then from the CD to the PPD at the debt cost of capital. Another commenter proposed a lower compounding rate based on the violator's actual after-tax rate of return on funds in a dedicated escrow account—if the violator has actually set aside such funds for a penalty payment.

Response: The Agency fully agrees with using the lower rate, but only if the violator has actually escrowed such funds. Because such instances seem to be extremely rare, the Agency does not believe the economic benefit should automatically be brought forward from the compliance date at the lower rate. Instead, if a company escrows funds for the economic benefit portion of the penalty demand (whether at the compliance date or at any other time), then when EPA runs the BEN model, it will use the date the funds were escrowed as the penalty payment date. Once the government approved of the arrangement, the violator would have to furnish proof that it established the escrow account, as well as placed on the account appropriate restrictions (*e.g.,* all accrued interest would go to the Agency, except for any interest that is attributable to escrowed amounts in excess of the benefit component). In cases where the period from the initial noncompliance date to the escrow date is short, this approach will eliminate much of the deviation in results between the competing economic benefit methodologies. We propose that BEN incorporate this guidance into its on-line help system and user's manual.

Comment: One commenter made the point that choosing an appropriate ''interest rate'' was very important, and it was not clear from the **Federal Register** notice that EPA was soliciting comments specifically on this issue.

Response: This seems to be a misunderstanding caused by word choice, as the Agency's request for comment on the ''discount rate'' issue is intended to encompass both the rate used to bring future cash flows back in time, and the ''compounding'' or ''interest'' rate used to go forward from the NCD to the PPD.

Comment: A few commenters stated that the tort law literature suggests rates for bringing the initial economic benefit forward in time from the NCD to the PPD.

Response: The goal in a tort action is to make the plaintiff ''whole.'' In a tort action, the settlement or court determination should place the plaintiff in the same position as if the ''wrong'' had not occurred. The first step in such a case is to calculate the necessary compensation at the time of the actual wrong. The next step is to adjust the compensation calculated at the time of the actual wrong to the time at which such compensation is to be made. This requires compounding and the issue then becomes: what is the appropriate compounding rate to use to make the plaintiff ''whole''? This is sometimes a risk-free rate or a corporate debt rate. On

the other hand, in an environmental enforcement action the Agency is not suing for damages it has suffered. The goal is not to make the plaintiff whole, restoring to it the amount by which it was damaged. Rather, the goal is to return the defendant to the position it would have been in had it complied, and thus disgorge from it the amount it wrongfully gained. This is a fundamentally different perspective from a tort case and demands a fundamentally different view of compounding the initial economic benefit forward to the penalty payment date. The literature from tort law is not relevant.

Comment: Another commenter stated that moving all cash flows directly to the PPD—as opposed to first moving them back to the NCD and then forward to the PPD—was a way of avoiding moving the same funds through time at two different rates.

Response: This approach would eliminate the advantage of being able to see the initial economic benefit as of the NCD, which can provide insight into the violator's decision making. In any event, the BEN model itself uses the same rate to move cash flows back to the NCD and to move the initial economic benefit forward to the PPD. Adopting this approach would not change the end result.

Comment: A commenter stated that the theoretically correct discounting method would be first to discount back to the NCD the expected cash flows for the on-time compliance case (including the depreciation tax shields that occur after the NCD, as well as the annual costs that are avoided under the delayed-compliance scenario), and then to compound these cash flows forward to the PPD. The commenter further stated that cash flows for the delayed compliance case should be discounted back to the compliance date (*i.e.,* the beginning date of that delayed-case set of cash flows), before similarly compounding them forward to the PPD. The difference between the two present values as of the PPD would be the economic benefit.

Response: The Agency believes the BEN model's current approach is theoretically correct; *i.e.,* the cash flows for both the on-time and delay scenarios should be discounted back to the NCD to calculate the initial benefit as of the NCD, and then brought forward to the PPD. The calculation for the initial economic benefit as of the NCD can be thought of from the violator's viewpoint at the time of the NCD, weighing the options of on-time compliance and delayed compliance. Therefore, the violator is looking forward at the two sets of cash flows, implicitly discounting both sets back to the ''present'' (*i.e.,* the NCD). Nevertheless, with identical discounting and compounding rates, this approach yields exactly the same result as the BEN model.

Comment: One commenter advocated calculating the economic benefit for municipalities by using a discount rate for private entities that perform similar functions (*e.g.,* on a municipal Clean Water Act case, the discount rate would be the average WACC for privately owned wastewater treatment plants).

Response: In municipal cases, the Agency is trying to calculate the economic benefit that the municipality and its residents or rate payers have actually gained. Therefore, the Agency prefers to use an estimation of the municipal government's opportunity cost of financing projects, which is equal to the interest rate on the municipality's bonds. This debt rate—which forms the basis for the BEN model's not-for-profit standard value discount rate—will almost always be substantially lower than the private-sector-equivalent cost of capital.

Comment: One commenter argued that smaller firms have higher capital costs and as a result should reflect a higher economic benefit.

Response: The BEN standard value discount rate is based upon the typical large firm's WACC. Although this rate is reasonable for most cases, BEN allows the user to enter a different value for cases in which the specific values may differ significantly, whether because a small firm has a higher cost of capital or for some other reason. Significant evidence exists that small companies on average have higher returns than larger ones, but EPA has conservatively decided to base its standard value discount rate on large companies, instead of on small firms' higher (by about two percentage points) discount rate. For small firms, application of this generic WACC rate yields a benefit number that is smaller than it would otherwise be and thus is particularly conservative in regard to small firms. (For a detailed discussion of this issue, see the Ibbotson Associates *Stocks, Bonds, Bills, and Inflation* annual yearbooks, in particular Chapter 7, ''Firm Size and Return.'')

2. Inflation Rate

Comment: One commenter thought BEN suffers from three inflation rate defects: (1) it uses the same rate for past and future time periods; (2) it uses a 10-year average rather than the actual rate during noncompliance; and (3) it relies on the McGraw-Hill *Chemical Engineering* Plant Cost Index (PCI) to the exclusion of all other relevant inflation indices. A few commenters similarly thought that BEN could be improved by establishing subroutines or look-up tables that allow inputting current and historical inflation rate data to calculate a rate specific to the time period during which noncompliance occurred.

Response: The Agency proposes to address these three concerns in the revised BEN model. First, the model will use a separate projected inflation rate for compliance costs occurring in the future. Second, BEN will use look-up tables (without requiring any input from the user) of cost indices for actual historical inflation. Third, users will have the option to reference cost indices other than the default PCI for cases in which compliance costs merit a different index.

3. Other Technical Aspects

Comment: One commenter thought BEN incorrectly changes the tax rates on July 1 instead of on January 1. This individual felt that if this is not changed, the BEN manual should explain why this convention is used.

Response: This is not in fact what BEN does. The Agency believes that the commenter's attempt to replicate BEN's calculations may have been thrown off by BEN's use of the mid-point of each year to calculate the present value of annual costs and depreciation tax shields (with each year starting at month of the NCD).

Comment: One person commented that BEN does not account for investment tax credits (ITCs) for capital investments after 1985, even though ITCs were still available for certain types of projects in 1986 and 1987.

Response: Given how rare these circumstances are, the Agency believes that the BEN model's current warning about this issue (and the consequent need to consult a financial analyst for the necessary off-line calculations) is sufficient. Nevertheless, the Agency proposes that the revised BEN model not accept noncompliance dates before July 1, 1987. This will ensure that BEN's omission of ITCs—and also low-interest financing (LIF)—is not leading to incorrect economic benefit estimates in instances where users do not heed the current model's current warning. EPA will provide assistance in performing the necessary calculations for cases that involve noncompliance dates before July 1, 1987.

Comment: One person thought that EPA had not adjusted the standard values in BEN for more than two years,

even though they should be updated regularly.

Response: The Agency updates the standard values every year and encourages users to download the most current model version from its Internet site, at http://es.epa.gov/oeca.

Comment: One commenter stated that using BEN is inappropriate in instances in which the violator achieves compliance by using a different production method or by simply submitting the proper paperwork. Similarly, another commenter noted that BEN should have the flexibility to incorporate changes in technology between the on-time and delayed compliance scenarios, taking into account the lowest total cost of compliance as of the compliance date, rather than the actual cost incurred. One commenter stated that changing pollution technologies are inconsistent with the recapture of economic benefit based solely on the BEN model (regardless of the discount or inflation rate used). Another commenter stressed that more of the structure of the model and circumstances of the noncompliance scenario need to be taken into account, which cannot be addressed by just changing input values.

Response: If the violator eventually came into compliance using significantly different methods than would have been required had it complied on-time (*i.e.*, if the compliance components and costs for the on-time scenario differ from those for the delay scenario by more than just the inflation rate), then the current BEN model lacks the flexibility to analyze such a situation without assistance from a financial analyst, who would perform the necessary off-line calculations. The Agency hopes that the revised BEN model for the Windows™ operating environment will be able to offer such flexibility without additional complexity.

Comment: One commenter thought that BEN is not applicable to not-for-profit entities.

Response: This commenter appears to be misinformed, as BEN offers the user the option of selecting not-for-profit status, which then sets the tax rate to zero and the discount rate to the cost of municipal debt.

Comment: One commenter argued that minor infractions should not be considered when determining the dates of noncompliance and compliance—only significant violations should signal the noncompliance date. Similarly, as soon as the facility has remedied the vast majority of its violations, the period of noncompliance should be considered over.

Response: The Agency disagrees. The appropriate noncompliance and compliance dates for an economic benefit analysis are usually the same as their legal counterparts. The noncompliance date is when the violator should have incurred the costs necessary for compliance, and the compliance date is when the violator actually incurred such costs (typically, when compliance is achieved). The significance of the violations is irrelevant: what matters is when the company should have spent the money necessary for compliance, and when—by contrast—it actually did spend such money. There are some situations in which the noncompliance date may have different legal and economic meanings, such as when the first instance of noncompliance occurred prior to the statute of limitations cutoff. For purposes of settlement, the enforcement team may choose to use the statute of limitations date as the noncompliance date even though this means the actual economic benefit that has accrued to the violator may substantially exceed the economic benefit that the enforcement team calculates. Nevertheless, EPA believes that a very strong argument can be and should be made for using the actual noncompliance date and not the statute of limitations date. Economic benefit is a factor for consideration in imposing a civil penalty, and a trier of fact should not be precluded from considering the violator's entire economic gain from its violations. In these situations, the statute of limitations would serve to limit the maximum size of the civil penalty.

Comment: One person stated that unless the penalty is paid over a long period of time through several installments, no additional charges should accrue if the penalty is paid within 90 days of the date when the parties agree to the payment. The commenter also noted that the regulator should act quickly to propose an amount and immediately make the violator aware of the possibility of further compounding the penalty if the payment date is pushed back.

Response: Once final settlement is reached, the payment date and the rate at which the penalty should be compounded if not paid on time are debt collection issues and not relevant to the economic benefit analysis. In contrast, the payment date selected for a benefit analysis is a relevant consideration. Here, the Agency agrees and encourages enforcement staff to make violators aware early in negotiations that the later the penalty payment date, the higher the benefit number. Nevertheless, there is no legal obligation on the enforcement staff to do so.

Comment: One person felt that because BEN, by design, can only calculate an ''estimate,'' it cannot create values that should be used as hard and fast penalties.

Response: Any calculation of economic benefit is by necessity an estimate, as one can never determine economic benefit as precisely as, say, determining the money a bank robber stole (*i.e.*, a violator's financial statements have no line item for ''economic benefit from pollution control noncompliance.'') The Agency believes that BEN is sufficiently accurate for its intended purpose. Furthermore, the economic benefit is only one component of the penalty, to which is added the gravity component.

Comment: One person suggested that a list of common environmental expenditures that are known to be tax-deductible (*e.g.*, engineering costs for permits) would be helpful to those with little or no knowledge of this area.

Response: While the EPA does not give tax advice, the Agency understands that virtually all environmental compliance expenditures are tax-deductible, except for land.[31] Enforcement staff using BEN can always check with the IRS for confirmation of case-specific items.

Comment: One state agency thought it could not use BEN to evaluate a company that failed to install a piece of control equipment that was required for only a three-year period. (The equipment in this particular case was a condenser.) Thus, the company avoided the equipment cost entirely, but if the company had incurred the cost, then the equipment would have commanded a resale value after three years.

Response: In the vast majority of cases, the equipment is installed and operated by the firm for its entire useful life. BEN assumes there is no resale value since the equipment has no useful life left and/or is not worth moving to a new site. In a temporary use situation, off-line calculations are necessary. A user in this situation should consult Appendix B in the BEN User's Manual to determine the economic benefit from an avoided capital investment, and then subtract from that the resale value (or salvage value) of the condenser once it no longer would have been needed. Alternatively, the equipment's lease cost (if such a lease is feasible, and the data

[31] Penalties are almost never deductible. (The only area where they are deductible is where the ''penalty'' is compensating the government entity harmed by the violation, but this is rarely an issue in the benefit context.)

is available) could be entered as an annual cost.

Comment: One commenter stated that BEN should stress ''incremental'' operating and maintenance (O & M) costs (*i.e.,* the additional costs necessary for compliance, over and above the costs the company would otherwise incur in the absence of compliance).

Response: BEN already stresses this; for example, the ''help'' statement option that is available when entering annual costs states, ''The annual expense is an estimate of average annual incremental costs of operating or maintaining required environmental control measures.''

Comment: One group of commenters stated that the analysis of the on-time case must be based on the compliance alternative that would have been chosen from a rational business decision perspective, meaning the compliance option with the lowest *ex ante* net present value of total cost to the company. They further stated that no rational business would spend more than this amount to achieve compliance. Another group argued that the economic benefit calculation should be adjusted for compliance costs that go beyond the regulatory effort, and that companies should not be penalized for implementing ''Cadillac'' remedies when trying to be good environmental stewards. They commented that companies will have no incentive to move ''beyond compliance'' if the BEN model continues to calculate economic benefit based on the more expensive control option chosen by the company.

Response: The Agency agrees that regulatees will generally select the compliance option that has the lowest cost. However, this assumption is only a starting point and does not always hold true; therefore, case-specific information must be examined. Regulatees may choose more expensive compliance options because they will ultimately work better with existing equipment and, consequently, a seemingly more expensive outlay will ultimately entail lower total costs. Alternatively, a lower quote from one vendor may not be as reliable or realistic as a higher quote from another vendor. The Agency generally agrees, nevertheless, that the compliance costs for the BEN inputs should not include additional costs expended in an effort to go beyond minimum compliance. The Agency also cautions enforcement staff to scrutinize such claims closely as the more expensive approach is often undertaken because that was the minimum that a rational business would take for the regulatory requirements at issue.

Comment: A few individuals thought that in cases where a violator ineffectively spends significant resources trying to achieve compliance, or where funds are spent on other unprofitable ventures, the company's economic benefit of noncompliance is smaller than that estimated by BEN. This result occurs because BEN assumes that all resources not spent on achieving compliance are spent on alternative profitable ventures. One commenter noted that not allowing credits for unsuccessful compliance implementation is not an economic decision, but simply a bad policy decision by EPA. Similarly, one group stated that denial of credit for failed precompliance expenditures ''sends a clear message'' that mitigation of pollution problems has no value. Some commenters stated that a way should exist to account for ''good faith'' yet unsuccessful attempts at compliance. In contrast, other commenters argued that no adjustment or credit for costs of compliance efforts that eventually fail should be given. One reason given was that the entire regulated community faced a similar set of challenges in achieving compliance by the required date; another reason given was that ineffective compliance methods should be treated as delaying tactics.

Response: The current BEN User's Manual (1993 edition) provides an explanation of the Agency viewpoint, which is that credit may be given for unsuccessful yet good-faith efforts to comply, as opposed to purported compliance actions that in fact had other motives. Nevertheless, the decision as to what constitutes such a good-faith efforts can be made only on a case-specific basis.

Comment: One commenter stated that the EPA could provide more guidance on the subject of compliance credits. The commenter suggested that to provide the correct incentives, EPA should not grant credit unless ''compelling evidence'' was present that the noncompliant firm had reason to believe that its effort and costs would actually bring it into compliance. Another commenter echoed the sentiment that a case-by-case determination is required.

Response: The Agency will try to elaborate more on its guidance in future versions of the BEN User's Manual, but the determination in each case still requires the judgment of the enforcement staff.

Comment: One commenter provided reports from actual cases in which he had calculated a negative economic benefit, typically because the violator's avoidance and/or delay of pollution control expenditures had ramifications that resulted in economic losses.

Response: The Agency recognizes that economic benefit can be negative—in both theory and practice. Enforcement staff must scrutinize such claims very carefully because violators generally do not avoid or delay pollution control expenditures when making such expenditures are in the violators' best financial interests. Critical factors in such a case may be the various assumptions for hypothetical transactions, the postulated sequence of events, and the relevance of claimed environmental expenditures to the statute at issue. Furthermore, there are limits as to what the Agency will consider in this regard.

Comment: A few commenters made the point that BEN does not take into account different types of compliance credits, such as those for increased production, reduced operating costs, or recycling in the production process.

Response: The Agency's position is that the economic benefit component of the penalty should not be adjusted for any supplemental environmental projects that the violator elects to undertake, which can instead mitigate the gravity portion of a proposed penalty. If the commenter is referring to the cost savings from compliance expenditures, then BEN will accept negative entries for annual costs. For example, suppose a $1 million capital investment will require annual operation and maintenance costs of $100,000, but at the same time will entail annual savings of $200,000. In that case, the BEN user can enter $1 million for the capital cost estimate, but a negative $100,000 for the annual cost estimate. The *BEN User's Manual* provides further guidance and examples for this issue.

Comment: One commenter expressed the idea that BEN could be adjusted to take into account market-based pollution control strategies, such as a permit system or pollution taxes.

Response: For atypical cases that involve noncompliance under an incentive-based pollution control system, a relatively simple computer model such as BEN is generally not sufficient, and the assistance of a financial analyst is necessary.

Comment: Several commenters noted that the BEN model uses inputs that are a mixture of both *ex ante (i.e.,* known only at the time of initial noncompliance) and *ex post (i.e.,* known only now that the calculation is being performed). Several of the commenters stated that BEN should use an *ex ante* view for the cost inputs, although others felt an *ex post* view was

appropriate. Still another commenter saw little value in the *ex ante/ex post* distinction, and felt that virtually all models use a combination of *ex ante* and *ex post* data.

Response: A pure *ex ante* approach is generally impractical because it would require ignoring all information (*e.g.,* tax rate changes, inflation data) that has become known since the date of initial noncompliance. Therefore, BEN uses *ex post* data as an approximation of *ex ante* expectations. The Agency also agrees that the entire *ex ante/ex* post distinction is not very important.

Comment: One commenter stated that the EPA should ''affirmatively indicate'' that specific input values are preferred over the BEN default values. He also stated that BEN needs to reflect the plant-specific financial information within the context of complex corporations. This idea was echoed by another commenter who stated that if a firm has two specific lines of business, then each line will have its own cost of capital and, therefore, the discount rate should be division-specific. However, another commenter stated that the use of the WACC to discount future cash flows was in most cases appropriate and constituted a harmless approximation.

Response: Specific input values are generally preferred, although the basis for their calculation must be in accordance with the general principles of the BEN standard values (e.g., WACC for discount rate with for-profit entities, marginal tax rates, etc.). However, the effort required for their calculation may not always be worth the additional accuracy gained. The Agency agrees that, where practical, discount rates should ideally be tailored to specific lines of businesses, although often these separate lines are sufficiently similar so that a company-wide rate can be used, especially if calculating a line-specific discount rate will entail further complications and inaccuracies.

Comment: One commenter stated that the BEN model should use a 20-year pollution control capital replacement cycle with a finite facility or process lifetime, instead of infinitely recurring future replacement cycles. One commenter thought the use of an infinite number of cycles was speculative.

Response: BEN uses a 15-year capital replacement cycle default value, but the user has the option to enter another value, such as 20. The user must also specify whether the capital investment is one-time, or whether future replacement cycles will occur. Even if the user chooses an infinite number of replacement cycles, the discounting of future cycles means that only the first several replacement cycles typically have any noticeable effect upon the economic benefit result. Furthermore, although BEN is making an assumption about the future, this assumption is essentially a baseline one and hardly speculative: BEN assumes that future pollution control requirements will be neither more stringent nor more lax than current requirements, and that the cost of the replacement equipment will increase by no more and no less than the projected rate of inflation. But because the additional cycles after the first several have almost no impact upon the economic benefit result, the Agency plans to modify the BEN model to incorporate a default value of two replacement cycles, with the option for the user to specify anywhere from zero to five replacement cycles.

Comment: One commenter expressed the opinion that BEN should use an average marginal corporate tax rate in lieu of the highest marginal corporate tax rate. By contrast, a few commenters asserted that EPA appears to have picked the rates for the BEN model that will produce the highest economic benefit. Another commenter felt the inputs and structure of BEN do not capture the ''real world.''

Response: The BEN model, like any other financial economics model, is designed to capture the essence of the ''real world'' by use of simplifying assumptions that produce a reasonable approximation of the violator's economic benefit. The Agency believes that its default rates are reasonable approximations and are appropriate to use in most cases. The BEN standard values are nevertheless only a default, and the user is free to enter any value. Regarding the tax rate, in most cases the highest marginal rate applies, which is why such a rate is the basis for the default value. Note that the use of the highest marginal rate is highly conservative in that it lowers the after-tax cost of compliance to the greatest extent possible, and as a result produces a lower economic benefit estimate than would a lower marginal tax rate.

Comment: One commenter stated that BEN's replacement cycle assumptions should be consistent with those of the PROJECT model (which calculates the after-tax net present value of a supplemental environmental project).

Response: The replacement cycle assumptions used in BEN and PROJECT are based on different conditions. BEN assumes that the violator will have to replace the capital equipment in the future, because the equipment's operation is mandated by law. PROJECT, by contrast, gives no credit for future replacement cycles because the capital equipment purchased as part of the supplemental project is by definition not required by law; it has been put in place for penalty mitigation, with no law or agreement mandating future replacement. Investment in SEP equipment carries no guarantee that the violator will be replace it after its useful life.

Comment: One commenter noted that EPA should recognize that in some situations no technologically feasible means of compliance may exist.

Response: One means of compliance always exists: shutdown. The economic benefit in this situation is the illegal profits the violator gained during the period of noncompliance (*i.e.,* when operations should not have occurred).

Comment: One commenter maintained that the EPA should recognize that when it changes the interpretation of a rule, newly noncompliant companies have gained no past economic benefit. Similarly, another commenter stated that there should be no recovery of economic benefit when an entire industry misinterprets EPA's rule.

Response: Economic benefit is ''no fault'' in nature: a company need not have deliberately violated the law, or even have been aware of its violation, to gain economic benefit. If a company should have been in compliance, but was not, then it is better off economically for not having complied—whether determined prospectively or retroactively. Furthermore, if any entire industry has been in noncompliance, then all of the firms in that industry have gained an economic benefit.

Comment: One commenter claimed that BEN should not be applied to regulated utilities.

Response: The Agency disagrees with this comment and believes that the BEN model applies to regulated utilities without regard to arguments that they would have received higher rates from their ratepayers had they complied on time. Whether and how a business recoups its pollution control expenditures is not part of the benefit calculation for for-profit entities and generally should not be considered in benefit calculations for regulated utilities.

Comment: One commenter noted that alternative depreciation schedules should be allowed when pollution control costs can be verified.

Response: If a company has in fact used a depreciation schedule other than the depreciation schedule that BEN uses, then a financial analyst can perform the necessary off-line calculations to supplement or substitute for the BEN model's results.

C. Improving the BEN Model's User-Friendliness

1. Is BEN Too Complex To Operate?

Comment: Several commenters thought that the BEN model is easy to use and understand, and that it should be kept that way.

Response: The Agency believes that BEN represents a proper balance between ease of operation and accuracy in calculation, and will try to ensure that any future enhancements preserve this balance.

Comment: One commenter suggested that to improve user friendliness, EPA should make the model and manual readily available to the public. Another commenter expressed the difficulty he had in downloading the BEN model and user's manual from the electronic bulletin board system. He also had a difficult time obtaining these materials from the EPA regional library. Another commenter noted that both the model and manual were available from the National Technical Information Service (NTIS).

Response: The Agency is aware of the difficulty of downloading large documents such as the BEN User's Manual and will try to rectify this in the future, as well as to improve the printed quality of the downloaded document. The easiest way to obtain the model is through the Office of Enforcement and Compliance Assurance's World Wide Web site on the Internet (http://www.epa.gov/oeca/datasys/dsm2.html).

Government users can also obtain the model and manual (for BEN and other applications) via the newly created enforcement economics helpline: 888–ECON–SPT (326–6778), which is staffed by a contractor, Industrial Economics, Incorporated, located in Cambridge, Massachusetts. The helpline is in operation from 8:00 AM to 6:00 PM Eastern time and will accept voice-mail messages when it is not in operation. In addition, the contractor is providing a companion e-mail address for this helpline: benabel@indecon.com. The helpline is strictly limited to providing advice to federal, state, and local environmental enforcement agencies regarding financial issues that impact enforcement cases. Callers will also be able to obtain advice on how to access training courses on the models and related subjects. EPA feels that many of the public comments it received from state and local government enforcement agencies could have been addressed easily and quickly with a call to the helpline. Inquiries regarding the interpretation of federal statutes and EPA polices, will be referred to EPA, as will inquiries from non-governmental employees. Non-government users can obtain the models and user's manuals from NTIS at 800–553–6847. (NTIS packages each model and its user's manual together; requesters will also need the following publication numbers—BEN: PB 98–500382GEI; ABEL: PB 99–500357GEI; CASHOUT: PB 98–500390GEI; PROJECT: PB 98–500408GEI; INDIPAY: PB 99–500407GEI; and MUNIPAY: PB 99–500415GEI.)

Comment: One commenter stated that BEN could be used without the manual, although this made the application more difficult.

Response: The Agency agrees, and also reminds users that the model provides significant on-line help, both in the introductory statement and by allowing the user to enter ''HELP'' at each prompt.

Comment: One commenter thought that increasing the flexibility of BEN could result in a less accurate measure of the economic benefit (*i.e.*, too wide a dispersion of many economic benefit values). Another commenter expressed the view that increasing the flexibility of BEN would also increase the complexity of using BEN, which in turn would preclude some states from calculating economic benefit.

Response: The Agency does not feel that the added flexibility will make BEN any less accurate, although it does agree that the potential for added complexity must be considered when adding flexibility to the BEN model.

Comment: Many commenters suggested that in order to improve user-friendliness, EPA should use a Windows-type format. One commenter suggested that an interactive format for BEN could be based on some commercially published financial or tax programs, which have a ''Wizard''-type guidance feature; another suggested that BEN should use a format for common spreadsheet software. Although, one commenter stated that although point-and-click Windows-type features and the ability to move between data entry fields freely would improve the model, it might not be worthwhile to scrap all the original code. Various commenters also suggested that the model should:

- Allow users to add headings and explanatory text to the BEN output;
- Calculate avoided costs without the need for a hand-held calculator;
- Allow printing of individual BEN runs, make printing more straightforward, and print each result on its own sheet of paper;
- Accept data in a table format for cases in which each month must be entered in a separate run;
- Prompt the user about whether to use the standard [default] or state-specific values;
- Accept other than the capital letters ''Y'' and ''N'' for yes and no answers;
- Save model inputs electronically for future use;
- Modify instructions for printing the output— ''positioning the paper'' seems irrelevant; and
- Allow the user to exit the model in the middle of a run.

Response: The Agency plans to reprogram the model for the Windows operating environment, which should address most of these concerns. (The Agency will still maintain the current DOS-based version for a time.) An actual spreadsheet may confuse many users, although the Windows-based model will incorporate many spreadsheet-type features.

2. Is the Information BEN Needs Difficult or Expensive To Obtain?

Comment: One commenter thought that although BEN is a very effective tool for cases in which the violator must install pollution control equipment or perform similar actions to achieve compliance, it is less effective when compliance comprises administrative activities. The commenter explained that this is primarily because of the difficulty of obtaining cost figures for such activities, and suggested that BEN have a subroutine for such cases that provides default cost values.

Response: The Agency understands that cost data can be difficult to obtain for certain cases. But if the violator has already come into compliance, then an estimate of its actual costs should be available. The Agency has begun developing a computerized RCRA compliance cost database which will complement the revised version of the BEN model.

Comment: While some users felt that inputs for BEN are readily available, others found that inputs are difficult to obtain when violators are uncooperative.

Response: In such situations, enforcement staff should use the discovery process to obtain the necessary information, whether through interrogatories, depositions, requests for production, or other legal processes. Another approach is to contact state or federal experts familiar with the regulatory requirement at issue for advice on cost estimates. Finally, retaining an outside consulting expert may occasionally be necessary to develop the compliance cost estimates.

Comment: One commenter wanted the Agency to develop a set of standardized rules or a protocol to be

followed when applying case-specific information to an economic benefit calculation.

Response: The Agency strives to provide sufficient guidance to enforcement staff, but does not feel that a strict protocol is feasible. Therefore, enforcement staff will always have to exercise case-specific judgment.

Comment: One commenter suggested that users should perform a cost-benefit analysis when contemplating the use of case-specific inputs in lieu of BEN default values. The commenter further stated that the Agency should consider allowing enforcement staff more flexibility with respect to the use of investment tax credits, depreciation schedules, tax rate choices, different inflation options, and low-interest financing. Another commenter stressed the increased workload and questionable reliability associated with case-specific data. Similarly, another commenter noted that BEN is intended to serve as only a gross indicator of the economic benefit, rather than as a precise calculation, and that more specific information should be used only if such information will improve the result significantly. This commenter further asserted that the occasional use of more specific data than BEN's default values will lead to skewed results in the aggregate, because only firms that will benefit from the precise information will make it available.

Response: The Agency agrees that the pursuit of case-specific inputs takes place within a resource-constrained environment and should be measured against the expected gains in accuracy. The Agency adopts the same approach to adding flexibility to the model, where such flexibility may make the model more difficult to use for less advanced users. The Agency also agrees that, theoretically, a firm will dispute standard values such as the discount rate only when a more accurate value is in its best interests. But it is the Agency's policy that if it the violator urges the use of a particular company-specific value in place of standard value, the Agency will insist on using company-specific values in place of all the standard values. The Agency believes this approach will limit the aggregate impact of adopting regulatee-specific values instead of standard values.

3. Other Issues Affecting Use of BEN

Comment: One person stated that Appendix A of the BEN User's Manual should be expanded to include the model's entire mathematical algorithm, and should be written with more focus on economic theory, like a textbook. Another stated that Appendix A should include a thorough development of equations 15a and 15b.

Response: The Agency is pleased that at least some members have taken the time and effort to familiarize themselves with the details of the BEN User's Manual. A user's manual for any computer model, however, can not take the place of a textbook on mathematics or financial economics. To answer some of the specific concerns, Equation 15a is the sum of an infinite geometric series, which can be found in most calculus texts. Equation 15b is a simple discount formula similar to the one given on page A–4 in Appendix A. Equation 15c is the sum of the present value of the first replacement cycle plus all the additional replacement cycles to infinity. The Agency encourages enforcement staff who have further questions along these lines to contact its enforcement economics helpline at 888-ECONSPT. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies.

Comment: One person thought the model departs from the formulae in Appendix A for depreciation, and instead appears to use a simplified formula that calculates each year's depreciation as a percentage of the previous year's. This commenter felt that any simplifications or departures from theory made for the sake of simplifying the model's programming should be detailed in the manual.

Response: BEN uses no such simplifying formula, and instead uses a seven-year depreciation life (for capital investments after 1987). The first four years use a double-declining balance with a half-year convention switching to a straight-line depreciation for the rest, corresponding to the revised tax law's Modified Accelerated Cost Recovery System (MACRS). The model adjusts the depreciation deduction to occur once a year at midyear.

Comment: One person stated that the manual should answer questions such as: What is the difference between a C Corporation and an S Corporation? What, other than land, constitutes a one-time nondepreciable expense? What happens when you choose a useful life that is shorter than the depreciation schedule?

Response: Between the BEN User's Manual and the ''Help'' prompts within the model, BEN attempts to provide as much guidance as is feasible in answering these frequently asked questions. For example, the difference between a C Corporation and an S Corporation can be found by selecting ''3'' of input number 1C—BEN will show information about both types of corporations. On page 4–10 of the user's manual, ''nondepreciable expenditures'' are defined as items that ''do not wear out;'' the manual proceeds to list several examples, such as a record-keeping system, employee training, waste removal, etc. For questions such as how to account for a useful life shorter than BEN's depreciation schedule (which requires off-line calculations by a financial analyst), the Agency encourages enforcement staff to contact its enforcement economics helpline at 888–ECONSPT. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies.

Comment: Several commenters agreed that BEN is a useful tool for calculating the economic benefit of noncompliance, and encouraged EPA to retain the model. But other commenters asserted that the regulator's discretion should be used in lieu of BEN's calculation to determine economic benefit; these commenters felt that EPA should not mandate the use of BEN. From the defense bar's viewpoint, one commenter thought that the plaintiff's failure to accept anything other than a BEN calculation can lead to ''unprincipled negotiations.''

Response: Although computer spreadsheets or even programmable calculators can calculate economic benefit accurately, the Agency suspects that leaving economic benefit determination up to the regulator's discretion will result in either no calculations at all or fundamentally flawed calculations. (For example, the Agency examined one state's ''alternative'' to BEN and found it unreliable and even more difficult to use than BEN.) The Agency is convinced that BEN is a reasonably accurate, relatively simple way to calculate the economic benefit from noncompliance, and it continues to promote the use of BEN. The Agency does not require state enforcement agencies to use BEN, but the Agency strongly encourages them to employ it. State enforcement personnel who want to employ a valid alternative to BEN are welcome to do. For example, one state enforcement staff member's spreadsheet version of BEN was perfectly adequate. Nevertheless, EPA strongly believes that the ''risk-free rate'' approaches are seriously flawed and discourages their use as alternatives.

Comment: Some commenters noted that BEN is reasonable and provides results that are fair to the violator. Others thought that estimates of economic benefit obtained from BEN are at times so high that they are useful only

for their shock value. Some commenters noted that BEN gives penalty amounts that are so high that many Agency resources are spent negotiating or pursuing legal judgments with violators who are not confident of the accuracy of BEN's assumptions and methodology. One commenter felt that BEN was designed to produce the maximum possible penalty.

Response: The Agency strives to provide enforcement staff with a model that makes reasonable estimates of economic benefit. If the model produces numbers so high that they are shocking to either the enforcement staff or the violator, then that is generally because the violator has gained a high economic benefit and not because the model is designed to produce the maximum possible penalty. The compliance cost inputs to the BEN model are always open to discussion, but the methodology, by contrast, is not open to compromise. The Agency is comfortable defending its benefit calculations based on the BEN approach.

Comment: One commenter noted that BEN is an inexpensive method of determining economic benefit, making it an economical option for case work, although others thought that BEN is resource-intensive and not cost-effective. Several others felt that attempting to use BEN in ''small'' enforcement activities was a waste of resources, with one commenter noting that in many small cases, the cost associated with using BEN would exceed that of the penalty itself.

Response: The Agency disagrees that BEN is ''resource-intensive and not cost-effective.'' A typical analysis takes about five minutes. The only potential issue is the user's need to determine the compliance costs, which normally should not take much time, particularly for small enforcement actions. In addition, the Agency is not confident that enforcement staff are always able to determine beforehand that a case is too small to merit the use of BEN. Often, it is only after running BEN that the magnitude of the economic benefit becomes apparent.

Comment: Some commenters thought BEN was difficult to understand and explain for enforcement staff, who are often engineers untrained in and unfamiliar with financial economics. While BEN may be designed for people with little background in financial economics, many commenters felt that determining actual numerical inputs, and whether to use BEN's standard values, requires the judgment of a financial expert. Another commenter similarly noted that the EPA needs sufficiently trained staff to handle a variety of ''real world'' circumstances which presumably may require calculations in addition the BEN model.

Response: The Agency strives to make BEN as easy to understand for non-experts as is possible. Interestingly, BEN's compliance cost inputs typically require engineering expertise, not knowledge of financial economics. Once such cost inputs have been obtained—either based on the violator's actual purchases or through the discovery process—then the BEN model can be run with no knowledge of financial economics. The Agency also encourages enforcement staff who have questions to contact its enforcement economics helpline at 888–ECONSPT, from which staff can receive copies of training videos, training materials, and user's manuals. The helpline can also assist users in performing off-line calculations for circumstances that the BEN model cannot accurately calculate by itself. As mentioned above, this helpline is strictly limited to employees of federal, state and local government enforcement agencies. Finally, in the coming years training courses for the new, revised BEN model will be conducted in each EPA Region and at the national headquarters, to which state and local government enforcement staff will be invited.

Comment: One commenter felt that EPA should not ''oversell'' the idea that BEN can be used by people with no knowledge of economics, as that may invite misuse. According to this commenter, users of BEN must at least be willing to learn what the model is doing.

Response: Our experience with the model over the last thirteen years is that users can be very effective in the settlement context without thoroughly understanding the theory behind the model. We do include an extensive presentation of the theory in the BEN training course, although the model is sufficiently simple that users need not possess an intricate knowledge of economic theory to calculate accurate and reliable results.

Comment: One commenter noted that it is not feasible to expect states to hire financial experts and, therefore, that the BEN model should be made easier to understand for non-expert users. Several other commenters thought that EPA should provide the expert assistance to states.

Response: EPA believes that the model is easy to understand and operate as is. Most of our users have taken the four-hour BEN training course, which we have found covers almost every situation our enforcement professionals will encounter. While we are working on ways to improve BEN's simplicity and yet make it more flexible, the current model was designed for use by enforcement professionals with little or no background in finance. The model is used effectively across the country by such personnel. With respect to providing expert assistance to the states, EPA has established the helpline, mentioned above, to address this need.

Comment: One commenter suggested that EPA develop a program to provide investigative and analytical assistance to state and local agencies.

Response: The provision of analytical assistance is being addressed by the helpline mentioned above. The provision of investigative assistance is clearly beyond the scope of this effort to review and revise the Agency's benefit recapture approach.

Comment: In addition, many commenters felt that EPA should provide more training for users of the BEN model.

Response: The EPA has presented over forty BEN courses since 1988. The Agency has conducted over thirty ''live'' BEN training courses at EPA facilities, and EPA invited state enforcement staff to nearly all of them. In addition, EPA has conducted fourteen BEN training courses primarily for state and local government personnel in Hartford, Connecticut (twice); Indianapolis, Indiana (twice); Little Rock, Arkansas; Baton Rouge, Louisiana; Trenton, New Jersey; Boise, Idaho; Ft. Lauderdale, Florida; El Monte, California; Baltimore, Maryland; Richmond, Virginia, Phoenix, Arizona; and Anchorage, Alaska. (Other state and local governments that are interesting in at least sharing the delivery costs with the EPA can also arrange for such a course.) EPA also presented a BEN course via satellite in 1994, and has made videotapes of that broadcast available to government enforcement staff on request.

Comment: One commenter argued that EPA should put pressure on individual states to account for the economic benefit component of noncompliance in their enforcement programs; another stated that EPA should help states incorporate the concept of economic benefit in penalties or assessments.

Response: The issues the Agency is addressing in this Notice are related to the determination of the economic benefit of noncompliance. Whether states are adequately accounting for the economic benefit component is beyond the scope of this effort. The EPA is ready and willing to provide support to states in using the model. Not only has the Agency provided such support to states in the past, but it has even

provided it to the governments of Indonesia, China, Taiwan, Brazil, United Kingdom and Mexico.

Comment: Several commenters noted that short, in-depth, case-specific reviews by experts should replace BEN analyses, as they yield more credible, defensible results than BEN.

Response: The Agency is convinced that the BEN model produces reasonably accurate calculations of economic benefit. It has proven to be an effective enforcement tool over the past 14 years. Furthermore, the new BEN model may often be a sufficiently accurate analytical tool for experts to use in such case-specific reviews. By contrast, to adopt an in-depth review of every case would require costs—either in contractor support and/or full-time in-house staff—that would be prohibitive, as well as add little value.

Comment: Several commenters noted that defending the BEN model's results in court is difficult, for a variety of reasons. While EPA's earlier guidance explains that BEN should be used only in settlement discussions, and that the regulator should never be put in the position of having to defend BEN in court, one commenter felt that most state users cannot follow EPA's advice. According to this commenter, a state's negotiations or settlements occur after a document has already been mailed to the violator with a penalty amount on it; therefore, if the case goes to court, the state must defend the amount.

Response: The suggested protocol is to hire an expert witness to perform an economic benefit calculation for presentation in court, as an expert is necessary to explain the methodology (either that of BEN or of some other analytical tool). If the result of this more customized analysis differs significantly from the initial BEN result, then the penalty demand can be changed.

Comment: One commenter noted that although BEN is not appropriate for all cases, if BEN is not used in every case, then the regulator is subject to criticism for inconsistency.

Response: BEN is appropriate in every case in which compliance costs were avoided or significantly delayed. BEN is not appropriate when the benefit comes from an illegal competitive advantage. As long as the regulator applies the BEN model to all the cases for which it was designed, then the regulator will be consistent.

Comment: Several commenters thought that small businesses and sources which are genuinely ignorant of their violations should be treated differently than large companies which have many resources and who commit egregious violations. One commenter suggested that small communities and businesses should be helped by small business assistance programs to achieve compliance, rather than be penalized for what may well be a genuine mistake. This commenter also suggested that if EPA continues to support the use of the BEN model in these cases, BEN should at least allow the regulator to account for the size of the community or business in question. A few commenters noted that sometimes, even when BEN calculates a positive economic benefit, it may be inappropriate to ask the violator to pay that amount; similarly, some commenters suggested that the regulator should run the ABEL model in conjunction with the BEN model to determine the effects of payment on the entity.

Response: Economic benefit is no-fault in nature and as a result accrues regardless of genuine mistakes. If a small business delays a required pollution control expenditure—for whatever reason—then it obtains an economic benefit. The regulatory agency must recover this benefit, otherwise the business will have an unfair advantage over those businesses that complied. If violations are especially egregious, then this should be reflected in the gravity component of the penalty or in criminal sanctions. The size of the violator is relevant only to the ability to pay a civil penalty. The Agency maintains the ABEL, INDIPAY, and MUNIPAY models (for corporations, individuals, and municipalities, respectively) to guide its enforcement personnel in determining ability to pay. BEN already favors small businesses in that the standard value discount rate is based upon the typical large company's WACC. Significant evidence exists that small companies on average have higher costs of financing than larger ones, but EPA has conservatively decided to base its standard value discount rate on large companies, instead of small firms' higher (by about two percentage points) discount rate. (For a detailed discussion of this issue, see the Ibbotson Associates *Stocks, Bonds, Bills, and Inflation* annual yearbooks, in particular Chapter 7, ''Firm Size and Return.'') Similarly, many small communities have higher debt costs on average than large communities, but the not-for-profit standard value discount rate is nevertheless based upon the average interest rate for communities that have access to the municipal bond market and are able to obtain ratings for the debt issues. If the discount rate were tailored to such small businesses and communities, then the discount rate, economic benefit result, and hence the penalty demand, would be higher. In order to maintain simplicity, BEN actually favors small businesses and communities in this regard.

Comment: One commenter stated that the BEN model should be used more as a tool for promoting environmental compliance than merely for recapturing the economic benefit of noncompliance. Another commenter noted that the EPA should de-emphasize penalty assessment and instead encourage self-compliance. One commenter noted that EPA's goal should be to prevent future noncompliance, which could in some circumstances be accomplished with a fine smaller than the economic benefit.

Response: The Agency is always in favor of promoting compliance and encouraging self-compliance. One means of promotion and encouragement is penalty assessment based upon full economic benefit recapture, which ensures that any gain potential violators reap from noncompliance will be fully taken away from them in the form of a civil penalty. Any penalty assessment short of this creates an incentive among regulatees to wait until they are caught before complying.

Comment: One commenter suggested that the EPA has been secretive regarding the BEN methodology.

Response: The BEN model and its user's manual are freely available, and the calculations are easily replicable.

Comment: One commenter noted that a supplemental environmental project (SEP) would in some cases be better than a ''disgorge'' of economic benefit.

Response: The Agency's policy is that a SEP can be performed for mitigation of only the gravity component of the civil penalty, not for the economic benefit component. Otherwise, given the additional motivations a violator may have for performing a SEP, the Agency could never ensure that the violator was really financially indifferent with respect to noncompliance. Therefore, the civil penalty must always, at a minimum, recapture economic benefit.

Comment: One commenter noted that the EPA should address the issue that competing regulatory requirements may force firms into noncompliance under one set of regulations when these firms comply with another.

Response: This is outside the scope of the issue of economic benefit recapture.

Comment: One commenter noted that it would be helpful if some type of ''gravity'' component could be incorporated into BEN for noncompliance prevention and/or a compliance incentive.

Response: The Agency feels that gravity component calculations in the various penalty policies are sufficiently

simple and straightforward so that a module in BEN is not necessary.

Comment: One commenter stated that BEN has historically been available only through a mainframe, making it useless to staff without such access.

Response: BEN now runs on the EPA LAN or on a personal computer. Copies for the latter are available through the Internet (http://es.epa.gov/oeca) or, for enforcement staff, through EPA's enforcement economics helpline at 888–ECONSPT or, for non-government employees, through National Technical Information Service (NTIS) at 800–553–6847.

D. General Comments on the Public Comment Process

Comment: Several commenters made the point that EPA does not need to go through a formal rulemaking process with the BEN model.

Response: The Agency recognizes the distinct advantages of public input on its benefit recapture approach which is why it is seeking comment at this time.

Comment: Some of the commenters expressed the need for the formation of one or more ''blue ribbon'' panels of outside experts in financial economics (similar to the National Oceanic and Atomospheric Administration panel on the use of contingent valuation in natural resource damage assessment). Along these lines, one commenter thought EPA's goal should be to find a solution with the broadest possible support in the financial field. By contrast, one commenter strongly opposed the ''weight of opinion'' process for adopting changes in BEN. Another commenter felt that although such expert panels might be beneficial, the financial and economic principles BEN uses are simple enough that any finance professor could discover whether the model held to the mainstream of modern finance and economics.

Response: Given that both academicians and practitioners in the field of financial economics disagree significantly (both on economic benefit analysis and a myriad of other issues), the Agency does not feel that the formation of an expert panel would be a productive exercise. For instance, tenured professors from business schools have reached diametrically opposed conclusions in the written comments they have submitted on the BEN model.

Comment: Some commenters expressed doubts about the nature of and manner for this public comment process and recommended a more open policy. To do otherwise, they state, would only continue the controversy and would not be in either EPA's or the regulated community's best interest. Similarly, one commenter stated that the adoption of the procedures for the public comment session should be subject to administrative due process.

Response: The Agency has made every effort to make the public comment process as open as possible.

Comment: A few commenters criticized the limited time for interested parties to respond to the request for comment as listed in the **Federal Register** notice of October 9, 1996.

Response: In response to such concerns, the Agency extended the deadline for public comments from the originally stated January 1, 1997, to a significantly later March 3, 1997, (see **Federal Register** notice on December 12, 1996, at page 65391).

Comment: Some commenters expressed concern that EPA has yet to release earlier statements made by several prominent professors in the field of finance that allegedly criticized the BEN model. These commenters asserted that the professors' prior remarks, if relevant, should also become part of the public record and be incorporated into any forthcoming decision.

Response: The Agency released these statements in April of 1997. The Agency recognized the merit of those comments long before they were released, but some of the statements were the subject of a three-year Freedom of Information Act case. That case was eventually resolved, and the Agency has since released the analyses sought in that case. In addition, the Agency released three other similar analyses which were not sought. Some of the statements were critical of the BEN model as it then existed, and the Agency adopted many of the changes they suggested. In any event, all of the analyses were of the prior BEN model version, not the current version. Copies of these statements are available by calling 202–564–2235.

Comment: Several commenters felt that the EPA should follow up on the public comment period by first drafting the findings, then requesting and evaluating further public comment, and finally publishing a formal draft on the final decision.

Response: The Agency agrees, and is taking that approach.

IV. Request for Comments

The Agency is interested in comments relating to its proposed changes to its benefit recapture approach as discussed in Section II of this Notice. After the comment period closes, the Agency plans to review all the comments and revise its benefit recapture approach and the BEN computer model as appropriate. EPA encourages parties of all interests, including state and local government, industry, not-for-profit organizations, municipalities, public interest groups and private citizens to comment so that we can have as broad a spectrum as possible.

Dated: June 8, 1999.

Sylvia K. Lowrance,

Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–15271 Filed 6–17–99; 8:45 am]

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federal register

Friday
June 18, 1999

Part IV

Department of Commerce

Economic Development Administration

13 CFR Part 301

Revision to Implement Economic Development Reform Act of 1998—Grant Rate Eligibility; Disaster Assistance Based on High Unemployment; Final Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No. 990106003–9157–02]

RIN 0610–AA56

Revision to Implement Economic Development Reform Act of 1998—Grant Rate Eligibility: Disaster Assistance Based on High Unemployment

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Interim rule.

SUMMARY: The purpose of this interim-final rule is to further amend regulations of the Economic Development Administration (EDA) to implement the amendment to and replacement of the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Reform Act of 1998 (PWEDA). This rule amends disaster grant rate eligibility requirements to correct currently listed grant rates and to add a new category of disaster grant rate eligibility. These changes are intended to more closely track the statutory language in PWEDA concerning supplemental appropriations, and to continue EDA's mission in providing disaster assistance under its regular program authorities. Changes are also being made so that grant rate eligibility for high unemployment is based on a stated percentage of the unemployment rate, similar to the grant rate eligibility based upon per capita income.

DATES: Effective date: June 18, 1999.

Comment date: Comments are due on or before July 19, 1999. EDA intends to publish a final rule in the summer of 1999 and will consider comments received on this interim-final rule as well as those received in response to the interim-final rule, 64 FR 5347, February 3, 1999.

ADDRESSES: Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, e-mail elevin@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This is a major legislative accomplishment, which will create stability and growth opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps towards improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA completely revised its regulations, (see 64 FR 5347, February 3, 1999) thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard by announcing an immediate response to comments received on EDA's disaster and unemployment grant rate eligibility requirements, prior to publication of EDA's final rule in the summer of 1999.

Comments on the Interim-Final Rule

Comments were requested on EDA's interim-final rule published at 64 FR 5347, February 3, 1999. The sixty (60) day comment period ended on April 5, 1999. EDA inadvertently overlooked certain matters concerning grant rate eligibility criteria for disasters. EDA received public comments suggesting that relative distress, like that presented in the table for per capita income, should likewise be the criteria for unemployment distress.

Description of Major Changes

EDA is amending its rules by revising 13 CFR 301.4(b) *Grant Rates*, by clarifying and modifying the paragraphs describing the maximum Federal grant rate eligibility of projects located in Federally-declared disaster areas and for areas suffering from high unemployment distress.

The current regulations purport to permit a 100 percent maximum grant rate for all projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent. That language is too broad, because the legislative authorization for 100 percent Federal grant rates is limited to (1) projects under part 308 (i.e., Economic Adjustment projects authorized by section 209 of PWEDA, (2) for which funds have been appropriated as authorized by section 703 of PWEDA, i.e., a supplemental appropriation. Moreover, while the result may be the same because the President establishes the FEMA grant rate, it would be more accurate to refer to ''Presidentially-declared'' rather than ''Federally-declared'' as the authority is limited to the Stafford Act, where the President makes the disaster declaration.

The current regulations also provide for an 80 percent maximum grant rate for other projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration. That language is also overbroad, because it does not limit grant rates in excess of 50 percent to situations (other than those authorized by section 703 of PWEDA) where the applicant cannot provide the required non-Federal share, as is required by section 205 of PWEDA.

EDA is correcting the respective paragraphs, the second and fifth boxes of the table in § 301.4(b), to reflect the statutory requirements.

EDA has determined to modify the regulations by adding an additional paragraph to permit a maximum Federal grant rate of 80 percent for projects in other Federally-declared disaster areas, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.

In addition, EDA has determined that in some situations one year is an insufficient length of time after the declaration of disaster, for the receipt of an application for assistance. For instance, following the Midwest Floods of 1993, in many areas the floodwaters did not recede for many months. Therefore, in all three disaster grant rate paragraphs, an 18 month period is established for the filing of an application after the disaster declaration.

The current regulations provide a two-part test for areas seeking a grant rate greater than 50 percent, based upon high unemployment; the area must meet both a relative standard—a percentage of the national average—and an absolute standard, a set unemployment rate. EDA received public comments suggesting that relative distress, like that presented in the table for per capita income, should likewise be the criteria for unemployment distress for fairness in determining distress factors. Therefore,

we have deleted references to unemployment rates of at least 11, 9 or 7.5 percent so that unemployment distress will be based upon absolute percentages of the 24 month unemployment rate of at least 225, 180 or 150 percent of the national average.

The maximum grant rates themselves remain the same with the addition of new item (6).

Executive Order 12866 and 12875

This interim-final rule in itself is not significant for purposes of E.O. 12866, Regulatory Planning and Review, though the underlying full regulation has been determined to be significant. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim-final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This interim-final rule modifying the maximum grant rate eligibility in 13 CFR 301.4(b) does not in itself affect information collection or recordkeeping requirements. Nevertheless, the underlying full regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, and has been cleared under OMB's Emergency Clearances process under OMB approval numbers: 0610–0093; 0610–0094; 0610–0095; 0610–0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105–393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments were invited in 64 FR 5347, but no public comments were received on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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. Though the comment period has ended, comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230. Such comments, if any, will be reviewed and considered to the extent they are received before EDA begins the clearance and review process on the final rule.

Administrative Procedure Act and Regulatory Flexibility Act

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim-final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

List of Subjects in 13 CFR Part 301

Community development; Grant programs; Indians.

For the reasons set forth in the preamble, part 301 of 13 CFR Chapter III is amended to read as follows:

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

2. Section 301.4(b) is revised to read as follows:

§ 301.4 Grant rates.

* * * * *

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
(1) Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project ...	100.

Projects	Maximum grant rates (percentage)
(2) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent.	100.
(3) Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project	Less than 100.
(4) Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or nonprofit organizations that have exhausted their borrowing capacity.	Less than 100
(5) Projects under Part 308 located in Presidentially-declared disaster areas for which EDA receives an application for assistance under a supplemental appropriation, within 18 months of the date of declaration.	80.
(6) Projects located in Federally-declared disaster areas, for which EDA receives an application for assistance within 18 months of the date of declaration, when the Assistant Secretary determines that the applicant cannot provide the required non-Federal share because of the disaster's impact on the economic situation.	80.
(7) Projects located in eligible areas where:	
(i) The 24-month unemployment rate is at least 225% of the national average or	
(ii) The per capita income (PCI) is not more than 50% of the national average	80
(8) Projects located in eligible areas that are not eligible for a higher rate, where:	
(i) The 24-month unemployment rate is at least 180% of the national average or	
(ii) The PCI is not more than 60% of the national average	70.
(9) Projects located in eligible areas that are not eligible for a higher rate, where:	
(1) The 24-month unemployment rate is at least 150% of the national average or	
(2) The PCI is not more than 70% of the national average	60.
(10) Projects in all other eligible areas	50.

* * * * *

Dated: June 11, 1999.

Phillip A. Singerman,

Assistant Secretary, Economic Development Administration.

[FR Doc. 99–15499 Filed 6–17–99; 8:45 am]

BILLING CODE 3510–24–P

federal register

Friday
June 18, 1999

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revised Landing Gear Shock Absorption Test Requirements and Proposed Advisory Circular 25.723–1, Shock Absorption Test; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–1999–5835; Notice No. 99–08]

RIN 2120–AG72

Revised Landing Gear Shock Absorption Test Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the landing gear shock absorption test requirements for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC). This action is necessary because the increasing complexity of landing gear shock absorption systems and the improvements in other requirements concerning landing loads have rendered the current requirements inconsistent and outdated. In addition, differences between the current United States and European requirements impose unnecessary costs on airplane manufacturers. These proposals are intended to update the landing gear requirements to be consistent with other requirements, to reflect modern technology, and to achieve common requirements and language between the Federal Aviation Regulations and the European Joint Aviation Requirements (JAR) without reducing the level of safety provided by the regulations and industry practices.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: U.S. Department of Transportation, Dockets, Docket No. FAA–1999–5835, 400 Seventh Street SW., Room Plaza 401, Washington, D.C. 20590. Comments may also be submitted electronically to the following address: 9–NPRM–CMTS@faa.gov. Comments may be examined in Room Place 401 between 10 a.m. and 5 p.m., weekdays, except Federal holidays. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Haynes, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2131.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this action are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in duplicate to the Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. Late filed comments will be considered to the extent practicable. The proposals contained in this action may be changed in light of comments received. All comments received will be available in the Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1999–5835.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–9680. Communications must identify the docket or notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The manufacturing, marketing and certification of transport airplanes is increasingly an international endeavor. In order for U.S. manufacturers to export transport airplanes to other countries the airplane must be designed to comply, not only with the U.S. airworthiness requirements for transport airplanes (14 CFR part 25), but also with the transport airworthiness requirements of the countries to which the airplane is to be exported.

The European countries have developed a common airworthiness code for transport airplanes that is administered by the Joint Aviation Authorities (JAA) of Europe. This code is the result of a European effort to harmonize the various airworthiness codes of the European countries and is called the Joint Aviation Requirements (JAR)–25. It was developed in a format similar to part 25. Many other countries have airworthiness codes that are aligned closely to part 25 or to JAR–25, or they use these codes directly for their own certification purposes.

The Aviation Rulemaking Advisory Committee (ARAC) was established by the FAA on February 15, 1991, with the purpose of providing information, advice, and recommendations to be considered in rulemaking activities. By notice in the **Federal Register** (59 FR 30081, June 10, 1994), the FAA assigned several new tasks to an ARAC working group of industry and government structural loads specialists from Europe, the United States, and Canada. Task 6 of the working group charter concerned the shock absorption test requirements for landing gear. The ARAC working group has completed its work for this task and the ARAC has made recommendations to the FAA by letter dated October 29, 1997.

Although the requirements for landing gear shock absorption tests are essentially the same between the Federal Aviation Regulations and JAR, the requirements do not address the capabilities of modern technology and

do not take into account other related changes in the requirements for landing gear load conditions that have already been incorporated into other sections of the Federal Aviation Regulations. When the landing loads requirements for transport airplanes were originally developed, they required the landing load factors to be determined and applied to the airplane. The airplane was treated as a rigid body and the landing loads were applied to this rigid representation of the airplane for the purpose of structural analysis. For the early landing gear systems, analysis alone was considered sufficient for determining the landing load factor that would be applied to the rigid airplane. It was only necessary to determine the landing load factor (by analysis or tests) and this load factor would then be used to design and substantiate the airplane for the landing load conditions.

The development of more complex landing gear systems, for which analysis alone was unreliable, led to the adoption of a requirement to verify the landing load factor by actual shock absorption tests. This requirement was added to the Civil Air Regulations (CAR) part 4b, which was the predecessor to part 25. These shock absorption tests were allowed by § 4b.200 of the CAR to be free drop tests in which the gear alone, could be dropped in free fall to impact the ground. In these tests, mass is added to represent the proportion of the airplane weight on the landing gear unit, and the mass may be reduced to account for the effects of airplane lift acting during the landing impact. Later, the corresponding requirement in § 25.723(a), was modified to allow the substantiation of some changes to the landing gear shock absorption systems by analysis alone without verification by tests.

Part 25 currently requires the landing loads to be determined by accounting for the dynamic flexible airplane. In addition, the landing gear shock absorption systems have become even more sophisticated. At the same time, the ability to develop highly sophisticated computer models of landing gear and airplane structures has also improved. In order to determine the airplane loads from the landing load conditions, it is no longer sufficient to determine just the load factor from a drop test of a landing gear unit. A comprehensive analysis of the combined dynamic systems for the landing gear and airplane are essential in order to determine the structural design loads for the airplane. In developing this dynamic model, it is necessary to provide an accurate representation of all the landing gear dynamic characteristics. This includes the energy absorption characteristics and the time histories of force and displacement during a landing impact. The current §§ 25.473(d) and 25.723(a) for shock absorption tests require just the determination of the limit landing load factor from the drop test.

Discussion

The proposed revisions to § § 25.473(d) and 25.723(a) would provide for the new objective of the landing gear energy absorption tests which would be to validate the landing gear dynamic characteristics rather than to directly determine landing gear load factors. These revisions would require that these characteristics be substantiated over the range of landing conditions and airplane configurations expected in service. The manufacturer would be expected to substantiate the landing gear dynamic characteristics over the full range of weight conditions and configurations. As a minimum, the energy absorption characteristics would be confirmed by an energy absorption test at the weight condition for landing (maximum takeoff weight or maximum landing weight) which provides the maximum impact energy. This is in contrast to the current § § 25.473(d) and 25.723(a) which specifically require energy absorption tests at both the maximum landing weight condition and the maximum takeoff weight condition. The proposed rule would continue to provide for the substantiation of minor changes by analyses. To provide guidance in complying with the new proposed rule, a new advisory circular, AC 25.723–1, Shock Absorption Tests, is proposed.

The proposals for the revised § § 25.473(d) and 25.723(a) take into account the potential for sophisticated computer simulations that accurately represent the dynamic characteristics. These are also consistent with improvements in the landing load requirements that necessitate an accurate representation of the landing gear shock absorption characteristics. These proposals also provide more flexibility for the airplane manufacturer to determine the range of conditions and configurations over which to validate the analytical model for the landing conditions. The extent to which this analytical model could be extrapolated to include future design changes would depend on the range of conditions and configurations originally selected by the manufacturer for validation of the model.

The current § § 25.725 and 25.727 are proposed to be deleted as regulatory requirements and would be set forth in the new proposed AC 25.723–1. These criteria would be modified to reflect the advisory nature of the material as well as the revised objective of determining landing gear dynamic characteristics instead of landing gear limit inertia load factors. For the most part, these rules currently provide acceptable means of conducting energy absorption tests by means of a drop test. Section 25.725 provides an acceptable means of conducting a limit drop test for compliance with § 25.723(a), and § 25.727 provides an acceptable means of conducting a reserve energy drop test in compliance with § 25.723(b). Most of the guidance is limited to a ''free'' drop test in which a reduced effective weight is used to represent lift during the landing impact. The only item in these two sections that is considered to be regulatory in nature is the current § 25.725(c) concerning the attitude of the landing gear and the representation of drag loads during the tests. Therefore this paragraph has been modified to apply to all types of landing gear energy absorption tests (not just drop tests) and it is now set forth in § 25.723(a)(2) of the proposed rule. It is expected that these revisions will have no effect on the level of safety provided by the requirement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed

rule is not ''a significant regulatory action'' under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

The proposed requirements, applicable to future type certificated transport category airplanes, would result in two regulatory changes: (1) Utilizing landing gear energy absorption tests to validate the landing gear dynamic characteristics rather than the limit load factor value, and (2) confirming energy absorption characteristics by requiring tests at either the maximum landing weight or maximum takeoff weight condition, whichever provides the maximum landing impact energy. This is in contrast to current requirements which require tests at both weight conditions.

The test results would be used to develop the analytical modeling of the landing gear dynamic characteristics. These regulatory changes would not result in any physical change in the way landing gears are tested: the attitude of the gear being usually simulated directly by orienting the gear on the rig and drag loads being applied by spinning the wheel up to the ground speed. Therefore, it would not impose additional costs on manufacturers. This was confirmed by two manufacturers.

Significant cost savings may result from not having to test both at maximum landing weight and maximum takeoff weight, but instead, conducting shock absorption tests only for the conditions associated with maximum energy. One manufacturer estimates that these tests would result in 15 fewer test conditions per airplane certification. At a cost of $5,000 per condition, the total cost savings would reach $75,000 per airplane certification. Another manufacturer estimates a cost savings of approximately $190,000 for a ten-year period. Additionally, by harmonizing the standards of the Federal Aviation Regulations and JAR, the proposed rule would yield cost savings by eliminating duplicate certification activities.

Based on the finding of regulatory cost-savings, coupled with the cost-savings realizable from harmonization, and the expectation that these revisions will have no effect on the level of safety provided by the test requirements, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For manufacturers, a small entity has 1,500 or fewer employees. Since no part 25 airplane manufacturer has 1,500 or fewer employees, FAA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this proposed rule would have no adverse impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. By making U.S. landing gear test requirements conform with JAR requirements, international trade in aircraft would be enhanced by eliminating redundant testing costs for part 25 airplane manufacturers, possibly resulting in some cost savings for users of aircraft.

Federalism Implications

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when

modifying regulations in Title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Environmental Analysis

Federal Aviation Administration Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking, which if implemented may cause a significant impact on the human environment, qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

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

2. Section 25.473 is amended by revising paragraph (d) to read as follows:

§ 25.473 Landing load conditions and assumptions.

* * * * *

(d) The landing gear dynamic characteristics must be validated by tests as defined in § 25.723(a).

* * * * *

3. Section 25.723 is amended by revising paragraph (a) to read as follows:

§ 25.723 Shock absorption tests.

(a) Except as provided in paragraph (a)(3) of this section, the landing gear dynamic characteristics used for design must be validated by energy absorption tests. The dynamic characteristics must be substantiated for the range of landing conditions, airplane configurations, and service variations expected in operation.

(1) The configurations subjected to energy absorption tests must include at least the maximum landing weight or the maximum takeoff weight, whichever produces the greater value of landing impact energy.

(2) The test attitude of the landing gear unit and the application of appropriate drag loads during the test must simulate the airplane landing conditions in a manner consistent with the development of rational or conservative limit loads.

(3) Changes in previously approved design weights and minor changes in design may be substantiated by analyses based on previous tests conducted on the same basic landing gear system that has similar energy absorption characteristics.

* * * * *

§ 25.725 [Removed and Reserved]

4. Remove and reserve § 25.725.

§ 25.727 [Removed and Reserved]

5. Remove and reserve § 25.727.

* * * * *

Issued in Washington D.C. on June 10, 1999.

Frank Paskiewicz,

Acting Director, Aircraft Certification Service.

[FR Doc. 99–15381 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.723–1, Shock Absorption Tests

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.723–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides a method of compliance with the requirements of § 25.723 of the Federal Aviation Regulations (FAR). Section 25.723 contains the certification requirements for shock absorption tests. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate document published elsewhere in this issue of the **Federal Register**. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: James Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Burks, Transport Standards Staff, at the address above, telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify proposed AC 25.723–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This proposed AC sets forth acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the FAR related to the use of landing gear shock absorption tests and analyses to determine landing loads for transport category airplanes, and relates to the part 27 revisions proposed in Notice No. 99–08 entitled ''Revised Landing Gear Shock Absorption Test Requirements,'' published elsewhere in this same issue of the **Federal Register**. Issuance of proposed AC 25.723–1 is contingent on final adoption of the proposed revisions to part 25.

Issued in Renton, Washington, on September 28, 1999.

John J. Hickey,

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

[FR Doc. 99–15382 Filed 6–17–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
June 18, 1999

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid Programs; Mandatory Use, Collection, Encoding, and Transmission of Outcome and Assessment Set (OASIS) for Home Health Agencies and Privacy Act of 1974; Report of New System; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3020–N]

RIN 0938–AJ54

Medicare and Medicaid Programs; Mandatory Use, Collection, Encoding, and Transmission of Outcome and Assessment Information Set (OASIS) for Home Health Agencies

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

ACTION: Notice.

SUMMARY: This notice announces to home health agencies (HHAs), State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public changes to and effective dates for OASIS implementation. This notice announces the effective dates for the mandatory use, collection, encoding, and transmission of OASIS data for all Medicare/Medicaid patients receiving skilled services. For non-Medicare/non-Medicaid patients receiving skilled services, there will be no encoding and transmission until further notice, but HHAs must conduct comprehensive assessments and updates at the required time points. For patients receiving personal care only services, regardless of payor source, we are delaying the requirements regarding OASIS use, collection, encoding, and transmission until further notice. We expect to begin implementation of OASIS for non-Medicare/non-Medicaid patients receiving skilled care and for patients receiving personal care only services in the Spring of 2000. A separate **Federal Register** notice will be published with instructions at that time. In addition, software changes described at the end of this notice are of interest to software vendors and HHAs. Also, a companion notice concerning the OASIS System of Records (SOR) is published elsewhere in this **Federal Register** and is available via the HCFA Internet site (http://www.hcfa.gov).

EFFECTIVE DATES: This notice is effective on July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Tracey Mummert, (410) 786–3398, Mary Weakland, (410) 786–6835.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, we published a final regulation concerning the collection of OASIS data as part of the comprehensive assessment (64 FR 3764), and an interim final regulation concerning transmission of OASIS data (64 FR 3748). On April 7, 1999, we notified home health agencies (HHAs), State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public through the OASIS website that we delayed the effective date of the OASIS data transmission requirement. On April 27, 1999, we notified HHAs, State survey agencies, Medicare and Medicaid beneficiaries, software vendors, and the general public through the OASIS website, that the mandatory use, collection, and encoding of OASIS were also delayed, due to lack of Paperwork Reduction Act (PRA) clearances. A notice to this effect was published in the **Federal Register** on May 4, 1999 (64 FR 23846).

The appropriate PRA clearances have now been obtained and privacy procedures followed. Specifically, the PRA clearances for the final rule establishing OASIS collection and use, and the interim final rule for encoding and transmission have been obtained from the Office of Management and Budget (OMB) and approval numbers assigned. The respective OMB control numbers for these collections are 0938–0760 and 0938–0761 and the expiration dates are December 31, 1999. The Privacy Act System of Records (SOR) Notice has been carefully drafted in consultation with OMB and is published elsewhere in this **Federal Register**.

II. OASIS Effective Dates

Effective July 19, 1999, all HHAs participating in the Medicare/Medicaid programs are required to initiate the use of the standardized assessment data set, OASIS, as summarized in the following chart:

SUMMARY OF MANDANTORY COLLECTION, ENCODING, AND TRANSMISSION DATES FOR OASIS

Patient classification	Collection effective date	Encoding effective date	Transmission effective date
Medicare [1]/Medicaid [2]—Skilled	July 19, 1999	July 19, 1999	August 24, 1999.
Non-Medicare/Non-Medicaid [3]—Skilled	July 19, 1999	Spring 2000	Spring 2000 [4].
Medicaid [5]—Personal Care Only	Spring 2000	Spring 2000	Spring 2000.
Non-Medicaid [3]—Personal Care Only	Spring 2000	Spring 2000	Spring 2000 [4].
• Patients under age 18; • Patients receiving pre & post partum maternity services; • Patients receiving only chore and housekeeping services.	Excluded	Excluded	Excluded.

[1] OASIS item (M0150) Current Payment Sources for Home Care: response 1 or 2.
[2] OASIS item (M0150) Current Payment Sources for Home Care: response 3 or 4.
[3] OASIS item (M0150) Current Payment Sources for Home Care: response 0, 5, 6, 7, 8, 9, 10, 11, or UK.
[4] Data transmitted with masked identifiers
[5] OASIS item (M0150) Current Payment Sources for Home Care: response 3.

III. Major Changes to OASIS

We are initiating OASIS activities as outlined in this notice which include the following changes:

- Administration of a standard notification to patients of their privacy rights on admission to the HHA.
- The addition of language in the SOR explaining limitations on ''routine uses'' of data under the Privacy Act, so that personally identifiable data will only be used where statistical information is not sufficient. While this is usual practice, this language has not traditionally been included in SOR notices. Among other changes, personally identifiable data will no longer go to accrediting organizations such as the Joint Commission on Accreditation of Healthcare Organizations.
- Limiting the ''routine uses'' of data to other Federal and State agencies. Only those Federal and State agencies that (1) contribute to the accuracy of HCFA's health insurance operations including payment, treatment, and coverage, and/or (2) support State agencies in the evaluations and monitoring of care provided by HHAs will have access to OASIS data.
- Major changes to the application of OASIS to private-pay patients under OASIS. We have decided that information on non-Medicare and non-Medicaid patients will not be

transmitted to the States or HCFA in personally identifiable form.

- After careful attention to each question in OASIS, all questions but one were retained on the grounds of assuring quality of care and appropriate reimbursement. We did identify a sensitive question on patient financial factors that we consider less critical to achieving program goals, and this information will not be reported to HCFA or the States.
- Acceleration of efforts to encrypt data during transmission, to provide yet another level of protection. We expect to complete these efforts within a year.
- Delay and phase-in the requirement to collect, encode, and transmit OASIS data on patients receiving personal care only services until further notice. This allows States and associations to adjust to this requirement and allows us to evaluate issues pertaining to the content and frequency of OASIS data collection relative to other reporting requirements.

IV. OASIS Effective Dates in Detail

A. Medicare/Medicaid—Skilled

Effective July 19, 1999, for Medicare/Medicaid patients receiving skilled services, HHAs must collect OASIS data as described in the final regulation published on January 25, 1999 (64 FR 3764) concerning use of the OASIS as part of the comprehensive assessment. This means that for all Medicare/Medicaid patients receiving skilled services, currently under the care of the agency or admitted to the agency on or after July 19, 1999, HHAs must conduct comprehensive assessments and updates at the required time points, and incorporate the OASIS data set. The exception to this requirement are those patients receiving prepartum and postpartum services, patients under age 18, and patients receiving only housekeeping/chore services. OASIS data collection for patients receiving only personal care services is delayed. HHAs must collect start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must collect OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (that is, every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must collect OASIS data on all Medicare/Medicaid patients receiving skilled services.

Effective July 19, 1999, for Medicare/Medicaid patients receiving skilled services, HHAs must encode and lock their OASIS data (that is, enter it into a computer), according to the requirements outlined in the interim final rule published January 25, 1999 (64 FR 3748) concerning transmission of OASIS data. This means that HHAs will encode and lock start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must encode and lock OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (i.e., every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must encode and lock OASIS data on all Medicare/Medicaid patients receiving skilled services. If the HHA patient's services are to be paid for by Medicare or Medicaid, the OASIS must be reported. There are no exceptions.

Effective August 18, 1999, HHAs must have completed a successful transmission of test OASIS data. HHAs must successfully transmit test OASIS data to the State agency for the purpose of determining connectivity with the State OASIS system and receive a feedback report on the test data. On August 19, 1999, States will begin to purge all data on the State OASIS systems to allow for acceptance of production data. Beginning August 24, 1999, HHAs must begin the transmission of production OASIS data, that is, OASIS assessments completed, encoded and locked the previous month.

EXAMPLE:

June 18, 1999—Publication of **Federal Register** Notice

July 19—August 18, 1999—Collection, encoding, and test transmission begins

August 19–24, 1999—States purge test data

August 25, 1999—Production transmission begins

At least monthly thereafter, HHA transmissions must include all OASIS data collected, encoded, and locked in the previous month.

B. Non-Medicare/Non-Medicaid—Skilled

Effective July 19, 1999, for non-Medicare/non-Medicaid patients receiving skilled services, HHAs must conduct comprehensive assessments and updates at the required time points as described in the final regulation concerning use of the OASIS as part of the comprehensive assessment published on January 25, 1999 (64 FR 3764), incorporating the OASIS data set. HHAs must collect start of care OASIS data and updates at the required time points on new admissions to the HHA on or after July 19, 1999. In addition, HHAs must collect OASIS data on patients already in service. At the next appropriate time point, that is, resumption of care, follow-up (that is, every 2 calendar months), transfer to an inpatient facility (with or without agency discharge) and death at home, on or after July 19, 1999, HHAs must collect OASIS data on all non-Medicare/non-Medicaid patients receiving skilled services. However, we are not requiring encoding and transmission of OASIS data at this time. These assessments must be retained as part of the patient's clinical record in the HHA.

We expect the effective date for encoding and transmission of OASIS data to begin in the Spring of 2000 for these patients. We will publish a notice in the **Federal Register** with instructions at that time. In the Spring of 2000, we will not expect HHAs to retroactively encode and transmit OASIS data collected between July 19, 1999 and the Spring of 2000. If a HHA mistakenly transmits identifiable non-Medicare/non-Medicaid data, we will reject this data at the State level. Rejection at this point ensures that the data will not get into the Federal data base until masking can be accomplished.

When the requirement to encode and transmit non-Medicare/non-Medicaid patient data begins, HHAs must submit non-identifiable OASIS data on these patients to the State agency. In this way, care provided by the HHA can be evaluated for all patients of the agency, and not just Medicare/Medicaid patients. However, these data will be not be individually identifiable, but will be masked, as discussed below.

C. Medicaid/Non-Medicaid—Personal Care Only

For patients receiving *only* personal care services, regardless of payor source, the effective date for OASIS implementation will be in the Spring of 2000. We will publish a notice in the **Federal Register** with instructions at that time. This is a delay in the implementation of OASIS for these patients, which we originally outlined in the preamble language to the January 25, 1999, regulation concerning use of the OASIS as part of the comprehensive assessment.

At this time, HHAs are not required to collect, encode and transmit OASIS data on patients receiving personal care or chore services unless skilled care is also provided. HHAs are required to collect, encode and transmit OASIS data

on patients who receive personal care and/or chore services only if they also receive skilled care as described above, in addition to the personal care services.

We are delaying the requirement to allow States and associations to adjust to this requirement and allow us to evaluate issues pertaining to the content and frequency of OASIS reporting relative to other reporting requirements. In addition, this phase-in will allow HHAs more time to prepare, upgrade their systems and integrate the OASIS data set into their HHA and State specific instrument(s).

D. Masking

Masking refers to the concealing of individual data elements by the provider. Patient identifiable information is not known to HCFA or the OASIS State system. In OASIS terms, the data elements to be masked are patient's name, social security number, Medicare number, and Medicaid number. HHAs will keep the masked identifiers and the original data in their records. For non-Medicare/non-Medicaid patients, HCFA and other users will only be able to access data that does not contain any unique identifiers, including, no name, social security number, Medicare number and Medicaid number. With a consistent set of masked identifiers, we are still able to do the longitudinal data linking across patient care settings that is necessary for outcome measurement and targeting patients for sampling during the State survey agency certification review. At a minimum, we will follow the Federal Government FIPS 46–2 Data Encryption Standard (DES).

Implementation of a masking system for non-Medicare/non-Medicaid OASIS data is expected to occur in the Spring of 2000. The steps required to accomplish this task include acquiring and evaluating tools that follow the FIPS 46–2 DES, developing system specifications required to incorporate the data masking tool, making the necessary program changes to the HCFA-provided HAVEN data entry software, as well as making other necessary changes to the OASIS State system and HCFA data specifications. For HHAs not using HAVEN, we are providing the opportunity for software vendors to make the required changes and properly test their software by posting these data specifications on the OASIS website in the near future. In addition, Year 2000 testing must take place after all program changes have been incorporated, to ensure that all systems are millennium compliant.

Until such time as a system of masking patient identifiers is implemented, HHAs must assess and collect OASIS information from all patients as required by the regulation but only encode and transmit assessments with a Medicare/Medicaid payment source. To ensure only assessments with a Medicare/Medicaid payment source are received by the OASIS State system, the OASIS State system will reject all assessments with a non-Medicare/non-Medicaid payment source.

E. Encryption

HHAs are required to send OASIS assessment data for patients who have a Medicare or Medicaid payor source. Currently, these data are sent to the respective State via a private telephone line that connects directly into the OASIS State system. Although this is a relatively secure method, additional protection may be provided by using encryption. The use of 128-bit server certificates will provide strong encryption for all users who use either the domestic or export version of the latest leading browsers. HCFA plans to require this method in the near future. Several Federal agencies such as the U.S. Department of Commerce and the United States Postal Services have an expanded license to issue 128-bit serve digital certificates.

A 128-bit encryption is standard for Netscape and Microsoft Internet Explorer, the two major web browsers. Both products are available free off the Internet or by mail for a nominal fee (less than $20.00). There are some system requirements to run these browsers. This includes a 32-bit operating system, that is, a computer that runs Windows 95, 98, or NT. HCFA's Y2K compliance requirements also require computers to have a 32-bit operating system. HHAs using the recommended computer system requirements described in the interim final regulations published on January 25, 1999 (64 FR 3738), concerning transmission of OASIS data will not require additional changes. The projected date for full 128-bit encryption transmission by HHAs is July 2000.

V. More Background on Changes to OASIS

A. Patient Rights

Existing regulations at 42 CFR 484.10, Conditions of Participation: Home Health Agencies, specify that the patient has the right to be informed of his or her rights with respect to care provided by the HHA. Under the terms of this condition, HHA patients whose data will be collected and used by the Federal government must receive a notice of their privacy rights. These rights include: (1) the right to be informed that OASIS information will be collected and the purpose of collection; (2) the right to have the information kept confidential and secure; (3) the right to be informed that OASIS information will not be disclosed except for legitimate purposes allowed by the Federal Privacy Act; (4) the right to refuse to answer questions; and (5) the right to see, review, and request changes on their assessment. The statements of patient privacy rights with regard to the OASIS collection (one for Medicare/Medicaid patients, one for all other patients served by the HHA) are included in this notice. They will also be available via the HCFA Internet site (http://www.hcfa.gov). These statements may be revised in accordance with the OMB Paperwork Reduction Act reapproval process. Future revisions to these statements will be available via the HCFA Internet site (http://www.hcfa.gov) and in other instructional materials issued by HCFA.

Consumer testing was undertaken to determine whether Medicare beneficiaries understood the overall message of the proposed Medicare notice. The findings indicated that beneficiaries understood that the notice was informing them about their rights relating to their personal health care information and that these protections were good. In addition, the majority of the beneficiaries found the notice's language to be clear and easy to understand. For Medicare/Medicaid patients, transmission of the assessment data to HCFA will be a condition for payment and an essential tool in ensuring that both programs are paying for quality health care services. As such, we are providing HHAs with a copy of the notice that HHAs must incorporate into their admission process.

- *Notice to Medicare/Medicaid Patients*

HHAs must incorporate into their admission process for Medicare/Medicaid patients Attachments A and B. Please refer to Attachment A—Statement of Patient Privacy Rights (front), and Attachment B—Privacy Act Statement—Health Care Records (back) of this notice for this document.

- *Notice to Non-Medicare/Non-Medicaid Patients*

Attachment C—Notice About Privacy for Patients Who Do Not Have Medicare or Medicaid Coverage. This is the notice that HHAs must incorporate into their admission process for non-Medicare/non-Medicaid patients.

B. Administering the Assessment

The OASIS items should be answered as a result of the clinician's total assessment process, not completed as a checklist during an interview. Conducting a patient assessment involves both interview and observation. Many times the two processes complement each other. Information gained through interview is verified through observation. Many clinicians begin the assessment process with an interview, sequencing the questions to build rapport and gain trust and then proceed with observation. Others choose to start the assessment process with a familiar procedure such as taking vital signs to demonstrate clinical competence to the patient before proceeding to the interview. Very few OASIS data items rely solely on patient interview. In the rare instance that an assessment cannot be made due to lack of patient information, agencies must report the most appropriate response, based on their professional judgement. Patients should not be forced to cooperate with the assessment process.

If patients refuse to answer some questions that are part of the OASIS assessment, the HHA may still deliver care to the patient as long as it completes and submits the OASIS assessment to the best of its ability.

Some changes have been made to the OASIS User's manual with regard to the conventions involved in collecting and recording OASIS data in the context of the comprehensive assessment process, particularly for mental health assessments. These changes are available via the HCFA Internet site (http://www.hcfa.gov). Alternately, these changes can be accessed directly at www.hcfa.gov/medicare/hsqb/oasis/hhedtrng.htm which is where the entire OASIS User's manual is available for downloading free of charge. The purpose of these changes is to clarify the definitions, instructions, and assessment strategies for selected OASIS items, as follows:

- Pages 8.2 and 8.3 of the OASIS User's Manual have been modified to clarify the means of administering the OASIS items in the context of the comprehensive assessment.
- An introductory page (8.82) has been inserted into the Item-by-Item Tips section regarding the assessment of mental and emotional status, to provide further clarification concerning observational and interview techniques that are effective in eliciting the needed information while minimizing burden and intrusion on the patient.
- Item-by-item tips have been changed for item M0540 and items M0560 through M0620. The purpose of these changes is to emphasize observational techniques and to provide further guidance for clinicians in assessing these characteristics especially in situations where patients refuse to answer direct questions.

C. Financial Factors Limiting the Ability of the Patient/Family to Meet Basic Health Needs (M0160)

HCFA is not requiring the transmission of OASIS data item M0160 to the OASIS State system at this time. Because this data item assesses the patient's ability to meet basic health needs, the HHA may need this information to provide appropriate care. Therefore, HCFA requires the collection, assessment and encoding of this item. HCFA's data entry software (HAVEN Version 2.0) will blank out this encoded item as it is prepared for transmission to the OASIS State system. Additionally, the State system will reject this data item if it is inadvertently transmitted to the OASIS State system from software that does not meet HCFA specifications. Vendor software must be changed to accommodate this and other changes. This is discussed elsewhere in this notice.

VI. Technical Information for HHAs and Vendors

A. Medicare/Medicaid Patients

At this time, HCFA requires the encoding and transmission of OASIS information on patients who are receiving Medicare/Medicaid benefits. This means that for patients who have selected a payor source of (1) Medicare (traditional fee-for-service), (2) Medicare (HMO/managed care), (3) Medicaid (traditional fee-for-service), or (4) Medicaid (HMO/managed care) on OASIS item M0150, the HHA must collect, encode and transmit all required OASIS information to the State agency. The payor source for services provided as part of a Medicaid waiver or home and community-based waiver (HCBW) program by a Medicare-approved HHA are coded as (3) Medicaid (traditional fee-for-service) at item M0150.

B. Non-Medicare/Non-Medicaid Patients

For non-Medicare/non-Medicaid patients, the HHA will only assess and collect OASIS as part of the comprehensive assessment and agency medical record. Until such time as we develop and implement a system to mask individual-level identifying data, encoding and transmission of OASIS data items is not required for patients with payor sources other than Medicare/Medicaid. Non-Medicare/non-Medicaid payor sources include private insurance, private HMO/managed care, self pay programs funded under the Social Security Act: for example, Title III, V, XX or other Government programs.

C. Automation Information

Software Changes Made

The following section is of interest to software vendors and includes the changes that *have been made* to accommodate requirement changes for the OASIS:

1. *HAVEN Software:* HAVEN has changed the export function to allow the user to select Medicare/Medicaid only assessments, non-Medicare/non-Medicaid assessments only, or all assessments. The HAVEN export function produces an ASCII text file from the HAVEN database. This file meets the OASIS data specifications that must be transmitted to the State agency. If a user selects Medicare/Medicaid only, as defined earlier, all assessments with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value of 1, 2, 3, or 4, as well as, all assessments with a reason for assessment (M0100) with a value of 6, 7, 8, and 10 will be selected for export. If a user selects non-Medicare/non-Medicaid only, as previously defined, all assessments with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4 will be selected for export. Therefore, the HHA controls assessments to be sent to the State agency. As stated previously in this notice, these procedures ensure that only assessments with a Medicare/Medicaid payment source are received by the OASIS State system as the OASIS State system will reject all assessments with a non-Medicare/non-Medicaid payment source.

In addition to this change, HAVEN will blank out responses and move spaces to the Financial Factors data item (M0160) on *all* assessments prior to creating the export file. This data will remain in the original format in the HHA database but will exist as spaces at the State database. No data is collected at the State system on this item.

2. *OASIS State System:* The OASIS State system has been changed to reject any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4. The validation report will reflect that an

assessment meeting the above criteria has been rejected.

In addition to this change, the OASIS State system will blank out and move spaces to the Financial Factors data (M0160) on *all* assessments prior to editing a file submitted by a HHA. This data will remain in the original format in the HHA database but as spaces at the State database. These changes in the HAVEN software are available via the HCFA Internet site (http://www.hcfa.gov) in our revised HAVEN software, version 2.0. Registered HAVEN users will be mailed a copy of the revised HAVEN software, version 2.0 by July.

The following changes *still need to be made* to accommodate requirement changes for the OASIS data base:

Software Changes Pending

1. HAVEN Software: The HAVEN software will need to incorporate all requirements to mask designated identifiers for any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, and 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4. Specifications for this are scheduled to be available via the HCFA Internet site (http://www.hcfa.gov) by July 1, 1999, and scheduled to become effective in April 2000.

2. *OASIS State System:* The OASIS State system will make the necessary edits to reject any assessment with a reason for assessment (M0100) value of 1, 2, 3, 4, 5, *and* 9 *and* a payment source (M0150) value other than 1, 2, 3, or 4 that does not have the designated identifiers masked. This edit is scheduled to be effective in April 2000.

HCFA Websites

Revisions and updates to OASIS implementation will be available via the HCFA Internet site (http://www.hcfa.gov). Alternatively, the OASIS Internet site is accessible directly at the following address: www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. This is the OASIS home page. A summary of OASIS website content is available at this site.

OMB Review

In accordance with the provisions of Executive Order 12866 this document was reviewed by the Office of Management and Budget.

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

Dated: June 11, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

BILLING CODE 4120–03–P

Attachment A

Home Health Agency
Outcome and Assessment Information Set (OASIS)
STATEMENT OF PATIENT PRIVACY RIGHTS

As a home health patient, you have the privacy rights listed below.

- **You have the right to know why we need to ask you questions.**
  We are required by law to collect health information to make sure:
  1) you get quality health care, and
  2) payment for Medicare and Medicaid patients is correct.
- **You have the right to have your personal health care information kept confidential.**
  You may be asked to tell us information about yourself so that we will know which home health services will be best for you.
  We keep anything we learn about you confidential.
  This means, only those who are legally authorized to know, or who have a medical need to know, will see your personal health information.
- **You have the right to refuse to answer questions.**
  We may need your help in collecting your health information.
  If you choose not to answer, we will fill in the information as best we can.
  You do not have to answer every question to get services.
- **You have the right to look at your personal health information.**
  - We know how important it is that the information we collect about you is correct. If you think we made a mistake, ask us to correct it.
  - If you are not satisfied with our response, you can ask the Health Care Financing Administration, the federal Medicare and Medicaid agency, to correct your information.

You can ask the Health Care Financing Administration to see, review, copy, or correct your personal health information which that Federal agency maintains in its HHA OASIS System of Records. See the back of this Notice for CONTACT INFORMATION. If you want a more detailed description of your privacy rights, see the back of this Notice: PRIVACY ACT STATEMENT - HEALTH CARE RECORDS.

This is a Medicare & Medicaid Approved Notice.

Attachment B

PRIVACY ACT STATEMENT - HEALTH CARE RECORDS

THIS STATEMENT GIVES YOU ADVICE REQUIRED BY LAW (the Privacy Act of 1974).

THIS STATEMENT IS NOT A CONSENT FORM. IT WILL NOT BE USED TO RELEASE OR TO USE YOUR HEALTH CARE INFORMATION.

I. AUTHORITY FOR COLLECTION OF YOUR INFORMATION, INCLUDING YOUR SOCIAL SECURITY NUMBER, AND WHETHER OR NOT YOU ARE REQUIRED TO PROVIDE INFORMATION FOR THIS ASSESSMENT. Sections 1102(a), 1154, 1861(o), 1861(z), 1863, 1864, 1865, 1866, 1871, 1891(b) of the Social Security Act.

Medicare and Medicaid participating home health agencies must do a complete assessment that accurately reflects your current health and includes information that can be used to show your progress toward your health goals. The home health agency must use the "Outcome and Assessment Information Set" (OASIS) when evaluating your health. To do this, the agency must get information from every patient. This information is used by the Health Care Financing Administration (HCFA, the federal Medicare & Medicaid agency) to be sure that the home health agency meets quality standards and gives appropriate health care to its patients. You have the right to refuse to provide information for the assessment to the home health agency. If your information is included in an assessment, it is protected under the federal Privacy Act of 1974 and the "Home Health Agency Outcome and Assessment Information Set" (HHA OASIS) System of Records. You have the right to see, copy, review, and request correction of your information in the HHA OASIS System of Records.

II. PRINCIPAL PURPOSES FOR WHICH YOUR INFORMATION IS INTENDED TO BE USED

The information collected will be entered into the Home Health Agency Outcome and Assessment Information Set (HHA OASIS) System No. 09-70-9002. Your health care information in the HHA OASIS System of Records will be used for the following purposes:

- support litigation involving the Health Care Financing Administration;
- support regulatory, reimbursement, and policy functions performed within the Health Care Financing Administration or by a contractor or consultant;
- study the effectiveness and quality of care provided by those home health agencies;
- survey and certification of Medicare and Medicaid home health agencies;
- provide for development, validation, and refinement of a Medicare prospective payment system;
- enable regulators to provide home health agencies with data for their internal quality improvement activities;
- support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health,

  and for health care payment related projects; and
- support constituent requests made to a Congressional representative.

III. ROUTINE USES

These "routine uses" specify the circumstances when the Health Care Financing Administration may release your information from the HHA OASIS System of Records without your consent. Each prospective recipient must agree in writing to ensure the continuing confidentiality and security of your information. Disclosures of the information may be to:

1. the federal Department of Justice for litigation involving the Health Care Financing Administration;
2. contractors or consultants working for the Health Care Financing Administration to assist in the performance of a service related to this system of records and who need to access these records to perform the activity;
3. an agency of a State government for purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or quality of health care services provided in the State; for developing and operating Medicaid reimbursement systems; or for the administration of Federal/State home health agency programs within the State;
4. another Federal or State agency to contribute to the accuracy of the Health Care Financing Administration's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluations and monitoring of care provided by HHAs;
5. Peer Review Organizations, to perform Title XI or Title XVIII functions relating to assessing and improving home health agency quality of care;
6. an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects;
7. a congressional office in response to a constituent inquiry made at the written request of the constituent about whom the record is maintained.

IV. EFFECT ON YOU, IF YOU DO NOT PROVIDE INFORMATION

The home health agency needs the information contained in the Outcome and Assessment Information Set in order to give you quality care. It is important that the information be correct. Incorrect information could result in payment errors. Incorrect information also could make it hard to be sure that the agency is giving you quality services. If you choose not to provide information, there is no federal requirement for the home health agency to refuse you services.

NOTE: This statement may be included in the admission packet for all new home health agency admissions. Home health agencies may **request** you or your representative to sign this statement to document that this statement was given to you. **Your signature is NOT required.** If you or your representative sign the statement, the signature merely indicates that you received this statement. You or your representative must be supplied with a copy of this statement.

CONTACT INFORMATION

If you want to ask the Health Care Financing Administration to see, review, copy, or correct your personal health information which that Federal agency maintains in its HHA OASIS System of Records:

Call 1-800-638-6833, toll free, for assistance in contacting the HHA OASIS System Manager.
TTY for the hearing and speech impaired: 1-800-820-1202.

Attachment C

Home Health Agency
Outcome and Assessment Information Set (OASIS)

NOTICE ABOUT PRIVACY
For Patients Who Do Not Have Medicare or Medicaid Coverage

- As a home health patient, there are a few things that you need to know about our collection of your personal health care information.
  - Federal and State governments oversee home health care to be sure that we furnish quality home health care services, and that you, in particular, get quality home health care services.
  - We need to ask you questions because we are required by law to collect health information to make sure that you get quality health care services.
  - We will make your information anonymous. That way, the Health Care Financing Administration, the federal agency that oversees this home health agency, cannot know that the information is about you.
- We keep anything we learn about you confidential.

This is a Medicare & Medicaid Approved Notice.

[FR Doc. 99–15529 Filed 6–16–99; 9:00 am]
BILLING CODE 4120–03–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

The provisions in this system of records are unique to the OASIS data set, and therefore, are not necessarily representative of current or future HCFA system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled ''Home Health Agency Outcome and Assessment Information Set (HHA OASIS), HHS/HCFA/CMSO, 09–70–9002.'' HCFA proposes to establish a new system of records containing data on the physical, mental, functional, and psychosocial status of all patients receiving the services of Home Health Agencies (HHAs) that are approved to participate in the Medicare and/or Medicaid programs. Information retained in this system for those individuals who have only non-Medicare and non-Medicaid payment sources will be in a non-patient identifiable format.

The primary purposes of the system of records are to provide for the development, validation, and refinements of the Medicare Prospective Payment System and to study and help ensure the quality of care provided by HHAs. Information retrieved from this system of records will be used to aid in administration of the survey and certification of Medicare/Medicaid HHAs; enable regulators to provide HHAs with data for their internal quality improvement activities; support agencies of the State government to determine, evaluate and assess overall effectiveness and quality of HHA services provided in the State; aid in the administration of Federal and State HHA programs within the State; monitor the continuity of care for patients who reside temporarily outside of the State; support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; support litigation involving the agency; and support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, HCFA invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: HCFA filed a new system of records report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 15, 1999. We have requested a waiver of the OMB 40-day advance notice period for this system of records. If OMB grants the waiver, the system of records is effective on June 18, 1999. If OMB does not grant the waiver, we will implement the system on July 28, 1999. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 am.–3 pm., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Helene Fredeking, Director, Division of Outcomes and Improvements, Center for Medicaid and State Operations, HCFA, 7500 Security Boulevard, S2–14–26, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7304.

SUPPLEMENTARY INFORMATION:

Description of the Proposed System of Records.

A. Glossary of OASIS Terms

OASIS Data Set

The OASIS data set is the sum of the identifiers and information.

Identifiers

Identifiers are the data elements that can be used to determine a patient's identity.

These are: patient's name, social security number, Medicare number and Medicaid number.

OASIS Information

OASIS information includes the clinical items listed below and case mix adjusters (e.g. age, sex, race, residence, etc.).

Patient History
Living Arrangements
Supportive Assistance
Sensory Status
Integumentary Status
Respiratory Status
Elimination Status
Neuro/Emotional/Behavioral Status
Activities of Daily Living/Instrumental Activities of Daily Living (ADL/IADLs)
Medications
Equipment Management
Emergent Care
Discharge

Masked Identifiers

A masked identifier is created when an encrypted value is substituted for an identifier prior to transmission of data. Thus the government receives non-identifiable data (see below). Only the HHA has identifiable data.

Identifiable Data

Identifiable data includes individual records with OASIS information and identifiers.

Non-Identifiable Data

Non-identifiable data includes individual records with OASIS information and masked identifiers or OASIS information without identifiers.

B. Statutory and Regulatory Basis for System of Records

Sections 1102(a), 1871, 1861(o), 1861(z), and 1891(b) of the Social Security Act authorize the Administrator of HCFA to require HHAs participating in the Medicare and Medicaid programs to complete a standard, valid, patient assessment data set; i.e., the OASIS, as part of their comprehensive assessments and updates when evaluating adult, non-maternity patients as required by § 484.55 of the Conditions of Participation. On March 10, 1997, we published in the **Federal Register**, at 62 FR 11035, a proposed rule with an opportunity for public comment, titled ''Medicare and Medicaid Programs: Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies.'' On January 25, 1999, some provisions of this rule were published as a Final Rule in the **Federal Register**, titled ''Medicare and Medicaid Program:

Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies.'' The rule required that all HHAs participating in the Medicare and Medicaid programs be required to complete a standard, valid, patient assessment data set; i.e., the OASIS, as part of their comprehensive assessments and updates when evaluating adult, non-maternity patients as required by § 484.55 of the Conditions of Participation. Also published in the **Federal Register**, was an interim final rule with comment titled ''Medicare and Medicaid: Reporting Outcome and Assessment Information Set.'' This interim rule established an additional requirement of the Conditions of Participation for HHAs approved to participate in Medicare and/or Medicaid, to encode and report OASIS electronically into a national database. Information retained in this system for those individuals who have only non-Medicare and non-Medicaid payment sources will be in a non-patient identifiable format and will be used only for statistical purposes and to ensure quality of care for all patients. Information on Medicare and Medicaid patients will be identified for quality of care and reimbursement purposes.

OASIS also serves as the backbone of the home health prospective payment system. The Balanced Budget Act of 1997 requires Medicare to implement a prospective payment system for HHAs by October 1, 2000. OASIS not only contains data items that indicate quality, but information necessary to develop a reliable prospective payment system that pays HHAs appropriately according to the different level of services patients need. If HCFA opted not to use OASIS for the prospective payment system, HCFA would have had to collect another set of data items from HHAs.

The system of records will contain clinical assessment information (OASIS records) for all Medicare and Medicaid patients receiving the services of a Medicare and/or Medicaid approved HHA, except pre-partum and post-partum patients, patients under 18 years of age, and patients receiving other than personal care or health care services; i.e., housekeeping services and chore services. The OASIS data set contains statistically proven valid and reliable items which have been shown to be effective in measuring outcomes for patients receiving home health services.

C. Purpose for System of Records

In 1987, Congress changed the Social Security Act to require HCFA to survey the quality of care and services furnished by HHAs using a ''standardized, reproducible assessment instrument.'' The next year, HCFA entered into a contract with the University of Colorado to develop an assessment instrument that would help oversee the quality of care patients receive in HHAs and improve HHA performance. University of Colorado researchers, doctors, and clinicians developed the Outcome Assessment Instrument Set (OASIS) as the standardized, reproducible assessment instrument.

OASIS is not an interview or a survey. Rather, it is part of an assessment of the patient that is conducted by a registered nurse or therapist. To determine the type of care a patient needs, HHAs already do an assessment of each patient's physical and emotional condition. HHAs will continue to do these comprehensive assessments, but now they will report a portion of that assessment to HCFA so that we can perform several critical functions, such as calculating the appropriate amount for the government to pay for home health services or ensuring HHAs are providing the highest quality of care for the entire agency and for each individual patient.

Home health patients are one of the most vulnerable populations because services are provided in the homes where it is difficult to oversee the quality of services provided. For the first time, OASIS will allow HCFA to measure how well HHAs care for their patients. HHAs caring for Medicare beneficiaries will submit OASIS data through secure communications to HCFA, which will analyze the information to develop performance profiles for each agency. This process is similar to what we now do for managed-care plans—a system that has been widely praised by consumers and health-care professionals.

These ''performance reports'' can serve several important purposes: (1) HHAs can use them to identify their own weaknesses and improve the quality of care they provide; (2) HCFA can use them to identify HHAs that provide substandard care and then require such agencies to correct problem areas or risk losing Medicare funding; and (3) patients may be able to use this information in the form of ''report cards'' as a means of comparing HHAs in their area. All patient-specific information will be kept confidential with access carefully limited to ensure that privacy remains protected.

OASIS represents a significant advancement in home health care. It will ensure accurate payments to HHAs under the new prospective payment system, improve quality of patient care and allow HCFA to monitor the quality of care it purchases for its beneficiaries.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The OASIS will be completed on all patients, except those in a category exempted by administrative policies and procedures, who receive services from an HHA certified for Medicare and Medicaid payments. The OASIS data set includes identifiers. It also includes information on:

Patient History
Living Arrangements
Supportive Assistance
Sensory Status
Integumentary Status
Respiratory Status
Elimination Status
Neuro/Emotional/Behavioral Status
Activities of Daily Living/Instrumental Activities of Daily Living (ADL/IADLs)
Medications
Equipment Management
Emergent Care
Discharge

Identifiers are patient name, social security number, Medicare number and Medicaid number. A masked identifier is one in which an encrypted value is substituted for an identifier so that recipients of the information cannot identify the individual.

The OASIS information will be submitted by the HHA to the government for all patients, except prepartum and postpartum patients, patients under 18 years of age, and patients receiving personal care or health care services; i.e., housekeeping services and chore services. Identifiers will be included for all patients receiving services paid for by Medicare traditional fee-for-service, Medicaid traditional fee-for-service, Medicare HMO/managed care or Medicaid HMO/managed care. For patients with only a non-Medicare or non-Medicaid payment source, the HHA will submit OASIS information with masked identifiers and will retain the identifier and masked identifier at the HHA. In other words, the patient identifier for non-Medicare and non-Medicaid patients will only be known and retained by the HHA and not by the government.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purpose(s) for which the

information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release OASIS information that can be associated with an individual HHA patient as provided for under ''Section III.A. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with OASIS information and identifiers. Non-identifiable data includes individual records with OASIS information and masked identifiers or OASIS information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of OASIS. HCFA has the following policies and procedures concerning disclosures of information which will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after HCFA:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., developing and refining payment systems and monitoring the quality of care provided to patients.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all patient-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

The routine use disclosures in this system may occur only to the following seven (7) categories of entities (i.e., the entities which can get identifiable data only if we apply the policies and procedures in Section II.B. above). In addition, our policy will be to prohibit release even of non-identifiable data, beyond the seven listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the home health agency enrollees could, because of the small size, use this information to deduce the patient identity).

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(d) The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which HCFA collects the information.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contractual or similar agreement with a third party to assist in accomplishing HCFA functions relating to purposes for this system of records.

HCFA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. HCFA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards (like ensuring that the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring and those stated in II.B. above), are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

3. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of HHA services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State HHA programs within the State. Data will be released to the State only on those individuals who are either patients under the services of a HHA within the State, or are legal residents of the State, regardless of the location of the HHA in which the patient is receiving services.

State government components in partnership with HCFA will use OASIS information to enhance the monitoring of HHAs' performance in providing patient care. States will also use this information to study the cost effectiveness and quality of Medicaid programs. In addition some States will use OASIS information for case mix Medicaid reimbursement systems. States will use OASIS data to monitor the continuity of care delivered to patients who, for whatever reason, temporarily reside in another State and receive HHA services during that stay.

4. To another Federal or State agency (e.g. State survey agencies and State Medicaid agencies) to contribute to the accuracy of HCFA's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluations and monitoring of care provided by HHAs.

Other State agencies in their administration of a Federal health

program may require OASIS information in order to support evaluations and monitoring of quality of care for special populations or special care area, including proper reimbursement for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which HCFA collects the information.

5. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HHA quality of care. PROs will work with HHAs to implement quality improvement programs, provide consultation to HCFA, its contractors, and to State agencies. The PROs will provide a supportive role to HHAs in their endeavors to comply with Medicare Conditions of Participation; will assist the State agencies in related monitoring and enforcement efforts; assist HCFA and help regional home health intermediaries in home health program integrity assessment; and prepare summary information about the nation's home health care for release to beneficiaries.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The OASIS data will provide the research, evaluations and epidemiological projects a broader, longitudinal, national perspective of the status of HHA patients. HCFA anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to HHA patients and the policy that governs the care.

7. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

IV. Compatibility of the Proposed Routine Uses

The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. Our disclosure regulation allows us to disclose information under a routine use when the disclosure will be used to administer one of our programs or a similar program of another government agency, or when disclosure is required by law.

In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of HCFA's programs; e.g., disclosures related to the administration of the survey and certification of Medicare/Medicaid HHAs, disclosures to contractors assisting HCFA with an administrative function, or disclosure in connection with litigation relating to, or affecting, a program administered by HCFA.

V. Safeguards

The HHS OASIS system will conform with applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' HCFA has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that HCFA is using to ensure the security of this system and the information within it.

A. *Authorized users:* Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, HCFA is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or work station and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the State agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- QI Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges. This class is used by the OASIS data submission applications to receive and validate HHA file uploads.

B. *Physical Safeguards:* All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the HHA OASIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and adequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the State agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the State agency level.

• Inactivity Lockout—Access to the NT workstation is automatically locked after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and when servers are accessed by workstations.

• Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the HHA OASIS system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28-STD, December 1985). Netscape Enterprise Server is the security mechanism for all HHA transmission connections to the system. As a result, Netscape controls all HHA information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. *Procedural Safeguards:* All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

VI. Effect of the Proposed System of Records on Individual Rights.

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will monitor the collection and reporting of OASIS data. OASIS information on patients is completed by the HHA and submitted to HCFA through standard systems located at the State agencies. Accuracy of the data is important since incorrect information could result in the wrong reimbursement for services and a less effective process for assuring quality of services. HCFA will utilize a variety of onsite and offsite edits and audits to increase the accuracy of OASIS data.

HCFA will take precautionary measures (see item V. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights including not collecting patient identifiable data for non-Medicare and non-Medicaid patients. Therefore, HCFA anticipates no adverse effect on any of these rights. HCFA will collect only that information necessary to perform the system's functions. In addition, HCFA will make disclosure of identifiable data from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

To secure data that resides in a HCFA Privacy Act System of Records; to ensure the integrity, security, and confidentiality of information maintained by HCFA; and to permit appropriate disclosure and use of such data as permitted by law, HCFA and the non-HCFA recipient of the data, hereafter termed ''User,'' enter into an agreement to comply with the following specific requirements. The agreement addresses the conditions under which HCFA will disclose and the user will obtain and use the information contained in the system of records. The parties mutually agree that HCFA retains ownership rights to the data and that the user does not obtain any right, title, or interest in any of the data furnished by HCFA. The user represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to HCFA for each purpose are complete and accurate. The user shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data disclosed from the system of records to any person. The user agrees that access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose stated in the protocol and to those individuals on a need to know basis only. If HCFA determines or has reasonable belief that the user has made an unauthorized disclosure of the data, HCFA in its sole discretion may require the user to: (a) Promptly investigate and report to HCFA any alleged or actual unauthorized disclosures; (b) promptly resolve any problems identified by the investigation; (c) submit a formal response to any allegation of unauthorized disclosures; (d) submit a corrective action plan with steps to prevent any future unauthorized disclosures; and (e) return data files to HCFA. If HCFA determines or has reasonable belief that unauthorized disclosures have taken place, HCFA may refuse to release further HCFA data to the user for a period of time to be determined by HCFA.

The Privacy Act provides criminal penalties for certain violations. The Act provides that ''Any officer or employee of an agency, who by virtue of his [or her] employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific materials is so prohibited, willfully discloses the material in any manner to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.'' (5 U.S.C. 552a(i)(1). The Act also provides that ''Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.'' (5 U.S.C. 552a(i)(3). The agency's contractor and any contractors' employees who are covered by 5 U.S.C. 552a(m)(1) are considered employees of the agency for the purposes of these criminal penalties.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 11, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

09–70–9002

SYSTEM NAME:

Home Health Agency Outcome and Assessment Information Set (HHA OASIS).

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. HCFA contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain clinical assessment information (OASIS records) for all patients receiving the services of a Medicare and/or Medicaid approved Home Health Agency (HHA), except prepartum and postpartum patients, patients under 18 years of age, and patients receiving other than personal care or health care services; i.e., housekeeping services and chore services. Identifiable information will be retained in the system of records only for those individuals whose payments come from Medicare or Medicaid.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain individual-level demographic and identifying data, as well as clinical status data for patients with the payment sources of Medicare traditional fee for service, Medicaid traditional fee for service, Medicare HMO/managed care or Medicaid HMO/managed care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 1102(a), 1154, 1861(o), 1861(z), 1863, 1864, 1865, 1866, 1871, 1891(b) of the Social Security Act.

PURPOSE(S):

In 1987, Congress changed the Social Security Act to require HCFA to survey the quality of care furnished by HHAs using a ''standardized, reproducible assessment instrument.'' Through a contract with the University of Colorado, the OASIS was developed by researchers, doctors, and clinicians as the standardized, reliable assessment instrument. OASIS represents a significant advancement in home health care. Home health patients are one of the more vulnerable populations because services are provided in the homes where it is difficult to oversee the quality of services provided. OASIS will ensure accurate payments to HHAs under the prospective payment system, improve quality of patient care, and allow HCFA to monitor the quality of care that it purchases for its beneficiaries.

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

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HCFA may release information from the HHA OASIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. Also, HCFA will require each prospective recipient of such information, except those otherwise covered by the Privacy Act, to agree in writing to certain conditions to ensure the continuing confidentiality and security, including physical safeguards of the information.

Disclosures may be made:

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(d) The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

3. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of HHA services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State HHA programs within the State. Data will be released to the State only on those individuals who are either patients under the services of a HHA within the State, or are legal residents of the State, regardless of the location of the HHA in which the patient is receiving services.

4. To another Federal or State agency (e.g. Department of Defense, Veterans Administration, state survey agencies and state Medicaid agencies) to contribute to the accuracy of HCFA's health insurance operations (payment, treatment and coverage) and/or to support state agencies in the evaluations and monitoring of care provided by HHAs.

Other Federal or State agencies in their administration of a Federal health program may require OASIS information in order to support payment evaluations, and monitoring quality of care for special populations or special care area, including proper reimbursement for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which HCFA collects the information.

5. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HHA quality of care.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

7. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

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

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

The Medicare and Medicaid records are retrieved by health insurance claim number, social security number or by State assigned Medicaid number.

SAFEGUARDS:

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the

exposure of computer equipment and thus achieve an optimum level of protection and security for the HHA OASIS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies; and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

HCFA and the repository of the National Archive and Records Administration (NARA) will retain identifiable OASIS assessment data for a total period not to exceed fifteen (15) years.

5SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Medicaid and State Operations, HCFA, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth, and sex.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

The Outcome and Assessment Information Set.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–15530 Filed 6–16–99; 9:00 am]

BILLING CODE 4120–03–P

federal register

Friday
June 18, 1999

Part VII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2509

Interpretive Bulletin 99–1; Payroll Deduction Programs for Individual Retirement Accounts

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2509

RIN 1210–AA70

Interpretive Bulletin 99–1; Payroll Deduction Programs for Individual Retirement Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interpretive bulletin.

SUMMARY: In 1975, the Department of Labor (the Department) issued a regulation describing circumstances under which the use of an employer payroll deduction program for forwarding employee monies to an individual retirement account (IRA) will not constitute an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Since the issuance of that regulation, the Department has issued several advisory opinions answering common questions arising under the regulation. This interpretive bulletin codifies the views of the Department provided in those advisory opinions and, by restating those views in one, more readily available document, is intended to assist employers in their efforts to provide retirement savings opportunities to employees by means of payroll deduction programs that do not fall within the reach of Title I of ERISA.

DATES: Effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: John Keene at (202) 219–8521, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW, Room N–5669, Washington, DC 20210. This telephone number is not a toll-free number.

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretations of ERISA, the Department publishes its interpretive bulletins in the Rules and Regulations section of the **Federal Register**. Published in this issue of the **Federal Register** is ERISA Interpretive Bulletin 99–1, which interprets ERISA section 3(2)(A), 29 U.S.C. 1002(2)(A), and the Department's regulation issued thereunder at 29 CFR 2510.3–2(d), and which codifies the advisory opinions previously issued by the Department interpreting these provisions. The Department is publishing this interpretive bulletin in an effort to facilitate the use by employers of payroll withholding as a vehicle for encouraging employee savings through individual retirement accounts.

The Department has a strong interest in promoting retirement savings by employees. The Department recognizes that some employers currently do not provide pension plans for their employees. Although retirement savings vehicles like the SIMPLE and the SEP, which impose little in the way of administrative burdens or costs on employers, are readily available, some employers are reluctant to assume even those costs for a variety of reasons. The Department believes that it is important that employees of such employers be encouraged to save independently for retirement, and it is in the interest of the public that employers be encouraged to provide opportunities for employee retirement savings. One relatively inexpensive method that employers may use to provide employees the opportunity to save for retirement is making available to employees the possibility of regular payroll deductions that are transmitted directly by the employer to individual retirement accounts established by the employees. At present, there are relatively few such programs in operation, and some employers have indicated that they are reluctant to create payroll withholding programs for individual retirement accounts because they are concerned that such programs would be considered pension plans covered by ERISA and therefore subject to the requirements of Title I of ERISA. The Department is concerned that employers may not be aware of or understand the long-established views of the Department with respect to the ability of employers to establish and maintain employer payroll withholding programs without such programs being considered pension plans under ERISA. This guidance summarizes and restates those views in order to provide employers the Department's views in one convenient, easily accessible document.

Background

Section 3(2)(A) of Title I of ERISA provides that ''any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both,'' shall be a pension plan ''to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program * * * provides retirement income to employees, or * * * results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.''

Under provisions of the Internal Revenue Code of 1986, as amended (Code),[1] individual taxpayers may establish individual retirement accounts or individual retirement annuities (IRAs) that are tax-favored if operated within the requirements of the Code. With respect to Title I coverage of such IRAs, the Department has published a regulation at 29 CFR 2510.3–2(d), establishing a safe harbor under which an IRA established by employees and funded through payroll deductions will not be considered to be a ''pension plan'' within the meaning of section 3(2) of Title I when the conditions of the regulation are satisfied. The regulation specifies that an IRA will not be considered a ''pension plan'' when there are no contributions made by an employer; employees participate in the IRA on a completely voluntary basis; and the employer's activities with respect to the IRA must be limited solely to permitting, without endorsement, the IRA sponsor to publicize its program to employees; collecting contributions through payroll deductions or dues checkoffs; and remitting those contributions to the IRA sponsor. Finally, the regulation provides that the employer may receive no consideration in any form, other than reasonable compensation for services actually rendered in connection with the payroll deduction or dues checkoff system. If one or more of the conditions of the regulation are not met, the employer may be considered to have established or maintained a pension plan. If an IRA program is a pension plan under Title I of ERISA, it is subject to Parts 1, 4, and 5 of Title I of ERISA, dealing with reporting and disclosure requirements, fiduciary duties, and enforcement rights. Pursuant to ERISA sections 201(6) and 301(a)(7), 29 U.S.C. 1051(6) and 1081 (a) (7), IRAs are exempt from Parts 2 and 3 of Title I, relating to participation, vesting, and funding.[2]

As part of the Conference Report on the Taxpayer Relief Act of 1997, Congress expressed its view that ''employers that choose not to sponsor a retirement plan should be encouraged to set up a payroll deduction system to help employees save for retirement by making payroll deduction contributions to their IRAs.'' H.R. Rep. No. 220, 105th

[1] *See generally* Code sections 408, 408A.

[2] Whether or not an IRA is part of a ''pension plan,'' the prohibited transaction provisions of section 4975 of the Internal Revenue Code are applicable to transactions by the IRA.

Cong., 1st Sess. at 755 (1997). The Department is aware that some employers that would permit payroll deduction contributions to IRAs are reluctant to do so if ERISA would require employers to permit employees an unlimited choice of IRA sponsors for the payroll deduction IRAs in order not to be considered to have established an ERISA plan. Similarly, some employers desire to limit the choice of IRA sponsors to one entity, but are concerned that doing so might make their payroll deduction arrangements ERISA plans. Employers also have raised issues concerning the extent to which they may encourage employee savings for retirement without being viewed as endorsing an arrangement contrary to the limitations in the Department's regulation.

In response to these specific concerns, and as part of the Department's ongoing efforts to encourage retirement savings, the Department is hereby summarizing and restating its views on employer involvement in providing voluntary payroll deduction systems for contributions to IRAs. This bulletin is intended to supplement 29 CFR 2510.3–2(d) by summarizing and restating the interpretive views of the Department, as expressed in advisory opinions since promulgation of the regulation, on various aspects of an employer's involvement in IRA programs.[3] This interpretive bulletin clarifies the circumstances under which an employer may facilitate employees' voluntary contributions to IRAs by providing an IRA payroll deduction program without thereby inadvertently establishing or maintaining an employee benefit pension plan within the scope of section 3(2) of ERISA.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f)(4), the order defines a ''significant regulatory action'' as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities.

Pursuant to the terms of the Executive Order, the Department has determined that this regulation, which encourages employers to provide the opportunity for employees to save for retirement by clarifying the applicability of certain regulatory compliance issues, is consistent with the President's priorities in encouraging retirement savings, and as such is a ''significant regulatory action'' subject to OMB review under Executive Order section 3(f)(4).

According to the Employee Benefits Supplement to the 1993 Current Population Survey, over half of the private wage and salary workforce does not have employment-based retirement coverage. Employment-based retirement coverage arises from three separate components: access to coverage made available through employer sponsorship of plans, eligibility for coverage through satisfaction of age and service requirements, and acceptance of coverage, where employee participation in the employer's plan is voluntary.

Access to coverage is currently shown to differ significantly by employer size. Approximately 82% of private wage and salary workers employed by employers with 100 or more employees have access to coverage. However, only 18% of employers of fewer than 25 employees, and 45% of employers of 25 to 99 employees sponsor retirement plans. As a result, about 30 million employees of small business do not have access to employment-based retirement coverage. Furthermore, only about 12% of these employees choose to close this gap in retirement coverage with an individual retirement account.

Small employers who do not sponsor retirement plans typically offer a few principal reasons for their decision, including the administrative complexity and burden associated with retirement plans, and the risk of commitment to an ongoing expense in the face of the financial uncertainties of the small business environment. Although this interpretive bulletin is not expected to impact access to employer-provided retirement coverage, it may benefit both employers and employees. First, it offers improved access to the Department's views concerning the regulatory requirements for payroll deduction programs for individual retirement accounts. This may ease concerns about the administrative complexity of offering access to individual retirement savings vehicles, which normally requires only a very limited financial commitment on the part of an employer in the form of affording payroll deductions.

The interpretive bulletin may also facilitate individual savings for retirement by those employees whose access to employer-sponsored retirement coverage is most limited, by encouraging employers to make individual retirement saving programs available in a manner convenient to the employees. Although many employees without access to employer-sponsored coverage are currently permitted to make use of an IRA as an alternative method to save for retirement, the Department believes that employees may be more likely to make use of an individual retirement savings vehicle that is offered in an employment setting and features regular withholding, than one which requires making individual arrangements with an IRA sponsor.

Small Business Regulatory Enforcement Fairness Act

The interpretive bulletin being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

Paperwork Reduction Act

The interpretive bulletin being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an ''information collection request'' as defined in 44 U.S.C. 3502(3).

List of Subjects in 29 CFR Part 2509

Employee Benefit Plans, Pensions.

For the reasons set forth above, Part 2509 of Title 29 of The Code of Federal Regulations is amended as follows:

Part 2509—Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

1. The authority citation for part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. Add a new § 2509.99–1 to read as follows:

§ 2509.99–1 Interpretive Bulletin Relating to Payroll Deduction IRAs.

(a) Scope. This interpretive bulletin sets forth the Department of Labor's (the Department's) interpretation of section 3(2)(A) of the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and 29 CFR 2510.3–2(d), as applied to payroll deduction programs established by employers[1] for the purpose of enabling employees to make voluntary contributions to individual retirement accounts or individual retirement annuities (IRAs)

[3] *See* Advisory Opinions 77–29A (March 16, 1977), 81–80A (Dec. 18, 1981), 82–13A (Feb. 17, 1982), 82–18A (March 22, 1982), 82–27A (June 16, 1982), 82–53A (Oct. 4, 1982), 83–1A (Jan. 13, 1983), 83–2A (Jan. 13, 1983), 83–9A (February 9, 1983), 83–10A (February 9, 1983), 83–25A (May 24, 1983), 90–20A (June 15, 1990).

[1] The views expressed in this Interpretive Bulletin with respect to payroll deduction programs of employers are also generally applicable to dues checkoff programs of employee organizations.

described in section 408(a) or (b) or section 408A of the Internal Revenue Code (the Code).

(b) General. It has been the Department's long-held view that an employer who simply provides employees with the opportunity for making contributions to an IRA through payroll deductions does not thereby establish a ''pension plan'' within the meaning of section 3 (2) (A) of ERISA. In this regard, 29 CFR 2510.3–2 (d) sets forth a safe harbor under which IRAs will not be considered to be pension plans when the conditions of the regulation are satisfied. Thus, an employer may, with few constraints, provide to its employees an opportunity for saving for retirement, under terms and conditions similar to those of certain other optional payroll deduction programs, such as for automatic savings deposits or purchases of United States savings bonds, without thereby creating a pension plan under Title I of ERISA. The guidance provided herein is intended to clarify the application of the IRA safe harbor set forth at 29 CFR 2510.3–2 (d) and, thereby, facilitate the establishment of payroll deduction IRAs.

(c) Employee Communications. (1) It is the Department's view that, so long as an employer maintains neutrality with respect to an IRA sponsor in its communications with its employees, the employer will not be considered to ''endorse'' an IRA payroll deduction program for purposes of 29 CFR 2510.3–2(d).[2] An employer may encourage its employees to save for retirement by providing general information on the IRA payroll deduction program and other educational materials that explain the advisability of retirement savings, including the advantages of contributing to an IRA, without thereby converting the program under which the employees' wages are withheld for contribution into the IRAs into an ERISA covered plan. However, the employer must make clear that its involvement in the program is limited to collecting the deducted amounts and remitting them promptly to the IRA sponsor and that it does not provide any additional benefit or promise any particular investment return on the employee's savings.

(2)The employer may also do the following without converting a payroll deduction IRA program into an ERISA plan: An employer may answer employees' specific inquiries about the mechanics of the IRA payroll deduction program and may refer other inquiries to the appropriate IRA sponsor. An employer may provide to employees informational materials written by the IRA sponsor describing the sponsor's IRA programs or addressing topics of general interest regarding investments and retirement savings, provided that the material does not itself suggest that the employer is other than neutral with respect to the IRA sponsor and its products; the employer may request that the IRA sponsor prepare such informational materials and it may review such materials for appropriateness and completeness. The fact that the employer's name or logo is displayed in the informational materials in connection with describing the payroll deduction program would not in and of itself, in the Department's view, suggest that the employer has ''endorsed'' the IRA sponsor or its products, provided that the specific context and surrounding facts and circumstances make clear to the employees that the employer's involvement is limited to facilitating employee contributions through payroll deductions.[3]

(d) Employer Limitations on the number of IRA sponsors offered under the program. The Department recognizes that the cost of permitting employees to make IRA contributions through payroll deductions may be significantly affected by the number of IRA sponsors to which the employer must remit contributions. It is the view of the Department that an employer may limit the number of IRA sponsors to which employees may make payroll deduction contributions without exceeding the limitations of 29 CFR 2510.3–2(d), provided that any limitations on, or costs or assessments associated with an employee's ability to transfer or roll over IRA contributions to another IRA sponsor is fully disclosed in advance of the employee's decision to participate in the program. The employer may select one IRA sponsor as the designated recipient for payroll deduction contributions, or it may establish criteria by which to select IRA sponsors, e.g., standards relating to the sponsor's provision of investment education, forms, availability to answer employees' questions, etc., and may periodically review its selectees to determine whether to continue to designate them. However, an employer may be considered to be involved in the program beyond the limitations set forth in 29 CFR 2510.3–2(d) if the employer negotiates with an IRA sponsor and thereby obtains special terms and conditions for its employees that are not generally available to similar purchasers of the IRA. The employer's involvement in the IRA program would also be in excess of the limitations of the regulation if the employer exercises any influence over the investments made or permitted by the IRA sponsor.

(e) Administrative fees. The employer may pay any fee the IRA sponsor imposes on employers for services the sponsor provides in connection with the establishment and maintenance of the payroll deduction process itself, without exceeding the limitations of 29 CFR 2510.3–2(d). Further, the employer may assume the internal costs (such as for overhead, bookkeeping, etc) of implementing and maintaining the payroll deduction program without reimbursement from either employees or the IRA sponsor without exceeding the limits of the regulation. However, if an employer pays, in connection with operating an IRA payroll deduction program, any administrative, investment management, or other fee that the IRA sponsor would require employees to pay for establishing or maintaining the IRA, the employer would, in the view of the Department, fall outside the safe harbor and, as a result, may be considered to have established a ''pension plan'' for its employees.

(f) Reasonable Compensation for Services. 29 CFR 2510.3–2(d) provides that an employer may not receive any consideration in connection with operating an IRA payroll deduction program, but may be paid ''reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.'' Employers have asked whether ''reasonable compensation'' under section 2510.3–2(d) includes payments from an IRA sponsor to an employer for the employer's cost of operating the IRA payroll deduction program. It is the Department's view that the IRA sponsor may make such payments, to the extent that they constitute compensation for the actual costs of the program to the employer. However, ''reasonable compensation'' does not include any profit to the employer. *See* 29 CFR 2510.3–1(j), relating to group or group-type insurance programs. For example, if an IRA sponsor offers to pay an employer an amount equal to a percentage of the assets contributed by employees to IRAs through payroll deduction, such an arrangement might exceed ''reasonable compensation'' for the services actually rendered by the employer in connection with the IRA payroll deduction program. An employer will also be considered to have received consideration that is not ''reasonable compensation'' if the IRA sponsor agrees to make or to permit particular investments of IRA contributions in consideration for the employer's agreement to make a payroll deduction program available to its employees, or if the IRA sponsor agrees to extend credit to or for the benefit of the employer in return for the employer's making payroll deduction available to the employees.

(g) Additional rules when employer is IRA sponsor or affiliate of IRA sponsor. Under

[2] The Department has specifically stated, in its Advisory Opinions, that an employer may demonstrate its neutrality with respect to an IRA sponsor in a variety of ways, including (but not limited to) by ensuring that any materials distributed to employees in connection with an IRA payroll deduction program clearly and prominently state, in language reasonably calculated to be understood by the average employee, that the IRA payroll deduction program is completely voluntary; that the employer does not endorse or recommend either the sponsor or the funding media; that other IRA funding media are available to employees outside the payroll deduction program; that an IRA may not be appropriate for all individuals; and that the tax consequences of contributing to an IRA through the payroll deduction program are generally the same as the consequences of contributing to an IRA outside the program. The employer would not be considered neutral, in the Department's view, to the extent that the materials distributed to employees identified the funding medium as having as one of its purposes investing in securities of the employer or its affiliates or the funding medium in fact has any significant investments in such securities. If the IRA program were a result of an agreement between the employer and an employee organization, the Department would view informational materials that identified the funding medium as having as one of its purposes investing in an investment vehicle that is designed to benefit an employee organization by providing more jobs for its members, loans to its members, or similar direct benefits (or the funding medium's actual investments in any such investment vehicles) as indicating the employee organization's involvement in the program in excess of the limitations of 29 CFR 2510.3–2(d).

[3] For example, if the employer whose logo appeared on the promotional materials provided a statement along the lines of in the first sentence of footnote 5, the employer would not be considered to have endorsed the IRA product.

certain circumstances, an employer that offers IRAs in the normal course of its business to the general public or that is an affiliate [4] of an IRA sponsor may provide its employees with the opportunity to make contributions to IRAs sponsored by the employer or the affiliate through a payroll deduction program, without exceeding the limitations of § 2510.3–2(d). If the IRA products offered to the employees for investment of the payroll deduction contributions are identical to IRA products the sponsor offers the general public in the ordinary course of its business, and any management fees, sales commissions, and the like charged by the IRA sponsor to employees participating in the payroll deduction program are the same as those charged by the sponsor to employees of non-affiliated employers that establish an IRA payroll deduction program, the Department has generally taken the position that this alone will not cause the employer to be sufficiently involved in the IRA program as an employer or to have received consideration of the type prohibited under § 2510.2(d)(iv) to warrant the program being considered outside the safe harbor of the regulation.[5] Under such circumstances, the employer, in offering payroll deduction contribution opportunities to its employees, would appear to be acting generally as an IRA sponsor, rather than as the employer of the individuals who make the contributions.[6]

Signed at Washington, DC, this 14th day of June, 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–15410 Filed 6–17–99; 8:45 am]

BILLING CODE 4510–20–P

[4] For purposes of this interpretive bulletin, the definition of ''affiliate'' in ERISA section 407(d)(7) applies.

[5] While the funding medium offered by an employer that is an IRA sponsor or an affiliate of an IRA sponsor might be considered an employer security when offered to its own employees, the fact that informational materials provided to employees identify the funding medium as having as one of its purposes investing in securities of the employer would not, in the Department's view, involve the employer beyond the limits of 29 CFR 2510.3–2(d). Neither would the fact that the funding medium may actually be so invested. However, the Department would consider that an employer may have exceeded the limitation of 2510.3–2(d) if the informational materials the employer provides to employees suggest that the employer, in providing the IRA payroll deduction program for purposes of investing in employer securities, is acting as an employer in relation to persons who participate in the program, rather than as an IRA sponsor acting in the course of its ordinary business of making IRA products available to the public.

[6] However, if an employer that is an IRA sponsor waives enrollment and management fees for its employees' IRAs, and it normally charges those fees to members of the public who purchase IRAs, the employer would be considered to be so involved in the program as to be outside the safe harbor of the regulation.

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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)

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