

Journal of Interpersonal Violence



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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-A111

Prevailing Rate Systems; Abolishment of Kansas City, MO, Special Wage Schedule for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final an interim rule to abolish the Federal Wage System (FWS) special wage schedule for printing positions in the Kansas City, Missouri, wage area. Printing and lithographic employees in the Kansas City wage area will now be paid rates from the regular Kansas City wage schedule. This change is being made because of decreased employment in printing occupations in the Kansas City FWS wage area.

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

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins at (202) 606-2848, or send an email message to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On December 24, 1997, the Office of Personnel Management (OPM) published an interim regulation (62 FR 67258) abolishing the Kansas City special printing schedule. The interim regulation had a 30-day period for public comment, during which OPM received no comments. The interim rule is therefore being made final.

Printing and lithographic employees were converted to the regular schedule for the Kansas City wage area on a grade-for-grade basis, effective January 4, 1998. The conversion of employees stipulated that an employee's new rate of pay would be set at the rate for the

step of the applicable grade of the regular schedule that equaled the employee's existing scheduled rate of pay. When the existing rate fell between two steps on the regular schedule, the employee's new rate was to be set at the rate for the higher of those two steps. In addition, pay retention provisions applied for the few employees who may not have received increases upon conversion to the regular wage schedule.

This action was taken after the Department of Defense (DOD) recommended to OPM that the Kansas City, MO, special wage schedule for printing positions be abolished and that the regular Kansas City wage schedule apply to printing employees in the Kansas City wage area. The recommendation was based on the fact that the number of employees paid from the special schedule has declined in recent years from a total of about 70 employees in 1985 to a total of about 30 employees. With the reduced number of employees, DOD found it increasingly difficult to comply with the requirement that workers paid from the special printing schedule participate in the local wage survey process. A full-scale special wage survey in the Kansas City wage area required a substantial work effort in contacting about 70 printing establishments spread over 8 counties and required the participation of about 10 percent of the employees who were paid from the special printing schedule.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national-level labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and concurred by consensus with this change.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on December

24, 1997 (63 FR 67258), is adopted as final without any changes.

Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 99-15802 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AH88

Prevailing Rate Systems; Abolishment of the Lubbock, Texas, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final an interim rule to abolish the Lubbock, Texas, nonappropriated fund Federal Wage System wage area and establish a new Curry County, New Mexico, wage area. This change is being made because of the closure of the Lubbock wage area's host installation, Reese Air Force Base. This closure left the lead agency, the Department of Defense, without an installation in the survey area capable of hosting annual local wage surveys.

DATES: This final regulation is effective on July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606-2848, FAX: (202) 606-0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On May 29, 1997, the Office of Personnel Management (OPM) published an interim rule (62 FR 28978) to abolish the Lubbock, Texas, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Curry County, New Mexico, NAF FWS wage area. The Lubbock wage area consisted of one survey county, Lubbock, TX, and two area of application counties, Curry, NM, and Potter, TX. The closure of the Lubbock wage area's host activity, Reese Air Force Base, left the Department of Defense (DOD), the lead agency for the Lubbock wage area, without an installation in the survey area capable of hosting local annual wage surveys.

Even though the host installation closed, the Lubbock wage area

continued to have NAF FWS employment. Cannon Air Force Base, located in Curry County, NM, has more than the minimum required number of NAF FWS employees and has the capability to host annual local wage surveys. Also, Curry County has more than the required minimum number of private enterprise employees in establishments within survey specifications. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we abolish the Lubbock, TX, NAF wage area and establish a new Curry, NM, NAF wage area. The new wage area consists of one survey county, Curry County, NM, and two areas of application counties, Lubbock and Potter, TX.

Full-scale wage surveys were ordered in the Curry, NM, NAF wage area in June of odd-numbered fiscal years. The first full-scale wage survey began in June 1997. The interim rule provided a 30-day public comment period, during which OPM did not receive any comments. The interim rule is being adopted as final with no changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on May 29, 1997 (62 FR 28978), is adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99-15804 Filed 6-21-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572-AB46

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to: revise the method of determining loan fund eligibility for "ordinary replacements" and authorize the use of guaranteed financing for "minor projects".

DATES: This rule will become effective August 6, 1999 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before July 22, 1999. If we receive such comments or notice, we will publish a timely withdrawal of the Direct Final Rule in the **Federal Register** stating that the rule will not become effective. We will address the comments received and publish a final rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington, DC 20250-1522. Telephone: (202) 720-9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Stop 1560, 1400 Independence Avenue, SW, Washington, DC 20250-1560. Telephone: (202) 720-9547. FAX (202) 690-0717. E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in

accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 USC § 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget (OMB) has approved the reporting and recordkeeping requirements contained in 7 CFR Part 1710 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned control number 0572-0032. This rule contains no additional information collection or recordkeeping requirements.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the United States Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled "Department Programs and Activities Excluded from Executive Order 12372", (50 FR 47034), exempted RUS loans and loan guarantees from coverage under this order.

Unfunded Mandates

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

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

RUS is amending its regulations to change the manner in which it categorizes electric plant replacements for the purpose of clarifying financing eligibility for replacements. RUS financing is presently based upon the accounting and engineering classifications of new construction, system improvements, and ordinary replacements. These procedures are established in 7 CFR Part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, including § 1710.106, Uses of Loan Funds, establishing the extent of funding for new construction, system improvements, and ordinary replacements, as well as RUS Bulletin 1767B-2, Work Order Procedure (Electric).

At present, RUS financing is provided as follows: (a) for new construction based on cost of construction (amount capitalized), (b) for system improvements based on cost of construction plus removal cost less applicable salvage, and (c) for ordinary replacements based on cost of construction less original cost of units removed.

In each case above, non-refundable contribution amounts by the ultimate customer are deducted from the amount financed.

Section 1710.2, Definitions, provides the following definitions: (a) system improvement means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries; (b) ordinary replacement means replacing one or more units of plant, called "retirement units," with similar units when made necessary by normal wear and tear, damage beyond repair, or obsolescence of facilities. With these definitions, RUS has experienced problems as to which projects should appropriately be classified as either system improvements or ordinary replacements. As a result, there has been confusion and inconsistency in the determination of loan fund eligibility. While the determination does not

significantly affect the amount of loan funds provided by RUS, the determination nevertheless is an unnecessary burden for RUS borrowers, their engineering consultants, and RUS staff, who often apply the definitions differently.

This rule change combines the classifications of system improvements and ordinary replacements into a single category. Financing will be based on the process presently used to finance system improvements. This process will provide funding to cover the cost of construction, plus the cost of removal, less any salvage value. No change is being made in the manner in which new construction or system improvements are classified or financed by RUS. It merely changes the manner in which ordinary replacements are categorized and financed by RUS.

RUS has previously authorized certain types of ordinary replacements, including underground cable replacements, to be financed as system improvements. Furthermore, § 1710.106 (3) presently permits RUS to finance the total cost of ordinary replacements, if specifically authorized by the Administrator.

Potentially, the requests for RUS financing assistance may be slightly increased by combining these two methods of accounting for system improvements and ordinary replacements into a single category. However, the overall benefits to the borrowers and RUS outweigh the possible increase in requests for loan funds. This rule change is being made in order to: (a) simplify classifications of construction and eliminate the judgments necessary as to whether a project is considered an improvement or replacement; and (b) avoid creating any new method of financing while still generating necessary information from which RUS can determine appropriate funding eligibility.

It should be further noted that factors other than the amount of construction eligible for financing under the present concepts of system improvements and ordinary replacements impact the amount of funding actually requested from RUS. Generally, RUS borrowers do not request financing assistance for all capital improvements because of desired equity goals. Typically, borrowers utilize internally generated funds from as little as 20 percent to more than 50 percent of total construction costs. The overall effect of this is that borrowers presently borrow funds in amounts which are significantly less than that for which they would be eligible under either present loan concepts (with system

improvements and ordinary replacements) or those concepts provided under this rule change.

Benefits of this rule change include: (a) simplified RUS financing and engineering analysis which avoids conflicting interpretations of what is a system improvement and what is an ordinary replacement; (b) expedited close-out and audit processes; (c) little or no change in the application for available loan funds; and (d) elimination of additional analysis in electric plant accounting to determine amount capitalized.

With this rule change, Inventories of Work Orders, RUS Form 219, covering completed construction projects that are closed out after the effective date of this rule, will be subject to these new procedures for "ordinary replacements." During the period while revised RUS Form 219's are being prepared and distributed, RUS borrowers may utilize existing supplies of forms bearing an issue date of 10/88 and include all plant rebuilds and replacements as system improvements. The columns on RUS Form 219 that are currently dedicated to ordinary replacements would, therefore, not be used under this rule change.

The second aspect of this rule change concerns "minor projects" and guaranteed loan funds. Minor projects are defined in 7 CFR Part 1721, Post-Loan Policies and Procedures for Insured Electric Loans, Subpart A, Advance of Funds, § 1721.1(a) as "a project costing \$25,000 or less." Section 1721.1(a), further states that: "With the exception of minor construction, insured loan funds will be advanced only for projects in an RUS approved Borrower's construction work plan or approved amendment and in an approved loan, as amended." Also related to this matter is 7 CFR Part 1710, Subpart F, Construction Work Plans and Related Studies. Section 1710.250(e) states that: "Applications for a loan or loan guarantee from RUS...must be supported by a current CWP. . . ." Since part 1721 only covers insured loans, no mechanism is presently in place to authorize minor projects under an RUS loan guarantee. Part 1710, subpart F, would, therefore, presently require inclusion of all projects in either a work plan or an amendment to a work plan and preclude authority for and funding of "minor projects" under an RUS loan guarantee. The purpose of this rule change is to clarify that minor projects may, in fact, be funded through an RUS loan guarantee, just as they are done under insured loan procedures without being specifically approved in a work plan or amendment.

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR part 1710 is amended as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS, SUBPART C—LOAN POLICIES AND BASIC POLICIES

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901 et seq., 1921 et seq., and 6941 et seq.

2. Amend § 1710.106 by removing paragraph (a)(3), redesignating paragraphs (a)(4) through (a)(6) as (a)(3) through (a)(5), and revising paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 1710.106 Uses of loan funds.

(a) * * * * *

(1) Distribution facilities. (i) The construction of new distribution facilities or systems, the cost of system improvements and removals less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth requirements, improve the quality of service, or replace existing facilities.

* * * * *

(2) Transmission and generation facilities. (i) The construction of new transmission and generation facilities or systems, the cost of system improvements and removals, less salvage value, the cost of ordinary replacements and removals less salvage value, needed to meet load growth, improve the quality of service, or replace existing facilities.

* * * * *

3. Amend § 1710.250(f) by adding the following sentence to the end of the paragraph to read:

§ 1710.250 General.

* * * * *

(f) * * * Provision for funding of "minor projects" under an RUS loan guarantee is permitted on the same basis as that discussed for insured loan funds in 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.

* * * * *

Dated: June 14, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99-15703 Filed 6-21-99; 8:45 am]

BILLING CODE 3410-15-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AF80

Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several inconsistencies and to clarify certain sections of its regulations pertaining to the storage of spent fuel and high-level radioactive waste. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance (QA) records must be maintained as permanent records when identified with activities and items important to safety. These amendments are necessary to facilitate NRC inspections to verify compliance with reporting requirements to ensure the protection of public health and safety and the environment.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: M. L. Au, telephone (301) 415-6181, e-mail mla@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

The Commission's licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste are contained in 10 CFR part 72. NRC experience in applying Part 72 has indicated that certain additions and clarifications to the regulations are necessary. The NRC published a proposed rule in the Federal Register on June 9, 1998 (63 FR 31364).

When subpart L of part 72 was issued in 1990, the purpose and scope of these regulations (i.e., to approve the design of spent fuel storage casks and issue a Certificate of Compliance (CoC)) was not clearly indicated in §§ 72.1 and 72.2. Additionally, § 72.2 referred to a Federal Interim Storage Program; however, the statutory authorization for this program has expired.

The current regulations contain information in multiple locations on

where to send part 72 reports and applications to the NRC. These requirements were inconsistent and did not ensure that received information was properly docketed.

The current regulations in § 72.44 on reporting annual summaries of radioactive effluents released from dry storage casks impose an unnecessary regulatory burden on part 72 licensees by requiring submittal of these reports on a schedule that is different from that required by 10 CFR part 50. Most part 72 licensees are also part 50 licensees. Consequently, this regulation imposed an unnecessary regulatory burden on part 72 licensees.

The current regulations in § 72.75 on reporting requirements for specific events and conditions are inconsistent with the reporting requirements for similar reactor-type events contained in § 50.73.

The current regulations in §§ 72.122 and 72.124 on instrumentation and neutron poison efficacy requirements are unduly burdensome when applied to dry storage cask technology. The Commission has received nine requests for exemption from these regulations over the last three years.

The current regulations in subpart G (quality assurance (QA) requirements) regarding retention of part 72 QA records differ from the retention requirements imposed on part 50 license holders. However, § 72.140(d) currently allows a part 72 license holder to take credit for its part 50 QA program in meeting the requirements of subpart G with the result that differing retention requirements are imposed on part 72 licensees.

Discussion

This final rule makes eight clarifying changes to Part 72. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions and ensure that necessary information is included in reports and that QA records are maintained permanently when identified with activities and items important to safety. These reports and records are needed to facilitate NRC inspections to verify compliance with reporting requirements to ensure protection of public health and safety and the environment.

The following are a group of eight miscellaneous items of changes to the regulations:

1. Modify §§ 72.1 and 72.2 to include spent fuel storage cask and remove superseded information.

The purpose (§ 72.1) and scope (§ 72.2) were not modified when the Commission amended part 72 on July 18, 1990 (55 FR 29181). Part 72 was

amended to include a process for providing a general license to a reactor licensee to store spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites (subpart K) and a process for the approval of spent fuel storage casks (subpart L). Although the language in these sections may be read to include the general license provisions of subpart K, the approval process for spent fuel storage casks in subpart L is not referenced. This rulemaking makes the purpose and scope sections complete by specifically referencing the subpart L cask approval process. Additionally, this rule removes information in the purpose and scope sections, regarding the Federal interim storage program, because the statutory authorization for the interim storage program has expired (61 FR 35935; July 9, 1996).

2. Change the requirement for making initial and written reports in §§ 72.4 and 72.216.

The change to § 72.4 provides that, except where otherwise specified, all communications and reports are to be addressed to NRC's Document Control Desk (DCD) rather than to the Director, Office of Nuclear Material Safety and Safeguards (NMSS). Three current regulations govern the submission of written reports under part 72 (§§ 72.75, 72.216(b), and 50.72(b)(2)(vii)(B)), which is referenced in § 72.216(a). Under § 72.75(d)(2), a report is sent to the DCD. However §§ 50.72(b)(2)(vii)(B) and 72.216(b) indicate that the report be sent, as instructed in § 72.4, to the Director, NMSS. To achieve consistency, § 72.4 is revised to instruct that reports shall be sent to the DCD. Licensing correspondence forwarded to the NRC's DCD ensures proper docketing and distribution. Also, § 72.216(c) is revised to correct an error in the paragraph designation. The current regulation § 72.75(a)(2) and (3) is revised to read § 72.75(b)(2) and (3).

3. Change the requirement for submittal of the dry cask storage effluent report in § 72.44.

Currently, § 72.44(d)(3) requires that a dry cask storage effluent report be submitted to the appropriate NRC regional office within the first 60 days of each year. Section 50.36a(a)(2) requires that a similar report be submitted to the Commission once each year specifying liquid and gaseous effluents from reactor operations.

The revision permits reactor licensees, who also possess licenses for ISFSIs, to submit their dry cask storage effluent report to the NRC once each year, at the same time as the effluent report from their reactor operations. The dry cask storage effluent report would

be submitted within 60 days after the end of the 12-month monitoring period. However, after the effective date of this final rule, the licensee may submit the dry cask report covering a shorter period of time to synchronize the reporting schedule with the annual reactor effluent report.

4. Clarify the reporting requirements for specific events and conditions in § 72.75.

Section 72.75 contains reporting requirements for specific events and conditions, including the requirement in § 72.75(d)(2) for a follow-up written report for certain types of emergency and non-emergency notifications. This rule clarifies the specific information required to meet the intent of the existing reporting requirement. A comparable reporting requirement already exists for similar reactor type events in § 50.73(b). This rule will provide greater consistency between parts 50 and 72, on event notification requirements. Since the reporting requirement already exists, a minimal increase in the licensee's reporting burden will occur by clarifying the format and content.

5. Clarify the requirement for capability for continuous monitoring of confinement storage systems in § 72.122(h)(4).

Currently, § 72.122(h)(4) requires the capability for continuous monitoring of storage confinement systems. The meaning of "continuous" is open to interpretation and does not differentiate between monitoring requirements for wet and dry storage of spent fuel. Wet storage requires active heat removal systems which involve a monitoring process that is "continuous" in the sense of being uninterrupted. Because of the passive nature of dry storage, active heat removal systems are not needed and monitoring can be less frequent. This rule clarifies that the frequency of monitoring can be different for wet and dry storage systems.

6. Clarify the requirement specifying instrument and control systems for monitoring dry spent fuel storage in § 72.122(i).

Section 72.122(i) requires that instrumentation and control systems be provided to monitor systems important to safety, but does not distinguish between wet and dry spent fuel storage systems. For wet storage, systems are required to monitor and control heat removal. For dry storage, passive heat removal is used and a control system is not required. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety

over anticipated ranges for normal conditions and off-normal conditions. This rule clarifies that control systems are not needed for dry spent fuel storage systems.

7. Clarify the requirement for dry spent fuel storage casks on methods of criticality control in § 72.124(b).

Section 72.124(b) requires specific methods for criticality control, including the requirement that where solid neutron absorbing materials are used, the design must provide for positive means to verify their continued efficacy. This requirement is appropriate for wet spent fuel storage systems, but not for dry spent fuel storage systems. The potentially corrosive environment under wet storage conditions is not present in dry storage systems, because an inert environment is maintained. Under these conditions, there is no mechanism to significantly degrade the neutron absorbing materials. In addition, the dry spent fuel storage casks are sealed and it is not practical nor desirable to penetrate the integrity of the cask to make the measurements verifying the efficacy of neutron absorbing materials. This rule clarifies that positive means for verifying the continued efficacy of solid neutron absorbing materials are not required for dry storage systems, when the continued efficacy may be confirmed by demonstration or analysis before use.

8. Clarify the requirements in § 72.140(d) concerning the previously approved QA program in conformance with appendix B of 10 CFR part 50.

Section 72.174 specifies that QA records must be maintained by or under the control of the licensee until the Commission terminates the license. However, § 72.140(d) allows a holder of a part 50 license to use its approved part 50, appendix B, QA program in place of the part 72 QA requirements, including the requirement for QA records. Appendix B allows the licensee to determine what records will be considered permanent records. Thus, part 50 licensees using an appendix B, QA program could choose not to make permanent all records generated in support of part 72 activities. This rule requires these licensees to follow the part 72 requirement to maintain QA records until termination of the part 72 license.

Summary of Public Comments on the Proposed Rule

The NRC received four letters containing nineteen comments responding to the proposed rule published in the **Federal Register** on June 9, 1998 (63 FR 31364). These

comments were considered in the development of the final rule. The primary objective of this rulemaking is to clarify requirements for certain sections of the regulations. The amendments differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that QA records must be maintained as permanent records. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003-1527.

Four comment letters were received in response to the proposed rule. One was from the Department of Energy (DOE) Idaho Operations Office, one was from a private enterprise, and two were from nuclear power plant licensees. All commenters were supportive of the proposed rule.

Public Comments

1. *Comment:* One commenter believed that to ensure consistency with existing regulations in part 72 and with another NRC proposed rulemaking, "Expand Applicability of Regulations to Holders of, and Applicants for, Certificates of Compliance and Their Contractors and Subcontractors" (63 FR 39526; July 23, 1998), which proposes to define a Certificate of Compliance (CoC) as a certificate approving the "design" of a spent fuel storage cask (as opposed to approving a cask), changes should be made to §§ 72.1 and 72.2(f).

Response: The Commission agrees with this comment. Changes have been made to §§ 72.1 and 72.2(f) to reflect the fact that Certificates of Compliance are issued to approve spent fuel storage cask designs rather than individual casks. In addition, in § 72.2(f), the phrase "in accordance with the requirements of this part as stated in § 72.236", which appears in the proposed rule, has been changed to "in accordance with the requirements of subpart L of this part" to reflect the fact that all the requirements of subpart L pertain to the issuance of certificates of compliance.

2. *Comment:* One commenter noted that the proposed revision to § 72.4 removes existing language which provides the street address for NRC's headquarters office. The commenter noted that this information is necessary for persons who wish to either mail communications to the NRC using a private courier service (e.g., FedEx or UPS) or deliver their communication in person. Additionally, § 72.4 did not provide any guidance for instances in

which the due date for a report or written communication falls on a weekend or holiday. In that regard the language in § 50.4(e) should be used as an example.

Response: The Commission agrees with this comment. The current language in § 72.4 containing the street address to be used for personal delivery is being retained. In addition, the suggested changes have been made for reports due on the weekend or a holiday. The Public Docket Room at 2120 L Street NW, Washington, DC, has been removed from the address listing because it is no longer receiving mail deliveries, as all mail is now delivered to NRC Headquarters.

3. *Comment:* For § 72.44(d)(3), one commenter was concerned that allowing flexibility in the timing for submitting the annual report could create "ratcheting" of the due date and result in the submittal of each report earlier than required to avoid lateness. The change proposed by the commenter to require that each report be submitted within 60 days from the end of each monitoring period and not to exceed the 12-month reporting interval would ensure timely submittal of these reports.

Response: The Commission agrees that the language in the proposed rule needs clarification. The Commission has added language in the final rule to clarify that the report must be submitted within 60 days after the end of the 12-month monitoring period. This change will allow flexibility in timing of submitting the annual report without resulting in the submittal of each report earlier than required to avoid lateness.

4. *Comment:* Two commenters noted that current § 72.75(d)(2) requires a written follow-up report when an event or condition requires an emergency notification under § 72.75(a) or a non-emergency four-hour report under § 72.75(b), but that a written follow-up report is not required when the event or condition requires a non-emergency 24-hour report under § 72.75(c). The second commenter suggested that the NRC clarify its expectation for Part 72 licensees regarding the use of NRC Form 366 and the format and guidance contained in NUREG 1022, Revision 1, "Events Reporting Guidelines 10 CFR 50.72 and 50.73."

Response: The Commission agrees with the comment on the first issue and the suggested change has been made to require a written follow-up report after a 24-hour oral notification. The written report is required for documentation for future use and inspections. With respect to the second issue, the Commission believes that use of NRC Form 366 and the guidance contained in NUREG-

1022, Rev. 1, is an acceptable method for preparing written event reports; however, licensees are not required to follow this method if the written report contains all the information required by § 72.75(d)(2). Therefore, no change has been made to address the second issue.

5. *Comment:* One commenter recommended not specifying the address and addresses in different sections of the regulations where licensees submit reports to NRC. Instead, the commenter recommended the use of one initial location to indicate where reports are submitted to simplify the regulations and ensure a consistent approach. Further, the references in part 72 to the location where persons are to submit information to the NRC should use the phrase "in accordance with § 72.4" instead of providing a specific address in each individual section. This approach would be consistent with the approach taken in other sections in part 72 as well as part 50. This would allow future changes to the NRC receiving address to involve fewer sections of the regulations. The commenter identified §§ 72.44(d)(3), 72.75(d)(2) and 72.140(d) as sections where this change should be made.

Response: The Commission agrees and has made the suggested changes in the final rule.

6. *Comment:* One commenter noted that the proposed amendment to § 72.75 appears to be inconsistent with the advance notice of proposed rulemaking (ANPR) for 10 CFR 50.73 (63 FR 39522; July 23, 1998) concerning the format and content for reporting reactor events and conditions.

Response: An objective of the § 72.75 rulemaking was to make the part 72 independent spent fuel storage installations (ISFSI) report format and content requirements consistent with the current reactor requirements in § 50.73. The final proposed reporting requirements for specific events and conditions in § 72.75 are consistent with the current requirements in § 50.73. If the reporting requirements in § 50.73 should change, the staff will consider whether conforming changes to § 72.75 would be appropriate.

7. *Comment:* One commenter believed that the retention of QA records until termination of the license for part 72 licensees, and the addition of specific information to meet the existing reporting requirement, do not comply with the Backfit Rule. The commenter indicates that both of these amendments will introduce changes to licensee procedures which are not justified by the substantial increase in protection standard and asserts that the NRC appears to be applying a new test; i.e.,

whether the changes are sufficiently trivial to ignore the Backfit Rule.

Response: Under § 72.62, "backfitting" includes the modification, after the license has been issued, of procedures or organizations required to operate an ISFSI or MRS. This backfitting provision is very similar to the Backfit Rule in § 50.109. The Commission has determined that reporting and record keeping requirements are not considered backfits even though they may result in changes to procedures. If the reporting or record keeping requirements had to meet the standards for a backfit analysis, the Commission would have to find that the information would substantially increase public health or safety or common defense and security without knowing the results of the request. In addition, the existence or non-existence of a record or report usually has no independent safety significance as compared to actions taken by the licensee or NRC as a result of the information contained in the record or report. It is this resulting action that affects public health and safety or the common defense or security that should be measured under the backfit standard and not the method for obtaining or maintaining the information.

Nevertheless, the Commission also recognizes that imposing reports or record keeping requirements may have a significant impact on a licensee's resources. The standard for authorizing reporting or record keeping requirements for NRC licensees that is contained in the Code of Federal Regulations should be the same standard as the regulations requiring the providing of information under 10 CFR 50.54(f). Namely, before the staff either changes existing requirements or issues new requirements affecting reporting or record keeping, a written analysis should be prepared that contains (a) a statement that describes the need for the information in terms of the potential safety benefit and, if appropriate, a discussion of possible alternatives and (b) the licensee actions required and the cost to develop a response to the information request. In addition, the imposition of the new or modified reporting or record keeping requirement should be approved by the appropriate level of senior management (namely the Executive Director for Operations or his or her designee) or the Commission itself in the case of rulemaking. For rulemaking, the analysis justifying either modifications to existing or new reporting and record keeping requirements shall be contained in the regulatory analysis. The regulatory analysis section of this rulemaking

package adequately addresses the Commission's standards for this specific record keeping requirement.

8. *Comment:* One commenter recommended that the proposed change to § 72.140(d) should also include QA programs which satisfy the requirements of subpart H of 10 CFR part 71. The commenter believes that QA requirements in part 71 are equivalent to the QA requirements in parts 50 and 72.

Response: While the staff agrees that the QA program requirements in parts 50, 71, and 72 are equivalent, this comment is beyond the scope of this rulemaking. This issue is being considered in a separate rulemaking.

9. *Comment:* One commenter recommended that the wording in §§ 72.75(d)(2)(ii)(5) and (6) be revised to change the word "plant" to "facility" to be consistent with wording in § 72.75(d)(2)(ii).

Response: The Commission agrees with this comment and the change has been made.

10. *Comment:* One commenter recommended adding "spent fuel storage" in the second and third sentences to better describe "cask design requirements" in § 72.122(h)(4).

Response: The Commission agrees with this comment and the change has been made.

11. *Comment:* One commenter recommended replacing the terms "systems" and "facility" in the third sentence of § 72.124(b) with the term "cask".

Response: The Commission is not adopting this comment. The term "facility" includes casks but is not limited to casks. It is possible that different noncask design configurations could be proposed. In reviewing this comment, the staff recognized that a mistake had been made in the proposed rule language in this section. The proposed rule stated "demonstration and analysis", this has been corrected to read "demonstration or analysis."

12. *Comment:* One commenter recommended that the term "notification" be used in place of the term "initial report" in the first sentence of § 72.75(d)(2) to help distinguish between verbal and written communications.

Response: The Commission agrees with the comment and the change has been made.

13. *Comment:* One commenter stated that there is no provision in part 72 for changes to NRC approved quality assurance programs comparable to the part 50 provision at § 50.54(a)(3) unless a licensee has a § 72.140(d) QA program incorporating an approved part 50

program. The commenter requests that a program change provision similar to those found in § 72.44(e) and 72.44(f) be provided to allow for changes to a QA program without NRC approval in defined circumstances.

Response: The proposed recommendation is beyond the scope of this rulemaking action.

14. *Comment:* DOE requested that § 72.80(b) be clarified to exclude DOE from the requirement to submit a copy of its annual financial report.

Response: The Commission agrees with the comment and § 72.22(e) has been revised to exclude DOE from financial assurance requirements.

Specific Changes in Regulatory Text

The following section is provided to assist the reader regarding the specific changes made to each section or paragraph in 10 CFR part 72. For clarity and content, a substantial portion of a particular section or paragraph may be repeated, while only a minor change is being made. This approach will allow the reader to effectively review the specific changes without cross-reference to existing material that has been included for content, but has not been significantly changed.

Sections 72.1 (Purpose) and 72.2 (Scope): These sections are revised to remove superseded information regarding the Federal Interim Storage Program that has expired and to indicate that subpart L provides requirements, procedures, and criteria for approval of spent fuel storage cask designs and issuance of a Certificate of Compliance.

Sections 72.4 and 72.216: These revisions specify that all communications and reports are addressed to the NRC's Document Control Desk.

Section 72.44: This revision permits reactor licensees, who also possess licenses for ISFSIs, to submit dry cask storage effluent report once each year at the same time as the effluent report for reactor operations, instead of submitting dry cask storage effluent report within 60 days of the beginning of each year.

Section 72.75: This change incorporates specific format and content information requirements comparable to reporting requirements that already exist for similar reactor type events in § 50.73(b).

Section 72.122(h)(4): This revision is made to state that periodic monitoring instead of continuous monitoring is appropriate for dry spent fuel storage.

Section 72.122(i): This section specifies the differences between wet pool spent fuel storage instrumentation and control systems and dry spent fuel storage cask instrumentation systems.

Section 72.124(b): This change is made to state that a positive means for verifying the continued efficacy of solid neutron absorbing materials is not required for dry storage systems, when the continued efficacy is confirmed by demonstration or analysis before use.

Section 72.140(d): This change requires all licensees, including a holder of a part 50 license using its approved part 50, appendix B, QA program, to follow the requirement in § 72.174 to maintain part 72 QA records until termination of the part 72 license.

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Environmental Impact: Categorical Exclusion

The NRC has determined that Items 1, 5, 6, and 7 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(2) and Items 2, 3, 4 and 8 of this rule are the types of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule increases the burden on licensees by increasing a record retention period from 3 years to life. The public burden for this information collection is estimated to average 38 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

If a means used to impose information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond, to the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC and concludes that the final rule results in an incremental improvement in public health and safety that outweighs the small incremental cost associated with this proposed change. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from M. L. Au, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6181; or e-mail mla@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operators of independent spent fuel storage installations (ISFSI). These companies do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act of 1954 (AEA), the Commission is issuing the final rule to amend 10 CFR part 72; 72.44, 72.75, 72.140, and 72.216 under one or more of section 161(b), (i), of (o) of AEA. Willful violation of the rule will be subject to criminal enforcement.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR part 72.62, does not apply to this rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR part 72.62(a). Therefore, a backfit analysis is not required for this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Enforcement Fairness Act of 1996, the

NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.1 is revised to read as follows:

§ 72.1 Purpose.

The regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor

spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) and the terms and conditions under which the Commission will issue these licenses. The regulations in this part also establish requirements, procedures, and criteria for the issuance of licenses to the Department of Energy (DOE) to receive, transfer, package, and possess power reactor spent fuel, high-level radioactive waste, and other radioactive materials associated with the spent fuel and high-level radioactive waste storage, in a monitored retrievable storage installation (MRS). The regulations in this part also establish requirements, procedures, and criteria for the issuance of Certificates of Compliance approving spent fuel storage cask designs.

3. In § 72.2, paragraph (e) is removed, paragraph (f) is redesignated as paragraph (e) and a new paragraph (f) is added to read as follows:

§ 72.2 Scope.

* * * * *

(f) Certificates of Compliance approving spent fuel storage cask designs shall be issued in accordance with the requirements of subpart L of this part.

4. Section 72.4 is revised to read as follows:

§ 72.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001. Written communications, reports, and applications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 between 7:30 am and 4:15 pm eastern time. If the submittal deadline date falls on a Saturday, or Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

5. In § 72.44, paragraph (d)(3) is revised to read as follows:

§ 72.44 License conditions.

* * * * *

(d) * * *

(3) An annual report be submitted to the Commission in accordance with § 72.4, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other

information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information that the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate. The report must be submitted within 60 days after the end of the 12-month monitoring period.

* * * * *

6. In § 72.75, paragraph (d)(2) is revised, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6) and (d)(7) are added to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

* * * * *

(d) * * *

(2) Written report. Each licensee who makes an initial notification required by paragraphs (a), (b), or (c) of this section also shall submit a written follow-up report within 30 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be sent to the Commission, in accordance with § 72.4. These reports must include the following:

(i) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(ii) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(A) ISFSI or MRS operating conditions before the event;

(B) Status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(C) Dates and approximate times of occurrences;

(D) The cause of each component or system failure or personnel error, if known;

(E) The failure mode, mechanism, and effect of each failed component, if known;

(F) A list of systems or secondary functions that were also affected for

failures of components with multiple functions;

(G) For wet spent fuel storage systems only, after failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(H) The method of discovery of each component or system failure or procedural error;

(I)(1) Operator actions that affected the course of the event, including operator errors, procedural deficiencies, or both, that contributed to the event;

(2) For each personnel error, the licensee shall discuss:

(i) Whether the error was a cognitive error (e.g., failure to recognize the actual facility condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

(ii) Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

(iii) Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

(iv) The type of personnel involved (e.g., contractor personnel, utility-licensed operator, utility nonlicensed operator, other utility personnel);

(J) Automatically and manually initiated safety system responses (wet spent fuel storage systems only);

(K) The manufacturer and model number (or other identification) of each component that failed during the event;

(L) The quantities and chemical and physical forms of the spent fuel or HLW involved;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

7. In § 72.122, paragraphs (h)(4) and (i) are revised to read as follows:

§ 72.122 Overall requirements.

* * * * *

(h) * * *

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions. For dry spent fuel storage, periodic monitoring is sufficient provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements.

* * * * *

(i) Instrumentation and control systems. Instrumentation and control systems for wet spent fuel storage must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. Systems that are required under accident conditions must be identified in the Safety Analysis Report.

* * * * *

8. In § 72.124, paragraph (b) is revised to read as follows:

§ 72.124 Criteria for nuclear criticality safety.

* * * * *

(b) Methods of criticality control. When practicable, the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design must provide for positive means of verifying their continued efficacy. For dry spent fuel storage systems, the continued efficacy may be confirmed by a demonstration or analysis before use, showing that significant degradation of the neutron absorbing materials cannot occur over the life of the facility.

* * * * *

9. In § 72.140, paragraph (d) is revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(d) Previously approved programs. A Commission-approved quality assurance program which satisfies the applicable criteria of appendix B to part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee using an appendix B quality assurance program also shall meet the requirement of § 72.174 for recordkeeping. Prior to initial use, the licensee shall notify the Commission, in accordance with § 72.4, of its intent to apply its previously approved appendix B quality assurance program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

10. In § 72.216, paragraph (c) is revised to read as follows:

§ 72.216 Reports.

* * * * *

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events specified by § 72.75(b)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this 15th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99-15793 Filed 6-21-99; 8:45 am]

BILLING CODE 7590-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 712

Investment and Deposit Activities; Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: The final rule makes four changes to the recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The four changes are: First, delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; second, revise a provision limiting CUSO investments in non-CUSO service providers; third, delete a provision preventing FCUs from investing in the debentures of a CUSO; and fourth,

clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. In addition, the final rule clarifies the meaning of cyber financial services. The changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: This rule is effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518-6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The proposed amendments addressed four issues resulting from the March 1998 revisions to the CUSO rule. 63 FR 10743 (March 5, 1998). The Board also requested comment on the scope of services that should be included within the existing cyber financial services category of the CUSO rule.

Summary of Comments

The NCUA Board received twenty comments on the proposal: nine from credit unions; three from CUSOs; two from credit union trade groups; one from a CUSO trade group; one from a bank trade group; three from state leagues; and one from an attorney. Of the fourteen commenters that addressed the proposed changes, thirteen generally supported the added flexibility of the proposed amendments.

FCUs Investing in or Lending to a CUSO in Which a Bank or Thrift Is Also a Participant

Section 712.2(c) prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions participate. The rationale behind the limitation was that it would be too confusing to credit union members if both NCUSIF and FDIC signs were posted together at shared branches. 63 FR at 10746. The Board believes possible confusion can be addressed through appropriate disclosures and so the proposal removed the prohibition.

The commenters generally supported the added flexibility of this amendment. There were two negative commenters. One was a bank trade group that objected because it believes the

requirement that CUSOs primarily serve credit unions or their members will be too hard to monitor if banks and thrifts are allowed to participate. The bank trade group also objected on the basis that insurance disclosures for this type of CUSO would be too burdensome. The Board rejects these arguments. The disclosure issue for federally insured credit unions is currently addressed in § 740.3(c) of NCUA's regulations. The CUSO rule currently allows credit unions to participate with other entities, just not banks or thrifts. This participation has not led to a problem in monitoring the "primarily serves" requirement, and the Board does not anticipate a problem when banks and thrifts are added. One commenter was concerned that NCUA would no longer be able to regulate CUSOs if banks and thrifts were allowed to participate. Inasmuch as NCUA does not currently regulate CUSOs, the Board determined that this concern was not justified.

CUSO Investment in Other Service Providers

Section 712.3(b) limits a CUSO investing in a service provider not meeting the customer base requirement to the minimum amount necessary to provide the service. The NCUA Board does not believe it is necessary to be so restrictive in limiting the amount a CUSO can invest. It proposed limiting the amount to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services.

All of the commenters but the bank trade group were in support of this added flexibility, and three commenters suggested even greater flexibility. One commenter suggested that FCUs also be permitted to invest in non-CUSO service providers. There is no statutory authority for this type of investment. Another commenter recommended deleting any investment restriction on CUSOs, and a third commenter suggested expanding a CUSO's investment authority up to the amount necessary "to obtain a board of director position or policy input in the service provider."

In contrast, the bank trade group objects to a CUSO having the potential to gain a controlling interest in a non-CUSO service provider and recommends limiting the investment to a passive interest. Its position is that CUSOs should be limited as much as possible because of the tax exempt status of FCUs. The final rule allows CUSOs to invest so that they can provide goods and services to their customers at competitive prices without losing sight of the fact that CUSOs

cannot function as an investment vehicle for FCUs to invest in what would otherwise be an impermissible investment. Accordingly, the Board thinks the proposal struck the appropriate balance and has adopted that approach in the final rule.

FCUs Investing in the Debentures of a CUSO

Section 712.2(a) limits an FCU's investment in a CUSO structured as a corporation to the equity of a corporation. Although this provision was intended as a clarification, it has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation. The proposal removed this prohibition. The one commenter that specifically referenced this amendment was in support of it.

FCUs Accounting in Accordance With GAAP

The proposed change clarified that generally accepted accounting principles (GAAP) are to be used in accounting for an FCU's investment in and loans to a CUSO both for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. However, it does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the equity method without any additional cash outlay.

The commenters generally supported this change because "it maintains consistency in the accounting treatment of CUSOs and avoids the undesired possibility of penalizing success." One commenter objected and two commenters had drafting suggestions. The negative commenter maintains that if the investment in the CUSO is less than .5% of total credit union assets, the credit union should be permitted to use aggregate cash outlay since the material effect would be insignificant. However, § 201(a) of the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105-219, 112 Stat. 918 (1998), requires credit unions having assets of \$10 million or more to follow GAAP in all reports or statements filed with the Board. 12 U.S.C. 1782(a)(6)(C). Therefore, the requirement that all FCUs use GAAP in accounting for their investment and loans to CUSOs is consistent with the new accounting requirements of CUMAA and, even for investments below the regulatory limit will insure that future growth or diminution in the investment are fairly reported in FCU financial statements.

Cyber Financial Services

The NCUA Board also requested comment on § 712.5(d)(8) which lists cyber financial services as a permissible CUSO activity. The Board received thirteen comments on this issue. The preamble to the current rule described cyber financial services as "credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services." 63 FR at 10753. The NCUA Board specifically requested comment on the scope of services that should be included within the category of cyber financial services.

Six of the commenters opposed having a list of specific permissible services because they thought it would be too limiting and, with changing technology, would rapidly become outdated. The Board agrees with these concerns. The Board also agrees that the limitations described in the preamble to the March 1998 rule are too restrictive. The Board's intent is that CUSOs be permitted to provide to credit unions and their members electronic delivery of any permissible CUSO service and electronic delivery of any permissible credit union service.

Some commenters noted that credit unions need to be able to offer Internet access to their members to market their services effectively and compete in the financial marketplace. Therefore, in addition to allowing CUSOs to provide currently permissible financial services electronically, the Board, similar to a Federal Reserve Board determination, will allow CUSOs to provide FCUs and their members an electronic link to an Internet access provider as part of providing currently permissible financial services electronically. *Royal Bank of Canada, Montreal, Canada, et al.*, Order Approving Notices to Engage in Nonbanking Activities, Federal Reserve Board (December 2, 1996). CUSOs providing Internet access would be limited to providing access through an electronic link to their member credit unions, which in turn would offer Internet access to their members, only as part of a broader package of credit union or financial services. This is an example of an activity that would be considered incidental to permissible cyber financial services.

Group Purchasing

Although comment was not requested on this issue, one commenter suggested that CUSOs be allowed to provide group purchasing for FCU members to the same extent as FCUs under part 721 of NCUA's regulations. Although the

commenter cites the statutory limitations placed on CUSOs to provide a service that "relates to the daily operations of the credit unions they serve" or "the routine operations of credit unions," the commenter ignores the implications of these limitations by arguing that CUSOs should be allowed to market any service provided by a third party vendor. 12 U.S.C. 1757 (5)(D) and (7)(I). The Federal Credit Union Act (Act) prohibits the commenter's broad interpretation of permissible CUSO activities.

Section by Section Analysis

Section 712.2(c) is revised to read: "A federal credit union may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties." This language is substantially the same as the rule prior to the March 1998 revision. In addition, the final rule removes a cross-reference in the current version of § 712.2(c) to § 712.6. Section 712.6 stands on its own to implement the statutory prohibition against using the CUSO authority to acquire control of certain other organizations such as trade associations and other depository institutions. 12 U.S.C. 1757(7)(I).

Section 712.3(b) of the current rule limits the amount a CUSO can invest in other service providers to the minimum amount necessary to provide the service. The revised language concerning service providers permits CUSO investments in non-CUSO service providers if the investment is limited to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services, for the CUSO, its credit unions, or the credit unions' members. The intent of this provision is to allow a CUSO to invest as much as is necessary to obtain an economic advantage on the goods or services it is receiving. CUSOs would not be permitted to use this provision as independent investment authority.

NCUA believes it would be clearer for this provision to be set out in that portion of the regulation addressing permissible activities rather than in the section addressing customer base. NCUA is moving this provision from the customer base section of the rule, § 712.3(b), and adding it as a new subsection (p) to § 712.5 concerning permissible CUSO activities and services.

The third change concerns § 712.2(a) of the current rule that limits an FCU's investment in a CUSO structured as a corporation to the equity of the corporation. The preamble to the March 1998 rule explains that this limitation was a clarification. 63 FR at 10745.

However, this provision has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation, a practice that was previously permissible. NCUA is eliminating this provision because the limitation is more restrictive than the Act, which permits FCUs to invest in the obligations of a CUSO. 12 U.S.C. 1757(7)(I).

Currently, § 712.2(a) states that an FCU can only invest in a limited partnership as a limited partner. This provision is more related to the permissible structure of a CUSO than permissible investments in a CUSO. NCUA believes this provision would be clearer if it is moved from § 712.2(a) to § 712.3(a). In addition, the provision limiting an FCU's investment in a limited liability company to membership is deleted because it is unnecessary.

This Board is revising §§ 712.2 and 712.3 to clarify that GAAP is to be used in accounting for an FCU's investments in and loans to a CUSO both for purposes of accounting for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. The final rule does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the GAAP equity method without any additional cash outlay.

To accomplish this, new subsections (d) and (e) have been added to § 712.2. Subsection (d) includes the definition of "paid-in and unimpaired capital and surplus" that was formerly in subsection (a) and adds the requirement that total investments in and loans to the CUSO be measured consistent with GAAP for regulatory purposes. Section 712.3(c) is revised by adding "for financial reporting purposes" to the title.

As explained in the proposal, an example of how the rule will be applied is if an FCU owns 45% of a CUSO and the CUSO has an annual net income of \$50,000, the equity method requires an FCU to book a \$22,500 addition to its "investments in and loans to CUSO" asset account. If by doing so, the regulatory limitation is reached or exceeded, NCUA will not require divestiture.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under 1 million

in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendments to the rule reduce regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this rule does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends 12 CFR chapter VII as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 will continue to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8) and 1757(15).

§ 703.20 [Amended]

2. Section 703.20 is amended in paragraph (c) by revising “§ 701.27” to read “part 712.”

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

3. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

4. Amend § 712.2 by revising the section heading, removing the second and third sentences of paragraph (a), revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section: paid-in and unimpaired capital and surplus means shares and undivided earnings; and total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

5. Amend § 712.3 by adding a new sentence following the first sentence of paragraph (a), by removing the second sentence of paragraph (b) and by revising the title of paragraph (c) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* * * * An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a limited partnership as a limited partner. * * *

* * * * *

(c) *Federal credit union accounting for financial reporting purposes.* * * *

6. In § 712.5 add paragraph (p) to read as follows:

§ 712.5 What activities and service are preapproved for CUSO

* * * * *

(p) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[FR Doc. 99-15650 Filed 6-21-99; 8:45 am]

BILLING CODE 7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 712****Credit Union Service Organizations**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule provides a grandfather exemption for real estate brokerage services if a credit union service organization (CUSO) was providing that service prior to April 1, 1998, and requests comment on that exemption and whether real estate brokerage services should be reinstated as a permissible CUSO service.

DATES: This rule is effective July 22, 1999. Comments must be received on or before August 20, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518-6360.

SUPPLEMENTARY INFORMATION:**Background**

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712

sets forth the requirements for FCUs investing in or lending to CUSOs. The NCUA Board is issuing a separate final rule adopting the proposed amendments.

Although the Board did not request comment on the issue of real estate brokerage services, eight commenters objected to the Board's removal in March 1998 of real estate brokerage services from the list of permissible services. 12 CFR 712.6(b). The March rule allows a CUSO currently providing this service to continue until April 1, 2001. 12 CFR 712.9. In the alternative, the commenters requested that CUSOs currently providing real estate brokerage services be permitted to continue these services under a grandfather provision.

The Board continues to have concerns with conflicts and the appearance of conflicts between real estate brokerage CUSOs and the credit unions such CUSOs serve. However, because the existing real estate brokerage CUSOs do not appear to present a safety and soundness risk, the Board is willing to provide a grandfather exemption for existing real estate brokerage CUSOs. This interim final rule amends § 712.6(b) so that CUSOs engaged in real estate brokerage services prior to April 1, 1998 may continue to provide that service.

Section 712.5 allows the Board to limit or discontinue a CUSO service if it has supervisory, legal, or safety and soundness concerns. The Board cautions that if a conflict between the real estate brokerage CUSO and the FCU's loan program arises, the Board may order the FCU to divest its investment in the real estate brokerage CUSO.

The Board believes good cause exists to issue this provision as an interim final rule. The rule is relieving a regulatory burden and CUSOs engaging in this activity must either know that they are going to be allowed to continue or begin the process of closing down the business.

Amendment

Section 712.6 is revised to allow FCUs to invest in or loan to CUSOs engaged in real estate brokerage services provided the CUSO was engaging in that activity prior to April 1, 1998.

Request for Comment

The Board is requesting comment on the change made by this interim final rule providing a grandfather exemption for real estate brokerage CUSOs in existence prior to April 1, 1998. The Board is also requesting comment on whether real estate brokerage services

should be reinstated as a permissible CUSO activity.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under \$1 million in assets). The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendment to the rule reduces regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This interim rule has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this interim rule does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

1. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. In § 712.6 revise paragraph (b) to read as follows:

§ 712.6 What activities and services are prohibited for CUSOs?

* * * * *

(b) *Real estate brokerage CUSO.* An FCU may not invest in or loan to a CUSO engaged in real estate brokerage services, except those in existence prior to April 1, 1998.

[FR Doc. 99-15648 Filed 6-21-99; 8:45 am]

BILLING CODE 7535-01-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-23]

Modification of Class E Airspace; Neillsville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Neillsville, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, and a Nondirectional Beacon (NDB) SIAP to Rwy 27, Amendment (Amdt) 6, have been developed for Neillsville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Neillsville, WI (64 FR 18584). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation, and three additional comments were received from the Manager of the Neillsville Airport, WI, the Assistant Manager of the Marshfield Airport, WI, and the President of Duffy's Aircraft Sales and Leasing, Inc., Neillsville, WI. These three commenters all supported the proposal while at the same time expressing a safety-related concern that the adjacent Falls Military Operations Area (MOA) does not exclude enough of the controlled airspace around Neillsville Municipal Airport. Any consideration of modification to a MOA would be a separate non-rulemaking airspace action and is beyond the scope of this proposal. However, these comments relating to the MOA have been forwarded to the appropriate Military Representatives for their consideration. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Neillsville, WI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP, and NDB Rwy 27 SIAP, Amdt 6, at Neillsville Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action"

under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL WI E5 Neillsville, WI [Revised]

Neillsville Municipal Airport, WI
(Lat. 44°33'29" N., long. 90°30'44" W.)
Neillsville NDB
(Lat. 44°33'26" N., long. 90°30'55" W.)

That airspace extending upward from 700 feet above the surface within an 6.3-mile radius of the Neillsville Municipal Airport and within 2.5 miles each side of the 091° bearing from the Neillsville NDB extending from the 6.3-mile radius to 7.0 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15855 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–19]

Modification of Class E Airspace; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Savanna, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 has been development for Tri-Township Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport. **EFFECTIVE DATE:** 0901 UTC, September 09, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 30, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Savanna, IL (64 FR 15139). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Savanna, IL, to accommodate aircraft executing the

proposed GPS Rwy 13 SIAP at Tri-Township Airport by modifying the existing controlled airspace. The area will be depicted on appropriation aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL IL E5 Savanna IL [Revised]

Savanna, Tri-Township Airport, IL
(Lat 42°02'45" N., long. 90°06'27" W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.
Christopher R. Blum,
Manager, Air Traffic Division.
[FR Doc. 99-15854 Filed 6-21-99; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-18]

Modification of Class E Airspace; Hamilton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Hamilton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 11 has been developed for Hamilton-Fairfield Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.
EFFECTIVE DATE: 0901 UTC, September 9, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 30, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hamilton, OH (64 FR 15140). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E

airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Hamilton, OH, to accommodate aircraft executing the proposed GPS Rwy 11 SIAP at Hamilton-Fairfield Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL OH E5 Hamilton, OH [Revised]

Hamilton, Hamilton-Fairfield Airport OH (Lat. 39°21'52" N., long. 84°31'29" W.)
Hamilton NDB (Lat. 39°22'21" N., long. 84°34'21" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Hamilton-Fairfield Airport and within 2.9 miles either side of the 280° bearing from the Hamilton NDB, extending from the 6.6-mile radius to 10.0 miles west of the NDB, excluding that airspace within the Covington, KY, and Middletown, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.
[FR Doc. 99-15853 Filed 6-21-99; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-20]

Establishment of Class E Airspace; De Kalb, IL

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This notice establishes Class E airspace at De Kalb, IL. A Localizer/Distance Measuring Equipment (LOC/DME) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 2 has been developed for De Kalb Taylor Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 09, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-250, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at De Kalb, IL (64 FR 16371). The proposal was to add controlled airspace extending upward from 700 to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while

transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at De Kalb, IL, to accommodate aircraft executing the proposed LOC/DME Rwy 2 SIAP at De Kalb Taylor Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

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

* * * * *

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

* * * * *

AGL IL E5 De Kalb IL [New]

De Kalb Taylor Municipal Airport, IL [Lat. 41° 55' 55" N., long. 88° 42' 30" W.]

That airspace extending upward from 700 feet above the surface within an 6.6-mile radius of the De Kalb Taylor Municipal Airport, excluding that airspace which overlies the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–15852 Filed 6–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–17]

Modification of Class E Airspace; Willmar, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Willmar, MN. A VHF Omnidirectional Range (VOR) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, Amendment (Amdt) 2, and a VOR SIAP Rwy 10, Amdt 2, have been developed for Willmar Municipal-John L. Rice Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action adds a northwest extension and a southeast extension to the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Willmar, MN (64 FR 16368). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Willmar, MN, to accommodate aircraft executing the proposed VOR or GPS Rwy 28 SIAP, Amdt 2, and the VOR SIAP Rwy 10, Amdt 2, at Willmar Municipal-John L. Rice Field Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL MN E5 Willmar MN [Revised]

Willmar Municipal-John L. Rice Field Airport, MN
(Lat. 45°06'56" N. long. 95°05'20" W.)
Willmar VOR/DME
(Lat. 45°07'03" N. long. 95°05'26" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Willmar Municipal-John L. Rice Field Airport and within 2.4 miles each side of the Willmar VOR/DME 115° radial extending from the 6.6-mile radius to 7.0 miles southeast of the airport, and within 2.4 miles each side of the Willmar VOR/DME 286° radial extending from the 6.6-mile radius to 7.0 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 99–15851 Filed 6–21–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–22]

Modification of Class E Airspace; Juneau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Juneau, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 20 has been developed for Dodge County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 8, 1999, the FAA proposed to amend 14 CFR 71 to modify Class E airspace at Juneau, WI (64 FR 17133). The proposal was to add controlled airspace extending upward from 700 to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment strongly supporting the proposal was received from the Wisconsin Department of Transportation. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR 71 modifies Class E airspace at Juneau, WI, to accommodate aircraft executing the proposed GPS Rwy 20 SIAP at Dodge County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action”

under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL WI E5 Juneau, WI [Revised]

Juneau, Dodge County Airport, WI
(Lat. 43°25'36" N., long. 88° 42'N12"W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Dodge County Airport, excluding that airspace within the Oshkosh, WI, Hartford, WI, and Watertown, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 99–15850 Filed 6–21–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-21]

Modification of Class E Airspace;
Kokomo, INAGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Kokomo, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Logansport Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

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

SUPPLEMENTARY INFORMATION:**History**

On Monday, April 5, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kokomo, IN (64 FR 16371). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Kokomo,

IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP, and the GPS Rwy 27 SIAP, at Logansport Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL IN E5 Kokomo, IN [Revised]

Kokomo Municipal Airport, IN
(Lat. 40°31'41" N., long. 86° 03' 32" W.)
Grissom Air Reserve Base, IN
(Lat. 40°38'53" N., long. 86° 09' 08" W.)
Logansport Municipal Airport, IN

(Lat. 40° 42' 41" N., long. 86° 22' 28" W.)
Peru Municipal Airport, IN
(Lat. 40° 47' 11" N., long. 86° 08' 47" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Kokomo Municipal Airport and within 2.6 miles each side of the ILS localizer northeast course extending from the 7.0-mile radius to 10.8 miles northeast of the airport; and within a 7.0-mile radius of the Grissom ARB and within 3.8 miles each side of the ILS localizer northeast course extending from the 7.0-mile radius to 14.5 miles northeast of the base, and within 2.0 miles each side of the ILS localizer southwest course extending from the 7.0-mile radius to 14.5 miles southwest of the base; and within a 7.7-mile radius of the Logansport Municipal Airport; and within a 6.3-mile radius of the Peru Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on: June 8, 1999.

Christopher R. Blum,*Manager, Air Traffic Division.*

[FR Doc. 99-15849 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION**16 CFR Part 23****Guides for the Jewelry, Precious Metals, and Pewter Industries**

AGENCY: Federal Trade Commission.

FINAL ACTION: Revision of the Guides for the Jewelry, Precious Metals, and Pewter Industries.

SUMMARY: In a separate document published in the **Federal Register** on June 9, 1999, at 64 FR 30898, the Federal Trade Commission (“Commission”) rescinded the Guides for the Watch Industry (“Watch Guides”). This **Federal Register** document revises the Commission’s Guides for the Jewelry, Precious Metals, and Pewter Industries to remove a reference to the Watch Guides.

EFFECTIVE DATE: June 22, 1999.

ADDRESSES: Requests for copies of this **Federal Register** document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. This document also is available on the Internet at the Commission’s website, <<http://www.ftc.gov>>.

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326-3030.

SUPPLEMENTARY INFORMATION: In a separate **Federal Register** document published in the **Federal Register** on

June 9, 1999, at 64 FR 30898, the Commission rescinded the Guides for the Watch Industry, 16 CFR part 245. The Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides"), 16 CFR part 23, refer to the Watch Guides in footnote 1 in § 23.0. Because the Watch Guides have been rescinded, the Commission is amending the Jewelry Guides to remove the reference to the Watch Guides in footnote 1 in § 23.0.

List of Subjects in 16 CFR Part 23

Advertising, Jewelry, Labeling, Trade practices, Watch bands.

The Commission, under the authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends 16 CFR part 23 as follows:

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

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

§ 23.0 [Amended]

2. Section 23.0 is amended by removing and reserving footnote 1.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-15840 Filed 6-21-99; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegation of Authority and Organization; Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the general redelegation of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN); the Director, Office of Regulations and Policy, CFSAN; and the Director, Office of Premarket Approval, CFSAN authority to implement the Federal Food, Drug, and Cosmetic Act (the act), as amended hereafter. This redelegation is necessary to improve the efficiency of program operations.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT:

Louis B. Brock, Regulation

Coordination Staff (HFS-24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4273, or

Loretta W. Davis, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4809.

SUPPLEMENTARY INFORMATION: Section 309 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) amended section 409 of the act (21 U.S.C. 348). New section 409(h) of the act requires manufacturers or suppliers of food-contact substances to notify the Secretary of Health and Human Services (and by delegation, the Commissioner of Food and Drugs), at least 120 days prior to the introduction or delivery for introduction into interstate commerce, of the identification and use of food-contact substances, and to provide information showing that the substance is safe according to the standards of section 409(c)(3)(A) of the act.

FDA is amending the general redelegation of authority from the Commissioner of Food and Drugs to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN); the Director, Office of Regulations and Policy, CFSAN; and the Director, Office of Premarket Approval, CFSAN authority to implement the act, as amended hereafter. This redelegation is necessary to improve the efficiency of program operations. Further redelegation of the authorities is not authorized at this time. Authority delegated to a position may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; 15 U.S.C. 1451-1461; 21 U.S.C. 41-50, 61-63, 141-149, 321-394, 467f, 679(b), 801-886, 1031-1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1;

1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124-131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220-223.

2. Section 5.61 is amended by adding paragraph (i) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, color additives, nutrient content claims, and health claims.

* * * * *

(i) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs under section 409(h) of the act, excluding the duties set out in section 409(h)(5) of the act, regarding premarket notification of food-contact substances:

(1) The Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director, Office of Regulations and Policy, CFSAN.

(3) The Director, Office of Premarket Approval, CFSAN.

Dated: June 11, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99-15753 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[TD 8819]

RIN 1545-AX14

Use of Actuarial Tables in Valuing Annuities, Interests for Life or Terms of Years, and Remainder or Reversionary Interests; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Friday, April 30, 1999 (64 FR 23187) relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests.

DATES: This correction is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under

section 7520 and 2031 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8819), that were the subject of FR Doc. 99-10533 is corrected as follows:

1. On page 23188, in the table entitled "CROSS REFERENCE TO REGULATION SECTIONS", in the column entitled "Interest rate", line 11, the language "§ 7520....." is corrected to read "§ 7520".

PART 1—[CORRECTED]

§ 1.170A-12T [Corrected]

2. On page 23189, column 3, § 1.170A-12T(b)(2), the formula is corrected to read as follows:

§ 1.170A-12T Valuation of a remainder interest in real property for contributions made after July 31, 1969 (temporary).

* * * * *
(b) (2) * * *

$$\left(1 + \frac{i}{2}\right) \sum_{t=0}^{n-1} v^{(t+1)} \left[\left(1 - \frac{l_{x+t+1}}{l_x}\right) - \left(1 - \frac{l_{x+t}}{l_x}\right) \right] \left(1 - \frac{1}{2n} - \frac{t}{n}\right)$$

* * * * *

§ 1.7520-1T [Corrected]

3. On page 23211, column 1, § 1.7520-1T(c)(2) heading, line 3, the language "interest rates between 2.2 and 26" is corrected to read "interest rates between 2.2 and 22".

4. On page 23211, column 1, § 1.7520-1T(c)(2)(iii), line 5, the language "depreciation adjustment

factors. See" is corrected to read "depreciation adjustment factors. See".

PART 20—[CORRECTED]

§ 20.2031-7A [Corrected]

5. On page 23212, column 1, § 20.2031-7A(e)(4), line 9, the language "paragraph (b)(4), and Table B, Table J," is corrected to read "paragraph (e)(4), and Table B, Table J,".

6. On page 23212, column 2, § 20.2031-7T(c), the table at the end of the paragraph is corrected to read as follows:

§ 20.2031-7T Valuation of annuities, interests for life or term of years, and remainder or reversionary interests (temporary).

* * * * *
(c) * * *

	Valuation dates		Applicable regulations
	After	Before	
12-31-51		01-01-52	20.2031-7A(a).
12-31-70		01-01-71	20.2031-7A(b).
11-30-83		12-01-83	20.2031-7A(c).
04-30-89		05-01-89	20.2031-7A(d).
		05-01-99	20.2031-7A(e).

* * * * *

7. On page 23222, § 20.2031-7T(d)(7), in the table entitled "TABLE 90 CM.—LIFE TABLE APPLICABLE AFTER APRIL 30, 1999", the column headings are corrected to read as follows:

§ 20.2031-7T Valuation of annuities, interests for life or term of years, and remainder or reversionary interests (temporary).

* * * * *
(d) * * *

(7) * * *

TABLE 90 CM.—LIFE TABLE APPLICABLE AFTER APRIL 30, 1999

Age x	l(x)	Age x	l(x)	Age x	l(x)
(1)	(2)	(1)	(2)	(1)	(2)

* * * * *

§ 20.7520-1T [Corrected]

8. On page 23223, column 2, § 20.7520-1T(c)(2) heading, line 3, the

language "interest rates between 2.2 and 26" is corrected to read "interest rates between 2.2 and 22".

PART 25—[CORRECTED]

§ 25.7520-1T [Corrected]

9. On page 23227, column 3, § 25.7520-1T(c)(2) heading, line 3, the language "interest rates between 2.2 and 26" is corrected to read "interest rates between 2.2 and 22".

PARTS 1, 20, 25—[CORRECTED]

10. On page 23228, in the table in amendatory instruction Par.32, the entry for 1.170A-6 (c)(5), *Example* (2)(c) is added in numerical order; and the

entries for 1.170A-6(c)(5), *Example* (2)(a), first sentence; 1.170A-6(c)(5), *Example* (3)(a), seventh and eighth sentences (the fifth entry from top of chart); 1.642(c)-A6(e)(2)(i); 20.2055-2 (f)(2)(iv), *Example* (3), second sentence;

20.2055-2(f)(2)(iv), *Example* (3), third sentence; 20.2056A-4(c)(4)(ii)(B), penultimate sentence; and 25.7520-1(c)(1), third sentence are corrected to read as follows:

Section	Remove	Add
1.170A-6(c)(5), <i>Example</i> (2)(a), first sentence	1970.	
1.170A-6(c)(5), <i>Example</i> (2)(c)	for 1970.	
1.170A-6(c)(5), <i>Example</i> (3)(a), seventh, eighth, and ninth sentences	1972	1973.
1.642(c)-6A(e)(2)(i)	§ 20.2031-7(d)(6) ..	§ 20.2031-7A(e)(4).
20.2055-2(f)(2)(iv), <i>Example</i> (3), third sentence	§ 20.2031-10(e)	§ 20.2031-7A(c).
20.2055-2(f)(2)(iv), <i>Example</i> (3), fourth sentence	§ 20.2031-10(f)	§ 20.2031-7A(d).
20.2056A-4(c)(4)(ii)(B), fifth sentence	Alpha Volume	Book Aleph.
25.7520-1(c)(1), third sentence	Section 20.2031-7(d)(6) of this chapter (Estate Tax Regulations) contains.	Sections 20.2031-7(d)(6) and 20.2031-7A(e)(4) of this chapter contain.

Michael Slaughter,
Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).
 [FR Doc. 99-15786 Filed 6-21-99; 8:45 am]
 BILLING CODE 4830-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-99-042]

RIN 2115-AA97

Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Hempstead Harbor for the Glen Cove, NY fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Hempstead Harbor.

DATES: This rule is effective from 8:30 p.m. until 10 p.m. on July 4, 1999, and July 5, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard

Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354-4193.

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

SUPPLEMENTARY INFORMATION:
Regulatory History

On May 10, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY in the **Federal Register** (64 FR 24987). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to promulgate a NPRM and a final rule that would be effective at least 30 days after it was published. The Coast Guard published an NPRM with a 30-day comment period, but this did not leave sufficient time to publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent

traffic from transiting a portion of Hempstead Harbor, Glen Cove, New York, and provide for the safety of life on navigable waters. Additionally, the public was notified of this event when the NPRM was published in the Local Notice to Mariners on May 12, 1999.

Background and Purpose

Bay Fireworks submitted an Application for Approval of a Marine Event for a fireworks display on Hempstead Harbor. This regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51'58"N 073°39'34"W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The temporary safety zone is in effect from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is canceled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The temporary safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of Hempstead Harbor. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not

precluded from mooring at or getting underway from public or private facilities at Glen Cove or Red Spring Point, NY in the vicinity of this event. Public notifications will be made prior to the event via Local Notice to Mariners, and marine information broadcasts. The Coast Guard limited the comment period for this NPRM to 30 days because the temporary safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits.

Discussion of Comments and Changes

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

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of Hempstead Harbor during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at public or private facilities in Glen Cove or Red Spring Point, NY in the vicinity of this event, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

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

For reasons discussed in the Regulatory Evaluation section above, the

Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates

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

Environment

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

List of Subjects in 33 CFR 165

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01-042 to read as follows:

§ 165.T01-042 Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY.

(a) *Location.* The following area is a safety zone: All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40° 51' 58" N 073° 39' 34" W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

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

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

Dated: June 11, 1999.

L.M. Brooks,

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

[FR Doc. 99-15867 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 027-3038; FRL-6363-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State

Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires all major sources of nitrogen oxides (NO_x) to implement reasonably available control technology (RACT). This revision was submitted to comply with the NO_x requirements of the Clean Air Act (the Act). Also, Maryland's regulations are being revised by adding and amending definitions. The intended effect of this action is to grant conditional limited approval of Maryland's NO_x RACT regulation and to approve the new and revised definitions submitted by the State of Maryland.

EFFECTIVE DATE: This final rule is effective on July 22, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

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

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1999 (64 FR 8034), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed conditional limited approval of Maryland's NO_x RACT rule, Code of Maryland Regulations (COMAR) 26.11.09.08. The formal SIP revision was submitted by the Maryland Department of the Environment on June 8, 1993 and amended on July 11, 1995.

Also submitted with the NO_x RACT rule were amendments to COMAR 26.11.09.01 and 26.11.01.01, revising the definition of "fuel burning equipment" and adding definitions for the terms "annual combustion analysis," "space heater," and "system" used in COMAR 26.11.09.08. EPA is fully approving these amendments. Other specific requirements of Maryland's NO_x RACT rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

II. Comments Received on EPA's Notice of Proposed Rulemaking

EPA received three letters in response to the February 18, 1999 NPR, all making the same comment. The following discussion summarizes and responds to the comment received.

Comment 1: The commenters oppose submittal of COMAR 26.11.01.11 for inclusion in the Maryland SIP to satisfy the reporting and recordkeeping requirements of Maryland's NO_x RACT rule. The commenters stated that inclusion of this regulation would cause consequences beyond that of using continuous emissions monitoring (CEM) as a NO_x measurement tool. The comment also stated that COMAR 26.11.01.11 should be considered for inclusion in the SIP on its own merits, and the effort to include it "should initiate at the State level."

Response 1: In the State's NO_x RACT rule, Maryland established that the monitoring requirements for NO_x facilities would be those set forth in COMAR 26.11.01.10 and .11. COMAR 26.11.01.10 has been approved into the Maryland SIP; however, COMAR 26.11.01.11 has never been submitted to EPA for approval. Maryland's NO_x RACT rule will be federally enforceable only if the regulations cited by this rule are themselves federally enforceable. As pointed out in the second condition in the NPR, EPA left it to the State to decide whether or not to initiate efforts to include COMAR 26.11.01.11 in the SIP. The second condition in the NPR stated that Maryland may submit COMAR 26.11.01.11 or revise the rule to explain the reporting requirements. Maryland is currently in the process of revising its NO_x RACT rule to address the NO_x monitoring requirements and satisfy this condition.

Terms of Conditional Approval

EPA cannot grant full approval of Maryland's NO_x RACT rule because not every major NO_x source is covered by the presumptive limits in § C or RACT provisions in §§ H and J. Maryland has the option to submit individual RACT determinations as SIP revisions, thus the RACT rule will not be approvable until all of its components are approvable. Therefore, EPA is conditionally approving Maryland's NO_x RACT regulations, based on the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to MDE. Maryland submitted this commitment in a letter to EPA, dated October 29, 1998.

To fulfill the condition of this approval the State of Maryland must, within 12 months of the effective date of this rulemaking:

1. Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions;

2. Either submit COMAR 26.11.01.11 to EPA for approval, or revise § F to clearly explain the reporting and record keeping requirements in COMAR 26.11.09.08;

3. Change COMAR 26.11.09.08D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

Once EPA has determined that the State has met these conditions, EPA shall remove the conditional nature of its approval and the Maryland NO_x regulation SIP revision will, at that time, retain limited approval status. Should the State fail to meet the conditions specified above, the final conditional limited approval of the Maryland NO_x RACT regulation SIP revision shall convert to a disapproval.

Terms of Limited Approval

While EPA does not believe that the Maryland generic NO_x RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also granting limited approval of the Maryland generic RACT regulation on the basis that it strengthens the Maryland SIP. After Maryland has fulfilled the conditions of this rule and once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

III. Final Action

EPA is granting conditional limited approval to Maryland's NO_x RACT rule, COMAR 26.11.09.08, as a revision to the Maryland SIP, and is approving amendments to COMAR 26.11.01.01.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government,

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

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of

Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. versus U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not

impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Maryland's

generic NO_x RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 2, 1999.

Thomas Maslany,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(143) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(143) Revisions to the Code of Maryland Air Regulations (COMAR) 26.11.01.01 and 26.11.09.01, and limited approval of revisions to COMAR 26.11.09.08, submitted on June 8, 1993 and July 11, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting COMAR 26.11.09.08, Control of NO_x Emissions from Major Stationary Sources and amendments to COMAR 26.11.09.01, Definitions.

(B) COMAR 26.11.09.08, Control of NO_x Emissions from Major Stationary Sources, effective on May 10, 1993, replacing the existing COMAR 26.11.09.08.

(C) Amendment to COMAR 26.11.09.01, Definitions, effective on May 10, 1993.

(D) Letter of July 11, 1995 from the Maryland Department of the Environment transmitting amendments to COMAR 26.11.09.08, Control of NO_x

Emissions from Major Stationary Sources, amendments to COMAR 26.11.01.01, Definitions and COMAR 26.11.09.01, Definitions.

(E) Amendments to COMAR 26.11.09.08, Control of NO_x Emissions from Major Stationary Sources, effective on June 20, 1994 and May 8, 1995.

(F) Amendment to COMAR 26.11.01.01, Definitions, effective on June 20, 1994.

(G) Amendments to COMAR 26.11.09.01, Definitions, effective on June 20, 1994 and on May 8, 1995.

(ii) Additional material.

(A) Remainder of June 8, 1993 and July 11, 1995 State submittals.

(B) Letter of October 29, 1998 from the Maryland Department of the Environment agreeing to meet certain conditions by no later than 12 months after July 22, 1999.

3. Section 52.1072 is amended by adding paragraph (e) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(e) Revisions to the Code of Maryland Air Regulations (COMAR), rule 26.11.09.08, pertaining to NO_x RACT submitted on June 8, 1993 and amended on July 11, 1995 by the Maryland Department of the Environment, is conditionally approved based on certain contingencies. Maryland must meet the following conditions by no later than 12 months after July 22, 1999. These conditions are that Maryland must:

(1) Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions;

(2) Either submit COMAR 26.11.01.11 to EPA for approval, or revise COMAR 26.11.09.08F to clearly explain the reporting and record keeping requirements in COMAR 26.11.09.08;

(3) Change COMAR 26.11.09.08D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

[FR Doc. 99-15713 Filed 6-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-6363-5]

Final Determination To Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The EPA is extending by six months the deadline for taking final action on petitions that three States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to ozone nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this document, EPA is making that determination. The three States that have submitted the petitions are Delaware, Maryland and New Jersey.

EFFECTIVE DATE: This action is effective as of June 14, 1999.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC 2344, 401 M St. SW, Washington, DC 20460, (202) 260-5892, hoffman.howard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action is procedural, and is set in the context of a series of actions EPA is taking to address the problem of the transport of tropospheric ozone and its precursors—especially oxides of nitrogen (NO_x)—across the eastern region of the United States.

By a document dated May 25, 1999, 64 FR 28250, EPA promulgated a final rulemaking concerning petitions submitted by eight northeastern States under section 126(b), which authorizes States or political subdivisions to petition EPA for a finding that major stationary sources in upwind states emit in violation of the prohibition of section 110(a)(2)(D), by contributing significantly to nonattainment problems in downwind States. The eight States submitting the petitions were Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EPA has recently received additional petitions under section 126 from the States of Delaware (received on June 11,

1999), Maryland (received on May 3, 1999), and New Jersey (received on April 15, 1999). These petitions seek findings, similar to those for which EPA granted affirmative technical determinations, for specified sources in specified upwind States.

Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. This period would expire, for the Delaware petition, on August 10, 1999; for the Maryland petition, on July 2, 1999; and, for the New Jersey petition, on June 14, 1999.

Under section 126(c), with respect to any existing sources for which EPA makes the requested finding, those sources must cease operations within three months of the finding, except that those sources may continue to operate if they comply with emissions limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) provides that EPA must allow a public hearing for the submitted petitions. In addition, EPA's action under section 126 is subject to the procedural requirements of CAA section 307(d). See section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides: Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

Section 307(d)(10) applies, by its terms, to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months. In previous rulemaking concerning the earlier section 126 petitions, EPA granted itself several time extensions for acting on those petitions. See, e.g., 62 FR 54769 (Oct. 22, 1997).

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d)

procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex, although much technical work has already been accomplished in the course of other rulemakings.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the other issues. The schedule must afford EPA adequate time to prepare a notice that clearly elucidates the issues so as to facilitate public comment, as well as afford the public adequate time to comment.

Accordingly, extending the date for action on the section 126 petitions for six months is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

II. Final Action

A. Final Determination

Today, EPA is determining, under CAA section 307(d)(10), that a six-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Accordingly, EPA is granting a six-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the dates for action on the section 126 petitions are: Delaware: February 10, 2000
Maryland: January 3, 2000
New Jersey: December 14, 1999

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to

the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on June 14, 1999. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by six months the upcoming deadlines for the three section 126 petitions. Moreover, EPA intends to use immediately the six-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq., EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because it (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., EPA must propose a regulatory flexibility analysis

assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. of the APA, 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This action does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of June 22, 1999.

Dated: June 14, 1999.

Carol M. Browner,
Administrator.

[FR Doc. 99-15543 Filed 6-21-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL-64-2-5807; FRL-6344-5]

RIN 2060-AE41

National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants pursuant to section 112 of the Clean Air Act (Act). Major source facilities subject to the rule emit hydrochloric acid (HCl), a hazardous air

pollutant (HAP). Chronic exposure to HCl has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute inhalation exposure to HCl may cause hoarseness, inflammation and ulceration of the respiratory tract, chest pain, and pulmonary edema. Hydrochloric acid regeneration plants also emit chlorine (Cl₂), which is also a HAP. Acute exposure to high levels of Cl₂ results in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, Cl₂ is a potent irritant to the eyes, the upper respiratory tract, and lungs. The final rule provides public health protection by requiring new or existing pickling lines that use hydrochloric acid as the primary pickling solution, hydrochloric acid regeneration plants, and acid storage tanks to meet emission standards reflecting application of the maximum achievable control technology (MACT). Implementation of the rule is expected to reduce HAP emissions by more than 2,200 megagrams per year (Mg/yr) (2,500 tons per year (tpy) from current levels.

EFFECTIVE DATE: This final rule is effective on June 22, 1999. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: Docket. Docket A-95-43, containing the information considered by the EPA in development of the final rule, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jim Maysilles, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-3265, facsimile number (919) 541-5600, electronic mail address, "maysilles.jim@epa.gov".

SUPPLEMENTARY INFORMATION:

Regulated Entities.

Entities potentially regulated by this action are those that emit or have the potential to emit HAP listed in section 112(b) of the Act. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	HCl steel pickling plants and acid regeneration plants (SIC 3312, 3315, and 3317).
Federal government ..	Not affected.
State/local/tribal government.	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities of which EPA is aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine if your facility is regulated by this action, you should carefully examine the applicability criteria in section III.A of this document and in § 63.1155 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** SECTION.

Judicial Review

The NESHAP for Steel Pickling Facilities—HCl Process was proposed on September 18, 1997 (62 FR 49051); this action announces EPA's final decisions on this rule. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements established by today's final rule may not be challenged later in any civil or criminal proceeding brought by EPA to enforce these requirements.

Technology Transfer Network

In addition to being available in the docket, an electronic copy of today's document, which includes the regulatory text, is available through the TTN at the UATW. Following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (<http://www.epa.gov/ttn/oarpg/t3pfpr.html>). The TTN facilitates the exchange of information in various areas of air pollution control, such as technology. If more information on the TTN is needed, call the TTN HELP line at (919) 541-5384.

Background Information Document

A background information document (BID) for the promulgated standards containing a summary of all the public

comments made on the proposed rule and the EPA's response to those comments is available in the docket for this rulemaking. The BID also is available from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487-4650. Please refer to "National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants—Background Information for Promulgated Standards," (EPA-453/R-98-010b). The BID is posted on the Technology Transfer Network (TTN) at the Unified Air Toxics Website (UATW) (http://www.epa.gov/ttn/uatw/7_10yrstds.html).

Outline

The following outline is provided to aid in reading this preamble to the final rule:

- I. Statutory Authority
- II. Background
- III. Summary
 - A. Summary of Final Rule and Changes Since Proposal
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 - 2. Definitions
 - 3. Emission Standards
 - 4. Operational and Equipment Standards
 - 5. Compliance Dates
 - 6. Maintenance Requirements
 - 7. Performance Testing and Test Methods
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 - 9. Notification, Reporting, and Recordkeeping Requirements
 - 10. Delegation of Authority
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 - B. Summary of Impacts
- IV. Summary of Major Public Comments and Responses
 - A. Applicability
 - B. Definitions
 - C. Emission Standards
 - 1. Pickling Lines
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 - 4. Assessment of HCl as a Threshold Pollutant Under Section 112(d)(4)
 - D. Compliance Dates and Maintenance Requirements
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- V. Administrative Requirements
 - A. Docket
 - B. Executive Order 12866: Regulatory Planning Review
 - C. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - D. Executive Order 12875: Enhancing the Intergovernmental Partnerships
 - E. Unfunded Mandates Reform Act
 - F. Regulatory Flexibility Act
 - G. Submission to Congress and the General Accounting Office

- H. Paperwork Reduction Act
- I. National Technology Transfer and Advancement Act
- J. Pollution Prevention Act
- K. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Statutory Authority

The statutory authority for this rule is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

II. Background

Section 112(c) of the Act requires the EPA to list each category of major and area sources, as appropriate, emitting one or more of the HAP listed in section 112(b) of the Act. On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated, followed by a schedule for promulgation of those standards (58 FR 63941, December 3, 1993). "Steel Pickling—HCl Process" is included on the list of major sources for which EPA must establish national emission standards. The term "major source" means a source emitting 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

The EPA proposed national emission standards for this source category on September 18, 1997 (62 FR 49052). The proposed rule, BID, and other materials containing information used in developing the proposed rule were made available for review and comment. A 60-day comment period from September 18, 1997 to November 17, 1997, was provided to accept written comments from the public. The opportunity for a public hearing was provided to allow interested people to present oral comments on the rulemaking. However, the EPA did not receive a request for a public hearing, so a public hearing was not held.

The EPA received a total of 15 comments on the proposed standards from industry, trade associations, States and representative associations, vendors, and engineering firms. A copy of each comment letter is available for public inspection in Docket No. A-95-43. The EPA held followup discussions with various commenters to clarify specific issues raised in their written comments that were submitted to the Agency during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for inspection in the docket.

All of the comments received were reviewed and carefully considered by

the EPA. Changes to the rule were made based on public comments where EPA determined it to be appropriate. The final rule and changes made since proposal are summarized in section III of this document; a summary of responses to major comments is included in section IV. Additional discussion of the EPA's responses to public comments is presented in the BID for the final rule.

III. Summary

A. Summary of Final Rule and Changes Since Proposal

1. Applicability

Several changes were made to the applicability provisions of the proposed rule to clarify the regulated source category and affected sources. As proposed, the regulated source category includes steel pickling facilities and acid regeneration plants. Thus, the regulated source category may consist of a stand-alone steel pickling facility or acid regeneration plant that is a major source of HAP or a steel pickling facility and/or acid regeneration plant that is part of a major source of HAP. The title of the final rule has been changed to include acid regeneration plants as part of the source category. This change is made to clarify that the regulation applies to hydrochloric acid regeneration plants, which is not apparent in the original title.

A steel pickling facility is a facility with a collection of equipment and tanks configured for the pickling process, including immersion, drain, and rinse tanks. A steel pickling facility may have one or more pickling lines. Conditions that distinguish pickling from other operations such as cleaning or surface activation are now defined such that each new or existing pickling line (batch or continuous process) using an acid solution in any tank in which hydrochloric acid is at a concentration of 6 percent by weight or greater and has a temperature of 100° F or greater is subject to the rule. For the purposes of the rule, steel pickling is limited to hydrochloric acid pickling of carbon steels, which contain approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6 percent or less silicon, and 0.6 percent or less copper.

An acid regeneration plant includes the collection of equipment and processes configured to reconstitute fresh hydrochloric acid pickling solution from spent pickle liquor using a thermal treatment process. A new or existing plant that regenerates only pickling solution other than HCl is not subject to the rule.

The rule is not applicable to facilities that pickle only specialty steels. Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels. Specialty steels are pickled by a process that may include the use of hydrochloric acid but also includes the use of other acids, which may be mixed with hydrochloric acid in the same pickling bath or used in separate baths as part of a multiacid/multibath pickling sequence. The EPA will determine at a later date if the specialty steel pickling process should or should not be subject to the requirements of a rule that limits HCl emissions.

2. Definitions

The title acid regeneration plant is changed to hydrochloric acid regeneration plant to clarify the applicability of the rule.

The title acid storage tank is changed to hydrochloric acid storage vessel to clarify the applicability of the rule. The definition is changed to apply only to a stationary vessel, not a temporary or mobile vessel, that is used for the bulk containment of virgin or regenerated hydrochloric acid.

The term "vessel" rather than "tank" is used for containers used to store hydrochloric acid, in order to be consistent with terminology used in other subparts of this part to define containers that are used for chemical storage. Similarly, the term "tank" is used for containers that are integral parts of processes, such as acid baths used in pickling lines.

A definition of carbon steel is added to identify processes to which the rule applies.

The definition of closed-vent system is modified to state that emissions may be transported into any device that is capable of reducing or collecting

emissions, not necessarily a control device.

The definition *hydrochloric acid regeneration plant* production mode is added to assist in clarifying that the operating and monitoring requirements for hydrochloric acid regeneration plants apply only while the plant is operating in a manner to produce usable regenerated acid or iron oxide.

The definition of *responsible maintenance official* is added to identify a person who is designated to have signature authority for records and reports required under this rule.

The definition of *specialty steel* is added to identify similar processes to which the rule does not apply.

The final rule defines *steel pickling* to mean "the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of the metal surface prior to plating or coating."

The definition of *steel pickling facility* is changed to refer only to facilities that conduct pickling.

Hydrochloric acid regeneration plants are discussed separately and also specifically identified in the title of the final rule as distinct entities.

3. Emission Standards

No changes were made regarding the technologies serving as the basis of the proposed standards. The emission control technology identified as achieving the MACT floor control level (wet scrubbing) is discussed in section VII.C of the preamble to the proposed rule (62 FR 49052, September 18, 1997).

The emission standards in §§ 63.1157 and 63.1158 of the proposed rule have

been revised. Sections 63.1157 and 63.1158 of the proposed rule included HCl emission standards for existing and new HCl pickling lines based on two options: An HCl emission rate corresponding to a minimum collection efficiency of the air pollution control device, or a maximum concentration of HCl in the exit gases. Based on public comment, EPA revised the level of the standards from that proposed for pickling lines and acid regeneration plants. The final standards are shown in Table 1.

The final standards retain the alternative to the Cl₂ concentration standard for existing acid regeneration plants that allows the owner or operator to request approval for a source-specific standard based on the maximum design temperature and minimum excess air that allows production of iron oxide of acceptable quality. The owner or operator must establish the source-specific Cl₂ standard using procedures specified in the final rule.

The provision in the proposed rule that owners or operators of new or reconstructed hydrochloric acid regeneration plants to request approval for a source specific Cl₂ concentration standard is removed. Upon reconsideration, this provision is not consistent with the statutory requirement that all new sources are to achieve the new source MACT numerical limit. The expectation is that owners and operators are to design and construct new sources capable of meeting the standard.

For pickling lines, the concentration option has been placed ahead of the collection efficiency option to reflect the expectation that the concentration option will be the one most likely exercised. The intent to make either option equally acceptable has not changed.

TABLE 1.—EMISSION STANDARDS FOR AFFECTED SOURCES

Affected source	Emission standard
Pickling line: Existing	HCl concentration in air pollution control device or process exhaust gas no more than 18 parts per million by volume (ppmv) or Air pollution control device minimum HCl collection efficiency of 97%.
New	HCl concentration in air pollution control device or process exhaust gas no more than 6 ppmv for continuous lines and 18 ppmv for batch lines or Air pollution control device minimum HCl collection efficiency of 99% for continuous lines and 97% for batch lines.
Hydrochloric acid regeneration plant: Existing	HCl concentration in air pollution control device or process exhaust gas no more than 25 ppmv and Cl ₂ concentration in air pollution control device or process exhaust gas no more than either 6 ppmv or a source-specific maximum concentration limit.
New	HCl concentration in air pollution control device or process exhaust gas no more than 12 ppmv and Cl ₂ concentration in air pollution control device or process exhaust gas no more than 6 ppmv.

TABLE 1.—EMISSION STANDARDS FOR AFFECTED SOURCES—Continued

Affected source	Emission standard
Hydrochloric acid storage vessel: Existing and new	Cover and seal all openings and route emissions to air pollution control device or alternative control system and Use enclosed line or local fume capture system vented to air pollution control device or alternative control system at each point where acid is exposed to atmosphere.

One change was made to the requirements for new or existing acid storage vessels to clarify that a forced ventilation add-on air pollution control device is not the only method allowed for emissions control. The final rule requires that the owner or operator cover and seal all openings on each vessel and route emissions through a closed-vent system to an air pollution control device or alternative device that is capable of reducing or collecting emissions. Acid loading and unloading must still be performed either through enclosed lines or with a local fume capture system, ventilated through an air pollution control device or alternative control device, at each point where the acid is exposed to the atmosphere.

4. Operational and Equipment Standards

A new section on operational and equipment standards has been added. The requirement to operate hydrochloric acid regeneration plants in a manner consistent with good air pollution control practices is highlighted in this new section to define those practices and emphasize their importance. The owner or operator of an acid regeneration plant must operate each affected source at all times while in production mode in a manner that minimizes that proportion of excess air fed to the process and maximizes the process offgas temperature consistent with producing usable regenerated acid or iron oxide.

The standards for hydrochloric acid storage vessels have been moved to this new section to reflect the fact that these standards are equipment standards, not numerical emission limits.

5. Compliance Dates

No changes to the proposed compliance dates have been made in the final rule. Under § 63.1160 of the final rule, compliance for existing sources must be achieved no later than June 22, 2001. The owner or operator of a new or reconstructed source that commences construction or reconstruction after September 18, 1997, must achieve compliance by June 22, 1999, or upon startup, whichever is later. As provided

under section 112(i)(3)(B) of the Act, the owner or operator may request that the Administrator or applicable permitting authority in a State with an approved permit program grant an extension for 1 additional year if necessary to install controls.

6. Maintenance Requirements

The owner or operator must develop and implement a written operation and maintenance plan for each emission control device that is consistent with good maintenance practices. For a wet scrubber emission control device, the written plan must, at a minimum, include the actions described in § 63.1160(b)(2)(i) through § 63.1160(b)(2)(iv)(E) of the final rule. The plan is no longer required to be submitted to the applicable permitting authority, but it is required to be incorporated by reference into the source's title V permit.

An additional maintenance requirement is to monitor and record the pressure drop across the scrubber once per shift to identify changes that may indicate a need for maintenance.

If corrective action is required, the owner or operator is allowed 1 working day in which to initiate procedures to correct the problem. Initiation of procedures is defined to be completion of the first applicable step or item in the maintenance plan. Required repairs must be completed as soon as practicable.

Under the proposed rule, a record of each maintenance inspection was required to be signed by a responsible plant official. Under the final rule, the signature authority is assigned to a responsible maintenance official, defined as a person designated by the owner or operator as having authority to sign records and reports required under this rule.

Maintenance rules regarding initiation of corrective action within 1 working day, timely repair, and signing of maintenance records by a responsible maintenance official also apply to hydrochloric acid regeneration plants.

7. Performance Testing and Test Methods

Changes made to the performance test requirements include adding provisions for new wet scrubber operating parameters and deleting the requirement to establish compliant values for pressure drop and scrubber effluent acidity.

Following approval of the site-specific test plan, the owner or operator must conduct an initial performance test for each process or control device to demonstrate compliance with the applicable emission standard. If the owner operator chooses to comply with the collection efficiency standard for a new or existing pickling line, the performance test must measure the mass flows of HCl at the inlet and outlet of the air pollution control device. Inlet and outlet measurements must be performed simultaneously. If the owner or operator chooses to comply with the HCl concentration standard for a new or existing pickling line or is demonstrating compliance with the HCl and Cl₂ concentration standards for a new or existing acid regeneration plant, the performance test must measure the concentration of HCl and, for hydrochloric acid regeneration plants, Cl₂ in the gases exiting the process or the air pollution control device. Compliance with the applicable standards is determined by either the average of three consecutive sampling runs or the average of any three of four consecutive runs. Each run must be conducted under conditions representative of normal process operations. Sampling point locations must be determined according to EPA Method 1, and stack gas conditions must be determined, as appropriate, according to EPA Methods 2, 3, and 4 in 40 CFR part 60, appendix A. An exception to Method 1 is made in that no traverse point shall be within one inch of the stack or duct wall. The final rule requires EPA Method 26A to determine compliance with the HCl and total chloride emission limits. As allowed by § 63.7(f) of the NESHAP general provisions in 40 CFR part 63, subpart A, the owner or operator may use equivalent alternative test methods

subject to approval by the Administrator. The EPA does not delegate authority for this determination.

If a wet scrubber is the air pollution control device, the owner or operator must monitor the makeup water flow rate and, for scrubbers that operate with recirculation, the recirculation water flow rate during each run to establish site-specific operating parameter values for the minimum makeup water flow rate and the minimum recirculation water flow rate. For an acid regeneration plant, the owner or operator must also monitor the process offgas temperature and a suite of parameters necessary to determine the proportion of excess air fed to the process to establish site-specific operating parameter values for the minimum process offgas temperature and the maximum proportion of excess air. The proportion of excess air is determined by a combination of total air flow rate, fuel flow rate, spent pickle liquor addition rate, and amount of iron in the spent pickle liquor or by any other combination of parameters approved by the Administrator. Compliant operating parameter values are determined as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration or collection efficiency. Alternative compliant operating parameter values may be established based on multiple performance tests. The final rule clarifies that the owner or operator may reestablish operating parameter values for wet scrubbers and acid regeneration plants as part of any performance test (or tests) conducted after the initial performance test.

8. Monitoring Requirements

The proposed monitoring requirements for wet scrubbers were revised to require monitoring of the makeup water flow rate and recirculation water flow rate. Alternative monitoring requirements may be developed subject to approval by the Administrator. Requirements for monitoring the scrubber pressure drop (as a monitoring parameter) and effluent acidity are eliminated. The requirement for installation and operation of continuous emission monitoring systems (CEMS) if excursions of the control device operating parameters occur more frequently than six times during any 6-month reporting period is deleted. Commenters on the proposed rule pointed out that the use of CEMS for this application has not been demonstrated; manufacturers have cautioned that using such devices in acidic conditions with water droplets

present would interfere with the test methodology and be corrosive to the testing apparatus.

The requirement for periodic performance tests also is revised. The final rule requires that the owner or operator conduct performance tests for each air pollution control device either annually or on an alternative schedule that is approved by the permitting authority, but no less frequently than every 2½ years or twice per title V permit term.

If a wet scrubber is used as the control device for a pickling line or acid regeneration plant, the owner or operator must install, operate, and maintain devices to measure continuously and record at least once per shift the makeup water flow rate and the recirculation water flow rate while the scrubber is operating. The final rule requires operation of the scrubber such that neither the makeup water flow rate nor the recirculation water flow rate are less than values established during the performance test (or tests). If an excursion occurs (i.e., either operating parameter is less than the allowed value), the owner or operator must initiate procedures to correct the problem within 1 working day of detection of the excursion.

The owner or operator of an acid regeneration plant also must install, operate, and maintain a device to measure continuously and record at least once per shift the process offgas temperature and devices to measure the parameters from which proportion of excess air is determined. The final rule requires that excess air must be determined and recorded at least once per shift instead of at least once every 8 hours while the plant is in production mode, which is in accordance with the original intent of the rule.

The proposed rule inadvertently stated that exceedances of scrubber operating parameters were violations of the emission limit. The intention was to state that exceedances of acid regeneration plant operating parameters were violations of the emission limit. This requirement has been changed so that exceedances of scrubber operating parameters only require initiation of corrective action according to the maintenance plan, and exceedances of acid regeneration plant operating parameters are not violations of the emission limit but instead are violations of the operational standard.

Each monitoring device for scrubbers and acid regeneration plants must be certified by the manufacturer to be accurate to within ±5 percent and be calibrated in accordance with the

manufacturer's instructions, but not less frequently than once per year.

Monitoring requirements for acid storage vessels are revised. The definition of closed-vent system now includes provisions to transport emissions back into any device that is capable of reducing or collecting the emissions. Under the final rule, the owner or operator must make semiannual instead of monthly inspections of each vessel to ensure proper operation of the closed-vent system and either the air pollution control device or enclosed loading and unloading line, whichever is applicable. Commenters to the proposed rule pointed out that semiannual inspections would be more consistent with other rules that have similar monitoring requirements.

9. Notification, Reporting, and Recordkeeping Requirements

Only minor changes needed to clarify and accommodate changes in the final rule were made to the proposed notification, reporting, and recordkeeping requirements. Requirements pertaining to CEMS were deleted in the final rule because these monitoring systems are no longer required.

The final notification requirements include, under § 63.9 (b) through (h) of subpart A, one-time notifications of applicability, intent to construct or reconstruct (including anticipated startup date and actual startup date), date of performance test, compliance extension requests, special compliance obligations, and compliance status. The final rule requires that the notification of compliance status include identification of the selected emission limits and the full test report documenting the results of initial performance tests (including all data and calculations used to establish operating parameter values or ranges).

Recordkeeping requirements are established in § 63.10(b) of the general provisions. In addition to these requirements, the standard requires plants to maintain records of information needed to determine compliance. All records must be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained onsite; records for the remaining 3 years may be retained offsite but still must be readily available for review. The files may be retained on microfilm, on microfiche, on a computer, or on computer or magnetic disks.

The final rule incorporates the general recordkeeping requirements in § 63.10(b) of the NESHAP general provisions in 40 CFR part 63, subpart A and requirements for subpart CCC records. The final rule requires records of scrubber makeup water flow rate and recirculation water flow rate, acid regeneration plant process offgas temperature and parameters from which proportion of excess air is determined, manufacturer certification that monitoring devices are accurate to within ± 5 percent, and monitoring device calibrations. The owner or operator also must maintain a current copy of the operation and maintenance plan (with any revisions) and records of each maintenance inspection, repair, replacement, or other corrective action (whether for maintenance or an excursion).

Minor revisions in wording were made to retain consistency with the wording of the general provisions to part 63 (subpart A). Referring to the section numbers that apply to the final rule, the following paragraphs were amended: § 63.1164(c), § 63.1164(c)(1), § 63.1165(a)(1), and § 63.1165(a)(2). These revisions do not change the substance or the intent of the rule.

10. Delegation of Authority

The proposed rule specified that authority for approval of an alternative test method and alternative nonopacity emission standards would be retained by the Administrator and not transferred to a State. Authority for approval of monitoring parameters for hydrochloric acid regeneration plants and alternative monitoring requirements for wet scrubbers is also retained by the Administrator because these parameters are fundamental to effective monitoring and cannot be delegated. The Administrator will also retain authority to waive recordkeeping requirements. Authority to approve an alternative performance testing schedule is delegated to the States.

11. Display of OMB Control Numbers

The EPA also is amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. This separate amendment updates the table to accurately display those information requirements contained in the NESHAP. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

B. Summary of Impacts

The final standards will reduce nationwide emissions of HAP from steel pickling facilities using the HCl process by 2,200 Mg/yr (2,500 tpy), a 76 percent reduction from current levels. The EPA estimates that 70 steel pickling facilities will be subject to the rule. This estimate excludes any major source speciality steel pickling facilities pending the outcome of a new rulemaking to determine the applicability of the rule to this pickling process.

No significant adverse secondary air, water, or solid waste impacts are anticipated. The amount of water discharged from wet scrubbers would increase by approximately 300,000 cubic meters per year over current levels. The volume of sludge generated by additional control may increase by up to 1,300 Mg/yr (1,400 tpy). Energy use for additional emission control systems is expected to increase by about 6.5 million kilowatt hours per year over current levels.

Nationwide capital costs of the final standards are estimated at \$20 million, with annual costs for testing and monitoring of about \$1.9 million. The economic impacts are all well below one percent of the cost of production of the steel product and result in no significant adverse impacts on the industry or small entities. No plant closures, regional impacts, or significant employment losses are expected. The economic impact of the rule on the industry as a whole is minor. Additional information on the impacts of the rule is included in the BID.

IV. Summary of Major Public Comments and Responses

The EPA received 15 comment letters on the proposed NESHAP for Steel Pickling Facilities—HCl Process. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A-95-43; see the ADDRESSES section of this preamble for information on inspecting the docket). The EPA has had followup discussions with commenters regarding specific issues initially raised in their written comments. Copies of correspondence and other information exchanged between the EPA and the

commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

The EPA reviewed and carefully considered all comments received. The EPA made changes to the rule where appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the BID.

A. Applicability

Comment: Four commenters requested clarification to show that the rule applies only to facilities that are major sources for HAP, not to facilities that are major sources for criteria pollutants or area sources for HAP.

Response: A revision to § 63.1155 has been made to show the indicated applicability.

Comment: Four commenters requested clarification of the 50-percent HCl criterion proposed as the concentration above which pickling lines were to be subject to the rule. One of the commenters also requested that a *de minimis* HCl concentration be established that excludes rinse tanks.

Response: The EPA has decided to clarify the applicability of the rule by establishing *de minimis* temperature and acid concentration values and is using information cited in the "Metals Handbook, Ninth Edition, Volume 5: Surface Cleaning, Finishing, and Coating," published by the American Society for Metals, which gives temperature and acid concentration ranges for batch and continuous pickling operations using hydrochloric acid (page 69). The lowest hydrochloric acid concentration cited is 6 percent, the lowest temperature is 100 °F. The EPA believes that these values are reasonable *de minimis* values and their establishment constitutes a realistic option to the proposed 50-percent HCl criterion. Most, if not all, rinse tanks would have conditions below these values and would therefore be excluded from the rule.

Comment: Two commenters requested the EPA to address the use of different types of acids in pickling processes. Both noted that the EPA possesses no information on HCl control requirements for processes that use HCl in combination with other acids and cannot verify that data on HCl only operations apply to these processes.

Response: The intent of the rule was to address carbon steel pickling by hydrochloric acid. After the comment period, the EPA received information from operators of two specialty steel

pickling facilities indicating that technology that is effective in collecting emissions from hydrochloric acid pickling of carbon steel may not be as effective in collecting emissions from operations in which specialty steel, such as stainless or electrical steel, is pickled, typically using other acids such as sulfuric acid in combination with hydrochloric acid. The EPA has consequently decided that the standards developed for carbon steel pickling cannot be applied to specialty steel pickling and therefore has clarified the rule to limit its applicability to carbon steel pickling. Definitions for carbon steel and specialty steel have been added to § 63.1156 as part of this clarification. These definitions are taken from the publication "Everything You Always Wanted to Know About Steel—A Glossary of Terms and Concepts," edited by M. G. Applebaum, Salomon Brothers Inc., Chicago, 1997. The facility description in § 63.1155 has been changed to "* * * facilities that pickle carbon steel using hydrochloric acid solution that contains 6 percent or more by weight HCl and is at a temperature of 100 °F or higher."

The EPA will determine at a later date if the specialty steel industry should be regulated under this part of the CFR and, if so, whether it will be regulated by amending subpart CCC or under a separate subpart.

Comment: Two commenters recommended that small mobile vessels, which would be expected to produce minimal emissions, not be subject to the rule.

Response: The EPA agrees that small mobile vessels should be excluded from the rule. The definition of acid storage vessel is modified to read "* * * a stationary vessel used for the bulk containment of virgin or regenerated hydrochloric acid."

Comment: One commenter believes that the proposed rule will require reconstruction of existing scrubber systems, forcing the process to become subject to new source rules. The definition of reconstructed source should be eliminated.

Response: Changes or additions to air pollution control devices do not constitute reconstruction of the source and are not included in the changes that would make a facility or process subject to reconstruction and modification requirements.

B. Definitions

Comment: As discussed under applicability, changes were recommended that required definitions for carbon steel and specialty steel.

Response: The following definition of carbon steel is added to the rule:

"Carbon steel means steel that contains approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6 percent or less silicon, and 0.6 percent or less copper."

The following definition of specialty steel is also added to the rule:

"Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels."

Comment: Two commenters requested to clarify the definition of control devices for acid storage vessels to avoid the possible interpretation that emissions would have to be routed to a control device of the type used to control pickling or acid regeneration emissions.

Response: The intent of the proposed rule was to allow any device that reduces HCl emissions to the atmosphere. For clarification, the definition of closed-vent systems was changed to include "* * * any device that is capable of reducing or collecting emissions."

Comment: One commenter recommended that reports required by this rule should only require certification by an inspector who has intimate knowledge of the system and not necessarily by a "responsible official" as defined in subpart A, § 63.2.

Response: The EPA agrees and is allowing facilities to designate a "responsible maintenance official" to have signature authority. This official is defined as "* * * a person designated by the owner or operator as having authority to sign records and reports required under this rule."

Comment: Five commenters believe that the proposed definition of steel pickling is too broad and have requested the EPA to clearly distinguish between pickling and other operations, and have offered suggestions for modifying the definition of pickling.

Response: The EPA agrees that the definition of steel pickling should be crafted to avoid misinterpretation. The commenters' suggestions are incorporated to the extent considered appropriate. The definition of steel pickling, with changes underlined, is modified to mean "* * * the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of

the metal surface prior to plating or coating."

Comment: One commenter believes that rinse tanks should be excluded from the definitions of batch and continuous pickling lines. The rule implies that an air pollution control device would be required for these tanks.

Response: The rule is meant to include all ventilated tanks that are part of a steel pickling process to which the rule applies, which may include some rinse tanks. The rule does not require installation of ventilation systems not previously installed.

C. Emission Standards

1. Pickling Lines

Comment: Five commenters stated that the EPA did not base the standards on the best performing 12 percent of sources. The language in the Act directs the EPA to derive numerical limits for new sources from the best performing scrubbers for a given option, but EPA used this approach in deriving existing source standards. The EPA only considered 10 of the 152 existing continuous pickling lines (7 percent), then used only four of the ten available data sets and determined the concentration limit from only two data sets. The EPA has not justified not using all data sets. The averages of all ten tests, 29.3 ppmv and 97.3 percent, are more representative of the actual variation in the test data which could be expected for properly controlled sources and should be the basis for the limits.

Response: As explained in the preamble to the proposed rule, the EPA based the MACT floor on technology. In determining MACT, the EPA considered alternative approaches for establishing the MACT floor; these include (1) information on State regulations and/or permit conditions, (2) source test data that characterize actual emissions discharged by sources, and (3) use of a technology floor and an accompanying demonstrated achievable emission level that accounts for process and air pollution control device variability. No Federal air emission standards currently apply to steel pickling or acid regeneration sources, and existing State standards cannot be directly related to the requirements of this rule. Applicable test data are only available from 10 of 152 continuous pickling lines. These data points are too few to establish 12 percent MACT floors based on actual releases. By comparison with the limited utility of State regulations and source test data, a substantial body of information is available on the types, configurations, and operating conditions

of air pollution control devices applied across the industry. The EPA therefore used the technology floor approach to establishing MACT for pickling lines. Details of this approach are discussed in the preamble to the proposed rule.

The characteristics of the scrubbers constituting the existing source and new source levels of control were determined by evaluating the results of emission tests conducted on units currently employed in the industry. Data from pickling lines controlled by devices of these descriptions were used to represent the capabilities of MACT for this application. The EPA determined the standards from these data, as discussed in the comments and responses below.

Comment: Two commenters stated that the standards are unnecessarily stringent in that they do not reflect what long term performance is achievable on a continuous basis considering natural process and control device variations. One commenter submitted data showing a wide variation in HCl emissions over a 3-year period from one facility using the same control technology where no known malfunctions occurred to cause the variation. Data from this facility consisted of nine tests, with average measured HCl concentrations ranging from 0.4 to 178 ppmv. This commenter also stated that data presented in the EPA BID also illustrate a wide variation in HCl emissions between and within facilities. Using a statistical argument based on standard deviations in data, the standard should be at least 15 ppmv for new sources and 35.8 ppmv for existing sources, according to this commenter. One commenter believes that inaccuracies of the sampling methods do not permit setting an emission standard as low as that proposed.

Response: The EPA is not required to use a specific statistical procedure in arriving at values for emission standards. The commenter's facility's nine tests are comprised of seven tests for which all data points, including individual sampling runs, are within a 13 ppmv concentration limit. The remaining two tests have averages that are about 19 and 37 times the average of the other seven tests. The EPA believes these two tests cannot be the result of normal air pollution control device operation during normal process operation.

Regarding accuracy of sampling, this issue is discussed in section E below. The EPA believes that the test method is sufficiently accurate for the proposed emission standards for new and existing facilities.

Relative to the broad issues of stringency and achievability of the proposed standards, the EPA agrees with the commenters in that the data used to determine the numerical limits are sparse and that variations in operations and in test results should be considered. The numerical limit determination was therefore reexamined. The EPA conducted a thorough review of the scrubber design and source test data base used to develop the pickling standard. Details of this review are given in the BID. Data from all tests, including those with only one or two sampling runs, were examined primarily in regard to variability in individual test run results. The data were considered separately for new and existing source MACT.

Performance of the scrubbers used as the basis for new source MACT was considered on the basis of long term performance and variability in individual sampling runs. All three scrubbers served continuous pickling lines. The average outlet HCl concentrations were 1.6, 2.1, and 7.7 ppmv, with corresponding average HCl collection efficiencies of 99.5, 99.96, and 99.0 percent, respectively. Thus, on the basis of average performance, all three scrubbers meet the proposed new source standard for collection efficiency of 99 percent, and two meet the proposed new source standard for outlet concentration of 3 ppmv. The worst results of individual sampling runs for these scrubbers were HCl outlet concentrations of 5.9, 3.5, and 7.7 ppmv, with worst results for HCl collection efficiencies of 97.6, 99.94, and 99.0 percent, respectively. On this basis, two scrubbers meet the proposed collection efficiency standard but no scrubber meets the proposed concentration standard. To accommodate the uncertainty in sampling, particularly in determining outlet concentration at these low levels, the EPA decided to consider a new source standard for outlet concentration that could be met by the new source MACT scrubbers that did not meet the collection efficiency standard. This concentration is 6 ppmv HCl, which is 5.9 rounded up to the nearest whole number. Based on the worst individual sampling run results, all three scrubbers meet at least one of the two alternative standards; one scrubber meets both the concentration standard of 6 ppmv and the collection efficiency standard of 99 percent, one meets the concentration standard, and one meets the collection efficiency standard. New source standards of 6 ppmv maximum outlet concentration and 99 percent minimum

collection efficiency are therefore promulgated for continuous pickling lines.

Performance of the scrubbers used for the basis of existing source MACT for continuous pickling lines was also considered on the basis of individual sampling runs. As discussed in the preamble to the proposed rule, the concentration and collection efficiency standards were derived from the scrubbers that were the better performers in each respect. Three units produced outlet HCl concentrations of 1.7, 8.0, and 13 on the averages, 2.7, 15, and 18 ppmv for the worst runs; all the others produced HCl outlet concentrations of 42 ppmv or higher on the averages, 70 ppmv or higher for the worst runs. The concentration standard was therefore determined to be 18 ppmv HCl from the performance of these three scrubbers. On the basis of HCl collection efficiency, the seven scrubbers used as the basis for existing source MACT performed with average efficiencies of 98.1, 97.8, 97.5, 97.0, 96.8, 94.7, and 92.7 percent. Worst run efficiencies were 97.5, 96.8, 96.7, 96.6, 95.9, 94.1, and 92.1 percent. With efficiencies rounded off to the nearest percent, four of the seven scrubbers would meet a standard of 97 percent. Of the remaining three scrubbers, one is a marginal performer and two poor performers by comparison with the first four. The HCl collection efficiency standard of 97 percent was determined from the performance of the best four scrubbers. Five of the seven scrubbers meet at least one of the alternative standards.

Comment: Two commenters questioned the rationale of using data from the best performing scrubbers to establish separate collection efficiency and concentration limits because each owner or operator would have two options. The logic ignores the statistical ability of scrubbers to comply with the proposed standard continuously and the very basis for proposing alternative standards in the first instance. The EPA "proposed alternative standards out of the recognition that facilities with high HCl inlet concentrations could not meet the low HCl outlet concentration standard, and vice versa. Deriving the MACT standards from the best scrubbers for each option disregards the fact that the MACT floor is supposed to represent the average of the best 12 percent and those facilities that have HCl inlet concentrations too low to comply with the proposed collection efficiency impossible and too high to comply with the proposed 10 ppmv standard."

Response: The EPA disagrees with the commenters. The commenter's logic

expressed above is itself not clear. The fact that the standard is not based on a statistical average has been discussed previously. The assumption of the final standards is that at least some devices will not be able to meet both options but all would be able to meet one or the other. Therefore the numerical limits for each option were developed separately.

Comment: Two commenters stated that the EPA has not sufficiently justified its MACT determination for batch pickling lines. The rulemaking record contains no data specific to batch pickling. Batch pickling lines are significantly different from continuous lines in terms of design, operation, air capture rates, inlet concentrations, hood design, product handling, and volume throughput rates. In light of these differences, the absence of test data from batch lines, and limited data from continuous lines, it may not be appropriate for EPA to simply borrow and apply its MACT determination for continuous lines to batch operations.

If EPA promulgates this rule prior to supporting its MACT determination, batch picklers will be in the position of not knowing if they can meet the standards until they have spent the money to install or upgrade their pollution control equipment. The EPA would be prudent to delay implementation of the proposed rule until it can demonstrate, based on batch pickling-specific data, that the proposed standards do in fact constitute MACT.

Response: The commenters state that there are significant differences between batch and continuous pickling lines but do not give details nor any indication of how air pollution control requirements are different. The commenters do not express any technical considerations that have not already been addressed. Differences in fume capture systems between batch and continuous operations, for example, are discussed in detail in chapter 4 of the proposal BID. However, the effectiveness of the air pollution control system is based on the characteristics of the gas stream, not the capture system. According to scrubber manufacturers and designers, scrubber design considerations are the same for both types of operations. The major difference between batch and continuous operations is that the HCl concentration in batch line offgases varies during different phases of the operating cycle. For example, the concentration can increase when steel is raised out of the tank and allowed to drain before it is rinsed. Scrubbers can be designed on the basis of the maximum concentration experienced.

Regarding the ability of batch operations to meet the same standards

as continuous operations, the EPA notes the view expressed by two commenters, one with extensive relevant experience, that the proposed standards are reasonable and can be attained with available control equipment. These comments are presented in the BID.

After the comment period, the EPA received emission data from a batch pickling operation in which the outlet gas was sampled in three runs of 1 hour each; HCl concentrations were 5.1, 4.2, and 3.6 ppmv. The only other information available for batch operations is from a test at another facility in which only one sampling run, of 1 hour duration, was conducted on the scrubber outlet. A concentration of 6.3 ppmv HCl was measured. Results of these two tests give some indication that HCl emission control for these processes at levels achieved for continuous pickling lines is possible.

Based on these considerations, the EPA believes that control of batch pickling lines at the level of existing source standards is achievable. However, the EPA agrees with the commenters to the extent that control of batch lines at the new source standard level is less certain. Because no clear limitation for new batch pickling lines could be determined from the available information, particularly in considering the variation in operating conditions and ventilation system design, the rule is revised to make the new source standard for batch pickling the same as the existing source standard.

2. Hydrochloric Acid Regeneration Plants

Comment: One commenter disagreed that sufficient source test data were available to provide a basis for the MACT floor. The EPA evaluated five measured scrubber outlet concentration values, then noted that one value was far out of line with the others and did not consider this value in establishing the floor. No attempt to review the next appropriate value was made by EPA. Constructing a fifth data point in lieu of actual data has no technical or regulatory basis under section 112 of the Act. The EPA should have used another facility's actual test data or conducted additional tests to establish a fifth point.

A second commenter observed that the MACT floor on which EPA bases its standard is not representative of single stage water scrubbing. Caustic scrubbing technology, contrary to EPA's belief, has been shown to be more effective in reducing HCl emissions than scrubbing with unneutralized water. The EPA notes in the proposed rule that no single stage scrubber has demonstrated the capability of meeting the proposed

existing source standard of 8 ppmv HCl. The EPA should consider the cost impacts to the industry for waste water treatment and sludge disposal if the standard is to be based on caustic scrubbing.

A third commenter provided additional data from the two acid plants that use two stage scrubbing. Details are presented in the BID. The data include outlet concentration data for the first stage water scrubbers. These data are from tests conducted on both plants in April 1994, March 1996, and November 1996. All tests except for two consisted of three sampling runs of 3 hours each using EPA Method 26A; the remaining two tests consisted of two sampling runs. Average HCl concentrations in the first stage water scrubber outlet gas for one plant vary between 5.6 and 20 ppmv, with the highest concentration measured for an individual run of 25 ppmv; average HCl concentrations for the other plant vary between 11.2 and 23 ppmv, with the highest concentration measured for an individual run of 31 ppmv.

Response: The EPA agrees with the first commenter in that the method used to determine the proposed floor was not appropriate, specifically, the manufacturing of a fifth data point in lieu of having actual data followed by averaging. Furthermore, the EPA agrees with the suggestion of the second commenter that the proposed existing source standard of 8 ppmv HCl is not demonstrated to be achievable with single stage water scrubbing, the predominant control technology used in the industry.

The floor has therefore been reexamined on the basis of the median of the best five controlled sources on a technology basis. The best two controlled sources employ either two stage acid recovery or two stage scrubbing, with neutralized water used in the last scrubbing stages in both cases. The third best controlled source employs single stage scrubbing with unneutralized water; this technology is also used by all of the remaining sources in this subcategory. The final standard for existing sources is therefore developed based on the performance of single stage water scrubbing, which addresses the main concern of the second commenter.

With the inclusion of the above information, long term data from two acid regeneration plants are now available. Data from the plant for which the measured HCl concentration was 16 ppmv were still restricted to the one test, which consisted of two sampling

runs with measured HCl concentrations of 15.6 and 15.8 ppmv. The final data point available was 137 ppmv HCl, which is so far out of line with the other data that the plant tested could not be considered well controlled; data from this plant could therefore not be used to establish an emission standard.

In order to determine a numerical concentration standard from all of the available information, process and control system variability over time were taken into account by considering HCl concentration averages and also values for individual sampling runs. On the basis of average outlet concentrations, it seems clear that the first three plants meet a limit of 25 ppmv HCl. Considering all 19 individual runs from the three plants, except for one run of 31 ppmv, all others are 25 ppmv or less. A maximum outlet concentration of 25 ppmv HCl therefore seems reasonable for a standard based on single stage water scrubbing.

Regarding the new source standard for HCl, the additional data discussed above include outlet concentration data from second stage scrubbers that use neutralized water. Data are from four tests conducted between March 1993 and March 1996. In all tests, three sampling runs of 2 or 3 hours were made using Method 26A. Results of the first tests average 49 and 19.6 ppmv HCl; these results are much higher than those from the more recent three tests and apparently do not reflect current operations. Results of the last three tests are average HCl concentrations ranging from 0.9 to 11.1 ppmv, with results of individual runs ranging up to 11.9 ppmv.

The only other HCl concentration data that have not already been discussed are from the plant that employs two-stage acid recovery plus a venturi scrubber that uses neutralized water. Results from only one test are available; the average HCl outlet concentration was 1.0 ppmv.

Considering the capability of a scrubber to meet a long-term standard, results from the first two plants seem more meaningful. These plants clearly meet an outlet concentration HCl standard of 12 ppmv over the most recent three tests based on individual runs. A new source maximum outlet concentration standard of 12 ppmv HCl therefore has been reasonably demonstrated. Consequently, the final standard is a maximum outlet HCl concentration of 25 ppmv for existing sources, 12 ppmv for new sources.

Comment: Two commenters stated that EPA did not demonstrate that its standards for existing and new sources

are based on a sustainable level of performance. One commenter stated that there is a wide variation in HCl emissions at different times using the same control technology. This commenter provided additional data at EPA's request to support the statement. Average emissions range from 31 to 470 ppmv and results of individual tests range from 26 to 542 ppmv HCl, with, according to the commenter, no obvious anomalies in the acid regeneration data. The EPA's data illustrate that there is a wide variation between and within facilities. The standard deviation for all data from which EPA determined its standard is 7.2 ppmv, which is far out of range of the proposed limit.

Response: By comparison with data from other facilities, the plant from which the data provided by the above commenter were taken cannot be well controlled in EPA's opinion, particularly considering the extreme range in values between the lowest and highest measurements. Data from this facility are not relevant in determining a standard based on the best performing plants. The issue of sustainable performance is addressed in the previous comment and response.

Comment: Two commenters state that the Cl₂ limit should be based on five sources instead of three. The small sample size probably does not reflect variability at each source. The 4 ppmv limit has not been shown to be continuously achievable. One commenter states that the existing source emission limits should be determined from the average of five facilities plus two standard deviations; the standard should be at least 74.3 ppmv. For new sources, the standard should be 60 ppmv based on two standard deviations from the mean of EPA's data. The other commenter did not recommend specific standards but provided additional data at EPA's request.

Response: As discussed under the HCl numerical standard, the standards for hydrochloric acid regeneration plants are being revised. The existing source standard is based on technology, which is single stage water scrubbing. As in the case of the HCl standard, the Cl₂ numerical standard was reconsidered based on the body of data available for this technology.

The data provided by the second commenter included results of the three tests discussed above, conducted between April 1994 and November 1996, of outlet Cl₂ concentrations from first stage water scrubbers. Average Cl₂ concentrations are between 0.4 and 5.1 ppmv with the exception of a measurement of 9.9 ppmv from one test

conducted in 1994. Results of the more recent tests on this plant were 0.4 ppmv in each case. Excluding this one test, which is assumed to be not representative of current operations, average Cl₂ concentrations range from 0.4 to 5.1 ppmv. Results of all 13 individual runs, except for one value of 7.3 ppmv, range from 0.3 to 5.6 ppmv.

In addition to the data discussed above, Cl₂ outlet concentration data from other facilities are 3.3 and 60 ppmv, each based on one test. The 60 ppmv value is so far out of line with the others that it cannot be considered representative of effective operation and therefore cannot be used in determining the standard.

Considering all of the data, it appears that a limit of 6 ppmv Cl₂ can be met by these operations, considering the variability in measurements (except for the one nonrepresentative value); only one sampling run gives a higher result (7.3 ppmv). The concentration standard for Cl₂ is therefore revised to 6 ppmv for existing sources.

Regarding the standard for new sources, the EPA is required to set the standard according to the capabilities of the best controlled facility. The additional data discussed above included results of the four tests conducted between March 1993 and March 1996 on the outlets of second stage scrubbers that use neutralized water. Results are similar to those for the first stage water scrubbers. Average Cl₂ concentrations range from 0.4 to 5.3 ppmv, with results of individual runs ranging from 0.1 to 7.1 ppmv. An individual plant cannot be identified that provides better performance than existing source MACT. The new source standard for Cl₂ is therefore the same as the existing source standard, 6 ppmv.

Comment: One commenter supported the optional Cl₂ standard to be established for each source.

Response: The optional standard is retained for existing sources but removed for new sources, as discussed above.

3. Acid Storage Vessels

Comment: Two commenters believe EPA should clarify that "control devices" for storage vessels are not a specific control technology, and that facilities can use any method that is demonstrated to minimize emissions to the atmosphere (e.g., bubbling through a drum or small vessel of caustic solution or water).

Response: The EPA agrees with this commenter. No specific control device is required for storage vessels. The definition of closed-vent system is reworded to make the EPA's intention

clear. Examples of devices that might be used include systems that bubble emissions through a small tank of water or caustic without the aid of a fan. However, larger facilities may find it advantageous to route emissions from storage vessels or an acid regeneration plant to a pickling line scrubber or to build a separate scrubber system for control.

4. Assessment of HCl as a Threshold Pollutant Under Section 112(d)(4)

Comment: After the close of the comment period on the proposal, EPA received a letter from a trade association requesting that the Agency assess HCl emissions from steel pickling under section 112(d)(4) of the Act, to determine whether Federal controls on these emissions were necessary, based upon relevant exposure and ecological assessments and a determination in an earlier EPA **Federal Register** notice that HCl was a "health threshold pollutant."

Response: As requested by the commenter, EPA is currently conducting an assessment of HCl emissions from steel pickling operations to determine first whether the Agency would be justified in invoking its section 112(d)(4) authority for steel pickling, and second whether EPA believes it is appropriate to do so, if justified. The EPA does not have adequate information at this time to support development of a standard for the steel pickling source category that may be less stringent than the "floor"-based standard in today's final rule.

Possessing insufficient information at this time to make a decision for the steel pickling source category pursuant to section 112(d)(4) authority, and recognizing that the authority bestowed by Congress is fully discretionary, EPA believes that it is reasonable to finalize today's standard while continuing to conduct an assessment of HCl emissions from steel pickling operations under section 112(d)(4). Absent such information, EPA believes that there is ample reason to regulate HCl emissions from steel pickling operations at the levels of today's standard, as discussed more fully in the remainder of this preamble.

D. Compliance Dates and Maintenance Requirements

Comment: One commenter stated that the required maintenance activities should be guidelines and not requirements. They do not further the rule (beyond required monitoring) to limit emissions and assure compliance with the limits.

Response: Operational and maintenance requirements are necessary

to help ensure that emission control equipment continues to operate at a level consistent with its operation at the time of compliance testing and are enforceable independently of emissions limitations. The EPA's statement of these requirements is in 40 CFR 63.6(e)(1)(iii), Operation and Maintenance Requirements.

Comment: Three commenters stated the following. The EPA's maintenance plan should not establish specific elements of the required maintenance plan, i.e., following manufacturer's recommended maintenance, cleaning scrubber internals and mist eliminators at intervals sufficient to prevent fouling, having set intervals for inspecting system components to identify, repair, or replace as needed. Two of the commenters recommend that EPA amend proposed § 63.1159 by eliminating the requirement that maintenance plans must include the elements set forth at § 63.1159(b)(2)(i)-(iv); these elements should be included only as potential elements that may be included in the plan. Another commenter believes that the operation and maintenance plan should not require strict adherence to the manufacturer's operating manual. Many manufacturer's manuals contain steps that are determined not be necessary and/or that only the manufacturer's proprietary products should be used. The EPA should change the wording to, for example, "substantially include" the elements set forth in the manufacturer's operating manual.

Response: The EPA has reviewed the proposed maintenance plan requirements and decided that revisions are appropriate. Manufacturer's instructions for older equipment may require materials no longer available. Manufacturers may no longer be in business so that required parts or materials cannot be purchased except by substitution from a source other than the original manufacturer. Therefore, the EPA has revised the rule so that it no longer requires adherence to the manufacturer's manual. The facility must write an operation and maintenance plan that is consistent with good maintenance practices and includes, at a minimum, the list of items described in the rule. The EPA believes that inclusion of these items is reasonable. Additionally, pressure drop must be monitored once per shift as a means of discovering scrubber operational anomalies that may require maintenance. No specific pressure drop deviation limit is required, but the monitoring records are required to be kept along with the recycle and makeup water flow rates.

Comment: Three commenters stated that the operation and maintenance plan should not be part of the source's title V operating permit. Plan approval places a substantial burden on permitting authorities. The details of these plans are frequently changed as operational problems are addressed. Such a requirement could cause administrative nightmares if a source is required to go through the title V permit modification process every time it modifies a plan, especially during the early stages of the rule. Approval of plans by informal action would encourage timely revision.

Response: The rule requires the plan to be incorporated into the permit only by reference and no longer requires it to be submitted to the permitting authority.

Comment: One commenter believes the requirement that the "responsible plant official" sign records of inspections is overly burdensome. The requirement is acceptable if "responsible plant official" means that an employee delegated the responsibility by the "responsible official" must sign.

Response: The EPA agrees with the commenter and has added the definition "responsible maintenance official," who is a person having signature authority for signing reports required under the rule.

Comment: One commenter states that the requirement to initiate repairs within 1 day is excessive and unworkable. It is unclear what "initiate corrective action" means. In some cases, corrective action may require engineering analysis to determine the source of the problem and effective corrective action. If this provision is retained, the commenter recommends that it be written as a requirement that repairs begin promptly and provide a "safe harbor" that repairs commenced within 1 day are considered to be prompt.

Two commenters state that the proposed requirement that maintenance plans be implemented within 1 working day is too stringent. There may be situations when initiating the plan within 24 hours would be impractical or impossible. In some cases, a facility may have to rely on an outside contractor to conduct necessary action. Instead of establishing a time-specific deadline, the EPA should provide that "facilities must initiate corrective action as soon as practically possible, but no later than 3 working days."

One commenter states that the requirement for corrective action within 1 day of detection of an operating problem with a control device is neither

reasonable or in keeping with the notification and repair requirements of other NESHAP rules. The commenter recommends that the requirement be changed to include a first attempt at repair within 5 working days of detection.

Response: The EPA believes that it is reasonable to expect operators to initiate procedures toward corrective action within 1 day and complete repairs or maintenance as soon as practicable. Initiation of procedures may consist of notification of a contractor or service group that corrective action is necessary. The rule is revised to clarify that the procedures to be initiated are the actions that are specified in the maintenance plan.

E. Performance Testing and Test Methods

Comment: One commenter stated that establishment of site specific scrubber operating parameters as a measure of compliance without first establishing the relationship between the parameters and the emissions in question is not appropriate. The EPA has made no attempt to establish any relationship between the proposed mandated parameters and actual emissions. This information was not evaluated during the MACT development; therefore, site specific parameters should not become mandated compliance parameters.

Response: Without implementation of continuous emissions monitoring systems, monitoring of relevant operating parameters in combination with routine and preventative maintenance is essential to enhanced compliance assurance. The requirement for operating parameter monitoring is retained in the rule.

Comment: One commenter stated that in setting parameter operating limits, the full range of values observed during a compliance test should be used, not the average. Because an average is being established, at least one of the tests must necessarily be above the average if all three tests are not identical. Another commenter believes that owners and operators should be able to establish compliant operating parameters using individual runs from compliance tests and not be restricted to multiple tests. Using multiple runs during a test will greatly diminish costs and repetitive sampling without substantially diminishing the assurance of compliance.

Response: The EPA agrees that some flexibility in establishing operating parameter compliant values is appropriate. The rule is revised to allow an average parameter value measured during any of the runs used to

demonstrate compliance to be used as the compliant value rather than the average value measured over the entire testing period.

Comment: Two commenters believe operators should have the option of conducting compliance demonstration tests as needed to show appropriate ranges of scrubber parameters. Establishment of parameters should not be limited to the initial performance test.

Response: The rule allows facilities to conduct multiple performance tests to establish alternative compliant operating parameter values and to reestablish compliant values during any performance test conducted after the initial performance test.

Comment: Two commenters expressed concerns that actions such as installing a more effective capture system or adding a mist eliminator would result in increased pressure drop and hence a violation of the standard.

Response: This issue is no longer a concern because the monitoring parameters have been changed. Pressure drop is now monitored only to detect potential problems with the scrubber.

Comment: Two commenters had the following statement. Method 26A is not validated for steel pickling, only for municipal waste incinerators (MWI). The MWI have higher temperatures, less moisture (and no liquid droplets), and no ferric chloride content, which could interfere with test results. The EPA's tests also show variations of as much as 700 percent for the same pickling line. Test bias may have resulted in an improperly low standard. Inexplicable negative biases are reported in an EPA municipal waste incinerator validation report for Method 26A. These biases are such that validation for pickling sources is required.

The practical level of quantification (PLQ) for Method 26A has not been established for pickling sources, and should be developed using Method 301. Also, ferric chloride might cause a positive bias for the HCl measurements. One facility believes that conditions encountered with HCl pickling tests include high humidity in the gas stream, extremely high solubility of HCl gas in water, condensation in the gas stream, refluxing in the stack, and the use of stack tip entrainment eliminators. These conditions lead to several measurement problems, all of which tend to bias results toward improperly high HCl concentration because of enriched droplet capture in the sampling probe or maldistribution of HCl with regard to sampling probe location. Sampling data show six cases in which the range of measured maximum concentrations

varies from 1.3 to 9.3 times the minimum concentration for heated pickling lines or acid regeneration plants. They recommend that the testing protocol include provisions for testing control devices (including stack-tip mist eliminators) and allow for discard of test results more than 50 percent above the average.

Response: The comments do not bring up any technical concerns regarding measurements at pickling or acid regeneration sites. A well designed and conscientiously run field validation of Method 26A specifically at these source categories would not likely uncover any evidence that there is a problem in this application. The EPA knows from its studies that the method is capable of measuring to fractional ppmv levels. Review of data from a 1997 study at a light-weight aggregate kiln burning hazardous waste provides a minimum detection limit estimate of about 0.04 ppmv. The EPA estimated the method precision (reported as the standard deviation of individual runs) to be 0.42 ppmv at 3 ppmv. This value would lead to the precision estimate of the mean of a 3 run test of 0.24 ppmv. If water droplets are routinely present, then the method has to be followed carefully to avoid gathering poor quality data. The EPA has not knowingly field validated the method in the presence of water droplets, but isokinetic sampling is the accepted way to address this problem.

The commenters contended that EPA provides no justification to the preamble statement "EPA considers the method is equally valid for measuring emissions for pickling and acid regeneration sources." They go on to say that HCl pickling emissions are generally 100 to 200 °F and contain water droplets. The presence of water droplets increases the potential for negative bias.

The EPA responds that the method is validated at a municipal waste combustor (MWC) where the sample matrix is a more severe test of the method in terms of potential chemical interferents, and the stack is at a higher temperature. The higher stack temperature at MWCs is a more severe test of the method in that the probe and filter temperatures are less than the stack temperature, which, in theory, could lead to condensation of HCl in the probe. An effective control system would be expected to include a mist eliminator, thus minimizing the potential for excessive water droplet effect. In addition, the test method has provisions to overcome the potential negative bias encountered if water droplets are present.

One commenter also commented on the MWC validation being done with

midjet impingers rather than the large impingers. The EPA report No. 600/3-89/064 concludes that there is an inexplicable negative bias compared to those using midjet impingers. The most likely cause of the low bias at low (3 to 4 ppmv) concentrations is absorption of HCl on alkaline particulate matter collected on the filter. This condition is not expected at steel pickling plants and, hence, field validation would not be of value.

The commenter also stated that proper field validation of Method 26A would provide the true PLQ that would take into account the normal variations resulting solely from the test procedures. Determining the actual PLQ of Method 26A on HCl pickling emissions is essential to ensure that the final NESHAP limitations are not set lower than the level that can be consistently quantified by the required testing. The recommendation already discussed in this comment should also apply to HCl regeneration plants since the limit of 3 ppmv HCl is at the lower limit of the range tested.

The EPA notes that the commenter provided the Method 301 definition of PLQ. There is general agreement that the intent of the Method 301 calculation procedure of 10 times the standard deviation should use the standard deviation at or near the limit of detection. (The actual Method 301 language adds “* * * at the blank level.”) The EPA believes the commenter cites an erroneous conclusion from a Rigo and Rigo Associates, Incorporated, document, that a recent quad-train study at an MWC had a PLQ of at least 125 ppmv at 7 percent oxygen for Method 26A. The study was done in a concentration range of 105 to 636 ppmv at 7 percent oxygen, instead of near the acceptable blank limit of the method. These conditions lead to an inflated standard deviation estimate and a subsequent over estimate of the PLQ. Draft results from a 1997 EPA study using a quad-train arrangement at a light-weight aggregate kiln where the actual (uncorrected for dilution) stack concentration of HCl ranged from 0.22 to 1.29 ppmv (more closely approaching the theoretical lower limit of the method) results in an estimated method standard deviation of 0.12 ppmv at zero. The EPA used these data to extrapolate an estimated method standard deviation of 0.42 ppmv at 3 ppmv as described above. This value compares favorably with the original MWC validation report's estimate of standard deviations of 0.24 ppmv and 0.49 ppmv at concentration of 3.9 ppmv and 15.3 ppmv, respectively.

Regarding positive bias caused by ferric chloride, it would have to have a significant vapor pressure at the filter temperature to pass through the Teflon matte filter in the test equipment. This is not the case.

The EPA believes the test method is appropriate for steel pickling and acid regeneration operations and will continue to require its use (or an approved substitute) for the standard. However, in order to reduce the possibility of collecting water droplets from the stack walls that may be present because of refluxing in the stack or high humidity, the EPA believes that Reference Method 1 should be modified for this application to specify that no sampling point be closer to the stack wall than one inch.

Comment: One commenter states that ammonia is commonly used as a precipitating agent in waste HCl, resulting in ammonium chloride formation. The commenter believes that some ammonium chloride will be decomposed in the acid regeneration plant roaster, but significant amounts may exit in the waste gas and will be recovered along with HCl in gas cleaning. The commenter is currently investigating the possibility of direct measurement of ammonium chloride in the acid plant scrubbers but does not at present have data to offer. The commenter understands that ammonium chloride can interfere in the measurement of HCl at low levels.

Response: Ammonium chloride is identified as a possible interferent in EPA Reference Method 26A that would be expected to appear as chloride ion and thus be measured as HCl. If an acid regeneration plant cannot meet the standard for HCl, it would have the option of demonstrating that ammonium chloride is present in the waste pickle liquor fed to the plant and seeking relief in the HCl emission limit on that basis. However, the need for relief seems unlikely. Ammonium chloride would not be expected to pass the filter that is required for this method at the filter temperature. Ammonium chloride decomposes from the solid state at 339 °C, which is far above the temperature of 248 °F (120 °C) used for sampling acid regeneration plant emissions.

F. Monitoring Requirements

Comment: Four commenters stated that excessive excursions of operating parameters should not trigger implementation of CEMS. In addition, seven commenters stated that the use of CEMS should not be required. No systems have been demonstrated to have the capability to accurately measure and record compliance for this application.

Commercially available systems for monitoring at the proposed levels are expensive, difficult to calibrate and maintain, and not reliable to the level of operation required. Manufacturers have cautioned that using such devices in an acidic application containing water droplets would interfere with the test methodology and be corrosive to the testing apparatus. Conditions of high humidity and acidity make it unlikely that an in situ sensor will ever work.

Response: After reviewing the comments, the EPA agrees that reliable operation of currently available CEMS cannot be assured for this application. At best, inordinately burdensome maintenance and operating procedures would be required. The CEMS requirement is therefore deleted.

Comment: Five commenters stated that pressure drop and acidity are not appropriate monitoring parameters. A relationship between these parameters and scrubber efficiency has not been demonstrated. Given the lack of variation of scrubbing efficiency between caustic solution and clear water, monitoring acidity is questionable. Also, the requirement to measure acidity is vague. Three commenters suggested that parameters other than pressure drop and acidity would be better indicators of scrubber performance. Scrubber water flow rate is a more valid indicator of efficient scrubbing. For packed bed scrubbers, better parameters are pressure drop, air flow rate, and water flow rate to the top of the packing. For plate scrubbers, pressure drop and visual observation provide assurance of correct operation. Other parameters suggested were fan amps and liquid conductivity.

Response: In considering all of these comments, the EPA concludes that scrubber makeup water and recycle water flow rates are better indicators of scrubber performance than pressure drop and acidity, on the basis that the mechanism for HCl collection is absorption in water, which can be done effectively even with slightly acidic water. The rule is revised, eliminating the requirements for monitoring scrubber pressure drop and scrubbing effluent acidity and replacing them with the requirements to monitor scrubber makeup water flow rate and, for scrubbers that operate with recirculation, recirculation water flow rate. Monitoring of pressure drop is moved from operational requirements to maintenance requirements. Pressure drop must be monitored as a means of discovering scrubber operational anomalies that may require maintenance. No specific pressure drop deviation limit is required, but the

monitoring records are required to be kept in addition to the recycle and makeup water flow rates. Flow rate increases large enough to cause flooding would be considered malfunctions.

Comment: Four commenters stated that facilities should be allowed to develop their own monitoring protocols. The EPA should set forth minimum monitoring requirements and allow facilities to develop site specific protocols that they can justify.

Response: Alternative monitoring options can be approved under § 63.8(b) of the general provisions to this part. This provision is clarified in the final rule.

Comment: Six commenters believe that monitoring of scrubbers should not be required during nonoperating periods such as stoppages for maintenance and repairs.

Response: Periods of stoppage for maintenance and repairs would be covered under the Startup, Shutdown, and Malfunction Plan (SSMP). The rule is revised to clarify that monitoring scrubber parameters is required only while the scrubber is operating. The rule is also revised to clarify that monitoring acid plant operations is required only while the plant is operating in production mode. Discussions with plant operators after proposal have revealed that plants often operate in modes that are designed, for example, to maintain temperature while acid and iron oxide production are temporarily suspended. These operations are conducted under conditions that are not predicted to produce byproduct chlorine.

Comment: Two commenters stated that storage vessel inspections should be changed from monthly to semiannually to be consistent with the requirement under other subpart L NESHAP rules. Inspection of control devices on storage vessels should be conducted at the same frequency as compliance testing on the scrubber.

Response: The reference is to subpart L of part 61, National Emission Standard for Benzene Emissions from Coke Byproduct Recovery Plants. The requirement in subpart L is to monitor connections and seals on each control system that recovers or destroys emissions from process vessels, tar storage tanks, and tar-intercepting sumps. The EPA believes that the requirements for this subpart should not be more stringent than those for rules with similar monitoring requirements and has revised the rule to require semiannual rather than monthly inspections.

Comment: Three commenters stated that annual stack testing is excessive

when coupled with parametric monitoring. One commenter recommended that stack testing only be required if the control device is out of range. The other commenters recommended testing no more frequently than every 2½ years or every 5 years.

Response: In lieu of continuous emissions monitoring or other means for determining continuous compliance, enhanced compliance assurance is established in this rule by monitoring of relevant operating parameters in combination with routine and preventive maintenance plus periodic performance testing. Annual testing is typically required in such situations. The EPA believes, however, that some flexibility can be allowed in view of the requirement to also monitor parameters. The rule is revised to allow facilities to conduct performance testing on an alternative schedule that is approved by the applicable permitting authority but no less frequently than every 2½ years or twice per title V permit term.

Comment: Four commenters stated that excursions of control device or acid plant operating parameters should not be considered violations. Out of range measurements should be treated as indicators of potential problems requiring further investigation or corrective action. A strong enough relationship between variations in pressure drop or acidity and HCl emissions has not been demonstrated.

Response: The proposed rule inadvertently stated that exceedances of scrubber operating parameters were violations of the emission limit. The intention was to state that exceedances of acid regeneration plant operating parameters were violations of the emission limit. The rule is revised to state that excursions of scrubber monitoring parameters only require corrective action as specified by the maintenance requirements and are not violations of the emission limit.

Regarding acid plant monitoring parameters, the EPA's policy is that linking excursions of operating parameters to violations of the emissions limit is preferred but is only defensible where a strong correlation between the parameters values and emissions can be demonstrated. The EPA reexamined the appropriateness of the linkage of acid regeneration plant operating parameters with emissions and agrees with the commenters that a strong enough correlation has not been demonstrated. The rule is revised so that excursions of acid regeneration plant operating parameters are a violation of the operational standard and not the emission limit.

H. Recordkeeping Requirements

Comment: One commenter believes that the requirement for maintaining startup and shutdown records is ambiguous, burdensome, and of no environmental benefit. No guidance is provided on what constitutes a startup or shutdown. If required, startup and shutdown should be defined to exclude the normal stopping and starting of the pickling line during its daily operation.

Response: The EPA disagrees that no environmental benefit is gained from keeping startup and shutdown records. These records can be used as an enforcement tool to ensure continued compliance with environmental rules or to show periods of inactivity when, for example, emissions would not be expected to occur.

The EPA agrees that maintaining records of normal daily interruptions in line operations is onerous if not routinely practiced. This is not the intent of the recordkeeping requirement. Each facility writes its own SSMP and therefore can provide specific definitions of normal startup and shutdown versus intermittent stops and starts characteristic of daily operation. However, as part of the SSMP, these definitions are subject to approval by the facility's permitting authority.

Comment: One commenter suggests that for the air pollution control device recordkeeping, startup and shutdown should be defined to include only "abnormal" cases, perhaps periods of a day or more.

Response: As described in the previous response, each facility writes its own SSMP and can define normal startup and shutdown.

V. Administrative Requirements

A. Docket

The docket is an organized file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the Act.) The official rulemaking record, including all public comments received on the proposed rule, is located at the address in the ADDRESSES section at the beginning of this document.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine if a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

D. Executive Order 12875: Enhancing the Intergovernmental Partnerships

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

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of the rule. State and local governments and tribal governments are not directly affected by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, State and local governments will be required to implement the rule; i.e., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Comments were solicited from States and have been considered in the development of the final rule. No comments were received from any tribal government.

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

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final

rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in developing EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA has determined that the total annualized nationwide cost of the final standard is approximately \$7.9 million per year, which is well under the \$100 million per year threshold. The only costs to State and local governments are those associated with implementing this standard through the permitting process, and those costs are recouped through permit fees. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it does not impose any enforceable duties on small governments; such governments own or operate no sources subject to these rules and therefore would not be required to purchase control systems to meet the requirements of the rule. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

F. 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 whose jurisdictions are less than 50,000 people. This rule will not have a significant impact on a substantial number of small entities because it does not impact small entities whose jurisdictions cover less than 50,000 people. Only three of approximately 80 affected facilities in this industry meet the criteria for small businesses. Of these three, one company is expected to meet the standard and one company is projected to be a nonmajor source based on calculations using an emissions estimating model along with information supplied by the firm. It is not anticipated that these two facilities will be adversely impacted by the regulation. The remaining small company employs a scrubber that may meet the emission limitation. If this facility incurs emission control costs, the costs would likely relate to upgrading existing equipment or improving maintenance practices. Any regulatory impacts for this company are not expected to be significant.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 22, 1999.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection

Request (ICR) document has been prepared by EPA (ICR No. 1821.02) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The information collection requirements include mandatory notifications, records, and reports required by the NESHAP general provisions (40 CFR part 63, subpart A). These information collection requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The annual public reporting and recordkeeping burden for collecting this information (averaged over the first 3 years after the effective date of the rule) is estimated to total 23,190 hours based on a total of 70 likely respondents over that period (23.3 per year) at 995 hours per respondent per year. The total annualized cost is estimated to be \$1,850,000 per year, with a capital and startup cost of \$8,200 per year and an operation and maintenance cost of \$7,500 per year (excluding labor hours included in the previous total).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like the EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. It does, however, incorporate by reference existing technical standards. Incorporated are EPA Reference test methods 1 through 4 and 26A, as codified under 40 CFR part 60, appendix A. Consequently, the EPA searched for voluntary consensus standards that might be applicable. The search was conducted through the National Standards System Network (NSSN), an automated service provided by the American National Standards Institute (ANSI) for identifying available national and international standards. The search identified no applicable equivalent standards. Therefore, the final rule relies solely on use of the government-unique technical standards cited above for determining compliance.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

J. Pollution Prevention Act

"Pollution prevention" means source reduction as defined under the Pollution Prevention Act of 1990 (e.g., equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

The steel pickling industry employs pollution prevention techniques through regeneration of spent pickle liquor. The 10 acid regeneration plants operating in 1991 recovered about 40 percent of the pickling acid requirements for the industry in that year. Without the savings provided by the use of regenerated acid, additional costs would be incurred for treatment or disposal of waste pickle liquor (K062) that are otherwise avoided. The final rule encourages use of acid regeneration by providing simplified and cost effective compliance requirements.

The final rule also encourages pollution prevention through improved maintenance of air pollution control devices. Proper operation maintenance of control systems results in more effective emissions control.

K. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. No steel pickling facilities are owned or operated by Indian by tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Steel pickling.

Dated: May 12, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart CCC to read as follows:

Subpart CCC—National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

Sec.

- 63.1155 Applicability.
- 63.1156 Definitions.
- 63.1157 Emission standards for existing sources.
- 63.1158 Emission standards for new or reconstructed sources.
- 63.1159 Operational and equipment requirements for existing, new, or reconstructed sources.
- 63.1160 Compliance dates and maintenance requirements.
- 63.1161 Performance testing and test methods.
- 63.1162 Monitoring requirements.
- 63.1163 Notification requirements.

- 63.1164 Reporting requirements.
 - 63.1165 Recordkeeping requirements.
 - 63.1166 Delegation of authority.
 - 63.1167–63.1174 [Reserved]
- Table 1 to Subpart CCC—Applicability of General Provisions (40 CFR part 63, subpart A) to subpart CCC

Subpart CCC—National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

§ 63.1155 Applicability.

(a) The provisions of this subpart apply to the following facilities and plants that are major sources for hazardous air pollutants (HAP) or are parts of facilities that are major sources for HAP:

(1) All new and existing steel pickling facilities that pickle carbon steel using hydrochloric acid solution that contains 6 percent or more by weight HCl and is at a temperature of 100 °F or higher; and

(2) All new and existing hydrochloric acid regeneration plants.

(3) The provisions of this subpart do not apply to facilities that pickle carbon steel without using hydrochloric acid, to facilities that pickle only specialty steel, or to acid regeneration plants that regenerate only acids other than hydrochloric acid.

(b) For the purposes of implementing this subpart, the affected sources at a facility or plant subject to this subpart are as follows: Continuous and batch pickling lines, hydrochloric acid regeneration plants, and hydrochloric acid storage vessels.

(c) Table 1 to this subpart specifies the provisions of this part 63, subpart A that apply and those that do not apply to owners and operators of steel pickling facilities and hydrochloric acid regeneration plants subject to this subpart.

§ 63.1156 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in subpart A of this part, or in this section as follows:

Batch pickling line means the collection of equipment and tanks configured for pickling metal in any form but usually in discrete shapes where the material is lowered in batches into a bath of acid solution, allowed to remain until the scale is dissolved, then removed from the solution, drained, and rinsed by spraying or immersion in one or more rinse tanks to remove residual acid.

Carbon steel means steel that contains approximately 2 percent or less carbon, 1.65 percent or less manganese, 0.6

percent or less silicon, and 0.6 percent or less copper.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices that transport emissions from a process unit or piece of equipment (e.g., pumps, pressure relief devices, sampling connections, open-ended valves or lines, connectors, and instrumentation systems) back into a closed system or into any device that is capable of reducing or collecting emissions.

Continuous pickling line means the collection of equipment and tanks configured for pickling metal strip, rod, wire, tube, or pipe that is passed through an acid solution in a continuous or nearly continuous manner and rinsed in another tank or series of tanks to remove residual acid. This definition includes continuous spray towers.

Hydrochloric acid regeneration plant means the collection of equipment and processes configured to reconstitute fresh hydrochloric acid pickling solution from spent pickle liquor using a thermal treatment process.

Hydrochloric acid regeneration plant production mode means operation under conditions that result in production of usable regenerated acid or iron oxide.

Hydrochloric acid storage vessel means a stationary vessel used for the bulk containment of virgin or regenerated hydrochloric acid.

Responsible maintenance official means a person designated by the owner or operator as having the knowledge and the authority to sign records and reports required under this rule.

Specialty steel means a category of steel that includes silicon electrical, alloy, tool, and stainless steels.

Spray tower means an enclosed vertical tower in which acid pickling solution is sprayed onto moving steel strip in multiple vertical passes.

Steel pickling means the chemical removal of iron oxide mill scale that is formed on steel surfaces during hot rolling or hot forming of semi-finished steel products through contact with an aqueous solution of acid where such contact occurs prior to shaping or coating of the finished steel product. This definition does not include removal of light rust or scale from finished steel products or activation of the metal surface prior to plating or coating.

Steel pickling facility means any facility that operates one or more batch or continuous steel pickling lines.

§ 63.1157 Emission standards for existing sources.

(a) *Pickling lines.* No owner or operator of an existing affected continuous or batch pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(1) Any gases that contain HCl in a concentration in excess of 18 parts per million by volume (ppmv); or

(2) HCl at a mass emission rate that corresponds to a collection efficiency of less than 97 percent.

(b) *Hydrochloric acid regeneration plants.* (1) No owner or operator of an existing affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain HCl in a concentration greater than 25 ppmv.

(2) In addition to the requirement of paragraph (b)(1) of this section, no owner or operator of an existing affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain chlorine (Cl₂) in a concentration in excess of either 6 ppmv or an alternative source-specific maximum concentration. The source-specific maximum concentration standard shall be established according to § 63.1161(c)(2) of this subpart.

§ 63.1158 Emission standards for new or reconstructed sources.

(a) *Pickling lines.*—(1) *Continuous pickling lines.* No owner or operator of a new or reconstructed affected continuous pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(i) Any gases that contain HCl in a concentration in excess of 6 ppmv; or

(ii) HCl at a mass emission rate that corresponds to a collection efficiency of less than 99 percent.

(2) *Batch pickling lines.* No owner or operator of a new or reconstructed affected batch pickling line at a steel pickling facility shall cause or allow to be discharged into the atmosphere from the affected pickling line:

(i) Any gases that contain HCl in a concentration in excess of 18 ppmv; or

(ii) HCl at a mass emission rate that corresponds to a collection efficiency of less than 97 percent.

(b) *Hydrochloric acid regeneration plants.* (1) No owner or operator of a new or reconstructed affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain HCl in a concentration greater than 12 ppmv.

(2) In addition to the requirement of paragraph (b)(1) of this section, no

owner or operator of a new or reconstructed affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain Cl₂ in a concentration in excess of 6 ppmv.

§ 63.1159 Operational and equipment standards for existing, new, or reconstructed sources.

(a) *Hydrochloric acid regeneration plant.* The owner or operator of an affected plant must operate the affected plant at all times while in production mode in a manner that minimizes the proportion of excess air fed to the process and maximizes the process offgas temperature consistent with producing usable regenerated acid or iron oxide.

(b) *Hydrochloric acid storage vessels.* The owner or operator of an affected vessel shall provide and operate, except during loading and unloading of acid, a closed-vent system for each vessel. Loading and unloading shall be conducted either through enclosed lines or each point where the acid is exposed to the atmosphere shall be equipped with a local fume capture system, ventilated through an air pollution control device.

§ 63.1160 Compliance dates and maintenance requirements.

(a) *Compliance dates.* (1) The owner or operator of an affected existing steel pickling facility and/or hydrochloric acid regeneration plant subject to this subpart shall achieve initial compliance with the requirements of this subpart no later than June 22, 2001.

(2) The owner or operator of a new or reconstructed steel pickling facility and/or hydrochloric acid regeneration plant subject to this subpart that commences construction or reconstruction after September 18, 1997, shall achieve compliance with the requirements of this subpart immediately upon startup of operations or by June 22, 1999, whichever is later.

(b) *Maintenance requirements.* (1) The owner or operator of an affected source shall comply with the operation and maintenance requirements prescribed under § 63.6(e) of subpart A of this part.

(2) In addition to the requirements specified in paragraph (b)(1) of this section, the owner or operator shall prepare an operation and maintenance plan for each emission control device to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit. All such plans must be consistent with good maintenance practices and, for a scrubber emission control device, must at a minimum:

(i) Require monitoring and recording the pressure drop across the scrubber once per shift while the scrubber is operating in order to identify changes that may indicate a need for maintenance;

(ii) Require the manufacturer's recommended maintenance at the recommended intervals on fresh solvent pumps, recirculating pumps, discharge pumps, and other liquid pumps, in addition to exhaust system and scrubber fans and motors associated with those pumps and fans;

(iii) Require cleaning of the scrubber internals and mist eliminators at intervals sufficient to prevent buildup of solids or other fouling;

(iv) Require an inspection of each scrubber at intervals of no less than 3 months with:

(A) Cleaning or replacement of any plugged spray nozzles or other liquid delivery devices;

(B) Repair or replacement of missing, misaligned, or damaged baffles, trays, or other internal components;

(C) Repair or replacement of droplet eliminator elements as needed;

(D) Repair or replacement of heat exchanger elements used to control the temperature of fluids entering or leaving the scrubber; and

(E) Adjustment of damper settings for consistency with the required air flow.

(v) If the scrubber is not equipped with a viewport or access hatch allowing visual inspection, alternate means of inspection approved by the Administrator may be used.

(vi) The owner or operator shall initiate procedures for corrective action within 1 working day of detection of an operating problem and complete all corrective actions as soon as practicable. Procedures to be initiated are the applicable actions that are specified in the maintenance plan. Failure to initiate or provide appropriate repair, replacement, or other corrective action is a violation of the maintenance requirement of this subpart.

(vii) The owner or operator shall maintain a record of each inspection, including each item identified in paragraph (b)(2)(iv) of this section, that is signed by the responsible maintenance official and that shows the date of each inspection, the problem identified, a description of the repair, replacement, or other corrective action taken, and the date of the repair, replacement, or other corrective action taken.

(3) The owner or operator of each hydrochloric acid regeneration plant shall develop and implement a written maintenance program. The program shall require:

(i) Performance of the manufacturer's recommended maintenance at the recommended intervals on all required systems and components;

(ii) Initiation of procedures for appropriate and timely repair, replacement, or other corrective action within 1 working day of detection; and

(iii) Maintenance of a daily record, signed by a responsible maintenance official, showing the date of each inspection for each requirement, the problems found, a description of the repair, replacement, or other action taken, and the date of repair or replacement.

§ 63.1161 Performance testing and test methods.

(a) *Demonstration of compliance.* The owner or operator shall conduct an initial performance test for each process or emission control device to determine and demonstrate compliance with the applicable emission limitation according to the requirements in § 63.7 of subpart A of this part and in this section.

(1) Following approval of the site-specific test plan, the owner or operator shall conduct a performance test for each process or control device to either measure simultaneously the mass flows of HCl at the inlet and the outlet of the control device (to determine compliance with the applicable collection efficiency standard) or measure the concentration of HCl (and Cl₂ for hydrochloric acid regeneration plants) in gases exiting the process or the emission control device (to determine compliance with the applicable emission concentration standard).

(2) Compliance with the applicable concentration standard or collection efficiency standard shall be determined by the average of three consecutive runs or by the average of any three of four consecutive runs. Each run shall be conducted under conditions representative of normal process operations.

(3) Compliance is achieved if either the average collection efficiency as determined by the HCl mass flows at the control device inlet and outlet is greater than or equal to the applicable collection efficiency standard, or the average measured concentration of HCl or Cl₂ exiting the process or the emission control device is less than or equal to the applicable emission concentration standard.

(b) *Establishment of scrubber operating parameters.* During the performance test for each emission control device, the owner or operator using a wet scrubber to achieve compliance shall establish site-specific

operating parameter values for the minimum scrubber makeup water flow rate and, for scrubbers that operate with recirculation, the minimum recirculation water flow rate. During the emission test, each operating parameter must be monitored continuously and recorded with sufficient frequency to establish a representative average value for that parameter, but no less frequently than once every 15 minutes. The owner or operator shall determine the operating parameter monitoring values as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration or collection efficiency per paragraph (a)(2) of this section. An owner or operator may conduct multiple performance tests to establish alternative compliant operating parameter values. Also, an owner or operator may reestablish compliant operating parameter values as part of any performance test that is conducted subsequent to the initial test or tests.

(c) *Establishment of hydrochloric acid regeneration plant operating parameters.* (1) During the performance test for hydrochloric acid regeneration plants, the owner or operator shall establish site-specific operating parameter values for the minimum process offgas temperature and the maximum proportion of excess air fed to the process as described in § 63.1162(b)(1) of this subpart. During the emission test, each operating parameter must be monitored and recorded with sufficient frequency to establish a representative average value for that parameter, but no less frequently than once every 15 minutes for parameters that are monitored continuously. Amount of iron in the spent pickle liquor shall be determined for each run by sampling the liquor every 15 minutes and analyzing a composite of the samples. The owner or operator shall determine the compliant monitoring values as the averages of the values recorded during any of the runs for which results are used to establish the emission concentration per paragraph (a)(2) of this section. An owner or operator may conduct multiple performance tests to establish alternative compliant operating parameter values. Also, an owner or operator may reestablish compliant operating parameter values as part of any performance test that is conducted subsequent to the initial test or tests.

(2) During this performance test, the owner or operator of an existing affected plant may establish an alternative concentration standard if the owner or operator can demonstrate to the

Administrator's satisfaction that the plant cannot meet a concentration limitation for Cl_2 of 6 ppmv when operated within its design parameters. The alternative concentration standard shall be established through performance testing while the plant is operated at maximum design temperature and with the minimum proportion of excess air that allows production of iron oxide of acceptable quality while measuring the Cl_2 concentration in the process exhaust gas. The measured concentration shall be the concentration standard for that plant.

(d) *Test methods.* (1) The following test methods in appendix A of 40 CFR part 60 shall be used to determine compliance under § 63.1157(a), § 63.1157(b), § 63.1158(a), and § 63.1158(b) of this subpart:

(i) Method 1, to determine the number and location of sampling points, with the exception that no traverse point shall be within one inch of the stack or duct wall;

(ii) Method 2, to determine gas velocity and volumetric flow rate;

(iii) Method 3, to determine the molecular weight of the stack gas;

(iv) Method 4, to determine the moisture content of the stack gas; and

(v) Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method," to determine the HCl mass flows at the inlet and outlet of a control device or the concentration of HCl discharged to the atmosphere, and also to determine the concentration of Cl_2 discharged to the atmosphere from acid regeneration plants. If compliance with a collection efficiency standard is being demonstrated, inlet and outlet measurements shall be performed simultaneously. The minimum sampling time for each run shall be 60 minutes and the minimum sample volume 0.85 dry standard cubic meters (30 dry standard cubic feet). The concentrations of HCl and Cl_2 shall be calculated for each run as follows:

$C_{\text{HCl}}(\text{ppmv}) = 0.659 C_{\text{HCl}}(\text{mg/dscm})$,
and $C_{\text{Cl}_2}(\text{ppmv}) = 0.339 C_{\text{Cl}_2}(\text{mg/dscm})$,
where C(ppmv) is concentration in ppmv and C(mg/dscm) is concentration in milligrams per dry standard cubic meter as calculated by the procedure given in Method 26A.

(2) The owner or operator may use equivalent alternative measurement methods approved by the Administrator.

§ 63.1162 Monitoring requirements.

(a) The owner or operator of a new, reconstructed, or existing steel pickling

facility or acid regeneration plant subject to this subpart shall:

(1) Conduct performance tests to measure the HCl mass flows at the control device inlet and outlet or the concentration of HCl exiting the control device according to the procedures described in § 63.1161 of this subpart. Performance tests shall be conducted either annually or according to an alternative schedule that is approved by the applicable permitting authority, but no less frequently than every 2½ years or twice per title V permit term. If any performance test shows that the HCl emission limitation is being exceeded, then the owner or operator is in violation of the emission limit.

(2) In addition to conducting performance tests, if a wet scrubber is used as the emission control device, install, operate, and maintain systems for the measurement and recording of the scrubber makeup water flow rate and, if required, recirculation water flow rate. These flow rates must be monitored continuously and recorded at least once per shift while the scrubber is operating. Operation of the wet scrubber with excursions of scrubber makeup water flow rate and recirculation water flow rate less than the minimum values established during the performance test or tests will require initiation of corrective action as specified by the maintenance requirements in § 63.1160(b)(2) of this subpart.

(3) If an emission control device other than a wet scrubber is used, install, operate, and maintain systems for the measurement and recording of the appropriate operating parameters.

(4) Failure to record each of the operating parameters listed in paragraph (a)(2) of this section is a violation of the monitoring requirements of this subpart.

(5) Each monitoring device shall be certified by the manufacturer to be accurate to within 5 percent and shall be calibrated in accordance with the manufacturer's instructions but not less frequently than once per year.

(6) The owner or operator may develop and implement alternative monitoring requirements subject to approval by the Administrator.

(b) The owner or operator of a new, reconstructed, or existing acid regeneration plant subject to this subpart shall also install, operate, and maintain systems for the measurement and recording of the:

(1) Process offgas temperature, which shall be monitored continuously and recorded at least once every shift while the facility is operating in production mode; and

(2) Parameters from which proportion of excess air is determined. Proportion of excess air shall be determined by a combination of total air flow rate, fuel flow rate, spent pickle liquor addition rate, and amount of iron in the spent pickle liquor, or by any other combination of parameters approved by the Administrator in accordance with § 63.8(f) of subpart A of this part. Proportion of excess air shall be determined and recorded at least once every shift while the plant is operating in production mode.

(3) Each monitoring device must be certified by the manufacturer to be accurate to within 5 percent and must be calibrated in accordance with the manufacturer's instructions but not less frequently than once per year.

(4) Operation of the plant with the process offgas temperature lower than the value established during performance testing or with the proportion of excess air greater than the value established during performance testing is a violation of the operational standard specified in § 63.1159(a) of this subpart.

(c) The owner or operator of an affected hydrochloric acid storage vessel shall inspect each vessel semiannually to determine that the closed-vent system and either the air pollution control device or the enclosed loading and unloading line, whichever is applicable, are installed and operating when required.

§ 63.1163 Notification requirements.

(a) *Initial notifications.* As required by § 63.9(b) of subpart A of this part, the owner or operator shall submit the following written notifications to the Administrator:

(1) The owner or operator of an area source that subsequently becomes subject to the requirements of the standard shall provide notification to the applicable permitting authority as required by § 63.9(b)(1) of subpart A of this part.

(2) As required by § 63.9(b)(2) of subpart A of this part, the owner or operator of an affected source that has an initial startup before June 22, 1999, shall notify the Administrator that the source is subject to the requirements of the standard. The notification shall be submitted not later than October 20, 1999 (or within 120 calendar days after the source becomes subject to this standard), and shall contain the information specified in §§ 63.9(b)(2)(i) through 63.9(b)(2)(v) of subpart A of this part.

(3) As required by § 63.9(b)(3) of subpart A of this part, the owner or operator of a new or reconstructed

affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date and for which an application for approval of construction or reconstruction is not required under § 63.5(d) of subpart A of this part, shall notify the Administrator in writing that the source is subject to the standards no later than 120 days after initial startup. The notification shall contain the information specified in §§ 63.9(b)(2)(i) through 63.9(b)(2)(v) of subpart A of this part, delivered or postmarked with the notification required in § 63.9(b)(5) of subpart A of this part.

(4) As required by § 63.9(b)(4) of subpart A of this part, the owner or operator of a new or reconstructed major affected source that has an initial startup after June 22, 1999, and for which an application for approval of construction or reconstruction is required under § 63.5(d) of subpart A of this part shall provide the information specified in §§ 63.9(b)(4)(i) through 63.9(b)(4)(v) of subpart A of this part.

(5) As required by § 63.9(b)(5) of subpart A of this part, the owner or operator who, after June 22, 1999, intends to construct a new affected source or reconstruct an affected source subject to this standard, or reconstruct a source such that it becomes an affected source subject to this standard, shall notify the Administrator, in writing, of the intended construction or reconstruction.

(b) *Request for extension of compliance.* As required by § 63.9(c) of subpart A of this part, if the owner or operator of an affected source cannot comply with this standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of subpart A of this part, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in §§ 63.6(i)(4) through 63.6(i)(6) of subpart A of this part.

(c) *Notification that source is subject to special compliance requirements.* As required by § 63.9(d) of subpart A of this part, an owner or operator of a new source that is subject to special compliance requirements as specified in §§ 63.6(b)(3) and 63.6(b)(4) of subpart A of this part shall notify the Administrator of his/her compliance obligations not later than the notification dates established in § 63.9(b) of subpart A of this part for new sources that are not subject to the special provisions.

(d) *Notification of performance test.* As required by § 63.9(e) of subpart A of this part, the owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c) of subpart A of this part and, if requested by the Administrator, to have an observer present during the test.

(e) *Notification of compliance status.* The owner or operator of an affected source shall submit a notification of compliance status as required by § 63.9(h) of subpart A of this part when the source becomes subject to this standard.

§ 63.1164 Reporting requirements.

(a) *Reporting results of performance tests.* As required by § 63.10(d)(2) of subpart A of this part, the owner or operator of an affected source shall report the results of any performance test as part of the notification of compliance status required in § 63.1163 of this subpart.

(b) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports under § 63.6(i) of subpart A of this part shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(c) *Periodic startup, shutdown, and malfunction reports.* Section 63.6(e) of subpart A of this part requires the owner or operator of an affected source to operate and maintain each affected emission source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the level required by the standard at all times, including during any period of startup, shutdown, or malfunction. Malfunctions must be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan.

(1) *Plan.* As required by § 63.6(e)(3) of subpart A of this part, the owner or operator shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, or malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard.

(2) *Reports.* As required by § 63.10(d)(5)(i) of subpart A of this part, if actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the startup, shutdown, and malfunction plan, the owner or operator shall state such information in a semiannual report. The report, to be certified by the owner or operator or other responsible official, shall be submitted semiannually and delivered or postmarked by the 30th day following the end of each calendar half; and

(3) *Immediate Reports.* Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures in the startup, shutdown, and malfunction plan, the owner or operator shall comply with all requirements of § 63.10(d)(5)(ii) of subpart A of this part.

§ 63.1165 Recordkeeping requirements.

(a) *General recordkeeping requirements.* As required by § 63.10(b)(2) of subpart A of this part, the owner or operator shall maintain records for 5 years from the date of each record of:

(1) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(2) The occurrence and duration of each malfunction of the air pollution control equipment;

(3) All maintenance performed on the air pollution control equipment;

(4) Actions taken during periods of startup, shutdown, and malfunction and the dates of such actions (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when these actions are different from the procedures specified in the startup, shutdown, and malfunction plan;

(5) All information necessary to demonstrate conformance with the startup, shutdown, and malfunction plan when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. This information can be recorded in a checklist or similar form (see § 63.10(b)(2)(v) of subpart A of this part);

(6) All required measurements needed to demonstrate compliance with the standard and to support data that the source is required to report, including, but not limited to, performance test measurements (including initial and any subsequent performance tests) and measurements as may be necessary to determine the conditions of the initial test or subsequent tests;

(7) All results of initial or subsequent performance tests;

(8) If the owner or operator has been granted a waiver from recordkeeping or reporting requirements under § 63.10(f) of subpart A of this part, any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements;

(9) If the owner or operator has been granted a waiver from the initial performance test under § 63.7(h) of subpart A of this part, a copy of the full request and the Administrator's approval or disapproval;

(10) All documentation supporting initial notifications and notifications of compliance status required by § 63.9 of subpart A of this part; and

(11) Records of any applicability determination, including supporting analyses.

(b) *Subpart CCC records.* (1) In addition to the general records required by paragraph (a) of this section, the owner or operator shall maintain

records for 5 years from the date of each record of:

(i) Scrubber makeup water flow rate and recirculation water flow rate if a wet scrubber is used;

(ii) Calibration and manufacturer certification that monitoring devices are accurate to within 5 percent; and

(iii) Each maintenance inspection and repair, replacement, or other corrective action.

(2) The owner or operator of an acid regeneration plant shall also maintain records for 5 years from the date of each record of process offgas temperature and parameters that determine proportion of excess air.

(3) The owner or operator shall keep the written operation and maintenance plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the source is no longer subject to the provisions of this subpart. In addition, if the operation and maintenance plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the plan on record to be made available for inspection by the Administrator for a period of 5 years after each revision to the plan.

(c) *Recent records.* General records and subpart CCC records for the most recent 2 years of operation must be maintained on site. Records for the previous 3 years may be maintained off site.

§ 63.1166 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63, subpart E, the following authorities shall be retained by the Administrator and not transferred to a State:

(1) Approval of alternative emission standards for existing, new, and reconstructed pickling lines, hydrochloric acid regeneration plants, and hydrochloric acid storage vessels to those standards specified in §§ 63.1157 and 63.1158 of this subpart;

(2) Approval of alternative measurement methods for HCl and Cl₂ to those specified in § 63.1161(d)(1) of this subpart;

(3) Approval of alternative monitoring requirements to those specified in §§ 63.1162(a)(2) through 63.1162(a)(5) and 63.1162(b)(1) through 63.1162(b)(3) of this subpart; and

(4) Waiver of recordkeeping requirements specified in § 63.1165 of this subpart.

(b) The following authorities shall be delegated to a State: All other authorities, including approval of an alternative schedule for conducting performance tests to the requirement specified in § 63.1162(a)(1) of this subpart.

§§ 63.1167—63.1174 [Reserved]

TABLE 1 TO SUBPART CCC.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CCC

Reference	Applies to Subpart CCC	Explanation
63.1–63.5	Yes.	Subpart CCC does not contain an opacity or visible emission standard.
63.6 (a)–(g)	Yes.	
63.6 (h)	No	
63.6 (i)–(j)	Yes.	Subpart CCC does not contain an opacity or visible emission standard.
63.7–63.9	Yes.	
63.10 (a)–(c)	Yes.	
63.10 (d) (1)–(2)	Yes.	
63.10 (d)(3)	No	
63.10 (d) (4)–(5)	Yes.	Subpart CCC does not require the use of flares.
63.10 (e)–(f)	Yes.	
63.11	No	
63.12–63.15	Yes.	

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 97-244; RM-9200, RM-9235 & RM-9236]

Radio Broadcasting Services; Kerrville, Leakey & Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Kerrville, Texas, in response to a petition filed by The Stronghold Foundation, Inc. See 63 FR 193, January 5, 1998. The coordinates for Channel 291A at Kerrville are 30-02-48 NL and 99-08-24 WL. In response to two separate counterproposals filed by Kent S. Foster, we shall allot Channel 226A to Leakey, Texas, at coordinates 29-43-42 NL and 99-45-48 WL and Channel 224A to Mason, Texas, at coordinates 30-45-00 NL and 99-14-00 WL. Since Kerrville, Leakey and Mason are all located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for these allotments. With this action, this proceeding is terminated. A filing window for Channel 291A at Kerrville, Channel 226A at Leakey and Channel 224A at Mason will not be opened at this time. Instead, the issue of opening a filing window for these channels 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. 97-244, 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 Channel 291A at Kerrville, Channel 226A at Leakey, and Channel 224A at Mason.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-15747 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 99-59; RM-9447]

Radio Broadcasting Services; Fairfield, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279C2 to Fairfield, Montana, in response to a petition filed by Mountain West Broadcasting. See 64 FR 8787, February 23, 1999. The coordinates for Channel 279C2 at Fairfield are 47-37-00 NL and 111-59-06 WL. The channel can be allotted to Fairfield without a site restriction. Canadian concurrence has been obtained for the allotment of Channel 279C2 at Fairfield. With this action, this proceeding is terminated. A filing window for Channel 279C2 at Fairfield 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. 99-59, 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 Fairfield, Channel 279C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-15745 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 99-60; RM-9449]

Radio Broadcasting Services; Fort Benton, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239C3 to Fort Benton, Montana, in response to a petition filed by Mountain West Broadcasting. See 64 FR 8787, February 23, 1999. The coordinates for Channel 239C3 at Fort Benton are 47-44-01 NL and 110-47-41 WL. There is a site restriction 13.4 kilometers (8.4 miles) southwest of the community. Canadian concurrence has been obtained for the allotment of Channel 239C3 at Fort Benton. With this action, this proceeding is terminated. A filing window for Channel 239C3 at Fort Benton 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. 99-60, 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 Fort Benton, Channel 239C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-15744 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-62; RM-9410]

Radio Broadcasting Services; Reno, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A at Reno, Texas, in response to a petition filed by Thomas S. Desmond. See 64 FR 8788, February 23, 1999. The coordinates for Channel 255A at Reno are 30-40-12 NL and 95-36-08 WL. There is a site restriction 13 kilometers (8.1 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 255A at Reno 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. 99-62, 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 Reno, Channel 255A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-15743 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-71; RM-9362]

Radio Broadcasting Services; Ironton & Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C3 for Channel 224A at

Ironton, Missouri, and modifies the license for Station KYLS-FM at Ironton, to specify operation on Channel 240C3, and substitutes Channel 225C3 for Channel 240A at Salem, Missouri, and modifies the license for Station KKID(FM) accordingly, in response to a petition filed by Dockins Communications, Inc. and Ultra-Sonic Broadcast Stations, Inc. See 64 FR 12923, March 16, 1999. The coordinates for Channel 240C3 at Ironton are 37-33-46 and 90-44-29. The coordinates for Channel 225C3 at Salem are 37-38-01 and 91-32-05. With this action, this proceeding is terminated.

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. 99-71, 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 Missouri, is amended by removing Channel 224A and adding Channel 240C3 at Ironton and by removing Channel 240A and adding Channel 225C3 at Salem.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-15742 Filed 6-21-99; 8:45 am]

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 177

RIN 3206-A170

Administrative Claims Under the Federal Tort Claims Act

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise and update its regulations to reflect changes for the filing of administrative claims with OPM pursuant to the Federal Tort Claims Act for loss or damage of property, personal injury, or death caused by the negligent or wrongful act or omission of OPM employees while acting within the scope of their office or employment. **DATES:** Written comments must be received on or before July 22, 1999. **ADDRESSES:** Send written comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James S. Green, Associate General Counsel, or Gloria Clark, Paralegal Specialist, Office of the General Counsel, (202) 606-1700.

SUPPLEMENTARY INFORMATION: The Federal Tort Claims Act, as amended, 28 U.S.C. 2671-2680, provides that the United States Government may be held liable for property damage, personal injury, or death caused by the negligent or wrongful act or omission of its employees, while they are acting within the scope of their office or employment. The purpose of the Federal Tort Claims Act, which was passed in 1946, was to waive the traditional sovereign immunity of the United States from lawsuits in certain tort cases so that injured persons could seek recovery from the United States instead of from individual Federal employees who committed alleged wrongdoings. Under

the Federal Tort Claims Act, the United States is responsible to injured persons for the common law torts (i.e., torts as defined by state law case precedents rather than by statutes) of its employees in the same manner and to the same extent as a private individual under similar circumstances, in accordance with the law of the place where the alleged act or omission occurred.

The Department of Justice (DOJ) has the responsibility for overseeing the administration and implementation of the Federal Tort Claims Act for the United States Government. DOJ has authorized each agency to issue regulations and establish procedures consistent with their regulations for the Federal Tort Claims Act. The Federal Tort Claims Act authorizes the head of each Federal agency, or his designee, to consider, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The Director of OPM has delegated the responsibility for this function to the General Counsel of OPM. Any award, compromise, or settlement in excess of \$25,000 can only be effected upon the prior written approval of the Attorney General.

These regulations will only apply to claims asserted under the Federal Tort Claims Act for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM while acting within the scope of his or her office or employment. The proposed regulations will update OPM's regulations for the Federal Tort Claims Act and include revisions to reflect changes for the filing of administrative claims by claimants and the delegation of authority for this function within OPM by the General Counsel.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small

organizational units, and small governmental jurisdictions) because the changes will only affect the Federal Government.

List of Subjects in 5 CFR Part 177

Claims.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to revise 5 CFR part 177 as follows:

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

- 177.101 Scope of regulations.
- 177.102 Administrative claim; when presented; appropriate OPM office.
- 177.103 Administrative claim; who may file.
- 177.104 Investigations.
- 177.105 Administrative claim; evidence and information to be submitted.
- 177.106 Authority to adjust, determine, compromise, and settle.
- 177.107 Limitations on authority.
- 177.108 Referral to Department of Justice.
- 177.109 Final denial of claim.
- 177.110 Action on approved claim.

Authority: 28 U.S.C. 2672; 28 CFR 14.11.

§ 177.101 Scope of regulations.

These regulations apply only to claims presented or filed with the Office of Personnel Management (OPM) under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of OPM while acting within the scope of his or her office or employment.

§ 177.102 Administrative claim; when presented; appropriate OPM office.

(a) For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim is deemed to have been presented when OPM receives from a claimant, his or her authorized agent or legal representative, an executed Standard Form 95 (Claim for Damage, Injury or Death), or other written notification of an incident, accompanied by a claim for money damages stating a sum certain (a specific dollar amount) for injury to or loss of property, personal injury, or death alleged to have occurred as a result of the incident.

(b) All claims filed under the Federal Tort Claims Act as a result of the alleged negligence or wrongdoing of OPM or its employees will be mailed or delivered to the Office of the General Counsel, United States Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-1300.

(c) A claim must be presented to the Federal agency whose activities gave rise to the claim. A claim that should have been presented to OPM, but was mistakenly addressed to or filed with another Federal agency, is presented to OPM, as required by 28 U.S.C. 2401(b), as of the date OPM receives the claim. When a claim is mistakenly presented to OPM, OPM will transfer the claim to the appropriate Federal agency, if ascertainable, and advise the claimant of the transfer, or return the claim to the claimant.

(d) A claimant whose claim arises from an incident involving OPM and one or more other Federal agencies, will identify each agency to which the claim has been submitted at the time the claim is presented to OPM. OPM will contact all other affected Federal agencies in order to designate the single agency that will investigate and decide the merits of the claim. In the event a designation cannot be agreed upon by the affected agencies, the Department of Justice will be consulted and will designate an agency to investigate and determine the merits of the claim. The designated agency will notify the claimant that all future correspondence concerning the claim must be directed to that Federal agency. All involved Federal agencies may agree to conduct their own administrative reviews and to coordinate the results, or to have the investigation conducted by the designated Federal agency, but, in either event, the designated agency will be responsible for the final determination of the claim.

(e) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments must be in writing and signed by the claimant or his or her authorized agent or legal representative. Upon timely filing of an amendment to a pending claim, OPM will have 6 months in which to make a final disposition of the claim as amended and claimant's option under 28 U.S.C. 2675(a) will not accrue until 6 months after the filing of an amendment.

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his or her authorized legal agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his or her authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he or she will present with the claim appropriate evidence that he or she has the rights of a subrogee.

(e) A claim presented by an agent or legal representative must be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

OPM may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth date, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent on

him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injuries and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by OPM or another Federal agency. OPM will make available to the claimant a copy of the report of the examining physician on written request by the claimant, provided that he or she has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to OPM any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his or her claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of OPM, or his or her designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of 28 U.S.C. 2672, and this part. The General Counsel, in his or her discretion, has the authority to further delegate the responsibility for adjudicating, considering, adjusting, compromising, and settling any claim submitted under the provisions of 28 U.S.C. 2672, and this part, that is based on the alleged negligence or wrongful act or omission of an OPM employee, with the exception of claims involving personal injury. All claims involving personal injury will be adjudicated, considered, adjusted, compromised and settled by the Office of the General Counsel.

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under 28 U.S.C. 2672 and this part in excess of \$25,000 may be effected only with the prior written approval of the Attorney General or his or her designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim will be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part, only after consultation with the Department of Justice when, in the opinion of the General Counsel of OPM, or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and OPM is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under 28 U.S.C. 2672 and this part only after consultation with the Department of Justice when OPM is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required, or the advice of the Department of Justice is otherwise to be requested, under § 177.107, the written referral or request will be transmitted to the Department of Justice by the General Counsel of OPM or his or her designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim must be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial, but it must include a statement that, if the claimant is dissatisfied with the OPM action, he or she may file suit in an appropriate United States district court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of a Standard Form 95 (Claim for Damage, Injury or Death); a claims settlement agreement; and a Standard Form 1145 (Voucher for Payment), as appropriate. When a claimant is represented by an attorney, the Voucher for Payment must designate both the claimant and his or her attorney as payees, and the check will be delivered to the attorney, whose address is to appear on the Voucher for Payment.

(b) Acceptance by the claimant, his or her agent, or legal representative, of an award, compromise, or settlement made under 28 U.S.C. 2672 or 28 U.S.C. 2677 is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf

or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act omission gave rise to the claim, by reason of the same subject matter.

[FR Doc. 99-15805 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572-AB46

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to revise the method of determining loan fund eligibility for "ordinary replacements" and authorize use of guaranteed financing for "minor projects".

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received on or before July 22, 1999.

ADDRESSES: Written comments should be sent to Alex M. Cockey, Jr., Deputy Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, STOP 1560, 1400 Independence Avenue, SW, Washington, DC 20250-1560. RUS requires, in hard copy, a signed original and three copies of all comments (7 CFR part 1700.30(e)). All comments received will be available for public inspection at room 4037 South Building (address as above) between 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant

Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, STOP 1560, 1400 Independence Avenue, SW, Washington, DC 20250-1560. Telephone: (202) 720-9547. FAX (202) 690-0717. E-mail: acockey@rus.usda.gov.

SUPPLEMENTARY INFORMATION: See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: June 14, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99-15704 Filed 6-21-99; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-252-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Boeing Model 747-400 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would reduce the repetitive interval for one certain functional test. This proposal is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by August 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114,

Attention: Rules Docket No. 98-NM-252-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-252-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-252-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On July 13, 1994, the FAA issued AD 94-15-05, amendment 39-8976 (59 FR 37655, July 25, 1994), applicable to all Boeing Model 747-400 series airplanes, to require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. That action was prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

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

In addition, this proposed AD changes the acceptable revision levels for Boeing Service Bulletin 747-78A2113, from the original issue, dated November 11, 1993, and Revision 1, dated March 10, 1994, referenced in AD 94-15-05 as the appropriate source of service information for accomplishment of the actions, to Revision 2, dated June 8, 1993 and Revision 3, dated September 11, 1997. Revisions 2 and 3 of the service bulletin incorporate substantial technical changes. These revisions reduce the permitted resistance from 5.0 ohm to 4.0 ohm in the directional control valve hot short protection check, which ensures that the related circuit breaker will open if a hot short occurs. These revisions also add a step to

replace the bullnose seal in the next 650 flight hours if damage of more than 1 inch, but less than 10 inches is found during the bullnose seal inspection.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747-78A2166, Revision 1, dated October 9, 1997, which describes procedures for a repetitive functional test of the CDU cone brake on each thrust reverser, and correction of any discrepancy found. The procedures for the functional test of the cone brake are essentially the same as those described in Boeing Service Bulletin 747-78-2113, dated November 11, 1993, and Boeing Alert Service Bulletin 747-78A2113, Revision 1, dated March 10, 1994, for Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines (which were referenced as appropriate sources of service information in AD 94-15-05). However, Boeing Service Bulletin 747-78A2166, Revision 1, specifies a shorter repetitive interval for the functional test (650 flight hours) than was specified in Boeing Service Bulletin 747-78-2113 (1,000 flight hours).

In addition, the FAA has reviewed and approved Boeing Service Bulletins 747-78-2113, Revision 2, dated June 8, 1995, and Revision 3, dated September 11, 1997. The procedures for the functional test of the cone brake are essentially the same as those described in Boeing Service Bulletin 747-78-2113, dated November 11, 1993, and Boeing Alert Service Bulletin 747-78A2113, Revision 1, dated March 10, 1994, referenced previously, for Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines.

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94-15-05 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would reduce the repetitive interval for the functional test of the CDU cone brake. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Latest Service Bulletin and This Proposed AD

Operators should note that Boeing Service Bulletin 747-78A2166, Revision 1, specifies that the functional test of the CDU cone brake described in that service bulletin is not necessary for Model 747-400 series airplanes that are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747-78-2151 (or production equivalent). Boeing Model 747-400 series airplanes having line numbers 1061 and higher are equipped with such modified thrust reversers; therefore, the effectivity listing of Boeing Service Bulletin 747-78A2166, Revision 1, includes only Model 747 series airplanes equipped with General Electric Model CF6-80C2 engines having line numbers 679 through 1060 inclusive.

This proposed AD, however, would require that the cone brake functional test be performed on Model 747-400 series airplanes equipped with General Electric Model CF6-80C2 engines regardless of whether they are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747-78-2151. The FAA has determined that an inspection interval of 1,000 hours time-in-service (which was required by AD 94-15-05) provides a sufficient level of safety for the modified thrust reversers, and that an inspection interval of 650 hours time-in-service provides a sufficient level of safety for the unmodified thrust reversers, given the low holding torque condition that has been identified for the CDU cone brake.

Interim Action

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

Cost Impact

There are approximately 146 Model 747-400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD.

The new actions proposed by this AD would not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service

for thrust reversers that have not been modified). The current costs associated with AD 94-15-05 are reiterated in their entirety (as follows) for the convenience of affected operators.

For airplanes powered by Pratt & Whitney PW4000 series engines (39 U.S.-registered airplanes), the actions that are currently required by AD 94-15-05, and retained in this AD, take approximately 48 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines is estimated to be \$112,320, or \$2,880 per airplane.

For airplanes powered by General Electric CF6-80C2 series engines (16 U.S.-registered airplanes), the actions that are currently required by AD 94-15-05, and retained in this AD, take approximately 60 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines is estimated to be \$57,600, or \$3,600 per airplane.

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

Currently, there are no Model 747-400 series airplanes powered by Rolls-Royce RB211-524G/H series engines on the U.S. Register at this time. However, should one of these airplanes be imported and placed on the U.S. Register in the future, it will require approximately 30 hours to accomplish the required actions, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this AD is estimated to be \$1,800 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8976 (59 FR 37655, July 25, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98-NM-252-AD. Supersedes AD 94-15-05, Amendment 39-8976.

Applicability: All Model 747-400 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

Restatement of Requirements of AD 94-15-05, Amendment 39-8976

Inspections and Tests

(a) For Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines: Accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 90 days after August 24, 1994 (the effective date of AD 94-15-05, amendment 39-8976), perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser, and perform a test of the lock mechanism of the center locking actuator, in accordance with paragraphs III.C. and III.E. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2112, dated November 11, 1993; or paragraphs III.E. and III.H. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-78A2112, Revision 1, dated March 7, 1994. Repeat this inspection and test thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 9 months after August 24, 1994, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.A., III.B., III.D., and III.F. through III.M. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2112, dated November 11, 1993; or paragraphs III.C., III.D., III.F., III.G., and III.I. through III.P. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-78A2112, Revision 1, dated March 7, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Inspections and Tests

(b) For Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines: Accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 90 days after August 24, 1994, perform an inspection to detect damage to the bullnose seal on the translating sleeve of the thrust reverser, and a continuity test of the position switch module of the center drive unit (CDU) and a cone brake test of the CDU, in accordance with paragraphs III.B. and III.C. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2113, dated November 11, 1993; or paragraphs III.E. through III.G. of Boeing Alert Service Bulletin 747-78A2113, Revision 1, dated March 10, 1994; or Boeing Service Bulletin 747-78-2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Repeat the inspection and tests thereafter at intervals not to exceed 1,000 hours time-in-service.

(2) Within 9 months after August 24, 1994, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.A., III.D., III.F., III.G., III.H., and III.J. through III.M. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2113, dated November 11, 1993; or paragraphs III.D. and III.H. through III.N. of Boeing Alert Service Bulletin 747-78A2113, Revision 1, dated March 10, 1994; or Boeing Service Bulletin 747-78-2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997.

Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

Inspections and Tests

(c) For Model 747-400 series airplanes powered by Rolls-Royce RB211-524G/H series engines: Within 9 months after August 24, 1994, and thereafter at intervals not to exceed 18 months, perform inspections and functional tests of the thrust reverser control and indication systems in accordance with paragraphs III.D. through III.K. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2115, dated October 28, 1993; or paragraphs III.D. through III.L. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-78A2115, Revision 1, dated March 4, 1994.

Corrective Action

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

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747-78-2112, dated November 11, 1993, or Boeing Alert Service Bulletin 747-78A2112, Revision 1, dated March 7, 1994 (for Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines); Boeing Service Bulletin 747-78-2113, dated November 11, 1993, or Boeing Alert Service Bulletin 747-78A2113, Revision 1, dated March 10, 1994, or Boeing Service Bulletin 747-78-2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997 (for Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines); or Boeing Service Bulletin 747-78-2115, dated October 28, 1993, or Boeing Alert Service Bulletin 747-78A2115, Revision 1, dated March 4, 1994 (for Model 747-400 series airplanes powered by Rolls-Royce RB211-524G/H series engines); as applicable. Or

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

New Requirements of this AD

Functional Tests

(e) For Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines: Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first, perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747-78A2166, Revision 1, dated October 9, 1997; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747-78-2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997.

(1) For Model 747-400 series airplanes having line numbers 679 through 1060 inclusive, equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747-78-2151: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747-400 series airplanes having line numbers 1061 and higher, equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747-78-2151: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 hours time-in-service.

Terminating Action

(f) Accomplishment of the functional test of the CDU cone brake, as specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of this AD.

Corrective Action

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

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747-78A2166, Revision 1, dated October 9, 1997; or Boeing Service Bulletin 747-78-2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Or

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

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(h)(2) Alternative methods of compliance for Model 747-400 series airplanes powered by General Electric CF6-80C2 series engines, approved previously in accordance with AD 94-15-05, amendment 39-8976, are not considered to be approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

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

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-15774 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-55-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC-8 series airplanes. This proposal would require a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed; and revising the Airplane Flight Manual to prohibit airplane operation from runways less than 75 feet wide, if necessary. This proposal also would require eventual replacement of any single rate configuration springs with dual rate configuration springs, which would terminate the requirement for the AFM revision. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation.

DATES: Comments must be received by July 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT:

James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7521; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-55-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC-8 series airplanes. TCA indicated that during production of these airplanes, single rate configuration springs were inadvertently installed in the rudder control feel units. The installation of single rate configuration springs in lieu of the correct dual rate configuration springs could require heavier than normal rudder pedal forces, causing the pilot to exert extreme pressure on the rudder pedal during takeoff or landing resulting in an asymmetric rudder force condition. Such conditions could result in reduced controllability of the airplane and consequent potential for center line deviation.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Alert Service Bulletin S.B. A8-27-82, dated July 10, 1998, which describes procedures for a one-time inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, and replacement of any single rate configuration springs with dual rate configuration springs. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directives CF-98-39, dated October 23, 1998, and CF-98-39R1, dated December 31, 1998; in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel Canadian airworthiness directive in that it would require a revision to the operator's Airplane Flight Manual (AFM). The AFM revision would specify that operation from runways less than 75 feet wide is prohibited for airplanes operating with single rate configuration springs. Operators currently follow the procedures specified in deHavilland Supplement No. 54, "Operation from Narrow Runways," which has not been FAA-approved for U.S.-registered airplanes. This supplement allows a minimum runway width of 59 feet for airplanes operating with single rate configuration springs. The FAA has examined the charts included in the supplement, crew training issues, and feedback from U.S. operators, and has determined that accomplishment of the AFM revision described previously is necessary in order to address the unsafe condition. This is based on the FAA's determination that this would not impose an unnecessary burden on U.S. operators, and would allow affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 235 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$14,100, or \$60 per airplane.

It would take approximately 10 work hours per airplane to accomplish the proposed replacement, at an average labor rate of \$60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be \$141,000, or \$600 per airplane.

If accomplished, it would take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators,

if accomplished, is estimated to be \$14,100, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99-NM-55-AD.

Applicability: Model DHC-8 series airplanes, as listed in Bombardier Alert

Service Bulletin S.B. A8-27-82, dated July 10, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an asymmetric rudder force condition, which could result in reduced controllability of the airplane and consequent potential for center line deviation, accomplish the following:

General Visual Inspection

(a) Within 100 flight hours or 14 days after the effective date of this AD, whichever occurs later: Perform a one-time visual inspection of the spring assemblies located in the rudder control feel unit to verify that dual rate configuration springs are installed, in accordance with Bombardier Alert Service Bulletin S.B. A8-27-82, dated July 10, 1998.

(1) If dual rate configuration springs are installed, no further action is required by this AD.

AFM Revision

(2) If any single rate configuration springs are installed, prior to further flight: Revise the Limitations Section of the de Havilland Dash 8 Airplane Flight Manual (AFM) to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

"OPERATION FROM RUNWAYS LESS THAN 75 FEET WIDE IS PROHIBITED."

Terminating Action

(b) At the next scheduled maintenance visit, but no later than 36 months after the effective date of this AD: Replace any single rate configuration springs located in the rudder control feel unit with dual rate configuration springs, in accordance with Part C through Part H inclusive, of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8-27-82, dated July 10, 1998. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitation required by paragraph (a)(2) of this AD may be removed from the AFM.

Spares Paragraph

(c) As of the effective date of this AD, no person shall install any spring assembly having part number 82760050-003 on any airplane.

Alternative Methods of Compliance

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

provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directives CF-98-39, dated October 23, 1998, and CF-98-39R1, dated December 31, 1998.

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

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-15773 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-37]

Proposed Modification of Class E Airspace; Delaware, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, a GPS SIAP to Rwy 28, a Nondirectional Beacon (NDB) SIAP to Rwy 10, and VHF Omnidirectional Range (VOR) SIAP to Rwy 28, have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistance Chief Counsel, AGL-7, Rules Docket No. 99-AGL-37, 2300 East

Devon Avenue, Des Plaines, Illinois 60018.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 99-AGL-37." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-3484.

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

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Delaware, OH, to accommodate aircraft executing the proposed GPS Rwy 10 SIAP, GPS Rwy 28 SIAP, NDB Rwy 10 SIAP, and VOR Rwy 28 SIAP, at Delaware Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. 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 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(Lat. 40°16'47" N., long. 83°06'53" W.)

Delaware NDB
(Lat. 40°16'41" N., long. 83°06'33" W.)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of Delaware Municipal Airport and within 2.6 miles either side of the 286° bearing from the Delaware NDB extending from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on June 8, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 99-15856 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 25

[REG-108287-98]

RIN 1545-AW25

Definition of a Qualified Interest in a Grantor Retained Annuity Trust and a Grantor Retained Unitrust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the

definition of a qualified interest. The proposed regulations apply to a grantor retained annuity trust (GRAT) and a grantor retained unitrust (GRUT) in determining whether a retained interest is a "qualified interest." The proposed regulations will affect individuals who have made a transfer in trust to a family member and have retained an interest in the trust. The proposed regulations clarify that a trust that uses a note, other debt instrument, option or similar financial arrangement to satisfy the annual payment obligation will not meet the requirements of section 2702(b) of the Internal Revenue Code. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 20, 1999. Outlines of topics to be discussed at the public hearing scheduled for October 20, 1999, at 10 a.m., must be received by September 29, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-108287-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-108287-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at <http://www.irs.gov/prod/taxregs/reglist.html>. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James F. Hogan, (202) 622-3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 2701 through 2704 were added to the Internal Revenue Code in the Omnibus Budget and Reconciliation Act of 1990 (1990 Act), 1991-2 C.B. 481, 524. Section 2702 applies to a transfer in trust that benefits a family member where the transferor retains an interest in the property subject to the transfer. If section 2702 applies to a transfer, the transferor's retained interest will be

valued at zero for gift tax purposes (and the transferor will be treated as making a gift of the entire value of the property), unless the interest is a "qualified interest." The term "qualified interest" is defined in section 2702(b) and includes a right to receive, annually, fixed payments (a qualified annuity interest) and a right to receive, annually, a fixed percentage of the trust corpus determined annually (a qualified unitrust interest).

Congress was particularly concerned about properly valuing gifts in trust with retained interests. The legislative history that accompanied the 1990 Act states:

[T]he committee is concerned about the undervaluation of gifts valued pursuant to Treasury tables. Based on average rates of return and life expectancy, those tables are seldom accurate in a particular case, and therefore, may be the subject of adverse selection. Because the taxpayer decides what property to give, when to give it, and often controls the return on the property, use of Treasury tables undervalues the transferred interests in the aggregate, more often than not.

Therefore, the committee determines that the valuation problems inherent in trusts and term interests in property are best addressed by valuing retained interests at zero unless they take an easily valued form—as an annuity or unitrust interest. By doing so, the bill draws upon present law rules valuing split interests in property for purposes of the charitable deduction.

136 Cong. Rec. S15681 (daily ed. Oct. 18, 1990) (Informal Senate Report on S. 3209).

The provisions of section 2702 and the regulations thereunder are intended to ensure that, when a donor transfers property and retains an interest in the property, the value of the retained interest is readily ascertainable. Thus, the value of the gift, that is, the value of the transferred property less the value of the retained interest, can be accurately determined. Section 25.2702-3(b)(1) of the Gift Tax Regulations implements this principle by requiring that for a qualified annuity interest: (1) The annuity must be a fixed amount; (2) the annuity must be payable at least annually; and (3) the yearly amount must be paid by a specified date each year, that is, the annuity payment may be paid after the close of the taxable year, but no later than the due date of the trust's income tax return. The annuity payment must be payable to (or for the benefit of) the holder of the annuity interest for each taxable year of the trust term. A right of withdrawal,

whether or not cumulative, is not a qualified annuity interest. Section 25.2702-3(c) provides comparable rules applicable in the case of a qualified unitrust interest.

To avoid making a cash or an in-kind payment, some GRATs have issued notes to the transferor in satisfaction of the obligation to make the annual payment. In certain cases, the trust instrument specifically authorizes the trustee to satisfy the annual payment obligation with notes. The notes provide for actual payment at a date some time in the future.

Thus far, the transactions that have come to the Service's attention have involved the use of notes. However, the Service is also concerned about other financial arrangements that have the effect of delaying payment from the trust to the grantor and thus may alter the value of the transferor's retained interest. These techniques include the grant of an option to purchase trust property in the future.

Issuing a note is not payment of a fixed amount not less frequently than annually, nor is it payment of a fixed percentage of the trust assets determined annually, as required by the statute and regulations. A note is merely a promise to pay in the future. Delaying payment by the use of a note to satisfy the annual payment obligation alters the true value of the transferor's retained interest, contrary to Congressional intent in requiring provisions ensuring an accurate valuation of the interest. This position is consistent with case law and rulings concluding that the use of a note to satisfy an obligation does not constitute payment of the obligation for tax purposes. *Don E. Williams Company v. Commissioner*, 429 U.S. 569 (1977); *Helvering v. Price*, 309 U.S. 409 (1940); *Eckert v. Burnet*; 283 U.S. 140 (1931); *Maddrix v. Commissioner*, 780 F.2d 946 (11th Cir. 1986); *Battelstein v. Internal Revenue Service*, 631 F.2d 1182 (5th Cir. 1980); Rev. Rul. 76-135, 1976-1 C.B. 114.

Furthermore, under §§ 25.2702-3(b)(1)(i) and 25.2702-3(c)(1)(i), a right of withdrawal is not a qualified annuity or unitrust interest. A right of withdrawal allows the payee to determine, in the payee's discretion, when the payment will be made, and thus, neither the timing nor the amount of each payment is fixed and determinable under the trust instrument. For similar reasons, the use of notes, other debt instruments, options or other similar financial arrangements that place the amount and timing of each payment at the discretion of the payee should not satisfy the annual payment obligation.

Accordingly, these proposed regulations amend the regulations under section 2702 to provide that issuance of a note, other debt instrument, option or similar financial arrangement does not constitute payment for purposes of section 2702. A retained interest that can be satisfied with such instruments is not a qualified annuity interest or a qualified unitrust interest. In examining all of these transactions, the Service will apply the step transaction doctrine where more than one step is used to achieve similar results. In addition, a retained interest is not a qualified interest under section 2702, unless the trust instrument expressly prohibits the use of notes, other debt instruments, options or similar financial arrangements that effectively delay receipt by the grantor of the annual payment necessary to satisfy the annuity or unitrust interest amount. Under these provisions, in order to satisfy the annuity or unitrust payment obligation under section 2702(b), the annuity or unitrust payment must be made with either cash or other assets held by the trust.

The proposed regulations provide a transition rule for trusts created before September 20, 1999. If a trust created before September 20, 1999 does not prohibit a trustee from issuing a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation, the interest will be treated as a qualified interest under section 2702(b) if notes, etc. are not used after September 20, 1999 to satisfy the obligation and any note or notes or other debt instruments issued on or prior to September 20, 1999 to satisfy the annual payment obligation are paid in full by December 31, 1999, and any option or similar financial arrangement is terminated by December 31, 1999, such that the grantor actually receives cash or other trust assets in satisfaction of the payment obligation. For purposes of this section, an option will be considered terminated if the grantor is paid the greater of the required annuity or unitrust payment plus interest computed under section 7520 of the Code, or the fair market value of the option.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these

regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 20, 1999, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by September 20, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 29, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Paragraph 1. The authority citation for part 25 continues to read in part as follows:

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

Par. 2. Section 25.2702-3 is amended as follows:

1. Paragraph (b)(1)(i) is amended by adding a new sentence after the third sentence.

2. Paragraph (c)(1)(i) is amended by adding a new sentence after the fourth sentence.

3. A new paragraph (d)(5) is added. The additions read as follows:

§ 25.2702-3 Qualified interests.

* * * * *

(b) * * *

(1) * * * (i) * * * Issuance of a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity amount does not constitute payment of the annuity amount. * * *

* * * * *

(c) * * *

(1) * * * (i) * * * Issuance of a note, other debt instrument, option or other similar financial arrangement in satisfaction of the unitrust amount does not constitute payment of the unitrust amount. * * *

* * * * *

(d) * * *

(5) *Use of debt obligations to satisfy the annuity or unitrust payment obligation*—(i) *In general.* The trust instrument must prohibit the trustee from issuing a note, other debt instrument, option or other similar financial arrangement in satisfaction of the annuity or unitrust payment obligation.

(ii) *Special rule in the case of a trust created prior to September 20, 1999.* In the case of a trust created prior to September 20, 1999, the interest will be treated as a qualified interest under section 2702(b) if—

(A) Notes, other debt instruments, options or similar financial arrangements are not used after September 20, 1999 to satisfy the annuity or unitrust payment obligation; and

(B) Any note or notes or any other debt instruments issued to satisfy the

annual payment obligation on or prior to September 20, 1999, are paid in full by December 31, 1999, and, any option or similar financial arrangement issued to satisfy the annual payment obligation is terminated by December 31, 1999, such that the grantor receives cash or other trust assets in satisfaction of the payment obligation. For purposes of the preceding sentence, an option will be considered terminated only if the grantor receives cash or other trust assets equal in value to the greater of the required annuity or unitrust payment plus interest computed under section 7520 of the Code, or the fair market value of the option.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99-15524 Filed 6-21-99; 8:45 am]

BILLING CODE 4830-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-215, RM-9337]

Radio Broadcasting Services; Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by BK Radio requesting the allotment of Channel 239C2 at Mason, Texas, and modification of its application for Channel 249C2 at Mason to specify operation Channel 239C2 with cut-off protection. The coordinates for Channel 239C2 at Mason are 30-33-24 and 99-25-34. Concurrence of the Mexican government will be requested for this allotment.

DATES: Comments must be filed on or before August 2, 1999, and reply comments on or before August 17, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lee J. Peltzman, Shainis & Peltzman, Chartered, 1901 L Street, NW, Suite 290, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-215, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99-15746 Filed 6-21-99; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 247, and 252

[DFARS Case 98-D014]

Defense Federal Acquisition Regulation Supplement; Cargo Preference—Subcontracts for Commercial Items

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) guidance regarding the applicability of statutory requirements for use of U.S. vessels in the transportation of DoD supplies by sea. The DFARS presently waives these requirements for subcontracts for the acquisition of commercial items. This rule would require the use of the U.S. vessels under certain subcontracts for commercial items.

DATES: Comments on the proposed rule should be submitted in writing to the

address specified below on or before August 23, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350. Please cite DFARS Case 98-D014.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98-D014 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 98-D014 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131. Please cite DFARS Case 98-D014.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2631 provides a preference for use of U.S. vessels for ocean transportation of supplies purchased under DoD contracts. DFARS Parts 212 and 247 presently waive the requirements of 10 U.S.C. 2631 for subcontracts for the acquisition of commercial items or commercial components. This rule proposes to amend DFARS Parts 212 and 247 and corresponding clauses to limit the types of subcontracts for which the waiver of 10 U.S.C. 2631 is applicable. The rule is intended to ensure compliance with 10 U.S.C. 2631 for ocean cargoes clearly destined for DoD cause, while avoiding disruption of commercial delivery systems.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities providing ocean transportation of cargo are not small business concerns. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98-D014 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule

does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.504 is amended by revising paragraph (a)(xxii) to read as follows:

§ 212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(A) * * *
(xxii) 10 U.S.C. 2631, Transportation of Supplies by sea (except for the types of supplies listed at 252.247-7023(b)).
* * * * *

PART 247—TRANSPORTATION

§ 247.572-1 [Amended]

3. Section 247.572-1 is amended in paragraph (a) by removing the last sentence.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.212-7001 is amended by revising the clause date; in paragraph (b) by adding in numerical order the entry “___252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).”; and by revising paragraph (c) to read as follows:

§ 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (XXX 1999)

* * * * *

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items

clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

5. Section 252.244-7000 is revised to read as follows:

§ 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

As prescribed in 244.403, use the following clause:

Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (XXX 1999)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

6. Section 252.247-7023 is amended by revising the clause date; in paragraph (a)(5) by removing the last sentence; by redesignating paragraphs (b) through (g) as paragraphs (c) through (h) respectively; by adding a new paragraph (b); in newly designated paragraph (c) by removing the first sentence; and by revising newly designated paragraph (h). The added and revised text reads as follows:

§ 252.247-7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea (XXX 1999)

* * * * *

(b) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract. A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(1) This contract is a construction contract; or

(2) The supplies being transported are—

(i) Non-commercial items; or

(ii) Commercial items that are—
(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions.

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value with it subcontracts items for f.o.b. destination shipment.)

* * * * *

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that—

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b) of this clause.

(End of Clause)

7. Section 252.247-7024 is amended by revising the clause date and paragraph (b) to read as follows:

252.247-7024 Notification of Transportation of Supplies By Sea.

* * * * *

Notification of Transportation of Supplies by Sea (XXX 1999)

* * * * *

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Non-commercial items; or

(ii) Commercial items that are—
(A) Shipped in direct support of U.S. military contingencies, exercises, or forces deployed in peacekeeping missions;

(B) For commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643; or

(C) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value when it subcontracts items for f.o.b. destination shipment.)

(End of clause)

[FR Doc. 99-15836 Filed 6-21-99; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

[DFARS Case 97-D011]

Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD is withdrawing a proposed rule published on November 26, 1997 (62 FR 63047). The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification reference numbers and a clause for progress payments, the contracting officer must provide instructions to enable the payment office to distribute the progress payments in proportions that reasonably reflect the performance of work under the contract. After review of public comments, and in consultation with the Office of the Under Secretary of Defense (Comptroller), the Director of Defense Procurement issued a policy memorandum, dated August 12, 1998, which is available via the Internet at <http://www.acq.osd.mil/dp/>. The memorandum requires contracting officers to provide progress payment distribution instructions for any fixed-price contract, other than firm-fixed-price, that is funded with multiple appropriations. Consequently, DoD has determined that the proposed DFARS revisions are unnecessary.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062; telephone (703) 602-0131; telefax (703) 602-0350.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99-15835 Filed 6-21-99; 8:45 am]

BILLING CODE 5000-04-M

Notices

Federal Register

Vol. 64, No. 119

Tuesday, June 22, 1999

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA-99-03]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Services's (AMS) intention to request an extension for and revision to a currently approved information collection for the Dairy Inspection and Grading Program.

DATES: Comments on this notice must be received by August 23, 1999 to be assured consideration.

ADDRESSES: Comments should be sent to: Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: F. Tracy Schonrock, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2750-South Building, P.O. Box 96456, Washington, DC 20090-6456; Tel: (202) 720-3171, Fax (202) 720-2643.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Record Keeping.

OMB Number: 0581-0110.

Expiration Date of Approval: February 28, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621-1627) directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products graded under the dairy program may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there are regulations for the provider and user. For these reasons, the dairy inspection and grading program regulations were developed and issued under the authority of the Act. These regulations are essential to administer the program to meet the needs of the user and to carry out the purposes of the Act.

The information collection requirements in this request are essential to carry out the intent of the AMA to insure that dairy products are produced under sanitary conditions and that buyers are purchasing a quality product. In order for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products to serve the government, industry, and the consumer, laboratory test results must be recorded.

Respondents are not required to submit information to the agency. The records are to be evaluated by a USDA inspector at the time of an inspection. These records include quality tests of each producer, plant records of required tests and analysis, and starter and cheese make records. As an off-setting benefit, the records required by USDA are also records which are routinely used by the inspected facility for their own supervisory and quality control purposes.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average 3.002 hours per year per individual record keeper.

Record Keepers: Dairy products manufacturing facilities.

Estimated Number of Record Keepers: 508.

Estimated Total Annual Burden on Record Keepers: 1525 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency; (2) the accuracy of the collection burden estimate and the validity of the methodology and assumptions used in estimating the burden on record keepers; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581-0110 and the Dairy Inspection and Grading Program and be sent to USDA in care of the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. Comments received will be available for public inspection at this location during regular business hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 16, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99-15771 Filed 6-21-99; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM-99-00-3]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. Appointments for four members will be up in January 2000, and the

Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before September 20, 1999.

ADDRESSES: Nominations should be sent to Keith Jones, Program Manager, Room 2510 South Building, U.S. Department of Agriculture (USDA), AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Keith Jones, (202) 720-3252.

SUPPLEMENTARY INFORMATION: The OFPA of 1990 requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish a NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the program.

The current NOSB made recommendations to the Secretary regarding various matters, including recommendations regarding substances that it believed should be permitted to be used in organic production. It is expected that the NOSB will continue to work and make additional recommendations to the Secretary on various matters, including substances that should be permitted or prohibited for use in organic production and processing.

The NOSB was originally established in January 1992. A member of the NOSB is to serve for a term of 5 years, except that the original members were to serve staggered terms. The terms of four members of the current NOSB, who were appointed for 5-year terms, will be completed on January 24, 2000. A board member may serve consecutive terms if such member served an original term that was less than 5 years.

The NOSB is required to be composed of various individuals, including individuals who own or operate an organic farming operation, an organic handling operation, and a retail store with significant trade in organic products, as well as individuals who have expertise in the areas of environmental protection and resource conservation.

Nominations are sought for the positions of farmer/grower (1), environmentalist (1), retailer (1), and handler/processor (1). An individual desiring to be appointed to the NOSB at

this time must be one of the following: An owner or operator of an organic farming operation, an owner or operator of a handling operation, an owner or operator of a retail store with significant trade in organic products, or an expert in the area of environmental or resource conservation.

Selection criteria will include such factors as: Demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical information forms. The biographical information must be completed and returned to USDA within 10 working days of the receipt of the forms, to expedite the security clearance process that is required by USDA.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations for the Board have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505-0001.

Authority: 7.U.S.C. 6501-6522.

Dated: June 16, 1999.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 99-15770 Filed 6-22-99; 8:45 am]

BILLING CODE 3410-02-P

ARMED FORCES RETIREMENT HOME

Privacy Act of 1974; Computer Matching Program Between the Armed Forces Retirement Home and the Social Security Administration

AGENCY: Armed Forces Retirement Home.

ACTION: Notice.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of

Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby made of the computer matching between the Armed Forces Retirement Home (AFRH) and the Social Security Administration (SSA). The purpose of this match is for SSA to provide and verify benefit payment information on the AFRH's residents.

DATES: This proposed action will become effective July 22, 1999. The computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget, or Congress, objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the U.S. Soldiers' and Airmen's Home, Resource Management Directorate, 3700 N Capitol Street NW, Washington, DC 20317-0002.

FOR FURTHER INFORMATION: Donna H. Dietz, at (202) 722-3163.

SUPPLEMENTARY INFORMATION: AFRH and SSA have concluded an agreement to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which the SSA agrees to the disclosure of benefit payment information for the residents of the AFRH, which includes the United States Soldiers' and Airmen's Home (USSAH) and United States Naval Home (USNH). The AFRH Resident Fee Maintenance System will be used in a matching program with the SSA Master Beneficiary Records and Supplemental Security Income Records. Residents of the AFRH are required by 24 U.S.C. 414 to pay a monthly fee, which is a percentage of their monthly income and monthly payments, (including federal payments); thus, the AFRH will use the SSA data to verify the benefit earnings information currently provided by the residents, and identify any unreported recipients of benefit payments. A computer matching is the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice of accomplishing this requirement.

The matching agreement and an advance copy of this notice were submitted on June 9, 1999, to the Committee on Governmental Reform and Oversight of the United States

House of Representatives, the Committee on Governmental Affairs of the United States Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program is subject to review by Congress and OMB and shall not become effective until that review period has elapsed.

David F. Lacy,

Armed Forces Retirement Home Board, Chair/CEO.

Computer Matching Program Between the Armed Forces Retirement Home and the Social Security Administration

A. *Participating Agencies:* AFRH and SSA.

B. *Purpose of the Matching Program:* The purpose of this computer matching program is to identify and verify the gross Social Security benefit earnings of each resident of the AFRH. This is necessary to properly assess correct resident fee amounts, which is required by 24 USC 414 to be a percentage of residents' monthly income and monthly payments (including federal payments).

C. *Authority for Conducting the Matching Program:* The Armed Forces Retirement Home Act of 1991, 24 USC 401-441, requires the Directors of the USSAH and USNH, which are incorporated under the Armed Forces Retirement Home, to collect from each resident a monthly resident fee. The fee is a percentage of residents' monthly income and monthly payments (including federal payments).

D. *Records to be Matched:* The SSA records involved in the match are the Supplemental Security Income Record, SSA/OSR, 09-60-0103, and the Master Beneficiary Record, SSA/OSR, 09-60-0090. The AFRH will provide a finder file established from the AFRH Resident Fee Maintenance System (last published at 58 FR 68629).

E. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If there are no objections by either within 40 days, and the 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments, this computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on a semiannual basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between SSA

and AFRH, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

F. *Address for Receipt of Public Comments or Inquiries:* U.S. Soldiers' and Airmen's Home, Resource Management Directorate, 3700 N Capitol Street NW, Washington, DC 20317-0002, (202) 722-3163.

[FR Doc. 99-15795 Filed 6-21-99; 8:45 am]

BILLING CODE 8250-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No 1041]

Grant of Authority for Subzone Status; Komatsu Latin-America Corporation (Construction/Mining Equipment Components and Products), Miami, Florida

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 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 Greater Miami Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 32, has made application to the Board for authority to establish special-purpose subzone status at the construction and mining equipment components and products warehousing/distribution (non-manufacturing) facility of Komatsu Latin-America Corporation, located in Miami, Florida, (FTZ Docket 19-98, filed 4/6/98, and amended 11/30/98);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 18363, 4/15/98 and 63 FR 67645, 12/8/98); 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, as amended, is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the construction and mining equipment parts warehousing/distribution facility of Komatsu Latin-America Corporation, located in Miami, Florida, (Subzone 32B), at the location described in the application, as amended, and subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority does not include activity conducted under FTZ procedures that would result in a change in tariff classification.

Signed at Washington, DC, this 11th day of June 1999.

Robert S. LaRussa,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-15858 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1040]

Expansion of Foreign-Trade Zone 40, Cleveland, Ohio

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 Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40 to include four new sites at the Emerald Valley Business Park (Site 5), the Collinwood Industrial Park (Site 6), the Water Tower Industrial Park (Site 7) and the Strongsville Industrial Park (Site 8) in Cuyahoga County, Ohio, within the Cleveland Customs port of entry (FTZ Docket 31-98; filed 6/15/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 34144, 6/23/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and

that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 11th day of June 1999.

Robert S. LaRussa,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-15857 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-815]

Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review

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

ACTION: Notice of final results of administrative review.

SUMMARY: On May 15, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1992-1993 and 1993-1994 administrative reviews of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A-583-815). These reviews cover one manufacturer/exporter of the subject merchandise during the periods June 22, 1992 through November 30, 1993 and December 1, 1993 through November 30, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have not changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482-5222 or John Kugelman at (202) 482-0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on welded stainless steel pipe (WSSP) from Taiwan (57 FR 62300). On November 26, 1993, the Department published a notice of "Opportunity to Request Administrative Review" for the period June 22, 1992 through November 30, 1993 (58 FR 62326). In accordance with 19 CFR 353.22(a)(1), respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) requested that we conduct a review of its sales for this period. On January 18, 1994, we published in the **Federal Register** a notice of initiation of an antidumping duty administrative review covering the period June 22, 1992 through November 30, 1993. The Department subsequently published a notice of "Opportunity to Request Administrative Review" for the period December 1, 1993 through November 30, 1994 on December 6, 1994 (59 FR 62710). Again, Ta Chen requested a review of its sales for this period. On January 13, 1995, we published in the **Federal Register** our notice of initiation of the second administrative review (60 FR 3192).

We published the preliminary results of these reviews in the **Federal Register** on May 15, 1997 (Certain Welded Stainless Steel Pipe From Taiwan; Notice of Preliminary Results of Administrative Reviews, 62 FR 26776 (Preliminary Results)). Ta Chen filed a case brief on September 3, 1997; petitioners¹ submitted their rebuttal brief on September 10, 1997. The Department held a hearing on October 21, 1997.

The Department has now completed these reviews in accordance with section 751 of the Tariff Act.

Scope of the Review

The merchandise subject to these administrative reviews is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated

¹ Avesta Sheffield Pipe, Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steel Workers of America (AFL-CIO/CLC).

ASTM A-312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The periods for these reviews are June 22, 1992 through November 30, 1993 and December 1, 1993 through November 30, 1994. These reviews cover one manufacturer/exporter, Ta Chen, and its wholly-owned U.S. subsidiary, Ta Chen International (TCI) (collectively, Ta Chen).

Analysis of Comments Received

Due to the number of individual and company names and the importance of the timing of events in these reviews, that history is summarized briefly here. The comments that follow concern our application of adverse best information available (BIA) as the basis for Ta Chen's margins in the preliminary results of these reviews. Our decision to resort to BIA resulted from Ta Chen's dealings with two U.S. customers, referred to in the Preliminary Results as "Company A" and "Company B" to protect their identities. Ta Chen has since entered the names of these customers into the public record of these reviews and we here identify them by name: Company A is San Shing Hardware Works, USA (San Shing), and Company B is Sun Stainless, Inc. (Sun). San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only

Ta Chen products in the United States. According to Ta Chen, prior to June 1992 (the date of the preliminary determination in the less-than-fair-value (LTFV) investigation) Ta Chen had sold pipe from the U.S. inventory of its subsidiary, TCI. In June 1992 TCI and San Shing (a U.S. company established in 1988 by the president of a Taiwanese firm, San Shing Hardware Works, Ltd.) allegedly signed an agreement whereby San Shing would purchase all of TCI's existing U.S. inventory and would replace TCI as the principal distributor of Ta Chen pipe products in the United States. San Shing also committed itself to purchasing substantial dollar values of Ta Chen products from TCI over the next two years, and rented its business location from the president of Ta Chen and TCI, Robert Shieh. Ta Chen claims it took these measures to avoid the burden of reporting exporter's sales price (ESP) sales to the Department. Operating under a number of "doing business as" (dba) names including, *inter alia*, Sun Stainless, Inc., Anderson Alloys, and Wholesale Alloys, San Shing accounted for well over eighty percent of Ta Chen's U.S. sales during the 1992-1993 period of review.

According to Ta Chen, in September 1993 a member of Ta Chen's board of directors, Frank McLane, incorporated a new entity, also called Sun Stainless, Inc. This new Sun Stainless purchased all of San Shing's assets, including inventory, and assumed all of San Shing's obligations regarding its lease of space from Ta Chen's president, purchase commitments, credit arrangements, etc. One month later, in October 1993, Mr. McLane allegedly sold all of his Ta Chen stock, resigned as an officer of Ta Chen, and severed all ties with the firm, devoting his full energies from that time forward to the new Sun.

On May 18, 1994, Ta Chen filed its initial questionnaire response in the 1992-1993 review. San Shing, which accounted for over four-fifths of Ta Chen's U.S. sales in that review, was not mentioned anywhere in the response. On July 18, 1994, petitioners first called the Department's attention to San Shing's existence, and named six of an eventual eight dba parties all claimed by Ta Chen as unrelated U.S. customers. Ta Chen responded on July 28, 1994, claiming that San Shing, as a newcomer to the U.S. stainless steel pipe market, had adopted the names of prior Ta Chen customers as dba names. This submission failed to note the two additional dba names also used by San Shing, but not included in the petitioners' July 18 allegations. On August 3, 1994, sixteen days after

petitioners first called attention to its existence, the corporate charter of San Shing USA, Ta Chen's chosen replacement as master distributor, was dissolved.

The Department conducted a thorough verification of Ta Chen's home market submissions in October 1994. Department officials then traveled to TCI's headquarters in Long Beach, California to verify Ta Chen's U.S. sales submissions. Aside from minor corrections, the resulting verification reports noted no major discrepancies and repeated Ta Chen's account of San Shing's and Sun's histories without further comment. See Memoranda to the File, Ta Chen and TCI Verifications, November 7, 1996, public versions of which are on file in Room B-099 of the main Commerce building.

On July 12, 1995, petitioners renewed their allegations that Ta Chen, San Shing, and Sun were related parties, and appended reports by Dun & Bradstreet (D&B) and a foreign market researcher indicating that Sun Stainless had actually been founded by Frank McLane and W. Kendall (Ken) Mayes, TCI's sales manager, in May of 1992, not September 1993, as claimed by Ta Chen. Ta Chen's rebuttal of August 3, 1995 included affidavits from Mr. Mayes and a Taiwanese employee of Ta Chen denying the July 12 allegations.

Over a year later, on November 12, 1996, Ta Chen filed a supplemental response in the third (1994-1995) review of this order which disclosed for the first time that Ta Chen (i) had authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun, (ii) had physical custody of these parties' check-signing stamps, (iii) controlled San Shing's and Sun's assets and had pledged these as collateral for a loan obtained on behalf of TCI, (iv) enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records, and (v) shared sales and clerical personnel with San Shing and Sun. See Preliminary Results for a further description of these ties. The Department elicited further details concerning these connections in additional questionnaires, the relevant portions of which have been incorporated into the records of these reviews. Based on the totality of evidence before the Department, in the Preliminary Results we concluded that Ta Chen was related to San Shing and Sun within the meaning of section 771(13) of the Tariff Act. The Department also determined that Ta Chen had significantly impeded these reviews through its incomplete and inconsistent accounts of the events of

the relevant periods and that Ta Chen's behavior warranted application of first-tier, uncooperative BIA.

Comment 1: Related Party as Defined by Statute and Practice

Ta Chen insists that San Shing and Sun² were not related parties as defined by the Tariff Act in force at the time of all of Ta Chen's sales to these customers during the first and second periods of review (POR). First, Ta Chen notes that under the 1994 statute, section 771(13) of the Tariff Act defines an "exporter" as including "the person by whom or for whose account the merchandise is imported into the United States, if—

* * * * *

(B) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) The exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person.

Ta Chen's September 3, 1997 Case Brief (Case Brief) at 7, quoting section 771(13) of the Tariff Act (Ta Chen's emphasis omitted).

Under this statutory framework, Ta Chen argues, the "exporter" can only include the parties "by whom or for whose account the merchandise is imported." According to Ta Chen, because Ta Chen first sold the subject merchandise to its U.S. subsidiary TCI, which took legal title to the pipe, incurred all seller's risks of non-payment, acted as the importer of record for all these transactions, and "entered the importation into its financial inventory," TCI, not San Shing or Sun, was "the person by whom, or for whose account," the merchandise was imported. Case Brief at 9. Therefore, section 771(13) of the Tariff Act never reaches the issue of whether or not TCI subsequently resold the subject merchandise to a related party such as San Shing or Sun. Any such transactions, in Ta Chen's view, would be irrelevant under the statute, citing Certain Small Business Telephone Systems from the Republic of Korea, 54 FR 53141, 53151 (December 27, 1989) (Small Business Telephones). In that case, Ta Chen submits, the Department concluded that the respondent's related U.S. customer was "neither the importer nor the person for whose account the merchandise is imported;" therefore, the sales transactions between the respondent's U.S. subsidiary and the

² Although Ta Chen refers to San Shing and Sun Stainless, Inc. collectively as "Sun," for clarity the Department has not done so.

related U.S. customer did not constitute "related party" transactions, as defined by the antidumping statute. *Id.* at 9, quoting Small Business Telephones. That the sales at issue in Small Business Telephones represented ESP transactions from the U.S. affiliate's warehouse, as opposed to what Ta Chen characterizes as purchase price (PP) transactions "facilitated" by its U.S. subsidiary TCI does not, Ta Chen argues, make any difference.

Further, Ta Chen maintains that the Department's preliminary determination that Ta Chen is related to San Shing and to Sun because it controlled these entities is contrary to the plain language of the statute. Section 771 of the Tariff Act, Ta Chen argues, only defines two parties as related if one party "owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the other." Case Brief at 11, quoting section 771 of the Tariff Act (Ta Chen's emphasis). This "interest," Ta Chen insists, is defined both in case law and Departmental practice as involving equity ownership of at least five percent of the stock of the related party. Ta Chen avers that the Department's Preliminary Results in these reviews have read the phrase "any interest" out of the statute. According to Ta Chen, "[i]t is an elementary principle of statutory construction that a portion of a statute should not be rendered a nullity." *Id.*, quoting *Asociacion Colombiana de Exportadores de Flores v. United States (Asocoflores)*, 717 F. Supp. 847, 851 (CIT 1989). Ta Chen interprets the Department's Preliminary Results as stating essentially that because Ta Chen exercised "control" over San Shing and Sun, Ta Chen thereby controlled "an interest in" San Shing and Sun; such a reading, Ta Chen argues, renders the relevant statutory language meaningless and redundant. Case Brief at 12. Compounding the Department's error, Ta Chen continues, is that while recognizing the "any interest" requirement of section 771(13)(B) and (C) of the Tariff Act, the Department nonetheless failed to define "any interest" in its Preliminary Results. In Ta Chen's view, this failure to define "any interest" as applied in these reviews, especially in light of past practice defining "any interest" as entailing five percent or more equity ownership, places the burden upon the respondent to define the meaning of the undefined. Further, this "abdication" by the Department effectively precludes judicial review, as the reviewing court would also be hobbled by this same failure to define the relevant terms.

Ta Chen suggests that, had Congress intended to include a control test in the definition of related parties under section 771, it would have done so. Instead, Ta Chen maintains, Congress chose to define two parties as related to one another not when one controlled the other but, rather, when one controlled "any interest" in the other. This distinction is critical, Ta Chen asserts, because Congress did include a simple control test at sections 773(d) and (e) of the Tariff Act (the "Special Rules" for, respectively, Certain Multinational Corporations and disregarding related-party transfer prices for major inputs in the calculation of constructed value). "Where the Congress includes language in one provision of a statute, but not in another, it is assumed that the Congress did so for a purpose. * * * [T]he difference in statutory language must be recognized." Case Brief at 14, citing *Rusello v. United States*, 464 U.S. 16, 23 (1983), and *United States v. Wong Kim Bo*, 472 F.2d. 720, 722 (5th Cir. 1972). According to Ta Chen, Congress never intended that "control any interest" would be synonymous with "control" where, as here, neither entity owns or controls equity in the other. This reading, Ta Chen maintains, is supported by the legislative history underlying the relevant statutory provisions. Ta Chen, citing *Nacco Materials Handling Group v. United States*, Slip Op. 97-99 (CIT July 15, 1997) (*Nacco Materials*), notes that the Senate Report accompanying the Antidumping Act of 1921 (the 1921 Act), progenitor of the Tariff Act, defined "exporter" as including the importer when "the latter is financially interested in the former, or vice versa, whether through agency, stock control, resort to organization of subsidiary corporation, or otherwise." Case Brief at 15, quoting from S. Rep. No. 67-16, at 13 (April 28, 1921). One party's being "financially interested" in another, Ta Chen submits, is different from that party "controlling" another. *Id.*

Ta Chen argues that the Preliminary Results not only ignore the plain statutory language but also conflict with the common dictionary meaning of the term "interest" as entailing equity ownership of a share, right, or title in a business or property. *Id.* at 16. The Department, Ta Chen avers, embraced this definition when it stated that its policy is to find parties related only where the ownership interest of one party in the other meets the five percent threshold. See, e.g., *Certain Forged Steel Crankshafts From Japan (Crankshafts)*, 52 FR 36984 (October 2, 1987).

According to Ta Chen, that this interpretation (i.e., the reference to at least five-percent equity ownership) survived two major revisions to the antidumping law underscores Congress's approval of that interpretation. Ta Chen notes that both the 1984 Trade Act and the Omnibus Trade and Competitiveness Act of 1988 left intact the statutory language of section 771(13) and its reliance on equity ownership. "Congress's amendment or re-enactment of the statutory scheme without overruling or clarifying the [administering] agency's interpretation is considered as approval of the agency interpretation." Case Brief at 20, quoting *Casey v. C.I.R.*, 830 F.2d 1092, 1095 (10th Cir. 1987).

Ta Chen further argues that the Department's interpretation of section 771(13) of the Tariff Act in the Preliminary Results could lead to absurd results, asserting that under this standard, "any control, no matter how inconsequential, would make the parties related," including "any clerical assistance, any forwarding of orders to a customer, any attempt to insure payment, any security interest, any informational exchanges, any movement of an employee from one company to another, etc." Case Brief at 18. And, having created one absurdity by reading "any interest" out of the statute, Ta Chen continues, the Department creates another absurdity by altering the statutory definition of "controls . . . any interest" into "controls a substantial interest." *Id.*, citing the Preliminary Results at 26778 (Ta Chen's emphasis). Ta Chen argues that this attempt to rescue the Preliminary Results from absurdities founders on the Department's long-established practice that a party's five percent equity interest in another makes them related for purposes of the statute; "[five] percent is not a substantial or significant control interest." *Id.* at 19.

Ta Chen points to the amendments to the Tariff Act effected by the Uruguay Round Agreements Act (URAA) as further confirmation that control did not define related parties under the pre-URAA Tariff Act governing these administrative reviews. According to Ta Chen, the Statement of Administrative Action (SAA) accompanying the URAA supports Ta Chen's contention that the URAA fundamentally altered the prior definition of related parties by adding a control test as a means for finding parties affiliated. For example, the SAA states that "including control in the definition of 'affiliated' will permit a more sophisticated analysis which better reflects the realities of the marketplace." Case Brief at 21 and 22

(quoting the SAA at 78). Further, Ta Chen argues, the Senate report notes that the URAA added the factor of control in determining whether two parties are affiliated. *Id.* That Congress felt compelled to amend the Tariff Act to include specifically the indicium of control, Ta Chen avers, demonstrates that such a test was lacking in the old law: "when a legislative body amends statutory language, its intention is to change existing law." Ta Chen continues: "Congress completely rewrote the statutory language of the affiliated parties provision . . . adding the control test." *Id.* at 24 and 25. If control had been a factor in the pre-URAA Tariff Act's definition of related parties, Ta Chen concludes, there would have been no need to change the statutory language within the context of the Uruguay Round negotiations.

The Department, Ta Chen argues, has similarly distinguished between the prior definition of "related parties" and the expanded definition of "affiliated persons," which, Ta Chen asserts, introduced the concept of control. Ta Chen notes that the Department in its Notice of Proposed Rulemaking (Proposed Rule) (61 FR 7308 (February 27, 1996)) issued in the wake of the URAA's amendments, remarked upon the confusion of many parties over the definition of control, and noted that the statute and SAA failed to provide "sufficient guidance as to when the Department will consider an affiliate to exist by virtue of 'control' . . ." Case Brief at 28, quoting Proposed Rule. If the control test always existed in the law, Ta Chen asks, why is the Department only now beginning to define control? The answer, Ta Chen submits, is that the control test was added by the 1995 amendments of the URAA.

To buttress its contention that the URAA added a control test to the related-party equation, Ta Chen notes that non-equity control relationships have been common—and widely known—for years prior to enactment of the URAA; yet, Ta Chen asserts, neither Congress nor the Department felt an apparent need to address these non-equity relationships within the context of the antidumping law. Furthermore, generally-accepted accounting principles (GAAP) in the United States have long recognized, and distinguished between, relationships involving control and those involving equity interest. Ta Chen maintains that this bifurcation is evident in the Department's administration of antidumping administrative reviews; since enactment of the URAA the Department's antidumping questionnaires, verification outlines, and published

determinations are replete with discussions of control, whereas "[s]uch discussion does not exist under the pre-[URAA Tariff] Act." The reason, Ta Chen avers, is "not because the world changed . . . [r]ather, the reason is that the law changed." Case Brief at 31.

The Preliminary Results, Ta Chen continues, are contrary not only to the plain language of the statute and the common meaning of the term "related," but also fly in the face of long-standing Department practice. Citing *Crankshafts and Disposable Pocket Lighters from Thailand*, 60 FR 14263, 14268 (March 16, 1995) (*Pocket Lighters*), Ta Chen contends that under the pre-URAA statute, the Department has determined that two parties cannot be considered related absent common stock ownership. According to Ta Chen, in *Disposable Lighters* the Department refused to find two parties related despite closely intertwined operations, joint manipulation of prices and production decisions, and long-standing business relationships, including past ownership of one party by the other. The decisive factor in this determination, Ta Chen suggests, was the absence of any common equity relationship between the two entities during the period under review. Ta Chen maintains that the Department has hewn to this interpretation in litigation, as well. For example, Ta Chen continues, in *Nacco Materials* the Department concluded that the respondent and its two related entities satisfied the ownership requirements of section 771(13)(C) of the Tariff Act through direct or indirect ownership by the respondent. See *Nacco Materials*, at 10 and 11. Ta Chen insists that in the instant reviews Ta Chen, San Shing, and Sun have not satisfied what Ta Chen views as a statutory requirement for finding parties related.

Ta Chen suggests that even cases cited by petitioners in these reviews to support their claim that parties can be related through control (see, e.g., *Certain Fresh Cut Flowers From Colombia*, 61 FR 42833, 42861 (August 19, 1996) (*Colombian Flowers*), and *Roller Chain, Other Than Bicycle Chain, From Japan*, 57 FR 43697 (September 22, 1992)) indicate that the Department defined "any interest" solely in terms of equity ownership. Case Brief at 36 and 37. Ta Chen maintains that prior to the Preliminary Results the Department has never stated that control of a company is tantamount to controlling an interest in that party. Indeed, Ta Chen avers, such control is "irrelevant to whether the statutory standard is met." *Id.* at 37. As an example, Ta Chen cites *Fresh Cut Roses From Ecuador* where, Ta Chen

argues, the Department concluded that the petitioner's concerns over the possibility of price manipulation and control of production and sales were inapposite as there was no evidence that "any of these statutory indicators" of related parties had been found. See *Fresh Cut Roses From Ecuador*, 60 FR 7019, 7040 (February 6, 1995). According to Ta Chen, the Department likewise argued before the Court of International Trade (the Court) that the issue of control over prices "is irrelevant to the initial determination of whether the parties are indeed related" within the meaning of section 771(D) of the Tariff Act. Case Brief at 38, quoting *Torrington Co., Inc. v. United States*, Slip Op. 97-29 (CIT March 7, 1997). In that case, Ta Chen argues, the Court concluded that "requiring Commerce to look beyond the financial relationships of the companies would obviate the need for a statute setting forth specific guidelines for determining whether parties are indeed related." *Id.* at 40, quoting *Torrington* at 19. And in *Zenith Radio Corp. v. United States (Zenith)*, Ta Chen maintains, the Court affirmed the Department's position that such financial relationships "go to the essence of those relationships which the law details in 19 U.S.C. Sec. 1766(13)." *Id.*, quoting *Zenith* at 606 F. Supp 695, 699 (CIT 1985), aff'd, 783 F.2d 185 (Fed. Cir. 1986). Ta Chen points to *Cellular Mobile Telephones From Japan*, 54 FR 48011, 48016 (November 20, 1989) as another instance where the Department ruled that the presence of non-equity relationships embodied in a Japanese keiretsu was irrelevant to its related-party determination. Case Brief at 40.

Ta Chen draws further support for its interpretation of the statute from a "separate line of cases" involving the collapsing of related parties. While conceding that home market collapsing determinations are not coterminous with the Department's definition of exporter for the purpose of determining United States price, Ta Chen nonetheless asserts the Department has consistently reached the statutory definition that two parties are related before proceeding to the "non-statutory question" of whether or not to collapse the two entities for purposes of antidumping margin calculation. Case Brief at 45 and 46, citing *Pocket Lighters*, 60 FR 14263, 14276, *Fresh Cut Roses From Ecuador*, 60 FR 7019, 7040 (February 6, 1995), and *Colombian Flowers*, 61 FR 42833, 42853 (1996). Rather, Ta Chen avers, the Department's Preliminary Results "[puts] the cart before the horse" by, as Ta Chen frames it, reaching the collapsing decision first,

and then using that decision to determine whether Ta Chen is related to San Shing and Sun within the meaning of section 771(13)(B) and (C) of the Tariff Act. Case Brief at 47. Citing these "parallel lines" of precedent, Ta Chen argues that the Department has always found parties "only related when one owns another and no other factors are considered relevant." *Id.* at 48 and 49.

Ta Chen next turns to the Department's conclusion in the Preliminary Results that Ta Chen and Sun were related pursuant to subsection 771(13)(B) of the Tariff Act by virtue of the common ownership interests allegedly held by Mr. Frank McLane, who at the time in question was still a board member of Ta Chen. Ta Chen notes that the Preliminary Results assert that Mr. McLane simultaneously held equity interest in Ta Chen and owned Sun outright, thus making Ta Chen and Sun related. This conclusion, Ta Chen argues, is both factually and legally flawed. As a threshold matter, Ta Chen asserts, subsection 771(13)(B) of the Tariff Act holds that the exporter includes the person "by whom or for whose account" the subject pipe is imported into the United States (i.e., Mr. McLane's Sun), if such person owns or controls "any interest in the business of the exporter, manufacturer or producer" (i.e., Ta Chen). In Ta Chen's view, the Department could at most conclude that Mr. McLane was related to Sun or that Mr. McLane was related to Ta Chen. The Department could not argue, Ta Chen maintains, that Sun was, therefore, related to Ta Chen. Case Brief at 97.

Ta Chen adduces additional support for its contention that Frank McLane did not simultaneously own interests in Sun and Ta Chen by citing to corporate tax returns for San Shing for the 1992 and 1993 tax years. According to Ta Chen, San Shing's return for the year ended October 31, 1993 does not list Mr. McLane as either an officer or an owner. Ta Chen also argues that separate D&B reports on Ta Chen International, submitted by petitioners, do not list Sun as a related concern. Furthermore, Ta Chen claims, its audited financial statements do not list Sun as being related to Ta Chen or TCI, although they do list Mr. McLane's other business interests, such as McLane Leisure and McLane Manufacturing, as related parties. Case Brief at 105. Finally, Ta Chen concludes, the Department has stated in verification reports in other proceedings that Mr. McLane's involvement with Sun commenced after he left Ta Chen. *Id.*, citing Ta Chen's July 18, 1994 submission.

Assuming that Ta Chen and Sun were related before November 1993, Ta Chen

claims that it did not sell subject merchandise to Sun prior to that time. According to Ta Chen, until November Ta Chen sold to San Shing, doing business as Sun Stainless, Inc., not to Frank McLane's Sun Stainless, Inc. It would be "pure conjecture," Ta Chen submits, for the Department to conclude that Ta Chen sold to Mr. McLane's Sun. Case Brief at 107.

Finally, assuming that the pre-URAA law permits consideration of control in finding parties related, Ta Chen argues that the application of such a test in the instant reviews is unlawful absent sufficient agency explanation. The Preliminary Results, Ta Chen insists, represent a departure from the Department's practice of defining related parties in terms of five percent equity ownership; the failure to note and explain this so-called departure renders these determinations unlawful. Case Brief at 51, citing *USX Corp. v. United States*, 682 F. Supp. 60, 63 (CIT 1988). Furthermore, Ta Chen continues, the Preliminary Results represent an unfair retroactive application of what Ta Chen describes as a new control test under section 771(13) of the pre-URAA Tariff Act. Principles of fairness, Ta Chen submits, require the Department to reverse its preliminary finding that Ta Chen is related to San Shing and Sun, especially, Ta Chen argues, because (i) this is a case of first impression, (ii) the Preliminary Results represent an abrupt departure from past administrative practice with respect to related-party issues, (iii) Ta Chen relied upon its understanding of the law then in effect when it responded to the Department's requests for information on related parties, (iv) the Preliminary Results would impose an "enormous" burden upon Ta Chen (by raising its margins to the BIA rates presented in the Preliminary Results), and (v) there is, in Ta Chen's view, no statutory interest in applying this new test to these backlog reviews.

Petitioners dismiss Ta Chen's arguments about the statutory definition of related parties, noting that the plain language of the statute "expressly speaks of parties being related through control other than by equity ownership, and [that] the Department's questionnaires were unambiguous in so defining related parties and asking for information accordingly from Ta Chen." Petitioners' September 10, 1997 Rebuttal Brief (Rebuttal Brief) at 1. As a preliminary matter, petitioners assert that Ta Chen's behavior throughout the first and second reviews of this order has constituted a "deliberate hoax" by which Ta Chen has "intentionally reported the wrong body of sales in each

of these two reviews, having refused to submit to the Department the sales that Ta Chen surreptitiously made through San Shing and Sun Stainless to Ta Chen's first truly unrelated customers in the United States." *Id.* at 2; for more of petitioners' discussion of Ta Chen's comportment in these reviews, see Comments 2 and 3, below).

According to petitioners, section 771(13) of the pre-URAA Tariff Act defined "exporter" primarily to determine when ESP versus PP is the appropriate basis for United States price. Petitioners maintain that the critical question facing the Department in the instant reviews is whether or not the Department may rely upon Ta Chen's reported sales prices to San Shing and to Sun Stainless, Inc., or must instead use the price charged by these parties to their subsequent U.S. customers. Therefore, petitioners insist, section 771(13) controls whether or not Ta Chen, San Shing, and Sun are "related" under the pre-URAA statute. Quoting section 771(13), petitioners stress that the term "'exporter' includes the person by whom or for whose account the merchandise is imported into the United States" when such person "owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business" of the exporter." Rebuttal Brief at 17, quoting section 771(13)(B) of the Tariff Act (petitioners' emphases). Likewise, petitioners note, section 771(13)(C) repeats the explicit reference to parties being related when the exporter "owns or controls, through stock ownership, or control or otherwise, any interest in the business" of the importer. *Id.* (petitioners' emphases). Thus, petitioners assert, *contra* Ta Chen, that the pre-URAA definition of related parties extended beyond the bright-line test of equity ownership and provided expressly for situations wherein one party controls, through means other than stock ownership, any interest in the business of the other party. Stock ownership is not, petitioners insist, the "*sine qua non*" for a finding that two or more parties are related for the statutory purposes of defining the "exporter."

Rather, petitioners continue, Ta Chen ignores several aspects of the statute's plain language in its "quest to prove that Ta Chen was not related to [San Shing or to] Sun by virtue of its control over [San Shing's and] Sun's activities under the pre-1995 law." Rebuttal Brief

at 17.³ According to petitioners, the focus of the definition of exporter is not solely on the person by whom the merchandise is imported into the United States, but also on the person for whose account the merchandise is imported. In the instant case, petitioners argue, San Shing and Sun were the persons for whose account subject WSSP was imported during the relevant POR. Ta Chen's own representations during these reviews that TCI was a mere facilitator and paper-processor for its back-to-back U.S. sales is, petitioners believe, further evidence that San Shing and Sun, not TCI, were the parties for whom subject stainless steel pipe was imported into the United States. In petitioners' view, Ta Chen's persistent arguments concerning TCI's role in Ta Chen's U.S. sales transactions raise additional questions as to whether these sales were properly characterized as PP sales. Indeed, petitioners contend, the sole case cited by Ta Chen in support of its claim that TCI is properly considered the exporter under section 771(13) of the Tariff Act, *Small Business Telephones*, involved ESP, and not PP, sales, thus supporting petitioners' view that Ta Chen's sales through TCI were ESP transactions. Rebuttal Brief at 18.

Petitioners term unfounded Ta Chen's interpretation of the phrase "any interest" as requiring equity ownership to find two or more parties related under section 771(13) of the Tariff Act, and suggest that Ta Chen has attempted to dismiss the explicit statutory reference to relationships based on control other than through stock ownership by means of a "creative interpretation of the law that is not supported by its plain language, its legislative history or basic principles of statutory construction." Rebuttal Brief at 19. Ta Chen, petitioners note, has accused the Department of violating a basic principle of statutory construction that no part of a statute be rendered a nullity (i.e., by allegedly disregarding the phrase "any interest"). However, petitioners continue, Ta Chen's reading of the statute would violate the same principle: by defining the term "interest" as requiring ownership of an equity share in a company, Ta Chen has rendered the explicit references to "control" superfluous. Rather, petitioners submit, were Ta Chen's interpretation of the statute correct, there would be no need to refer to "control" beyond ownership, as control of an interest in a business would be synonymous with ownership of equity

in that business. Ta Chen's reading of the statute, petitioners contend, would defeat this "cardinal principle of statutory construction by striking reference to "control" other than through stock ownership from the statute." Rebuttal Brief at 20.

As for Ta Chen's assertions that equity ownership is required to demonstrate that two parties are related, petitioners argue that Ta Chen's interpretation is not supported by the statute's legislative history. Specifically, petitioners note, the Senate Report cited by Ta Chen in its case brief refers to cases wherein an exporter is financially interested in an importer, and lists various examples of how one company might be financially interested in the other. "Only one of those examples is stock control," petitioners note. Other possible scenarios, according to petitioners, include "agency relationships, resort to organization of subsidiary corporation, 'or otherwise.'" *Id.* at 20, quoting S. Rep. No. 67-16, at 13 (1921). Thus, petitioners aver, the legislative history recognized that companies could be financially interested by means other than equity ownership. Petitioners insist that the exclusive supplier relationships, the debt-financing arrangements, Ta Chen's custody of San Shing's and Sun's check signing stamps, and Ta Chen's complete access to these customers' computer records "provide overwhelming evidence that Ta Chen had a financial interest in [San Shing and] Sun, even in the absence of stock ownership." *Id.* at 21.

Petitioners concede that in the past the Department has focused primarily upon stock ownership in rendering its related-party determinations, noting that "as a matter of commercial reality," most related-party situations entail some measure of common stock ownership. However, petitioners aver, that the primary means of identifying related parties under the pre-URAA Tariff Act was through equity ownership can in no way be interpreted to preclude examination of relationships outside of equity ownership. "Indeed, the plain language of the statute states just the opposite—that control could be based on stock ownership 'or otherwise.'" Rebuttal Brief at 21 (citation omitted). For example, petitioners claim, in *Colombian Flowers* the Department "recognized that section 771(13) 'establishes a standard for relationship based on association, ownership or control.'" *Id.* at 22.

The possibility that parties could be related through means other than stock ownership, petitioners insist, was confirmed in several cases before the Court. Petitioners argue that in *E.I.*

DuPont de Nemours & Co. versus United States (DuPont), the Court "explicitly rejected" the respondent's argument that the Department may only consider evidence of equity ownership, quoting approvingly from the Court's opinion that "the ITA is not constrained to examine only financial relationships in making the determination." Petitioners quote further: "The requirements of U.S. law were satisfied when the ITA investigated both financial and non-financial connections. The ITA properly considered and balanced those relationships which the law details in [section 771(13)(B)]." Rebuttal Brief at 22, quoting *DuPont*, 841 F. Supp. 1237, 1248 (CIT 1993). That this case actually entailed equity ownerships, petitioners stress, is irrelevant to the specific proposition that equity ownership is not the sole criterion for defining related parties under section 771(13) of the Tariff Act. Petitioners also point to the Court's holdings in *Sugiyama Chain Co., Ltd. versus United States (Sugiyama)* that the Department "may properly consider 'both financial and/or non-financial connections' when assessing whether parties are related within the meaning of [771(13)(C) of the Tariff Act]." *Id.* at 22, quoting *Sugiyama*, 852 F. Supp. 1103, 1110 (CIT 1994). This interpretation of the relevant related-party provisions of the statute by both the Department and the Court, petitioners conclude, renders Ta Chen's exclusive focus on equity ownership "invalid." *Id.* at 23.

Petitioners also find Ta Chen's reliance on *Torrington* disingenuous. The facts of that case, petitioners maintain, revealed that the parties at issue were clearly related based upon a "substantial level of stock ownership." The foreign respondent, in urging the Department not to treat the parties as related, argued that the Department should be required to look beyond equity ownership and examine the level of control exercised by the parties. Petitioners note that the Court agreed with the Department's position that a demonstration of equity ownership alone sufficed to find parties related, thus obviating the need for any additional requirement that the Department also demonstrate control. This, petitioners suggest, is far different from Ta Chen's reading of *Torrington* as holding negatively that control in the absence of equity ownership could not be the basis for finding parties related. The *Torrington* decision, petitioners insist, is perfectly consistent with the Department's Preliminary Results in finding Ta Chen related to San Shing and Sun; "[i]n other words, either

³ As in Ta Chen's case brief, petitioners have referred to San Shing and Sun collectively as "Sun."

equity ownership or control is sufficient; both are not needed." Rebuttal Brief at 24.

In petitioners' view, the Department must resist Ta Chen's efforts to focus solely upon the issue of stock ownership, and to gloss over Departmental and judicial precedent holding that parties may be related even without common equity relationships. According to petitioners, the reason the Department tended to rely primarily upon equity relationships in the past was simply because such equity ownership is the most common means by which control is found in commercial practice. Petitioners acknowledge that most of the cases where the Department examined the possibility of control also involved some degree of equity ownership. However, petitioners conclude, nothing in these cases disturbs the fundamental conclusion of the Department or the courts—or the plain language of the statute—that control other than through stock ownership is sufficient grounds to find parties related under section 771(13).

As for Ta Chen's assertion that the URAA added the concept of control to the Department's related-party (or "affiliated persons") determinations, petitioners maintain that Ta Chen's arguments are equally unavailing. The URAA, petitioners submit, did not add a new concept of control to the Tariff Act as Ta Chen suggests. There was no need to add a control test to the related-party provisions of the Tariff Act because, petitioners contend, such a test already existed under the plain language of the pre-URAA Tariff Act. Rather, petitioners suggest, the URAA's amendments merely "heighten[ed] the agency's focus on this concept." Rebuttal Brief at 25 (original emphasis). Thus, petitioners aver, as the Department stated in a memorandum in Engineering Process Gas Turbo-Compressor Systems From Japan cited by Ta Chen, "[p]rior to enactment of the URAA, the Department traditionally focused on equity ownership as the basis for determining what entities were 'related.' The URAA expanded the definition of related parties (now called 'affiliated' parties) and shifted the focus to control rather than equity." Rebuttal Brief at 25, quoting the Department's December 4, 1996 memorandum at 2 (petitioners' emphasis added). Contrary to Ta Chen's assertions, petitioners believe, stating that the Department will shift its focus from equity ownership to control is decidedly different than stating that control outside of equity ownership was entirely irrelevant under the pre-URAA statute.

Petitioners further suggest that Ta Chen itself is guilty of violating a second cardinal principle of statutory construction cited by Ta Chen in its case brief: that Congress did not intend for an agency's interpretation of a statute to lead to absurdities. According to petitioners, Ta Chen accuses the Department of perpetrating absurdities with the Preliminary Results' focus on "any control, no matter how inconsequential." Rebuttal Brief at 26, quoting Ta Chen's Case Brief at 18. This contention, petitioners insist, is meritless, suggesting that while the Department may have concluded that any single activity cited by Ta Chen was insufficient grounds for finding two or more parties related, never before has the Department observed such a collection of activities "demonstrating operational control by a supplier over its customer." Rebuttal Brief at 26. Second, petitioners accuse Ta Chen of "mischaracteriz[ing]" the nature of these activities. Thus, petitioners aver, the Preliminary Results did not, as Ta Chen holds, find that "any security interest" indicated control; rather, petitioners note, Sun's and San Shing's pledging of their assets for Ta Chen's benefit indicated control. Similarly, petitioners stress, the Department did not state that "any attempt to insure payment" indicated control, but that Ta Chen's unfettered access to San Shing's and Sun's computers and proprietary data indicated control. Nor did the Department conclude that "any forwarding of orders" indicated control but, rather, petitioners maintain, that Ta Chen's direct involvement in sales negotiations indicated control. When examining the record, petitioners argue, "it is clear that the Department is not finding 'control' based on 'inconsequential' factors but rather on the array of activities that far exceeds that observed between companies that are truly unrelated and dealing at arm's-length." Rebuttal Brief at 27. Rather, petitioners insist, the Preliminary Results are "fully justified and consistent with legislative intent" as expressed through Congress' use of language which included ownership or control, direct or indirect, in defining the "exporter." *Id.*

Petitioners submit that it would be an absurdity, given the facts of record in these reviews, for the Department to find that Ta Chen, San Shing and Sun were not related parties. The array of connections found between Ta Chen and its principal customers San Shing and Sun, petitioners contend, is far beyond that seen between unrelated parties, and "establishes a degree of

control that is unparalleled, to petitioners' knowledge, in any other case." Rebuttal Brief at 27 and 28. Even where parties are clearly related through equity ownership of five percent (the figure cited by Ta Chen as defining related parties for purposes of the statute), petitioners ask, would one expect to see the level of control Ta Chen exercised over San Shing and Sun in these reviews? Would a supplier holding less than a majority stock interest in a customer be in a position to demand custody of the customer's signature stamp, access to its computer records and accounts, the ability to negotiate sales to the customer's customers, and the pledging of the customer's accounts receivable and inventory for the supplier's benefit? Petitioners answer with a firm no, reiterating that the degree of control Ta Chen exercised over San Shing and Sun far exceeds that seen in other cases, and more than satisfies the statutory related-party provisions of section 771(13) of the Tariff Act.

Furthermore, petitioners aver, the Department's questionnaires in these reviews provided explicit instructions that Ta Chen rely upon the definition of related party found at section 771(13), which includes relationships through equity ownership or control. In petitioners' view, that Ta Chen failed to do so both in its submitted responses and during a verification focusing specifically upon the issue of related parties "can only be seen as an effort by Ta Chen deliberately to withhold requested information * * *" Rebuttal Brief at 29. The evidence regarding direct sales negotiations with its customers' customers, check-signing authority, the pledging of the customers' assets for Ta Chen's benefit, and direct computer access to the customers' records, none of which was revealed at verification, establishes a compelling case that Ta Chen controlled San Shing and Sun, and failed to disclose that control until after its responses had been submitted and verified. Petitioners dismiss out of hand Ta Chen's contention that it withheld all of this information because the statutory definition of related party was somehow unclear. Rather, petitioners note, Ta Chen came forward only when forced to do so by the subsequent disclosure of "certain, salient facts" by petitioners and by a separate grand jury proceeding. Even accepting Ta Chen's definition of related parties as being limited to equity ownership, petitioners argue, the Department specifically asked Ta Chen to supply information on parties to which Ta Chen was related by virtue of

control other than through stock ownership. This, petitioners insist, Ta Chen failed to do. Rather, petitioners suggest that Ta Chen's behavior throughout these two reviews evidences "the deliberate withholding of information" and "justifies application of total, adverse" BIA to Ta Chen. *Id.* at 30.

Department's Position:

Based upon our review of the evidence on the record in these reviews, we conclude that the Department cannot reasonably rely upon sales between Ta Chen and San Shing or Sun for the purpose of calculating Ta Chen's dumping margins for these reviews. We agree with petitioners that the record evidence is clear that Ta Chen was, in fact, related to San Shing and Sun, as defined in section 771(13) of the pre-URAA Tariff Act.

First, nothing in the statute or its legislative history proscribes the examination of non-equity relationships in making a related-party determination pursuant to section 771(13) of the pre-URAA Tariff Act. The plain language of the Tariff Act provides the Department with the statutory mandate to examine, where appropriate, whether parties are related by means of control in defining the exporter for purposes of determining U.S. price. Furthermore, the Department has recognized in its pre-URAA administrative determinations that certain factual situations require it to look to non-financial factors when making its related-party determinations, an interpretation of the statute which the Court has upheld.

We also reject Ta Chen's contention that the definition of "interest" in section 771(13)(B) and (C) is limited to common stock ownership; nothing in the statute itself or its accompanying legislative history so constrains the Department in its analysis of related parties. Rather, we agree with petitioners that the principal reason stock ownership is so often cited as the basis for finding an exporter related to a U.S. importer is because equity ownership is the most common indicator of two parties' relationship found in commercial practice. In fact, common equity ownership has served as *prima facie* evidence that two parties are related for purposes of the Tariff Act. See, e.g., *Color Television Receivers, Except for Video Monitors, From Taiwan*, 53 FR 49706, 49712 (December 9, 1988). That common equity ownership constitutes *prima facie* evidence of related-party status is not, however, tantamount to saying it is the only evidence of such a relationship. Put simply, the statute does not direct

the Department to find parties unrelated in the absence of common stock ownership. Further, nothing in the statute, the legislative history, or the regulations defines "interest" as being limited solely to stock ownership, or fixes a bright-line figure for the requisite level of equity ownership at five percent or more.

Turning first to the statutory language, the statute's explicit reference to parties being related "through stock ownership or control or otherwise" demonstrates clearly that Congress anticipated that companies could be related for the purposes of defining the "exporter" through means other than through stock or equity ownership. Such a reading is consistent with Congressional intent, the legislative history, and the express purpose of section 771(13) of the Tariff Act, which is to determine the proper basis for United States price in calculating dumping margins. As Ta Chen notes, "[i]t is an elementary principle of statutory construction that a portion of the statute should not be rendered a nullity." See *Asocoflores*. Ta Chen's reading of the statute, however, would render a nullity the explicit statutory references to parties being related "through stock ownership or control or otherwise." Therefore, accepting the narrow reading of the statute posited by Ta Chen would be inconsistent with the plain language of the statute.

In addition, the Senate Report accompanying the 1921 Act clarifies that the Department is not limited solely to consideration of equity interests in making its related-party determinations, nor does it limit "financial interests" solely to common equity ownership. Congress specifically included non-equity relationships as possible bases for finding parties related; by noting that an interest can involve a financial interest or interest "through agency, stock control, resort to organization of subsidiary corporation or otherwise," Congress clearly envisioned the possibility of non-equity relationships between an exporter and an importer such that the prices between them become unreliable for purposes of calculating dumping margins. See S. Rep. No. 67-16, at 13 (1921). Clearly, then, Congress did not share the view of section 771(13) urged by Ta Chen that related parties were limited *per se* to those sharing common equity ownership. Rather, Congress' broader view, as expressed in the plain language of the statute, afforded the Department the discretion to examine non-financial relationships where, as here, the record evidence so demanded. Any other reading of the legislative history would

place artificial restraints on the Department's analysis and would be inconsistent with commercial realities, which recognize a wide range of relationships which could affect pricing and production decisions between parties.

Turning to the Department's interpretation of the relevant statutory provisions, at one time the Department focused primarily upon equity interests in rendering its related-party determinations under section 771(13) of the Tariff Act. See, e.g., *Cellular Mobile Telephones and Subassemblies From Japan*, 54 FR 48011, 48016 (November 20, 1989), and *Small Business Telephones*, 54 FR 53141, 53151 (December 27, 1989). The Department concluded that an equity interest of five percent or more, standing alone, was sufficient evidence to demonstrate that the prices between the parties could be manipulated. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 37154, 37157 (July 9, 1993). In certain situations, the Department decided that the facts on record did not justify examining factors of control beyond five percent equity ownership when determining if parties were related. See, e.g., *Pocket Lighters*, 60 FR 14263. In *Zenith* the Court upheld our decision not to broaden the related party inquiry beyond an examination of equity relationships. 606 F. Supp. 695, 699 and 700 (CIT 1985). The court stated that the Department is not required by the statute to look beyond financial relationships.⁴

However, the Department has recognized the possibility of parties being related through non-financial interests in factual situations where elements of control exist that raise the distinct possibility of price manipulation. Thus, the Department has not felt constrained to examine only financial relationships and, where appropriate, has ventured beyond a consideration of equity ownership in its interpretation of section 771(13) of the Tariff Act. See, e.g., *Portable Electric Typewriters From Japan: Final Results of Administrative Review*, 48 FR 7768, 7770 (February 24, 1983) (considering

⁴Ta Chen misreads the Court's decision in *Zenith*. There the Court found that while there was no statutory requirement that the Department examine "relationships which do not find expression in financial terms," nowhere did the court assert that the Department was statutorily barred from an examination of non-financial relationships. *Zenith*, 606 F. Supp. at 700.

factors indicating control, but ultimately rejecting the sufficiency of these factors to prove the parties were related in this case); Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, 33544 (June 28, 1995) (considering, in addition to equity factors, non-equity factors such as shared management and indirect control before concluding that the producer was not related to certain customers). For example, in Polyethylene Terephthalate Film From Korea, the Department "confirmed that the three entities are related in terms of common stock ownership, shared directors, and common management control" for purposes of determining U.S. price. See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991) (emphasis added). Similarly, in Roller Chain From Japan the Department, in finding that respondent Sugiyama was related to its customer, stated that it "considers shared directorship to be evidence of a relationship between these two organizations." Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697, 43701 (September 22, 1992). Again, the Department clearly examined factors of control, and not solely the level of equity ownership in defining related parties under the statute.

The Court has affirmed the Department's interpretation that a related-party determination may include an examination of non-financial factors. In *Sugiyama Chain Co. v. United States*, the Court expressly rejected the plaintiff's argument that section 771(13)(C) of the Tariff Act limited the Department to an examination of financial relationship when determining if parties are related under that provision of the statute. 852 F. Supp. 1103, 1112 (CIT 1994). Instead, the Court held that the Department "may properly consider 'both financial and/or non-financial connections' when assessing whether parties are related within the meaning of [section 771(13)(c)]." *Id.* (quoting *DuPont*, 841 F. Supp. 1237, 1248). Similarly, the court in *DuPont* ruled that the Department's examination of both financial and non-financial factors was in accordance with its statutory mandate. See *DuPont*, 841 F. Supp. at 1248.

As the express statutory language indicates, the purpose of the pre-URAA definition of "exporter" provided at section 771(13) is to "determine when an importer is 'connected' to the exporter so as to warrant the use of 'exporters sales price' as the basis for U.S. price." Statement of Administrative

Action at 839. Under the statute the Department is constrained from relying upon prices between an exporter and a related U.S. customer in calculating dumping margins because of the possibility that prices between the parties will be manipulated to mask dumping activities of the foreign respondent. As stated earlier, in order to effectuate this statutory mandate the Department has recognized that certain non-financial relationships between parties may give rise to the potential for price manipulation or control. See, e.g., Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991); Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 24, 1983). The Court has held that this interpretation is reasonable and in accordance with the law.

Ta Chen's exclusive focus on equity ownership in its Case Brief ignores the express purpose of the related-party determination made pursuant to section 771(13). While the Department's inquiry may begin with an examination of equity ownership, nothing precludes examination of other factors, especially where, as here, we have record evidence of non-financial relationships demonstrating connections between the parties which raise the distinct possibility of price manipulation. Our examination of related parties in light of non-financial relationships in these reviews is consistent with the express purposes of this provision. In fact, Ta Chen insists in its case brief that its prices to San Shing and Sun were lower than prices to its other U.S. customers, mistakenly viewing this as evidence that the parties could not be related, and that the prices between them are reliable for margin calculations. On the contrary, by offering preferential pricing for goods sold to San Shing and Sun, Ta Chen not only has demonstrated that its relationship with San Shing and Sun raises the possibility of Ta Chen affecting pricing, but has admitted that this relationship has resulted in preferential pricing. We also find misplaced Ta Chen's emphasis on revisions to the Tariff Act effected by the URAA. Contrary to Ta Chen's argument, new section 771(33) does not represent a fundamental change in the statute's intent. Rather, as petitioners note, the URAA's definition of affiliated persons merely shifted the focus. While in the past the predominant focus was on control through equity ownership, the new Tariff Act highlights all means of control in addition to equity ownership. See Rebuttal Brief at 25, citing Engineering Process Gas Turbo-Compressor Systems From Japan.

We also do not accept Ta Chen's definition of "any interest" as being limited to a minimum five percent equity ownership. The five-percent equity test is a mere starting point in the Department's inquiry, establishing *prima facie* evidence that two parties are related. The analysis urged by Ta Chen would ignore the clear evidence in the record of these reviews that Ta Chen controlled San Shing and Sun and, through these parties, had the potential to manipulate prices to U.S. customers. We conclude further that Ta Chen did, in fact, have a non-equity financial interest in San Shing or Sun. The totality of the facts in this case, including Ta Chen's control of San Shing's and then Sun's check signing stamps, the unfettered computer ties, the involvement of Mr. Shieh in negotiating the prices accepted by San Shing and Sun, the exclusive supplier relationships, the pledging of San Shing's and Sun's assets to TCI's benefit, the intermingling of personnel, the preferential pricing and credit terms (for more on each of these ties see our response to Comment 2, below), and the rise and disappearance at Ta Chen's behest of both San Shing and Sun as Ta Chen's sole distributors, all indicate that San Shing's and Sun's financial interests were indistinguishable from Ta Chen's.

In fact, given the depth and breadth of these non-equity financial ties, one would reasonably expect to find common equity ownership. Its absence is the only missing element in the panoply of indicia which demonstrate that Ta Chen "owned or controlled, through stock ownership, or control, or otherwise," an interest in the business of San Shing and Sun. Notwithstanding this absence, the Department cannot be constrained to finding that no relationship exists where parties have no equity interest between them. Such a limitation would invite parties to evade the antidumping law by simply avoiding any common stock ownership.

Finally, assuming, *arguendo*, that the statute and the Department's past practice bar a finding that Ta Chen was related to San Shing and Sun pursuant to section 771(13)(C) of the Tariff Act, the facts of these reviews lead us to conclude, nevertheless, that the prices between these parties were, at a minimum, subject to manipulation by Ta Chen. Ta Chen acknowledges that its prices to San Shing and Sun were lower than its prices to Ta Chen's other U.S. customers. This pattern of preferential pricing undermines the credibility of Ta Chen's assertions concerning its

relationships with San Shing and Sun and renders prices between them unsuitable for margin calculation purposes, given our statutory mandate to calculate dumping margins based upon arm's-length prices to the United States.

Our interpretation of the related-party provisions for these final results is consistent with the plain language of the statute when applied to the facts of this case. Any other conclusion would render this portion of the Tariff Act a nullity and would result in absurdities, given the evidence of record demonstrating Ta Chen's control over these parties. Both San Shing and Sun were established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen pipe products in the United States. Finally, we reject Ta Chen's suggestion that the Department has in this case applied an extra-statutory test based upon "substantial" interest. Our use of this adjective in the Preliminary Results was descriptive only, and in no way implies the use of any new basis for the examination of relationships based upon control.

Comment 2: Ta Chen's Control of San Shing and Sun

Assuming, *arguendo*, that the statute permits finding parties related based upon control, Ta Chen insists that it exercised no control over either San Shing or Sun. Ta Chen first contends that if it had held any interest in San Shing or Sun it would have "received something" from Chih Chou Chang's sale of San Shing to Frank McLane, and the subsequent sale of Mr. McLane's Sun Stainless, Inc. to a third party, Picol Enterprises.⁵ Ta Chen claims that it received nothing from either transaction, which "alone demonstrates that Ta Chen had no interest in either [San Shing or] Sun." Case Brief at 54.

Furthermore, Ta Chen argues, even the indicia of control cited by the Department in the Preliminary Results do not lead to a finding that Ta Chen exercised control over San Shing and Sun. For example, while Ta Chen concedes that it had physical custody of the check signature stamps used first by San Shing and later by Sun, Ta Chen claims that it could not unilaterally execute checks drawn against San Shing's or Sun's accounts. Nor, Ta Chen continues, could Ta Chen prevent either San Shing or Sun from writing checks

without Ta Chen's approval and signature. This physical custody of the signature stamp was, Ta Chen insists, merely an avenue for monitoring disbursements by these companies. Ta Chen suggests that this was a prudent measure given both the large volume of merchandise involved, as well as the 210-day credit terms Ta Chen extended first to San Shing and then to Sun. In Ta Chen's view, under these conditions it was entirely reasonable to impose "strong measures" to permit "stringent credit monitoring." Case Brief at 57.

In addition, Ta Chen admits that it had full access to San Shing's and Sun's computer systems. Because, Ta Chen claims, San Shing and Sun could write checks without using the signature stamps held by Ta Chen, this method of monitoring their disbursements "was not perfect." *Id.* Hence, Ta Chen insisted upon additional computer monitoring of San Shing's and Sun's accounts receivable and payable. Ta Chen concludes by insisting that (i) it did not control disbursements of funds by San Shing and Sun, and (ii) any such control over disbursements would be irrelevant where, as in the instant reviews, the only control at issue would be control over prices. Such stringent control, Ta Chen argues further, is an acceptable practice under the Uniform Commercial Code (UCC). According to Ta Chen, under Article 9 of the UCC, "policing" or "dominion" by a secured party (here, Ta Chen) over its unrelated debtors (referring to San Shing and Sun) "is both permissible and expected." Case Brief at 59, citing § 9-205, Comment 5 of the UCC. In other contexts, Ta Chen argues, courts have found it unremarkable that one company would provide its financial and computer records to a second unrelated company.

Ta Chen also takes issue with the Preliminary Results' conclusion that Ta Chen shared sales department personnel with San Shing and Sun. According to Ta Chen, the record indicates that no individuals were simultaneously employed by Ta Chen and either San Shing or Sun. As to the activities of Ta Chen's former sales manager Ken Mayes, Ta Chen asserts that Mr. Mayes was an independent contractor, and not an employee of Ta Chen. Ta Chen maintains that Mr. Mayes only began working for San Shing (and later, Sun) after terminating the independent contractor relationship with Ta Chen. Furthermore, Ta Chen continues, it is not uncommon for individuals in the U.S. stainless steel market to move about among the limited number of players in the industry. While acknowledging that Ta Chen did

provide some assistance to San Shing and Sun, Ta Chen insists that its employees remained on Ta Chen's payroll, acting on Ta Chen's behalf. Case Brief at 63. Even if Ta Chen shared employees with San Shing or Sun, Ta Chen avers, such commingling of personnel would not indicate that the parties are related. Even company officers, Ta Chen suggests, are merely corporate employees who do not necessarily have a share of, and therefore, an interest in, their employers. Ta Chen argues that the Department may not assume that because an individual is employed simultaneously by two firms, the two firms are related, or that the individual controls any interest in the firms. *Id.* at 64. Ta Chen also insists that a payment Ta Chen made to Mr. Mayes in 1995, or three years after he allegedly left Ta Chen's employ, does not indicate that Mr. Mayes was employed by Ta Chen in the intervening period (i.e., when he worked for San Shing and Sun). Rather, Ta Chen claims, this payment stemmed from a previous agreement between Mr. Mayes and Mr. Robert Shieh, Ta Chen's and TCI's president and CEO, whereby in return for Mr. Mayes's expertise and assistance in Ta Chen's start-up in the United States, Ta Chen would pay a certain amount to Mr. Mayes should it reach a pre-determined level of profits in any future year. Ta Chen accuses the Department of establishing a "*per se* rule" that because money changed hands between Ta Chen and Ken Mayes, Mr. Mayes was an employee of Ta Chen, and further, Ta Chen and Mr. Mayes were, therefore, related parties. This one-time profit sharing payment, Ta Chen argues, conferred no ownership rights or control over prices to Mr. Mayes, and is thus irrelevant to a related-party determination. Further, Ta Chen insists, both Ta Chen and San Shing (or Sun) acted freely and in their own best interests throughout this period. *Id.* at 68 and 69.

The close business relationships which existed in the instant reviews, Ta Chen maintains, do not constitute grounds for finding Ta Chen related with San Shing or Sun. For instance, Ta Chen argues, in OCTG From Argentina the Department found close business ties between parties irrelevant, even in the face of a prior equity connection. Subsequent equity ties were likewise found irrelevant in Pocket Lighters, 60 FR 14263, 14267. According to Ta Chen, the parties at issue must be related through equity ownership at the time of the sales in question for the relationship to be legally relevant. Case Brief at 65. Furthermore, Ta Chen continues, the

⁵This firm is identified variously as "Picol International" and "Picol Enterprises." The contract covering Frank McLane's sale of Sun lists the purchaser as "Picol Enterprises."

Department has previously examined cases wherein a respondent provided "clerical type assistance" [sic] to customers and found such assistance irrelevant to the issue of relatedness. See, e.g., Polyethylene Terephthalate Film From Korea, 62 FR 10526, 10529 (1997). In Tapered Roller Bearings From Japan, 61 FR 57629 (November 7, 1996), Ta Chen maintains, even the provision of sales personnel, training, inventory management assistance, use of computer resources for inventory and ordering, accounting assistance, and marketing and customer service training were insufficient to find a U.S. subsidiary related to its customers. Ta Chen continues by noting that the Department's level-of-trade analysis performed under the post-URAA Tariff Act routinely includes examination of precisely these types of relationships, demonstrating, Ta Chen submits, that "such services can be, and are, provided by sellers to their unrelated customers." Case Brief at 66.

Furthermore, Ta Chen argues, in past cases the Department has determined that parties are not related even in the face of much starker evidence of the parties' consanguinity. According to Ta Chen, in Certain Fresh Cut Flowers From Mexico, 56 FR 1794, 1799 (January 17, 1991) the parties shared the same address, telephone numbers, invoice forms, and the same individual signed all invoices. The Department not only found the parties unrelated, but "did not indicate that these facts were even relevant to whether the parties were related." Case Brief at 67.

Ta Chen also insists that there was nothing untoward in Ta Chen's practice of meeting with the customers of San Shing and Sun, and forwarding orders from these customers to San Shing and Sun. On the contrary, Ta Chen maintains, "it is a perfectly understandable business practice for a mill to act in this way and to meet with its own previous customers and assure them that its use of a new inventory-holding master distributor will not adversely affect service or the price competitiveness of its products." Case Brief at 70, n. 17. Ta Chen claims that its officials "knew the prices" Sun would charge for subject WSSP, and accepted customer orders on behalf of San Shing and Sun. As Ta Chen "would not wish to undermine [San Shing and Sun]," Ta Chen claims, it forwarded these orders to San Shing or Sun, as appropriate, rather than simply filling the order and billing the customers directly. Case Brief at 71. According to Ta Chen's account, San Shing and Sun were free to accept or reject any orders obtained by Ta Chen. Ta Chen likens

this pattern of activity with a commission agent who secures an order on behalf of a given supplier, and then forwards that order to the supplier. In Ta Chen's estimation, such a transaction would not render the commissionaire related to the supplier.

Furthermore, Ta Chen asserts, such practices as described in these reviews are common between unrelated parties and "thus, are not probative of Ta Chen and [San Shing and] Sun being related." Case Brief at 73. Citing statements by officials of a U.S. pipe company, a U.S. pipe and pipe fittings distributor, and a distributors' association, which Ta Chen submitted for the record, Ta Chen contends that mill officials would not fill orders directly from their distributors' customers, thus undercutting the distributors; rather, Ta Chen claims, the mill would forward the order to the distributor. Ta Chen challenges the credibility of one witness put forth by petitioners, Mr. Brent Ward, who asserted in a sworn affidavit that such intimate involvement of a mill with its customers' subsequent sales of merchandise is unheard of among unrelated parties. Ta Chen wonders whether "this lone domestic mill witness can really speak knowledgeably about the practices of offshore mills in assuring [the] ultimate customers about shipment and delivery with respect to" subject WSSP. *Id.* at 74 (original emphases).

Ta Chen argues that even if it knew the prices at which San Shing and Sun would sell the subject pipe they purchased from Ta Chen, such knowledge "is of no moment." *Id.* Ta Chen cites the public testimony of Joe Avento before the International Trade Commission (the Commission) in an unrelated inquiry that the market for a fungible product such as WSSP is price-driven, and that these prices are "generally well known by these participants" in the marketplace. *Id.* at 75. Ta Chen also cites to TRBs From Japan, where a respondent provided its distributors with resale prices, as another case where the supplier had knowledge of its customers' prices. Again, Ta Chen avers, such knowledge would be insufficient grounds for finding two parties related for purposes of the Tariff Act.

Turning next to the liens held by Ta Chen on San Shing's and Sun's assets, which these parties supplied voluntarily, Ta Chen argues that such liens do not make parties related and are, in fact, common between unrelated parties. Ta Chen reiterates that it sold stainless steel pipe and other stainless steel products to San Shing and Sun on extended credit terms. As an exercise in

prudence, Ta Chen allows, it obtained a security interest in the inventory and accounts receivable of first San Shing, and then Sun. Furthermore, Ta Chen submits, its assignment of these security interests to a third party (i.e., TCI's creditor bank) is irrelevant to a discussion of whether Ta Chen was related to San Shing and Sun. In fact, Ta Chen stresses, the UCC, at § 9-318, Comment 4, notes that security interests in "intangibles" such as accounts receivable "can be freely assigned." Case Brief at 81, quoting UCC § 9-318, Comment 4.

Ta Chen states that in June 1993 TCI asked San Shing to grant a lien directly to TCI's bank. Ta Chen insists that this arrangement had the same result as TCI securing an interest in San Shing's inventory and accounts receivable and then assigning this interest to TCI's bank. Asking San Shing to grant the lien directly to TCI's bank was, Ta Chen avers, "a way to simplify a still otherwise ordinary commercial arrangement," and imposed no additional burdens upon San Shing. *Id.* Ta Chen accuses the Department of creating another *per se* rule that providing UCC security interests as a condition for obtaining a loan makes two parties related. Rather, Ta Chen submits, failure to seek a lien on a borrower's assets would be a stronger indication that two parties are related, and that the creditor did not need to secure the debt. Ta Chen also claims that San Shing (and later, Sun) actually did receive consideration in return for granting these UCC liens, in the form of extended credit terms.

In addition, Ta Chen claims that since San Shing and Sun only distributed Ta Chen products, any liens on their inventory and accounts receivable were necessarily limited to the outstanding amounts owed to Ta Chen. That the liens covered all of San Shing's inventory and accounts receivable is, Ta Chen declares again, "of no moment." Ta Chen notes that Article 9 of the UCC permits creditors to seek a "blanket" interest in both existing and "after-acquired" assets, rather than attempting to secure interests only in specific assets. Case Brief at 83. Nor is it unusual, Ta Chen continues, for a party pledging its assets as security to a creditor to pledge full cooperation in enforcing the lien in the event of default by the creditor. In the instant case, Ta Chen submits, as San Shing and Sun held the accounts receivable at issue, efforts to secure payment from San Shing's and Sun's customers would necessarily continue to rest with San Shing and Sun.

Ta Chen also sees nothing unusual in San Shing and Sun, putatively unrelated parties, entering into these security arrangements with no written documentation as to their terms. Ta Chen claims that, while it was "unable to find any formal writing memorializing the agreement that [TCI's loan with its creditor bank] would always be less than the accounts payable of San Shing and McLane's Sun Stainless to TCI," such agreements were, Ta Chen contends, "referenced in various correspondence during the relevant period between the parties * * *" Case Brief at 85. Ta Chen implies that, just as terms of sales are not always committed to writing, there is nothing unusual in the absence of written documents concerning the debt financing arrangements between Ta Chen and San Shing, and between Ta Chen and Sun.

Even if the facts surrounding the debt financing arrangements between these parties were, in fact, unusual, Ta Chen avers, that would not provide a basis for finding Ta Chen related with San Shing or Sun. Ta Chen asserts that all parties acted freely and in their own best interests. Therefore, Ta Chen concludes, these security agreements do not indicate that Ta Chen controlled San Shing or Sun. Ta Chen points to the statements it submitted for the record from two individuals involved in the steel industry in the United States as support for its contention that security arrangements such as those described above are "reasonable given a concern of nonpayment." Case Brief at 88. Ta Chen quotes one of these statements at length, noting with approval this individual's opinion that such measures can and do occur between suppliers and their unrelated distributor customers. Not only did Ta Chen's witnesses find these arrangements "perfectly normal," but TCI's audited financial statements likewise did not include San Shing or Sun when listing loan guarantees provided by related parties. *Id.* at 89.

As two final notes with respect to the debt financing arrangements, Ta Chen states that no prior Departmental precedent exists for the proposition that secured debts or loan guarantees are sufficient grounds for finding parties related under the pre-URAA Tariff Act. Even under what Ta Chen interprets as a broader definition of "affiliation" under the post-URAA Tariff Act, to date the Department has yet to find that loans make parties affiliated. Case Brief at 90, citing to Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5604 (February 6, 1997), and Large Newspaper Printing Presses From Japan, 61 FR 38139, 38157

(July 23, 1996). Second, Ta Chen criticizes the Preliminary Results for failing to explain precisely how the liens at issue in these reviews could affect control over prices which, Ta Chen reiterates, is the only aspect of control relevant to these reviews.

Ta Chen next discusses San Shing's and Sun's exclusive supplier relationships with Ta Chen. While conceding that, in fact, San Shing and Sun purchased and sold Ta Chen products exclusively, Ta Chen claims that San Shing and Sun were "free to do business with others of [their] own choosing, as well as buy and sell others' products." Case Brief at 90. Ta Chen cites prior cases decided under the pre-URAA statute wherein the Department considered exclusive buy-sell relationships; in such cases, Ta Chen argues, the Department did not find such relationships indicative of the parties' being related. *Id.*, citing Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 28, 1983), and Certain Residential Door Locks and Parts Thereof From Taiwan, 54 FR 53153 (December 27, 1989) (Door Locks From Taiwan). Even under post-URAA determinations, Ta Chen avers, the Department has not found exclusive buy-sell relationships sufficient to consider two or more parties affiliated. According to Ta Chen, the Department examined such relationships in Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea, 62 FR 18404, 18441 (April 15, 1997) and Open-End Spun Rayon Singles Yarn From Austria, 62 FR 14399, 14401 (March 26, 1997), and concluded that because the parties were free to transact with others, their exclusive buy-sell arrangements did not render the parties affiliated. Case Brief at 91 and 92. On a broader plane, Ta Chen continues, San Shing and Sun could not be considered "reliant" upon Ta Chen because each had interests beyond their dealings with Ta Chen. San Shing, Ta Chen notes, sold fasteners, while Mr. McLane had interests involving lawnmower parts and plastic patio furniture. Ken Mayes, Ta Chen asserts, had an additional business interest in another pipe distributor, Stainless Specialties, Inc.

As further evidence that San Shing and Sun were not related to Ta Chen, the company states that its "net, ex-factory price to [San Shing and] Sun was less than its net, ex-factory price to other U.S. customers." Case Brief at 95 (original emphasis). These pricing patterns, Ta Chen asserts, demonstrate that Ta Chen "did not have control over" San Shing and Sun. *Id.* Ta Chen allows that, had it exercised control over these distributors, it would have

charged them higher prices, so as to mask any dumping of subject stainless pipe sold to genuinely unrelated customers. That Ta Chen's prices to San Shing and Sun were lower than its prices to other customers "further confirm[s]" that Ta Chen is not related to San Shing or to Sun.

Ta Chen also assails the credibility of the D&B report cited in the Preliminary Results as evidence that Ta Chen and Sun were related through Frank McLane's common equity ownership. According to Ta Chen, the conclusion in the D&B report that Frank McLane and Ken Mayes had been active with Sun since 1992 (indicating that Mr. McLane simultaneously held equity in Ta Chen and owned Sun outright) is based upon hearsay: "[o]ne D&B clerk apparently heard something from somebody. A second D&B clerk speculates from what the first D&B clerk said." Case Brief at 100. According to Ta Chen, its certification that Mr. McLane "had no involvement with any Sun before the one he incorporated in September 1993" should be sufficient to refute the D&B report. *Id.* Requiring Ta Chen to go beyond the certified questionnaire responses "unlawfully places the burden on Ta Chen to rebut the D&B report." *Id.* at 108. Ta Chen also claims that the Department should disregard the D&B report because petitioners failed to submit the September 1994 D&B report to the Department prior to the October 1994 verification in the first pipe review.

Assuming that the D&B report constitutes evidence, Ta Chen asserts that it is not substantial evidence and, therefore, any reliance upon it is unlawful. Citing *Timken Co. v. United States*, 894 F. 2d 385, 388 (Fed. Cir. 1990), Ta Chen argues that "substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Case Brief at 101. Ta Chen notes that Dun & Bradstreet issues a stock disclaimer with its reports that it does not guarantee their accuracy. Further, Ta Chen charges, the accuracy of this particular report is further impeached by the apparent removal of the unique D&B number identifying the subject of the report. Ta Chen asserts that this is not a minor matter since two Suns are at issue in this case—San Shing's dba Sun Stainless, Inc., and Frank McLane's Sun Stainless, Inc. Ta Chen also hints that other alterations may have been made to the D&B report.

In addition, Ta Chen maintains that the D&B report does not specifically cite Mr. Mayes as the source for the claim that Messrs. McLane and Mayes had been active in Sun since 1992. Since the

D&B report does not indicate that Mr. McLane was president or owner of Sun prior to November 1993, the clear and unequivocal evidence indicates that Mr. McLane only became involved with Sun at the later date. In fact, Ta Chen submits, the contract arising from Mr. McLane's July 1995 sale of Sun to an unrelated firm, Picol Enterprises, states that Mr. McLane was president of Sun since November 5, 1993.

In closing on this point, Ta Chen alleges that the Department treated it unfairly by not accepting into the record submissions by Ta Chen addressing the credibility of the D&B report. Ta Chen asserts that it first received notice of the possible "breadth of § 771(13)(B)," and the importance of the D&B report, upon publication of the Department's Preliminary Results. Case Brief at 109. Ta Chen maintains that its July 2, 1997 submission on this point (rejected by the Department as untimely new factual information) should have been accepted for the record.

Petitioners assert that "Ta Chen's version of its actions [with respect to San Shing and Sun] and what has transpired is incomplete and defies common sense and reality." Rebuttal Brief at 3. As a preliminary matter, petitioners chide Ta Chen for failing to provide a single specific example involving any other firms of ties such as those found between Ta Chen and San Shing and Ta Chen and Sun, which Ta Chen maintains are common between unrelated parties. The reason Ta Chen has failed to do so, petitioners insist, is because these practices "are not common and do not exist between unrelated parties." Rebuttal Brief at 12. Petitioners maintain that Ta Chen has failed to substantiate its claims that these extraordinary ties are, in fact, normal. With respect to Ta Chen's possession of San Shing's and Sun's signature stamps, petitioners note that Ta Chen was unable to cite a single instance where a supplier had physical custody of its unrelated customers' signature stamps. Similarly, although Ta Chen claims that the invasive computer monitoring Ta Chen employed with respect to San Shing and Sun was "prudent," petitioners note that Ta Chen has failed to provide a single example involving any other companies of such monitoring. "[I]f Ta Chen's ties with San Shing and Sun Stainless really are nothing out of the ordinary commercially speaking, why has the Department * * * never seen the likes of these ties in any other of the many cases under the antidumping law that the Department has considered over the last seventeen years?" *Id.* Were this not such a serious matter, petitioners

suggest, Ta Chen's claims with respect to the shared sales personnel, computer links, common negotiations with San Shing's and Sun's customers, and the pledging of San Shing's and Sun's assets to Ta Chen's benefit "would be laughable, because they are ludicrous." *Id.*

Addressing in turn each element of control cited by the Department in its Preliminary Results and discussed at length in Ta Chen's case brief, petitioners present a point-by-point rebuttal. As for Ta Chen's possession of the signature stamp and its maintenance of the computer links with San Shing and Sun, petitioners contend that these arrangements are "exceptional and [amount] to control over the other person's finances." Rebuttal Brief at 13. Ken Mayes's statement that San Shing and Sun were free to write checks of their own volition is, petitioners charge, "an unsubstantiated *ipse dixit* that is entitled to no credence." *Id.*

With respect to the sharing of sales personnel, petitioners also disagree with Ta Chen's assertion that it did not share common employees with San Shing or Sun. According to petitioners, Ta Chen's November 12, 1996 submission in the 1994-1995 administrative review (portions of which were incorporated into the records of these administrative reviews) indicates clearly that there was sharing of sales personnel among these parties; "the sort of intermingling of employees that Ta Chen admits took place suffices to establish Ta Chen's control of San Shing and Sun Stainless." Rebuttal Brief at 14. Furthermore, petitioners continue, Ta Chen's claims with respect to payments made to Ken Mayes are "not buttressed by documented evidence." Rather, petitioners aver, while allegedly employed by San Shing and later Sun, Mr. Mayes's self interest "lay in helping Ta Chen to be sufficiently profitable to trigger his bonus," doing so at the expense of San Shing and Sun. *Id.* Such a tie, petitioners attest, would further support the Department's determination that Ta Chen controlled San Shing and Sun.

Petitioners also dismiss as "fanciful speculation" Ta Chen's claim that its knowledge of San Shing's and Sun's prices for WSSP was not remarkable and, thus, "of no moment." Petitioners insist that "[t]he idea that a distributor would inform its arm's-length supplier of the distributor's prices to its customers is not believable in any market." *Id.* Rather, petitioners suggest, a distributor would keep its prices from its supplier to "maximize whatever negotiating room [the distributor] has with [its] supplier." *Id.* at 15.

As for the security interests pledged by San Shing and Sun, petitioners contend that this arrangement "epitomizes the control exerted by Ta Chen over San Shing and Sun Stainless." *Id.* With San Shing and Sun retaining legal title to the subject merchandise, petitioners aver, the pledging of these assets as collateral for TCI's line of credit should not have occurred. Furthermore, petitioners continue, that San Shing and Sun entered into these arrangements without any written agreements is additional evidence that "there was no arm's-length relationship at play." *Id.* In fact, petitioners note, the failure of San Shing or Sun to obtain written agreement concerning any of the elements of control cited in the Preliminary Results (i.e., the custody of the signature stamp, the free computer access, and the security interests) establishes a "pattern that confirms control and related-party relationships." Petitioners also dismiss as unsubstantiated Ta Chen's assertion that San Shing and Sun were free to do business with others; petitioners point out that there is no evidence of record that San Shing or Sun ever purchased subject merchandise from anyone other than Ta Chen.

As for the D&B report, petitioners stand by the accuracy of this document, and point to an affidavit from an employee of Dun & Bradstreet attesting to the provenance of the information contained in that report. According to this employee, the source for the information, including that Mr. McLane and Mr. Mayes had started the company in 1992, was none other than Ken Mayes himself, who provided this information in a May 24, 1994 interview with Dun & Bradstreet analysts. Petitioners aver that Mr. Mayes offered this account of Sun's history long before Ta Chen and Sun were aware of petitioners' concerns, i.e., at a time when Mr. Mayes "had no reason to miscite Sun Stainless date of establishment and roster of officers from its inception." Rebuttal Brief at 8. Petitioners compare the May 24, 1994 statement with Mr. Mayes's later statement, submitted on December 20, 1996, that he and Mr. McLane's affiliation with Sun commenced in November 1993, describing the latter as unsubstantiated. Further, according to petitioners, the later statement is based upon claims that Mr. McLane actually purchased San Shing's assets "that are themselves unsubstantiated." *Id.* at 9. In defending the accuracy of the D&B report, petitioners reiterate that Dun & Bradstreet's source for the report was Ken Mayes, and assert that the timing of this May 1994 statement, and "Dun &

Bradstreet's professional reputation are solid grounds for the Department to conclude that the D&B report is accurate." *Id.*

Petitioners conclude by asserting that Sun Stainless was established expressly to evade antidumping duties. Since Sun's 1992 establishment, petitioners allege, "Ta Chen has maneuvered by pretense and artifice to keep its real unrelated-party sales in the United States from undergoing the Department's scrutiny." According to petitioners, Ta Chen's means to this end were its "hidden control" of San Shing and Sun; therefore, petitioners argue, "the statute calls for the conclusion that Ta Chen was related to San Shing and Sun Stainless." Rebuttal Brief at 16.

Department's Position

We agree with petitioners that the factual evidence of record demonstrates a level of operational control exercised by Ta Chen over both San Shing and Sun that more than satisfies the statutory provisions for finding Ta Chen, San Shing, and Sun related parties.

Ta Chen in its case brief focuses upon each indication of control cited in the Preliminary Results in isolation, characterizing each of these connections as (i) commonplace and unremarkable in the commercial world, (ii) insufficient to demonstrate Ta Chen's control of these parties, and, (iii) irrelevant to a finding that these parties are related for purposes of the Tariff Act. However, we have examined the totality of the evidence in this case as it pertains to Ta Chen's overarching control over not only the activities of San Shing and Sun, but over their existence as well.

In placing such emphasis on a so-called five-percent equity test, Ta Chen ignores the true purpose of section 771(13) of the Tariff Act, which is to define the "exporter" for purposes of determining the correct basis for U.S. price. According to Ta Chen's repeated assertions, the only relevance of the present discussion is whether or not Ta Chen could control pricing decisions made by San Shing and Sun in selling subject merchandise in the United States. In fact, the evidence of record indicates this was so, as do Ta Chen's own admissions during the course of these reviews. As we have indicated, San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen products in the United States. Throughout their involvement in these proceedings Ta Chen had control of San

Shing's and Sun's bank accounts, with authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun. Ta Chen also had physical custody of these parties' check-signing stamps. Ta Chen further controlled San Shing's and Sun's assets and these parties pledged their assets as collateral for a loan obtained on behalf of TCI. In addition, Ta Chen enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records. Ta Chen's owner, Robert Shieh, owned the property housing San Shing and Sun, and Ta Chen shared sales and clerical personnel with the two companies. Finally, Robert Shieh actually negotiated the prices that San Shing and Sun would realize on their subsequent resales of subject merchandise to unrelated customers.

Furthermore, for the Department to conclude that Ta Chen did not exercise effective control over San Shing and Sun would require the Department to ignore numerous *lacunae* in Ta Chen's account. The inconsistencies, inaccuracies, partial admissions, and lack of documentation in Ta Chen's version of events in these administrative reviews do not support Ta Chen's claims.

First, as for Ta Chen's argument that had it held an interest in San Shing or Sun it would have received consideration for the sale of San Shing to Mr. McLane, and Mr. McLane's eventual sale of Sun Stainless, Inc. to Picol Enterprises, this argument suffers one fatal flaw. Ta Chen's claim that Mr. McLane purchased San Shing from Chih Chou Chang in the fall of 1993 is unsubstantiated. The transaction itself has never been documented for the record. In fact, aside from Ta Chen's claims on this matter, we have no evidence that any assets, or consideration therefor, actually changed hands in September 1993. Ta Chen's failure to document for the record this transaction is significant given Ta Chen's ability to enter into the record the most sensitive financial information concerning these parties, e.g., the individual tax returns of Frank McLane and the corporate tax returns of the putatively unrelated parties, San Shing and Sun. More fundamentally, as we discuss below, record evidence indicates that Ta Chen misstated the commencement of Frank McLane's (and Ken Mayes's) involvement with the second "Sun Stainless, Inc.," incorrectly indicating that Mr. McLane did not simultaneously act as president of Sun and as a director and shareholder of Ta Chen. Because the underlying chronology is itself impeached, we

cannot accept at face value Ta Chen's claim that it did not receive compensation for these transactions, whether in the form of cash value or other non-monetary consideration.

Turning now to the indications of control enumerated in the Preliminary Results, we affirm our preliminary finding that Ta Chen controlled San Shing's and Sun's disbursements. One avenue Ta Chen used to exercise this control was through its possession of San Shing's and Sun's signature stamps. Ta Chen's assertion that it is commonplace for a business entity to surrender control over its disbursements to an unrelated party, as both San Shing and Sun did to Ta Chen, by turning over physical custody of their signature stamps to an unrelated supplier is not credible and is not supported by record evidence. Nor is there record support for Ta Chen's *ex post facto* claim that it could not execute checks unilaterally; having possession of both the checks and the signature stamp enabled Ta Chen to execute checks at will upon these entities' accounts. Furthermore, there is no support, either in the record of these reviews or in the Department's experience, for the notion that demanding control over an unrelated customer's checking account would be required to effect "stringent credit monitoring" of the customer's expenditures, as Ta Chen claims here. In fact, control by one party over another party's checking account is usually only found between related parties.

Similarly, we find that Ta Chen's unlimited level of computer access to San Shing's and Sun's proprietary data supports a finding that Ta Chen exercised control over these parties. Ta Chen's assertions with respect to this computer access are unpersuasive and are not supported by evidence in the record. Ta Chen attempts to present its full-time and unrestricted ability to scrutinize San Shing's and Sun's proprietary business records as prudent monitoring by a creditor of its unrelated debtors which is "permissible and expected" under provisions of the UCC. We note that, while a creditor is entitled to periodic reports from a debtor concerning, e.g., the debtor's sales and deliveries and the agings of accounts receivable used as collateral, nothing in the UCC envisions the unlimited access Ta Chen enjoyed here. See Nassberg, Richard T., *The Lender's Handbook*, American Law Institute, American Bar Association Committee on Continuing Professional Education, Philadelphia, 1986, at 32 and 33. Further, Ta Chen has offered no examples of any other firm allowing its unrelated supplier such extensive access to its payroll and

accounting information. Contrary to Ta Chen's claims, such a practice is not common and, to the Department's knowledge, does not exist between truly unrelated parties. As we noted in the final results of the 1994–1995 administrative review of this order, "Ta Chen officials stated at the Department's [June 1997] verification at TCI that [Sun] maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to [Sun's] accounting system was complete." Certain Welded Stainless Steel Pipe From Taiwan, 62 FR 37543, 37549 (July 14, 1997).⁶

With respect to the claimed need for the computer access and control over San Shing's and Sun's disbursements, this claim too is undermined by Ta Chen's own statements in the record. Ta Chen insists that it required these measures of control as a means of monitoring its customers in light of the substantial quantities of merchandise Ta Chen sold to San Shing and Sun, and in return for the 210-day credit terms offered by Ta Chen.⁷ But as Ta Chen noted in its July 28, 1994 submission in the first administrative review, San Shing was an established company enjoying "substantial resources including lines of credit." Ta Chen's July 28, 1994 submission at 9. Furthermore, with respect to the balances owed by San Shing and Sun, as Ta Chen itself concedes, Ta Chen's "risk [of non-payment] is not significant, since actual bad debt has not been a problem." Ta Chen's November 12, 1996 submission at 81. If San Shing enjoyed such substantial resources, and never presented a risk of non-payment, Ta Chen's stated need to implement monitoring measures to secure payment for its sales is without support. The absence of a genuine credit risk would, in fact, attenuate the need for this relationship. The second possible reason for these ties, posited by Ta Chen's witnesses, is that it allows for "just-in-time" delivery of inventory. While electronic ordering is a common and growing practice between suppliers and their distributors, this typically entails a sharply delimited level of access—most commonly, a one-way communication between the customer's

purchasing department and the supplier's sales department. We are aware of no circumstances where electronic ordering would allow a supplier to have unrestricted access to the accounts payable, accounts receivable, inventory, and payroll data of an unrelated customer. We conclude that these untrammelled on-line computer ties existed because Ta Chen was controlling and directing San Shing and Sun.

We also conclude that the record indicates that Ta Chen shared personnel with San Shing and Sun. In fact, Ta Chen's November 12, 1996 submission details a long two-way history of shared office personnel between Ta Chen and San Shing dating to before San Shing ever purchased Ta Chen pipe. For example, Ta Chen claims that "[f]rom the outset of [Ta Chen's and San Shing's] landlord-tenant relationship, TCI provided San Shing USA with assistance from its personnel and, from time to time, the use of TCI office equipment." Furthermore, San Shing "provided necessary technical and other support to TCI personnel" when TCI commenced its production of fasteners. See Ta Chen's November 12, 1996 submission at pages 51 through 54. In addition, Ta Chen's sales manager, Mr. Mayes, also acted as sales manager for San Shing and for Sun. For more on Mr. Mayes's role in these reviews, see our response to Comment 3, below. When considered together with the other indicia of control, this commingling of personnel lends additional support to the conclusion that Ta Chen was related to San Shing and Sun as defined in the Tariff Act.

With respect to Ta Chen's involvement in negotiating sales prices to San Shing's and Sun's customers—the true focus of this inquiry—Ta Chen insists that this involvement does not indicate control by Ta Chen of San Shing and Sun, and further asserts that such practices are commonplace. However, we agree with petitioners that Ta Chen's claims that negotiating the prices of its customers' subsequent sales is common between unrelated parties are unsupported either by record evidence or the Department's experience. San Shing and Sun were engaged in the distribution of a fungible, commodity product, i.e., ASTM A312 pipe and fittings made from this pipe. As Ta Chen's witness Mr. Joe Avento notes, the market for such products is price-driven. With little margin for profit, an unrelated distributor, as a matter of survival, would guard the prices it would accept for reselling the product in order, as petitioners phrase it, to "maximize whatever negotiating

room [the customer] has with [its] supplier." Rebuttal Brief at 15. Ta Chen has argued that the only element of control relevant to an antidumping proceeding is control over prices; Ta Chen's admitted role in setting prices for San Shing's and Sun's subsequent sales of WSSP to unrelated customers in the United States is evidence of precisely this type of control. For Ta Chen, as the supplying mill, to liken its role in these transactions to that of a mere commission agent, passing purchase orders between end-users and its distributors San Shing and Sun, is not credible. Ta Chen has noted that Ta Chen officials (specifically, Ta Chen's president, Mr. Robert Shieh) not only met with customers of San Shing and Sun, but that these same customers would contact Ta Chen directly, bypassing altogether their putative suppliers, San Shing and Sun. Ta Chen claims that "Ta Chen officials would not wish to undermine [San Shing or] Sun," and that it merely forwarded any purchase orders it received to San Shing or Sun for their independent consideration and acceptance or rejection. See Ta Chen's Case Brief at 71. Here again, however, there is no record evidence, aside from Ta Chen's unsupported claims, that it ever forwarded a customer's order to San Shing or Sun, nor is there evidence of either San Shing or Sun ever rejecting a purchase order so obtained from TCI. Furthermore, Ta Chen's fastidious avoidance of "undermining" San Shing and Sun was unnecessary, given its control of the transactions from the mill in Tainan to the delivery to the ultimate end user in the United States.

Turning to the debt security arrangements between San Shing, Sun, TCI, and TCI's creditor bank, Ta Chen claims that such arrangements are "irrelevant." Ta Chen maintains that debt security arrangements by themselves have proven insufficient grounds for finding parties related for purposes of section 771(13) of the Tariff Act. Nevertheless, the nature of these particular security assignments, including the absence of any written agreement between these putatively unrelated parties, further supports our finding that transactions between these parties were not at arm's length. Within the larger context of Ta Chen's relationships with these entities, we find the debt security arrangements provide additional evidence of the degree of Ta Chen's control over all aspects of San Shing's and Sun's operations. Here, San Shing, and then Sun, unilaterally, and without consideration, assigned their entire

⁶The original text identifies Sun as "Company B." Although the verification concerned the 1994–1995 administrative review, this narrative applied to prior periods as well. See Memorandum to the File, June 19, 1997, at 5, a public version of which is on file in room B-099 of the main Commerce building.

⁷We note that, in addition to preferential pricing, these extended credit terms offered to San Shing and Sun would further indicate that their dealings were not at arm's length.

inventory and accounts receivable directly to TCI's bank to facilitate a loan for TCI. That San Shing and Sun would accept such a risk without any consideration—without even a written agreement memorializing the terms and duration of the agreement—is not consistent with the dealings between truly unrelated companies. Nor has Ta Chen offered convincing evidence that this arrangement is, in fact, commonplace. Ta Chen fails to note that the UCC financing statements submitted for the record “serve only to perfect the lender's rights against competing creditors and that rights so perfected must be created under a valid security agreement.” The Lender's Handbook, *op. cit.* at 27 (emphasis added). In spite of numerous submissions focusing upon the significance of these loan guarantees and their relevance to these proceedings, and in spite of our specific requests that Ta Chen do so, Ta Chen has never submitted evidence that a valid security agreement was ever created. Ta Chen has stated only that it “asked” first San Shing, and then Sun, to assign their inventory and receivables as security for a line of credit TCI obtained from a California bank, and that these parties agreed freely in return for extended credit terms. See Case Brief at 81 and 82. However, that these putatively unrelated parties would accede to such a request in the absence of any written security agreement as to the nature of the assignments, their scope, their duration, etc. does not comport with the actions of unrelated parties dealing at arm's length. Contrary to Ta Chen's assertion, in fact, the existence of these UCC filings absent any valid security agreement serves merely to underscore the dominion Ta Chen enjoyed over the actions and the assets of both San Shing and Sun.

Furthermore, Ta Chen has never documented for the record why the allegedly unrelated San Shing would be willing to offer its entire accounts receivable and inventory to secure a loan for TCI, or why Sun, supposedly unrelated to either Ta Chen or to San Shing, would assume these same obligations *in toto* when, as of the claimed date of its founding, it would have no outstanding balances whatever with Ta Chen. Two other aspects of these security agreements bear noting. First, that the secured amount available to TCI from its bank was always limited to the amount San Shing or Sun owed TCI for their purchases of Ta Chen's stainless pipe products is an *ipse dixit* which Ta Chen, the sole party able to do so, has failed to document for the record. Ta Chen claims in its case brief

that these agreements were “referenced in various correspondence during the relevant periods between the parties,” yet Ta Chen did not submit any of this correspondence for the record. Our thorough review of Ta Chen's and TCI's correspondence files during the October 1994 verifications also did not reveal any mention of these agreements. Second, Ta Chen insists that because San Shing and Sun only sold Ta Chen products, the value of any assets assigned by San Shing and Sun to TCI's bank necessarily equaled the amount owed by San Shing and Sun to TCI. See Case Brief at 82 and 83. However, this would be true only if San Shing and Sun sold this merchandise at the same price it originally paid to TCI. If San Shing and Sun marked up the price of the merchandise, which they would have to do to realize any profit from these transactions, then the secured amount necessarily exceeded the receivables San Shing and Sun owed to TCI. Furthermore, San Shing sold nuts and bolts for the automotive industry. Thus, its inventory and accounts receivable from the start of this relationship extended beyond the pipe and pipe fittings supplied by Ta Chen. Contrary to Ta Chen's assertions, the value of San Shing's inventory and accounts receivable clearly did exceed the amount San Shing owed to Ta Chen for its pipe products.

As for the exclusive supplier relationships between Ta Chen, San Shing and Sun, Ta Chen concedes that it was the exclusive supplier to both entities, but claims that each was free to do business with whomever it chose. However, Ta Chen has presented no evidence of San Shing or Sun ever seeking to purchase pipe or pipe products from any other firm. In fact, the record clearly indicates that except for the fasteners manufactured by San Shing Hardware Works, Ltd., San Shing dealt exclusively with Ta Chen merchandise; Sun Stainless was established for this purpose alone. Both were entirely reliant upon Ta Chen for their supplies of pipe and pipe fittings. We also find that Ta Chen's case citations in this regard are not entirely on point. In Portable Electric Typewriters, for example, respondent Tokyo Juki sold merchandise exclusively to EuroImport, S.A., a subsidiary of Olivetti. Petitioner in that case, citing a number of factors, including assumption of start-up costs, Olivetti's supplying typewriter parts to Tokyo Juki, and the fact that Tokyo Juki sold subject typewriters exclusively to EuroImport, alleged that Tokyo Juki and Olivetti were related parties. We

concluded that “Olivetti's and Tokyo Juki's relationship does not constitute control as contemplated by section 771(13) of the Tariff Act,” and that petitioner's arguments with respect to EuroImport were “not persuasive.” Portable Electric Typewriters From Japan, 48 FR 7768, 7771.⁸ While EuroImport had an exclusive distributor arrangement to distribute Tokyo Juki's typewriters, there is no indication that the obverse was true, i.e., that Tokyo Juki was the exclusive supplier to EuroImport. In all likelihood, EuroImport also distributed typewriters manufactured by its parent, Olivetti, and may have distributed typewriters supplied by any number of manufacturers. Unlike the instant case, there is no evidence that EuroImport was dependent upon Tokyo Juki for its continued sales operations. Thus, Portable Electric Typewriters never reaches the issue of whether or not an exclusive supplier relationship is, or is not, evidence of parties' being related under section 771(13) of the Tariff Act by means of control. Furthermore, in sharp contrast to the instant case, the totality of evidence in Portable Electric Typewriters clearly indicated that Tokyo Juki could not control Olivetti or vice versa. Likewise, the citation to Residential Door Locks From Taiwan is inapposite. There we concluded that “[t]here is no evidence on the record that Posse and Tong Lung operated closely together, were billed jointly, had their day-to-day operations directed by joint owners, or conducted transactions between themselves.” Residential Door Locks From Taiwan, 54 FR 53153, 53161 (emphases added). We did not say, as Ta Chen asserts, that exclusive-supplier relationships could not be indicative of related-party status; on the contrary, we clearly examined the issue of exclusive supplier relationships within the context of a related-party determination and found that not only was there no exclusive supplier relationship between Posse and Tong Lung, there were no business transactions of any kind between the two.

Furthermore, Ta Chen has presented no evidence in support of its contention that these indicia of control, including computer access, control of disbursements, and intervention by a mill in its unrelated customers' sales are common. Despite the claims of Ta Chen's witnesses, Mr. Charles Reid, Mr.

⁸This discussion of “control as contemplated by section 771(13) of the Tariff Act” would be unnecessary if, as Ta Chen insists, the statute only defined related parties in terms of common equity ownership.

Theodore Cadieu of the USX Corporation, and officials from a U.S. pipe producer and a distributors' association, that such practices happen "all the time," none could cite a single specific example of similar ties between unrelated parties. The head of the distributors' association, who would be expected to have familiarity with the practices of its membership, failed to name a single member firm engaging in such "common" practices. See Ta Chen's February 7, 1997 submission at 54, Ta Chen's January 31, 1997 submission at 151, and Ta Chen's April 1, 1997 submission. As for the qualification of petitioner's affiant, Mr. Brent Ward, to speak to "the practices of offshore mills," Ta Chen has known at least since the Department's April 28, 1997 public hearing (in the 1994-1995 administrative review) Mr. Ward's qualifications to address these matters. Mr. Ward is the president of the domestic producer, Damascus-Bishop Tube Company, and also the Specialty Tubing Group, an association of North American producers of WSSP. His firm also purchases and distributes ornamental steel tubing produced by offshore mills. See Memorandum to the File, October 30, 1997, at 2, and Hearing Transcript ("Open Session"), May 12, 1997 at 15 through 21 and 34 through 37, on file in room B-099 of the main Commerce building. It is worth quoting Mr. Ward, acting in all three capacities, at some length:

[a]t most, if it is necessary, a producing mill might have the opportunity to meet with both a distributor and that distributor's customer to discuss issues of material specification and/or quality requirements, but not to discuss issues of prices and quantities.
* * * [I]n reality distributors in the welded stainless steel pipe industry in the United States that are truly unaffiliated with their supplying mills jealously guard both their corporate independence and their commercial ties with their customers and limit any contact by the mills with those customers as much as possible. The logic behind this approach at one level, of course, is simply that the distributors do not want to lose control of their businesses and do not want their customers to buy directly from the mills and eliminate the distributor's role in the chain of distribution.

See Affidavit of Mr. Brent Ward, submitted April 8, 1997.

We find Mr. Ward's common-sense description of the business ties typically found between unrelated parties to be credible, especially in light of Ta Chen's inability to cite any evidence to the contrary.

Finally, turning to Ta Chen's relationship with Sun through Mr. McLane's full ownership of Sun while holding a share of, and acting as a

director for, Ta Chen, we find that substantial evidence of record in these reviews indicates that Mr. McLane's involvement with Sun predates the September 14, 1993 date claimed by Ta Chen. Mr. McLane, working with Mr. Mayes, established Sun and was actively engaging in sales of subject merchandise by 1992. The evidence of this is not, as Ta Chen characterizes it, hearsay. It is, in fact, the September 20, 1994 report of a disinterested and credible organization, Dun & Bradstreet, whose reports are routinely relied upon by the business and investment communities in assessing businesses' creditworthiness. Dun & Bradstreet's source was Mr. Ken Mayes who, as the putative vice president and director of Sun, clearly had familiarity with the history and operations of this firm. In a May 27, 1994 interview with Dun & Bradstreet's analysts, Mr. Mayes stated that "Sun Stainless, Inc." was started in 1992.⁹ Mr. Mayes noted that Mr. McLane was the president and he the vice president of Sun. Furthermore, the D&B report includes a "fiscal statement" covering the period from November 1, 1992 to October 31, 1993. This document shows that for the year ended October 31, 1993, Sun had millions of dollars in sales, accounts payable, and accounts receivable.

If, as Ta Chen claims, Frank McLane's Sun Stainless, Inc. only became operational as of November 1, 1993, there should have been no financial activity reported for the year prior to that date. Certainly, there would be no activity reported prior to September 1993 when Mr. McLane allegedly founded his new Sun Stainless, Inc. Perhaps recognizing this inconsistency, Ta Chen suggested in its August 2, 1995 submission that

[t]he Dun & Bradstreets submitted by Petitioners on Frank McLane's Sun Stainless, Inc. obviously include the financial results of San Shing USA for the pre-October 31, 1993 period and the financial results of Frank McLane's Sun Stainless, Inc. for the period November 1, 1993 onward.

Ta Chen's August 2, 1995 submission at 3, n. 4 (original bracketing deleted).

Ta Chen went on to speculate that "D&B's reporting in this fashion may be useful, as the profitability of San Shing USA's assets during the pre-October 31,

⁹We note this date coincides with Ta Chen's decision to "exit the ESP business" and to rely on newcomers to the pipe industry as its sole distributors in the United States. Thus, contrary to Ta Chen's assertions, the D&B report has not erroneously stated the founding date of San Shing USA, which existed as a distributor of fasteners manufactured by its parent, San Shing Hardware Works, Ltd., in Taiwan prior to its involvement in Ta Chen's pipe distribution. See Case Brief at 107.

1993 period may be a useful indicator of the financial performance of Frank McLane's Sun Stainless, Inc. during the post-November 1, 1993 period." *Id.* It is not at all obvious, however, that the D&B report for a putatively new corporate entity, Sun Stainless, Inc., would include the financial results for a separate party, San Shing. Unless Mr. Mayes incorrectly presented San Shing's financial results as Sun's own, Dun & Bradstreet could not have confused the two. Indeed, since San Shing used the name "Sun Stainless, Inc." as a fictitious dba name only, any search for financial information on "Sun Stainless, Inc." (as distinct from San Shing Hardware Works, USA), would be unavailing because, according to Ta Chen, Sun never really existed before September 1993, other than as a name on San Shing's invoice forms. Furthermore, if Sun had truly started as a new, independent entity in November 1993, the performance of San Shing in the prior year would be of little or no help in predicting how a new firm, with different ownership, different levels of financing, and different levels of business experience and expertise, would perform in the market.

Mr. Mayes's May 27, 1994 statements to a disinterested person, i.e., Dun & Bradstreet, were made at a time when Mr. Mayes had no reason to foresee that petitioners and, later, the Department, would inquire as to the dates of Sun's establishment. To the contrary, his later statements on Ta Chen's behalf for the record of these reviews were made at a time when he had a direct interest in sustaining Ta Chen's claim that it was not related to Sun. We conclude that the information contained in the D&B report more accurately reflects the history of Frank McLane's Sun Stainless, Inc.¹⁰

To conclude, after an exhaustive examination of the record evidence in this case, we find that Ta Chen enjoyed complete control over the establishment, existence, and activities of both San Shing and Sun, and that as a result, Ta Chen was related to San Shing and Sun in accordance with section 771(13) of the pre-URAA Tariff Act.

Comment 3: Use of Best Information Available

Even if the Department had the discretion to find Ta Chen related to San

¹⁰This same chronology was corroborated by a foreign market researcher retained by petitioners. See Petitioners' July 12, 1995 submission at Attachment 5. Even if the D&B analysts interpreted erroneously Mr. Mayes's May 27, 1994 statements, it is clear that Mr. McLane negotiated the purchase of San Shing USA's inventory sometime prior to mid-September 1993, i.e., while he was still a shareholder in, and director of, Ta Chen.

Shing and Sun within the meaning of section 771(13) of the Tariff Act, Ta Chen argues, the Department nonetheless acted unlawfully in applying BIA to Ta Chen. According to Ta Chen, the Department never clearly requested from Ta Chen any information regarding control of San Shing or Sun by Ta Chen, and never indicated what such control might entail. Citing *Sigma Corp. v. United States*, 841 F. Supp. 1255 (CIT 1994), Ta Chen asserts that the Department cannot "expect a respondent to be a mind-reader" * * * BIA cannot be imposed for failure to provide information that was not requested, or clearly requested." Case Brief at 112 (Ta Chen's emphasis omitted). Ta Chen also points to, *inter alia*, *Usinor Sacilor v. United States*, 907 F. Supp. 426, 427 (CIT 1995), *Creswell Trading Co., Inc. v. United States*, 15 F. 3d 1054, 1062 (Fed. Cir. 1994), *Daewoo Electronic Co. v. United States*, 13 CIT 253 266, and *Queen's Flowers de Colombia, et al., v. United States*, Slip Op. 96-152 (CIT September 25, 1996) as supporting its contention that the Department may not penalize a respondent "for failure to provide information on relationships which the respondent had no fair notice that the Department wanted." Case Brief at 112 through 114.

The Preliminary Results are especially galling, Ta Chen charges, given what Ta Chen characterizes as the Department's oft-stated position that "control indicia were irrelevant under the pre-[URAA] statute." *Id.* at 114. In cases involving financial inter-dependencies, interlocking and coordinated directors and officers, and *de facto* joint operation through, e.g., a Japanese keiretsu, Ta Chen claims, the Department has "repeatedly and publicly" stated that control was irrelevant to its analysis. *Id.*

Furthermore, Ta Chen avers, Ta Chen submitted for the record the information relied upon by the Department as indicative of control prior to issuing any supplemental questionnaires in the 1992-1993 and 1993-1994 reviews. With this information in hand, Ta Chen alleges, the Department issued supplemental questionnaires in both of these reviews, all covering Ta Chen's sales to San Shing and Sun. At no time, Ta Chen submits, did the Department ask Ta Chen to report the subsequent resales of Ta Chen pipe made by San Shing and Sun Stainless. Ta Chen argues that in *Olympic Adhesives, Inc. v. United States*, 899 F. 2d 1565, 1573 (Fed. Cir. 1990) the Court of Appeals for the Federal Circuit (Federal Circuit) held that when a respondent answers fully the Department's questionnaire and receives a supplemental request

"pursuing a different inquiry," the respondent has reasonable grounds for believing that the original queries were fully answered. Case Brief at 116. This holds *a fortiori*, Ta Chen continues, where the information concerning Ta Chen's relationships with San Shing and Sun was submitted prior to the Department's supplemental questionnaire. Why, Ta Chen asks, if the previous information "clearly indicated" that Ta Chen was related to San Shing and Sun, did the Department ask Ta Chen for wide-ranging information concerning Ta Chen's sales to San Shing and Sun, but never to report sales by San Shing and Sun? Ta Chen submits that it is not the Department's practice to determine that a response is inadequate *in toto* because a respondent reports the wrong body of U.S. sales, not to inform the respondent of the deficiency, to ask extensive questions about the putatively useless sales data, and only then to notify the respondent of what the Department now claims was evident all along; that the Department could not use Ta Chen's reported U.S. sales.

Ta Chen concludes that the questionnaires it received did not state that parties could be considered related through control; therefore, Ta Chen declares, it would be unlawful for the Department to proceed with BIA because Ta Chen failed to address these control issues in its responses.

If the Department continues to hold that Ta Chen's submitted U.S. sales data are unusable for these final results, Ta Chen nonetheless disputes the Preliminary Results' finding that Ta Chen failed to cooperate with the Department and, thus, deserves adverse (or "first tier") BIA. First, Ta Chen rejects the Department's conclusion that Ta Chen failed to disclose fully its relationships with San Shing and Sun. Rather, Ta Chen claims, it reported that Ta Chen was not related to San Shing and Sun as defined by the Tariff Act. Only later, Ta Chen avers, in the context of the 1994-1995 administrative review of WSSP did the Department phrase the question differently, asking Ta Chen to describe "all relationships" with San Shing and Sun. Ta Chen asserts that it answered fully this broader inquiry in its November 12, 1996 response in that proceeding. Ta Chen dismisses petitioners' claim that Ta Chen was forthcoming with this new information only because of a separate legal proceeding as both speculative and irrelevant to these proceedings. Rather, Ta Chen holds, once the Department framed the question as it did in the 1994-1995 review, Ta Chen responded candidly.

Ta Chen also claims that it explained accurately the provenance of the dba names used by San Shing and that, in any event, the Department failed to explain the significance of Ta Chen's account to the decision to apply uncooperative BIA. Furthermore, Ta Chen submits, in the 1993-1994 POR all sales of subject WSSP to "Sun Stainless, Inc." were to Frank McLane's Sun, not to San Shing and its dba Sun, thus making the derivation of these names especially irrelevant to the latter review period. Case Brief at 121, citing the Department's verification report for the 1992-1993 review. Ta Chen challenges the Preliminary Results' conclusion that Ta Chen misled the Department with respect to the origin of the dba names. According to Ta Chen, its November 12, 1996 submission never claimed that "all of the dba names would appear in the Ta Chen customer list submitted in the original [LTFV] investigation." *Id.* Rather, Ta Chen argues, only some of these names would be drawn from the customer list with the remainder selected because they were "American[-]sounding." *Id.* In any event, Ta Chen continues, the record does indicate the prior existence of six of the eight dba names Ta Chen claims were used by San Shing. Ta Chen claims that Charles Reid, with whom the Department spoke at the October 1994 verification, was also owner of Wholesale Alloys, one of the dba names. As to the use of the name Sun, Ta Chen asserts:

[t]he record does not establish the prior existence of the name Sun in the market. But what the record does show is that San Shing essentially went by the name Sun. That is what it was known as in the market and the vast bulk of its sales were under the name Sun. For someone to have the mindset that this was a company known as Sun, but on occasion using other dba names, would be reasonable and reflect the reality of the situation.

Case Brief at 123.

As for one customer name, Anderson Alloys (Anderson), Ta Chen insists that the Department in the Preliminary Results has assumed incorrectly that the Anderson of South Carolina is the same as San Shing's dba Anderson Alloys. The record, Ta Chen notes, is replete with references to two Andersons. The Anderson allegedly owned and operated by Charles Reid had a South Carolina mailing address; any sales to this Anderson, Ta Chen avers, can be segregated in Ta Chen's U.S. sales listing through use of this address. Furthermore, Ta Chen declares, all sales to Anderson in the 1993-1994 POR were to the South Carolina firm, as San Shing USA was no longer using the dba designation Anderson Alloys. "By then,

Sun was of course a sufficiently known company in the market that there was no reason to use dba designations for name recognition." Case Brief at 125.

Ta Chen takes issue with petitioners' attempt to portray the use of dba names as part of an effort to conceal sales to San Shing. Citing its October 20, 1994 submission in the 1992-1993 review, Ta Chen claims that it reported its U.S. sales to the Department using the names as appearing on the invoices TCI issued to the customer. For example, Ta Chen continues, a majority of its invoices to San Shing bore the name "Sun Stainless, Inc.", and were so reported. Other sales to San Shing under its other dba names were likewise reported using the applicable dba name. Furthermore, Ta Chen argues, its submitted sales data reflect a trend where sales to the various dbas were supplanted by sales exclusively to Sun Stainless, Inc., as "Sun became more well-known and the use of alternative dba names became unnecessary." Case Brief at 127.

As for the sales contracts between Ta Chen and San Shing, and between San Shing and Frank McLane, Ta Chen avers that these documents were not unusual, nor did they provide substantial grounds for adverse BIA. Contrary to the Preliminary Results, Ta Chen claims that the June 1992 contract, while allowing the possibility of future negotiations, did, in fact, set the prices for the sale of San Shing's inventory to Frank McLane. According to Ta Chen, sales contracts often omit price terms when, e.g., "the parties in their repeated dealings have customarily set the price at a later date," or in the face of risks of a "fluctuating market, particularly where delivery is postponed a considerable period of time (for example, 'delivery six months from today.')" Case Brief at 129, quoting, respectively, Nelson, Deborah L., and Jennifer L. Howicz, Williston on Sales, 5th Ed. at 377, and Hawkland, Will D., Uniform Commercial Code Series, § 2-305:01 at 301 (1997). Under the two-year term of the contract between Ta Chen and San Shing, Ta Chen submits, the open-ended nature of this contract was not remarkable. Ta Chen also claims that the first such purchase, which entailed all of TCI's then-existing U.S. inventory of WSSP, was concluded prior to the preliminary LTFV determination in this case, thereby averting suspension of liquidation. According to Ta Chen, the second incremental purchase six months later was timed to permit TCI to sell all of its existing inventory of fittings prior to suspension of liquidation in that investigation. See Preliminary Determination of Sales at Less Than Fair

Value: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 57 FR 61047 (December 23, 1992). Ta Chen asserts that such agreements between Ta Chen and San Shing were not improvident and that, in any event, these contracts are irrelevant for purposes of the Tariff Act. The Department, Ta Chen alleges, failed to explain why an "unusual" contract would suffice to treat the respondent with adverse BIA. Case Brief at 132. When confronted with similar contracts in other cases, Ta Chen argues, the Department concluded that the contracts were "not necessary or relevant to calculation of the dumping margin," and have never been the basis for imposing uncooperative BIA. *Id.*

With respect to Mr. Mayes's involvement with Ta Chen, San Shing and Sun, Ta Chen maintains that this is also an inappropriate basis for resorting to adverse BIA. Mr. Mayes, Ta Chen declares, worked for Ta Chen, later worked for San Shing, and later still worked for Mr. McLane's Sun; however, "[Mr.] Mayes never worked for Ta Chen and Sun at the same time." Ta Chen submits that an employee leaving one company to work for another "happens all the time." Case Brief at 133. As to Ta Chen's previous statement that Mr. Mayes was never "employed by San Shing," Ta Chen claims that it did note that Mr. Mayes was an "independent contractor" for San Shing. An independent contractor is not, Ta Chen declares, an employee. Case Brief at 134. As to monies paid by Ta Chen to Mr. Mayes after his alleged departure from TCI, Ta Chen insists that there was a single payment in 1995 pursuant to the standing agreement between Ta Chen and Mr. Mayes. According to Ta Chen, in return for helping Ta Chen get its start in the U.S. pipe market by turning over his customer lists to Ta Chen, Mr. Mayes would become eligible for a one-time payment should Ta Chen reach a specific profit level. Ta Chen suggests that "in a cyclical steel industry, where, when profits are good, they are great," achieving this level of profit was "almost an inevitability." Case Brief at 135. Ta Chen charges once again that the Department has created a *per se* rule that payment of money by one party to another is tantamount to employment by the former of the latter. Rather, Ta Chen concludes, this one-time profit-sharing payment conferred no ownership rights and is, thus, irrelevant to the issue of related parties.

Ta Chen next assails the Department's characterization in the Preliminary Results that Ta Chen misled the Department with respect to the debt-financing arrangements between Ta Chen and San Shing and Ta Chen and

Sun. According to Ta Chen, its descriptions of these arrangements were "consistent" and "clear" throughout these reviews. Ta Chen insists that as early as July 1994 the record indicated that San Shing's accounts receivable were "not securing San Shing's debt to TCI but, rather, Ta Chen's debt to a Los Angeles bank." Case Brief at 137. Furthermore, Ta Chen disagrees with the Preliminary Results' conclusion that it had misled the Department through its various characterizations of the debt arrangements. That Ta Chen pursued one argument to rebut the petitioners' submission as to the implication of the debt assignment, and later pursued a different argument to address petitioners' documentary evidence of those assignments is not, Ta Chen insists, a basis for concluding that Ta Chen misled the Department. Finally, Ta Chen avers, the relevance of Ta Chen's submissions addressing the security arrangements is unclear given the "undefined" nature of the Department's control test. As for the 1993-1994 review, Ta Chen claims the alternating arguments in the cited submissions were only presented in the 1992-1993 review; thus, they are irrelevant with respect to a BIA decision in the later review period.

Ta Chen claims further that the Department's verification reports in the first administrative review confirm that the company cooperated fully with the Department. Ta Chen states that it answered accurately every question asked, and supplied all requested documents. "There is," Ta Chen insists, "no record evidence otherwise." *Id.* at 139 and 140. Noting the free access granted to the Department's verifiers, Ta Chen concludes that "[n]ever once did the verifiers state that, per a control standard for relatedness, they were now going to address common indicia of control, or ask questions thereon. There are no statements in any of the verification reports otherwise." Case Brief at 140. Ta Chen dismisses the Preliminary Results' claim that Ta Chen withheld relevant information from the verifiers "[d]espite repeated probing by [the] verifiers," claiming that the Preliminary Results failed to explain what this "repeated probing" involved. *Id.*, quoting the Department's Preliminary Results Analysis Memorandum at 9. Ta Chen claims that the concern expressed by the Department during verification was whether one party owned the other, not whether one party controlled another. "Nothing was said or asked by the verifiers to suggest otherwise." *Id.* The Department cannot, Ta Chen insists,

resort to BIA where it "does not have the information it wants because it did not ask the right questions." *Id.* at 141. Furthermore, even if an alleged failure to be forthcoming in the October 1994 verification could be cited as grounds for adverse BIA in the 1992-1993 administrative review, Ta Chen continues, such is not the case for the 1993-1994 period of review. Conceding that it has, in fact, entered the relevant portions of the 1994 verification reports into the records of the 1993-1994 WSSP review and the 1992-1994 review of butt-weld pipe fittings, Ta Chen nevertheless insists that it "did not use the verification in the first pipe review to conceal its relationship with [San Shing and] Sun in these other reviews." Case Brief at 142.

Comparing its treatment at the hands of the Department in the instant reviews to that of respondents in other proceedings, Ta Chen suggests that the Department has elsewhere allowed far more egregious conduct to pass without resort to first-tier BIA. For example, Ta Chen cites a review of Antifriction Bearings (except Tapered Roller Bearings) From France, *et al.*, 57 FR 28360 (June 24, 1992), where the Department applied uncooperative BIA only to those companies that failed to respond to the questionnaire altogether. There, Ta Chen submits, the Department applied second-tier BIA to other firms despite "extensive misrepresentations and omission in [the firms'] questionnaire responses." *Id.* Likewise, Ta Chen cites *Emerson Power Transmission Corp. v. United States*, 903 F.Supp. 48 (CIT 1995) (*Emerson*), and *NSK, Ltd. v. United States*, 910 F.Supp. 663 (CIT 1995) (*NSK*) for the proposition that second-tier BIA is "proper and consistent with" Departmental practice where a respondent has tried but failed to cooperate. *Id.* at 144, quoting *NSK, Ltd. v. United States*. In addition, Ta Chen avers, a Binational Panel Review convened pursuant to Article 1904 of the North American Free Trade Act concluded that the Department must impose second-tier BIA in light of the respondents' "repeated efforts to provide answers to the Department's numerous questionnaires." *Id.*

Ta Chen notes that the Department applied second-tier BIA in Certain Small Business Telephones From Taiwan, 59 FR 66912 (December 28, 1994), and Certain Fresh Cut Flowers From Colombia, 59 FR 15159 (March 31, 1994), even though respondents in these proceedings improperly reported U.S. sales to related parties, improperly classified ESP sales as PP sales, and misreported data which were crucial to

the antidumping calculations. In *Sugiyama Chain Co., Ltd. v. United States*, 852 F. Supp. 1003 (CIT 1994), a case spanning seven review periods, Ta Chen points out that the Department relied upon second-tier cooperative BIA despite Sugiyama's failure to report its sixty percent equity relationship with its "dominant" home market customer. In addition, Ta Chen claims, the Department found that Sugiyama failed to provide its financial statements, had significant unrecorded transactions, and could not reconcile its U.S. and home market sales listings. Yet, Ta Chen asserts, the Department applied cooperative BIA in all but one of the seven reviews at bar. Ta Chen argues that because it disclosed the information upon which the Department based its related-party determination (as distinct from the *Sugiyama* case, where the Department discovered this information on its own), Ta Chen should not be a candidate for first-tier uncooperative BIA.

As for the choice of a BIA margin, Ta Chen takes issue with the Department's use of the highest margin from the petition as BIA in the Preliminary Results. In Certain Welded Carbon Steel Pipes and Tubes From Thailand, 62 FR 17590 (April 10, 1997), Ta Chen maintains, the Department used an average of the petition margins as BIA even though (i) the Department discovered purchases from and sales to affiliated parties and (ii) the parties' affiliation was evident on the basis of common stock ownership and, thus, the respondent should have known to report the affiliated-party transactions. Similarly, according to Ta Chen, in Brass Sheet and Strip From Sweden, 57 FR 29278 (July 1, 1992), the Department rejected a respondent's questionnaire response *in toto*, applying first-tier BIA; yet, Ta Chen notes, despite what it characterizes as the more egregious failings of the company's questionnaire response, the Department assigned as adverse BIA the respondent's own margin from the LTFV investigation. Selection of a BIA margin, Ta Chen asserts, should be based upon an objective reading of the respondent's cooperation, rather than any subjective and speculative standard of intent. *Id.* at 148 and 151.

Ta Chen urges the Department to use as BIA Ta Chen's cash deposit rate from the LTFV investigation, claiming this would be sufficient to "motivate cooperation" on the part of Ta Chen. *Id.* at 153. Ta Chen reasons that it requested the three pending administrative reviews in order to reduce its antidumping liabilities; if the Department reinstated the prior cash

deposit rate of 3.27 percent, "Ta Chen's purpose in participating in these reviews will have been completely undermined." Case Brief at 153. Ta Chen draws a distinction between the pending reviews of WSSP and other cases wherein a respondent is required to participate in an administrative review sought by a petitioner; in the latter case, Ta Chen argues, the threat of a higher margin suggested by petitioner serves to induce respondents' cooperation. This is especially so, Ta Chen argues, where the possible revocation of the antidumping duty order with respect to the respondent hangs in the balance. Ta Chen suggests that it requested the first three reviews of WSSP with the expectation that it would receive zero or *de minimis* margins in all three and, thereby, be eligible for revocation. Failure to cooperate in the instant reviews, Ta Chen concludes, would defeat Ta Chen's purpose in requesting these reviews in the first place.

Ta Chen distinguishes these reviews from the issue before the Court in *Industria de Fundicao Tupy and American Iron & Alloys Corp. v. United States (Industria de Fundicao)*, 936 F. Supp. 1009, 1019 (CIT 1989). In contrast to these reviews of WSSP, Ta Chen submits, the review at issue in *Tupy* was requested by the petitioners. In light of *Tupy's* failure to cooperate, Ta Chen notes, petitioners in that case presented evidence that *Tupy's* existing dumping margin would be insufficient to induce cooperation. There, Ta Chen concludes, the Department also used an average of the margins alleged in the antidumping petition in setting *Tupy's* BIA margin.

Ta Chen also faults the 31.90 percent BIA margin presented in the Preliminary Results as unlawfully punitive, contending that it is not probative of current conditions. Consistent with the holdings of the Federal Circuit in *D&L Supply Co., Inc. v. United States, (D&L Supply)* 1997 WL 230117 at 2 (Fed. Cir. May 8, 1997), Ta Chen asserts that there is an "interest in selecting a rate that has some relationship to commercial practices in the particular industry." Case Brief at 155, quoting *D&L Supply*. Rather, Ta Chen argues, the Department has already verified that Ta Chen's margins should be 3.27 percent for the WSSP case and 0.67 percent for the pipe fittings case. These past margins, Ta Chen submits, are "substantial evidence" as to Ta Chen's expected future dumping of subject merchandise. *Id.* at 156. Ta Chen urges the Department to disregard the margins suggested in the petition in favor of the

verified dumping margins from the appropriate LTFV determination.

Ta Chen also suggests that the failure of petitioners in this case to request a review of Ta Chen for the first three PORs is indicative of petitioners' belief that Ta Chen is not dumping WSSP into the U.S. market. In administrative reviews requested solely by a respondent who then fails to cooperate, Ta Chen argues, the Department's practice is to impose second-tier BIA. The Department's treatment of Ta Chen in the instant reviews, Ta Chen asserts, constitutes another *per se* rule (i.e., that it is irrelevant whether respondents or petitioners requested the review when selecting BIA), which is contrary to the Department's practice of deciding BIA issues on a case-by-case basis.

In addition, Ta Chen notes what it sees as significant changes in the U.S. market since publication of the antidumping duty order. Ta Chen claims that it is no longer forced to compete against other Taiwanese producers of WSSP who, according to Ta Chen, largely withdrew from the U.S. market after the imposition of antidumping duties. In support of this contention, Ta Chen quotes from a 1996 determination by the Canadian International Trade Tribunal which concludes that "Taiwanese producers other than Ta Chen have been excluded from the U.S. market." Ta Chen's Case Brief at 166 and 167. Ta Chen also insists that the health of the U.S. industry has improved markedly since the original investigation in this case. *Id.* at 162 and 163, citing Welded Stainless Steel Pipe From Malaysia, ITC Pub. No. 2744 (March 1994).

According to Ta Chen, petitioners' inaction is especially relevant in light of statements made by representatives of the U.S. industry in other antidumping proceedings. For instance, Ta Chen claims that the U.S. industry testified before the Commission in the investigation of welded stainless steel pipe from Malaysia that the imposition of antidumping duties on WSSP from Taiwan had effectively eliminated dumping by Taiwanese producers. See ITC Pub. No. 2744 at I-10. Ta Chen cites a telephone conversation purportedly held between the president of a U.S. pipe producer and Robert Shieh wherein this individual stated that he did not think a review of Ta Chen was necessary. Case Brief at 158. In a similar vein, Ta Chen cites the testimony of Mr. Avento, president of the U.S. pipe producer Bristol Metals, insisting that "Taiwan imports have been checked by the antidumping laws." Ta Chen's Case Brief at 162, quoting Economic Effects of Antidumping and Countervailing Duty

Orders and Suspension Agreements, ITC Pub. No. 2900 (June 1995). Ta Chen argues that these statements "support a [zero] percent dumping finding for Ta Chen." *Id.* at 163. Furthermore, Ta Chen suggests that these statements, coming after the original petition in this case, are more indicative of present market conditions. Ta Chen also cites to statements submitted by Ta Chen into the record of these reviews from the pipe company president and another purchaser of Ta Chen's WSSP and stainless steel butt-weld pipe fittings, both claiming that Ta Chen was not dumping at 31.90 percent margins through San Shing and Sun. Taken together, Ta Chen submits that petitioners' failure to request a review, and the subsequent statements as to the state of the U.S. market for WSSP after imposition of antidumping duties, indicate that petitioners have "repudiated [the 31.90 percent margin] as inapplicable to more recent time periods, including the period[s] of these reviews." *Id.* at 165. Furthermore, Ta Chen argues, the 31.90 percent rate applied to producers other than Ta Chen and is, thus, "irrelevant and unlawful."

Petitioners reject Ta Chen's description of events in these reviews, charging that "Ta Chen is a scofflaw and has lied to the Department." Rebuttal Brief at 31. According to petitioners, Ta Chen's "convoluted and excessive contentions and claims" do not alter the simple issue in these reviews. First, petitioners contend, Ta Chen did, in fact, know from the outset that the Department was seeking a full reporting of Ta Chen's sales in the United States to unrelated parties. Petitioners insist that Ta Chen was "fairly, timely, and pointedly" asked by the Department whether or not it was related through equity ownership or control or otherwise to any of its U.S. customers. Petitioners also argue that the questionnaires were clear in requiring Ta Chen to report only sales in the United States to unrelated purchasers. Rebuttal Brief at 31 and 32.

Second, petitioners continue, Ta Chen knew precisely what was being asked of it by the Department and acted deliberately to conceal from the Department the true nature of its related-party transactions through San Shing and Sun Stainless. Petitioners point to what they term the "glaring omissions" of Ta Chen in these reviews, such as its failure to even mention the existence of San Shing until petitioners identified it in the record, and its inability to document Mr. McLane's alleged purchase of San Shing's assets in the fall of 1993. Such omissions, petitioners argue, cannot be reconciled

with Ta Chen's portrayal of itself as a "confused, cooperative respondent that has been misled and treated unfairly by the Department." *Id.* at 33.

Third, petitioners suggest that Ta Chen deliberately decided to misreport the proper body of its U.S. sales by claiming San Shing's various dbas as unrelated customers. Ta Chen has persisted with this sham, petitioners charge, throughout the Department's verifications in October 1994 (in the 1992-1993 administrative review), June 1997 (in the 1994-1995 review), and to the present day. *Id.* at 33.

Finally, petitioners characterize Ta Chen as "an intransigently uncooperative respondent," that has "in the most egregious manner conceivable" attempted to compromise the integrity of the Department's administration of the antidumping law. According to petitioners, Ta Chen has done so by simultaneously submitting reams of unusable data while "deliberately withholding critical information" necessary for the Department's analysis. *Id.* at 34 and 35. Citing the chronology of events in these reviews, petitioners accuse Ta Chen of working to deceive the Department, withholding critical evidence and "attempting to explain away" unfavorable evidence it could not suppress. These explanations, petitioners maintain, "are not substantiated by the record and are so divorced from commercial reality as to be patently ridiculous." *Id.* Accusing Ta Chen of "a manipulative disdain for and an offensive disregard of the antidumping law," petitioners urge the Department to assign total adverse BIA to Ta Chen. *Id.*

Petitioners dismiss Ta Chen's protestations that it has been a cooperative respondent in these reviews, terming Ta Chen's reported sales data "a deliberate hoax." Rebuttal Brief at 2. Resort to uncooperative BIA, petitioners insist, is "not only justified, but essential to the integrity of the administrative process." *Id.* Petitioners suggest that Ta Chen's belated admissions contained in Ta Chen's November 12, 1996 submission in the third administrative review owed more to a grand jury investigation of Ta Chen, "and not to the sudden realization by Ta Chen that this material was considered to be relevant * * * Ta Chen chose rather to deceive the Department insofar as possible." *Id.* at 3.

Petitioners point to the following as examples of Ta Chen's fraudulent deception in these reviews:

- Despite making the overwhelming majority of its sales in the first review to San Shing, Ta Chen never acknowledged the existence of San Shing in its questionnaire

responses or sales listings until forced to by petitioners' July 18, 1994 submission. Nor, petitioners claim, has Ta Chen explained convincingly why it failed to volunteer this information;

- With respect to the use of dba names, Ta Chen's description has been inconsistent and, in any event, unbelievable. That Ta Chen would turn its U.S. sales operations over to San Shing, which had no prior experience in the stainless steel industry, and that Ta Chen's previous customers would lend their names to San Shing (thus undercutting their own livelihoods) is, petitioners aver, unsubstantiated;

- The August 3, 1994 dissolution of San Shing, falling a mere sixteen days after petitioners first called the Department's attention to San Shing's role in the first administrative review, further reinforces the conclusion, petitioners maintain, that Ta Chen "fraudulently" failed to cooperate in these reviews. Contrary to Ta Chen's proffered explanations, petitioners insist, "San Shing's involvement having been discovered, Ta Chen acted promptly in early August 1994 to remove San Shing from the Department's scrutiny as much as possible";

- Further unsubstantiated, according to petitioners, are Ta Chen's claims with respect to Frank McLane's alleged purchase of San Shing in October 1993. The reason this sale has not been substantiated, petitioners charge, is that it never took place. Petitioners contrast the "dearth of documentation" regarding Mr. McLane's purchase of San Shing with the July 1995 sale of Sun Stainless, Inc. to Picol Enterprises, which occurred after Ta Chen had known of petitioners' concerns regarding Sun for more than a year. Even if events unfolded as Ta Chen has claimed, petitioners continue, "[w]hile an officer and member of the board of directors of Ta Chen until some unspecified time in October 1993, Frank McLane could not have negotiated on his own behalf to purchase San Shing's assets [i.e., Ta Chen pipe and pipe fittings] * * * and still be in harmony with his fiduciary duties as an officer and member of the board of directors of Ta Chen."

- With respect to the D&B report on Sun, petitioners note that Ken Mayes provided Dun & Bradstreet with the information contained in the report on May 27, 1994, before petitioners voiced concern over the activities of San Shing and Sun; at that time, petitioners contend, Mr Mayes "had no reason to miscite Sun Stainless' date of establishment and roster of officers from its inception." Ta Chen's assertions that Mr. McLane had no involvement with Sun prior to November 1993 are, petitioners insist, unsubstantiated, and are based upon claims that are also unsubstantiated;

- Petitioners stand by their foreign market research, portions of which are in the record of these reviews, which indicated through interviews with Ta Chen officials that Sun Stainless was created by Ta Chen expressly to circumvent antidumping duty liability.

Rebuttal Brief at pages 3 through 9.

According to petitioners, the pattern of facts cited above proves that Ta Chen has "actively tried to deceive the

Department," both through its failure to report accurately its U.S. sales and by concealing the true nature of its ties to San Shing and Sun. *Id.* at 9.

Furthermore, petitioners charge, each time petitioners submitted information which they claim Ta Chen rightly should have volunteered, Ta Chen "has quickly reacted to cover its fraud and thereby has compounded its fraud." Rebuttal Brief at 9. "In essence," petitioners continue, "the same group of individuals, among them Frank McLane, Kou-An Lee [the president of San Shing Hardware Works, Ltd. in Taiwan], Chih Chou Chang, and the president of Ta Chen and Ta Chen International, Robert Shieh—have simply used different corporate names to conduct their common business, jettisoning one name and moving on to the next whenever their charade was in jeopardy of being discovered." *Id.* at 10. The clearest illustration of Ta Chen's fraud, petitioners maintain, is its failure to even name San Shing as a customer in the first review, and its inability to document the origins of "Sun Stainless, Inc." And once petitioners alerted the Department to these activities, petitioners contend, San Shing was dissolved as a corporate entity in an effort by Ta Chen to "perpetuate its misreporting scheme."

Likewise, petitioners dismiss Ta Chen's assertion that it voluntarily provided all the relevant facts concerning San Shing and Sun in its November 12, 1996 submission. Petitioners characterize Ta Chen's case brief as exhibiting "utter contempt for the statute and an extraordinary brazenness" in its efforts to demonstrate both that Ta Chen did not appreciate the relevance of this information and that the ties among Ta Chen, San Shing, and Sun are commonplace in the U.S. stainless steel pipe industry. Ta Chen's protestations, petitioners claim, "ring hollow," especially in light of petitioners' numerous submissions challenging Ta Chen's activities with respect to San Shing and Sun, and the Department's extraordinary verifications in October 1994. In fact, petitioners view Ta Chen's continued claims of cooperation as further evidence of bad faith on Ta Chen's part.

Petitioners turn next to Ta Chen's lengthy arguments that it did, in fact, cooperate fully with the Department in these reviews. Petitioners emphasize that there was never any doubt as to which body of U.S. sales data the Department required from Ta Chen. Given the unambiguous language of the statute, petitioners aver, "Ta Chen's efforts to find refuge" in defining related parties solely in terms of equity

ownership "is so much chicanery." Rebuttal Brief at 32. Petitioners insist that anything less than first-tier BIA "would reward Ta Chen for flagrantly and fraudulently disregarding the statute and the Department's regulations and questionnaires." *Id.* at 33.

As for the choice of BIA margins, petitioners urge the Department to dismiss Ta Chen's argument that use of the 31.90 percent rate as BIA would be unlawful. According to petitioners, the Department's application of BIA is "discretionary and case-by-case in nature." *Id.* The Department's BIA methodology must be consistent with the statute, petitioners aver; beyond that, the Department "is not required to supply a 'reasoned analysis' justifying its adoption of best information otherwise available." *Id.*, citing *Allied Signal Aerospace Co. v. United States*, 28 F.3d 1188, 1191 (Fed. Cir. 1994), and *National Steel Corp. v. United States*, 870 F. Supp. 1130, 1135 (CIT 1994). Nor, petitioners argue, should the Department be swayed by Ta Chen's claims that its misreporting in these reviews has been less severe than that of respondents in other cases that received second-tier BIA. According to petitioners, Ta Chen's behavior in these reviews "strikes at the essence of the Department's authority," making reliance on the 31.90 percent rate "reasonable." Rebuttal Brief at 34, n.11. Petitioners also reject Ta Chen's claims that the 31.90 percent rate has been verified as wrong, noting that this rate "has stood for nearly five years as the rate given as the best information available to two other similarly uncooperative Taiwanese respondents." *Id.* Petitioners insist that use of total BIA is appropriate where, as here, a respondent's submitted information is so flawed that the "response as a whole is rendered unusable." *Id.* at 34, citing *Rhone Poulenc, Inc. v. United States*, 710 F. Supp. 341, 346 (CIT 1989), *aff'd*, 899 F.2d 1185 (1990). Ta Chen's submitted data are "so badly skewed," petitioners insist, as to render its entire response "unreliable and unusable." *Id.*

Department's Position

As is clear from our responses to Comments One and Two, Ta Chen submitted the improper body of U.S. sales to the Department. The U.S. sales data submitted by Ta Chen in the 1992-1993 and 1993-1994 administrative reviews cannot be relied upon in calculating Ta Chen's antidumping margins. These flaws affect such a vast majority of Ta Chen's U.S. sales in both reviews as to render its questionnaire responses unuseable *in toto*.

We also agree with petitioners that, through its persistent refusal to disclose fully its relationships with San Shing and Sun, despite our repeated inquiries into these relationships, Ta Chen impeded the conduct of these administrative reviews and did not act to the best of its ability by providing complete, accurate and verifiable responses to the Department's questionnaires.

As a factual matter, we reject Ta Chen's claims that the Department never clearly requested information from Ta Chen concerning its sales to unrelated customers in the United States, or that the Department was in some way remiss in failing to seek data on San Shing's or Sun's downstream sales. In fact, the only reason we did not insist immediately that Ta Chen report San Shing's and Sun's sales as its first sales to unrelated customers in the United States is because the full extent of these relationships was not known until well after we had received and verified Ta Chen's original and supplemental responses in the first review. In our original antidumping questionnaires, issued March 16, 1994 in the 1992-1993 review, and March 2, 1995 in the 1993-1994 review, we asked Ta Chen to report its first U.S. sales to unrelated customers, and provided the statutory definition of related parties, including the references to parties being related "through stock ownership or control or otherwise," at Appendix II. Ta Chen instead reported sales to numerous customers, representing each of these as Ta Chen's separate and unrelated customers. Despite the fact that well over eighty percent of Ta Chen's U.S. sales in the first review were to San Shing, Ta Chen never acknowledged this company's existence in its initial questionnaire response. When petitioners first obtained business and real estate records indicating that Ta Chen might be related to these parties, Ta Chen admitted the existence of San Shing, and presented the wholly unconvincing story of San Shing's entrance into the United States market (see below for more on this point).

The Department issued its supplemental questionnaire in the 1992-1993 review on July 19, 1994, or one day after petitioners' first allegations concerning San Shing and Sun. On August 12, 1994, Ta Chen filed its 274-page supplemental questionnaire response. While this response included a revised U.S. sales listing and voluminous narrative and statistical information, again Ta Chen made no mention of San Shing.

As petitioners adduced additional evidence pointing to Ta Chen's failure

to disclose relevant information, however, Ta Chen proffered arguments why the Department should not inquire further into these relationships. Due to petitioners' related-party allegations, however, the Department sent a team of verifiers to Tainan and to Long Beach in October 1994 to verify Ta Chen's questionnaire responses in the 1992-1993 review. Ta Chen argues now that the results of these verifications, as outlined in the Department's reports for the record, prove conclusively that Ta Chen cooperated fully in these reviews. To the contrary, the results of these verifications do not support Ta Chen's claims that it cooperated with the Department. Despite an extensive verification of related-party issues, Ta Chen withheld all of the information concerning its extensive ties to San Shing and Sun. We were able to verify only those aspects of the control indicia for which petitioners had already produced documentary evidence for the record. Ta Chen provided information concerning (i) the dates Mr. McLane allegedly sold his stock in Ta Chen, and (ii) Mr. Shieh's ownership of the real property allegedly rented first to San Shing and then to Sun, including the arm's-length nature of the monthly rents charged by Mr. Shieh. Despite having free access to any employee, and despite reviewing TCI's correspondence files with relevant customers, including San Shing and Sun, and Ta Chen's correspondence files with TCI, we did not find a single memorandum, letter, facsimile message, phone message, or any other communication concerning the check-signing ability, the computer access, the debt-financing arrangements, the shared employees, etc. And, Ta Chen's protestations notwithstanding, the verifiers did indeed ask questions about, *inter alia*, the facts of, and reasons for, Mr. McLane's establishment of the second "Sun Stainless, Inc.," Mr. Shieh's rental of property to San Shing and Sun, and other questions about their dealings. The Department also polled other offices within the International Trade Administration for information on Ta Chen, and interviewed third parties, such as the president of San Shing Hardware Works, Ltd. in Tainan and several of Ta Chen's putative U.S. agents (including Mr. Reid) in Long Beach.¹¹ See Memoranda, Holly A. Kuga to Robert Chu, Ian Davis, Dan Duvall, and to Charles Bell, dated October 5, 1994. Clearly, all of these efforts were to determine if the transactions between

¹¹ It should be noted that none of these individuals provided any information about Ta Chen's and TCI's ties to San Shing and Sun.

these parties were at arm's length. And all were equally unavailing.

Therefore, contrary to the claims in Ta Chen's Case Brief, after two sales and two cost questionnaire responses, and full home market and U.S. sales and cost-of-production verifications, Ta Chen disclosed nothing about the nature of its ties to San Shing and Sun. Finally, in November and December 1996, Ta Chen made further partial disclosures of the facts surrounding its relationships with San Shing and Sun. The incomplete nature of these disclosures was made clear when Ta Chen, in its September 3, 1997 Case Brief, disclosed additional salient information for the first time: Ta Chen identified two additional dba names used by San Shing during this period. Ta Chen's partial and belated disclosure of relevant factual information casts further doubt on the reliability of its reported sales data as a whole.

Had Ta Chen had any concerns or questions as to the statutory definition of related parties, it could have contacted the Department's officials, as instructed in the questionnaires. Further, petitioners' July 1994, October 1994, and July 1995 allegations concerning San Shing and Sun, and the Department's attendant focus upon this issue, put Ta Chen on notice that its relationships with San Shing and Sun were a major issue in these reviews. Instead, Ta Chen released information piecemeal and incompletely.

Ta Chen's explanations for its behavior during these reviews are in themselves problematic. As a preliminary matter, they are not credible from a business standpoint when one looks beyond the text of the legal arguments. Ta Chen has claimed that in 1992 it elected to "exit the "ESP business," essentially because reporting ESP sales in the wake of the antidumping duty order would be too burdensome. See Ta Chen's July 28, 1994 submission at 8 and 9. Ta Chen continues:

[t]he market void created by Ta Chen's withdrawal from the "ESP business"—i.e., TCI sales from U.S. inventory—created an opportunity for others. San Shing, a company unrelated to Ta Chen, and with substantial resources, including lines of credit, decided to fill this void. That is, San Shing decided to buy pipe from Ta Chen for inventory in the United States and subsequent resale.

But U.S. pipe customers did not know San Shing. U.S. pipe customers did know TCI's prior customers who had resold Ta Chen pipe, including customers who were Rep's, consignment agents and distributors for Ta Chen. Hence, San Shing, in agreement with these prior TCI customers, used their names on a "dba basis" to make those unfamiliar

with the San Shing name feel comfortable by using a name they knew. Ta Chen's July 18, 1994 submission at 10 (emphasis added; Ta Chen's bracketing omitted).

Ta Chen, therefore, elected to rely upon San Shing, a company with no prior experience in the stainless steel or tubular products industries, to replace TCI as its sole distributor of stainless steel pipe and pipe fittings in the United States. Having made this decision, San Shing then purportedly on its own struck deals with known pipe dealers in the United States who had been prior TCI customers, whereby San Shing would use these dealers' names as dbas. The customers would then turn over their customer lists to San Shing and stand aside, allowing San Shing effectively to replace them in the distribution chain. However, having gone to such lengths to secure the names of known players in the U.S. market, San Shing then funneled the majority of its sales through the one previously unknown dba, "Sun Stainless, Inc."

As petitioners pointed out more than four years ago, "this arrangement makes neither commercial nor logical sense." Petitioners' October 12, 1994 submission at 7. According to Ta Chen's narrative account, San Shing, operating under its various dba names, e.g., Sun and Anderson Alloys, sold Ta Chen pipe to the same customers who formerly purchased pipe from TCI's customers, e.g., Sun and Anderson Alloys. The stated reason for this arrangement is that it would make those downstream purchasers "unfamiliar with the San Shing name feel comfortable by using a name they knew." Ta Chen's July 18, 1994 submission at 10. But clearly Sun's and Anderson's former customers knew with whom they were dealing. If San Shing replaced these dealers, their customers would not "feel more comfortable" because they were buying pipe from "San Shing, dba Sun Stainless," or "San Shing, dba Anderson Alloys." On a more elementary level, this narrative implies that established pipe distributors in the United States, who earned their income by purchasing pipe from TCI and reselling it after a markup to various end users, simply stepped aside and allowed San Shing to use their businesses' names to sell to their former customers. Such a step is inconsistent with commercial reality, and yet Ta Chen claims to have found not one, but eight pipe distributors amenable to this arrangement.

Ta Chen also misstated the origins of the dba names themselves. In its July 18, 1994 submission Ta Chen explained

that "San Shing, in agreement with these prior TCI customers, used their names on a "dba basis" to make those unfamiliar with the San Shing name feel comfortable by using a name they knew." *Id.* To verify this claim the Department introduced into the record of these reviews Ta Chen's U.S. customer list from the LTFV investigation. See Memorandum for the File, February 24, 1997. The most significant dba name, "Sun Stainless, Inc.," is not found on this list. In fact, only three of the admitted eight dbas were prior Ta Chen customers. In explaining the need for San Shing to use dbas and how San Shing came to select the names it used, Ta Chen misstated the origins of these names, and never explained for the record where the dba names, most significantly "Sun Stainless, Inc.," originated. Ta Chen explains its earlier misstatements by arguing in its case brief that its November 12, 1996 submission did not claim that "all" the dba names were those of prior TCI customers. While this is true, Ta Chen did so claim when first confronted with petitioners' knowledge of San Shing's and Sun's existence. Given the absence of evidence on the record that any sale of assets to Frank McLane ever took place (aside from Ta Chen's undocumented claims), given the lack of clarity surrounding Sun's 1992 founding, and given Ta Chen's failure to document for the record precisely how and why San Shing came to use dba names in the first place, Ta Chen's version of events is neither credible nor supported by evidence.

Other factual aspects of the record are also troubling. For example, we continue to believe that the sales contract involving Chih Chou Chang and Robert Shieh was, in fact, highly unusual. Ta Chen argues that sales contracts with no prices are commonplace when such transactions are customary between the parties, or where the date of delivery is in doubt. That was certainly not the case here. These transactions were not a "customary practice" between Ta Chen and San Shing, they were one-time deals involving the transfer of Ta Chen's entire existing inventory of stainless steel pipe and stainless steel pipe fittings to San Shing. Delayed delivery was also not at issue, as delivery was immediate, with Robert Shieh arranging to move the merchandise from one of his properties (TCI's warehouse) to another of his properties nearby, rented to San Shing. The relevance of the contract in the present discussion is that its commercially-unrealistic terms further indicate that San Shing was

created by, and related to, Ta Chen. We affirm our preliminary conclusion that "[t]he terms of this contract do not comport with Ta Chen's repeated assertions that San Shing was new to the pipe trade, and so lacked familiarity with the U.S. pipe market that it was compelled to use "dba" names which 'sounded more American.'" Preliminary Analysis Memorandum, March 4, 1997, at 7 and 8 (original bracketing omitted).

We also disagree with Ta Chen's description of the activities of W. Kendall Mayes. The record clearly indicates that Mr. Mayes, working with TCI since its inception, took over the day-to-day management of first San Shing and then Sun Stainless at the insistence of Ta Chen, and not as a free agent who coincidentally migrated between these three firms as a result of the normal peregrinations within a tightly restricted industry environment. As to the "independent contractor" relationship with Ta Chen, the record evidence indicates that Mr. Mayes worked exclusively on behalf of Ta Chen, used Ta Chen office space and equipment, was paid monthly by Ta Chen, was covered under Ta Chen's group health insurance policy (even after he putatively ended his employment with Ta Chen), and continued to enjoy substantial financial benefits from his relationships with Ta Chen and Mr. Shieh long after this relationship allegedly ended. Furthermore, in return for this "independent contractor" relationship, Mr. Mayes had to provide to Ta Chen his own list of customers, thus effectively selling his business to Ta Chen. We also disagree with Ta Chen's conclusion that the one-time payment to Mr. Mayes conferred no control over pricing. Rather, given Mr. Mayes's successive roles as sales manager for TCI, San Shing, and Sun Stainless, together with Ta Chen's admitted role in negotiating the final prices between San Shing and Sun and their unrelated customers, the record indicates that Mr. Mayes enjoyed a knowledge and control of prices unknown between unrelated parties. Finally, as petitioners note, with a sizeable payment to Mr. Mayes from Ta Chen dependent upon Ta Chen's profitability, Mr. Mayes's own self-interest lay not in negotiating truly arm's-length prices between San Shing and Sun and Ta Chen, but in maximizing Ta Chen's profits in these transactions. This relationship further buttresses the Department's Preliminary Results determination that these transactions were not, in fact, at arm's-length. Rather than enforcing a "per se"

rule concerning the exchange of money between Ta Chen and Mr. Mayes, we have drawn the only reasonable conclusion possible in light of the record evidence.

As for sales made to Anderson Alloys, Ta Chen mistakenly argues that the Department can sort these sales by customer address to segregate sales made to the "real" Anderson Alloys in South Carolina from those made to the dba Anderson Alloys. However, we have no idea which sales are to which entity, as Ta Chen used the same address and customer code for both Andersons. More to the point, the ability to segregate sales to Charles Reid's Anderson and sales to San Shing's dba Anderson would have no bearing on our decision to resort to total first-tier BIA. Rather, we cannot "use only portions of a response that were verifiable since this 'would allow respondents to selectively submit data that would be to their benefit in the analysis of their selling practices.'" *Chinsung Industries Co., Ltd. et al. v. United States*, 705 F. Supp 598, 601 (CIT 1989) (citations omitted). As the Court noted in *Persico Pizzamiglio, S.A. v. United States*, by allowing the Department "to reject a submission *in toto*, the court encourages full disclosure by the respondent, because only full disclosure will lead to a dumping margin lower than that established by employing BIA." *Persico Pizzamiglio, S.A. v. United States*, 18 CIT 299 (CIT 1994).

Finally, with respect to Ta Chen's reliance upon the statements of Messrs. Avento and Reid to support its arguments, we note Bristol Metal's and Mr. Avento's longstanding affiliation with Ta Chen. Bristol Metals was one of Mr. Shieh's original partners in founding Ta Chen, and Joseph Avento himself was at one time on Ta Chen's board of directors. See, e.g., Ta Chen's May 18, 1994 questionnaire response at Exhibit 1. Mr. Avento later joined the petitioners in initiating this antidumping case. He now appears before the Department as Ta Chen's witness and advocate. Neither in its case brief nor in its original filing of Mr. Avento's statement has Ta Chen elected to reveal the current relationships between Ta Chen, Bristol Metals, and Mr. Avento, such as whether Ta Chen and Bristol make purchases from each other, or whether either holds stock in the other. Given his ongoing ties to Mr. Shieh and Ta Chen, the unsubstantiated nature of his testimony, and Ta Chen's unwillingness to disclose for the record Mr. Avento's current dealings with Mr. Shieh and Ta Chen, we are unable to establish his credibility as a witness

about the U.S. stainless steel pipe industry as a whole.

As for Charles Reid, Ta Chen acknowledges for the public record that Mr. Reid, using at least three trade names, was a customer of Ta Chen during the investigation and first period of administrative review. See Case Brief at 122.

We conclude, therefore, that the use of total, adverse BIA is appropriate in this case. The statute's provision for use of BIA is, as the Federal Circuit has held, "an investigative tool, which the [Department] may wield as an informal club over recalcitrant respondents whose failure to cooperate may work against their best interest." *Atlantic Sugar Ltd. v. United States*, 744 F.2d 1556, 1560 (Fed. Cir. 1984). In the absence of subpoena power, the Department "cannot be left merely to the largesse of the parties at their discretion to supply the [Department] with information. . . . Otherwise, alleged unfair traders would be able to control the amount of antidumping duties by selectively providing the ITA with information." *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990). The decision to resort to BIA in an administrative review is made on a case-by-case basis after evaluating all evidence in the administrative record. With respect to the selection of BIA, the Department is granted considerable deference in deciding what constitutes the "best" information available. See *Allied-Signal Aerospace Corp. v. United States*, 966 F.2d 1185, 1191 (Fed. Cir. 1993). The courts have long held that "it is for Commerce, not respondent, to determine what is the best information" available. *Yamaha Motor Co. v. United States*, 910 F. Supp. 679, 688 (CIT 1995).

As discussed, we believe Ta Chen has impeded these administrative reviews through the submission of inaccurate and incomplete information, and through its lack of cooperation in bringing forth factual information known by Ta Chen to be of immediate relevance to these proceedings. We also agree with petitioners that Ta Chen's conduct in these reviews warrants use of first-tier BIA.

We also find that Ta Chen's citations to past Departmental determinations in support of using cooperative, second-tier BIA are not on point. In *Fresh Cut Flowers From Colombia*, for example, the respondent's related entities had either gone out of business entirely, or were in the process of liquidation, and thus the firms were unable to provide sales data to the Department. Similarly, in *Certain Small Business Telephones*

From Taiwan, the affiliated U.S. customer of respondent Bitronics was out of business. We concluded that "[s]ince Bitronics made substantial attempts to submit information to the Department," second-tier, or cooperative, BIA would be most appropriate. See *Certain Small Business Telephones From Taiwan; Preliminary Results of Administrative Review*, 59 FR 66912, 66913 (December 28, 1994). In the instant case, despite the 1995 sale of Sun to Picol Enterprises, Ta Chen has never indicated any such difficulty in accessing San Shing's and Sun's records, and has even submitted these companies' federal income tax returns in the record of this review.

Emerson and *NSK*, cited by Ta Chen as grounds for use of second-tier BIA, are likewise not on point. *Emerson* involved a review of antifriction bearings from Japan where the Department, in two significant departures from standard practice, determined it would (i) use a sampling of home market sales, and (ii) use annual average home market prices as the basis for FMV, both to reduce the complexity and reporting burden of the review. Respondent Nippon Pillow Block Sales made good faith efforts to respond to the Department's questionnaire, but misinterpreted the instructions concerning which home market sales it would be required to report for purposes of sampling.¹² In addition, the Department discovered other unreported sales at verification. The Department determined that, while Nippon had attempted to cooperate, it had failed to provide the home market sales data necessary to calculate annual weighted-average prices; therefore, Nippon's margin was based on second-tier BIA. In *NSK*, involving a review of tapered roller bearings (TRBs) from Japan, plaintiff NSK submitted complete, verifiable, and timely U.S. and home market sales responses. However, NSK balked when directed to submit cost of production data on TRB parts acquired from related suppliers, arguing that the Department had no legal authority to request these data absent "a specific and objective basis" for suspecting that NSK's prices for the parts had been less than the suppliers' cost of production. *NSK*, 910 F. Supp. at 666. The Court held that we properly rejected NSK's arguments, and that we correctly resorted to partial second-tier

¹² Thus, while it is true that Nippon "failed to report approximately 80% of its home market sales," it is only fair to note that Nippon was required to report only a portion of its home market sales for sampling purposes to begin with. *Emerson*, 903 F. Supp. at 52.

BIA for the missing cost data.¹³ In each of the cited cases, while the responses were found to be deficient, the respondents attempted to cooperate with the Department's review. We contrast the behavior of these respondents with that of Ta Chen, and find that Ta Chen not only failed to submit the proper body of U.S. sales, but impeded the reviews. We conclude, therefore, that it would be inappropriate to base Ta Chen's margins for these reviews on second-tier, or cooperative, BIA.

Similarly, we cannot accede to Ta Chen's suggestion that we apply its margin from the LTFV investigation as first-tier BIA, as this would amount to rewarding Ta Chen for its failure to disclose essential facts to the Department and to report the proper body of its U.S. sales. Were we to consider Ta Chen's margin, which was calculated in a segment of these proceedings wherein Ta Chen was deemed cooperative and its responses fully verified, as first-tier BIA, we would effectively cede control of these reviews to Ta Chen. The respondent would be free to submit selective, misleading, or inaccurate information, secure in its knowledge that the worst fate it could expect would be to receive its prior cash deposit rate as BIA. See *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990). We find the Court's holdings in *Industria de Fundicao* to be directly on point: "the Court will not allow respondent to cap its antidumping rate by refusing to provide updated information to [the Department]." *Industria de Fundicao*, 936 F. Supp 1009, 1011. Contrary to Ta Chen's suggested approach, our aim in selecting BIA for non-cooperating respondents is to choose a margin which is sufficiently adverse "to induce respondents to provide [the Department] with complete and accurate information in a timely fashion." *National Steel Corp. v. United States*, 913 F. Supp 593 (CIT 1996). Likewise, we find that the antidumping proceedings of other countries, such as Canada, are irrelevant to our selection of BIA in these reviews which are being conducted pursuant to U.S. antidumping law. Furthermore, aside from its irrelevance, information concerning antidumping proceedings before Canadian authorities is not in the administrative record of these reviews.

We also reject Ta Chen's assertion that the 31.90 percent BIA margin is inappropriate because it was drawn from an earlier segment of these

proceedings. In *Mitsuboshi Belting Corp. Ltd. v. United States*, the Court, relying upon the findings in *Rhone Poulenc*, found that the Department's use of a margin drawn from a LTFV investigation was reasonable and, further, that "best information" doesn't necessarily mean "most recent information." The Court also rejected plaintiff's claim that the Department's choice of BIA was unreasonably harsh:

to be properly characterized as "punitive," the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only presumed that the highest prior margin was the best information of current margins. . . . We believe a permissible interpretation of the statute allows the agency to make such a presumption and that the presumption is not "punitive." Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.

Mitsuboshi Belting Ltd. and MBL (USA) Corp. v. United States, Court No. 93-09-00640, Slip Op. 97-28 (CIT March 12, 1997).

Likewise, in *Sugiyama Chain Co., Ltd. et al. v. United States*, the plaintiff contested our selection of best information available as having no probative value concerning Sugiyama's current margins because the rate taken from the LTFV investigation had "only a tenuous link to Sugiyama Chain's margins in the instant review." The Court approved of our use of the highest prior margin as BIA, noting that the Department "can make a common sense inference—indeed, there is a rebuttable presumption—that the highest prior margin is the most probative evidence indicative of the current margin." *Sugiyama Chain Co., Ltd., et al. v. United States*, 880 F. Supp. 869, 873 (CIT 1995); see also *Rhone Poulenc, Inc. v. United States*, 710 F. Supp. 341, 346 (CIT 1989) ("There is no mention in the statute or regulations that the best information available is the most recent information available."), aff'd 899 F.2d 1185 (Fed. Cir. 1990). Furthermore, we reject Ta Chen's suggestion that the 31.90 percent margin has been "verified as wrong." Our use of a margin drawn from data supplied by the petitioners comports fully with section 776(b) of the Tariff Act. It is not necessary, as Ta Chen appears to argue, for the Department to conduct an economic analysis of the stainless steel pipe industry before using a margin based on petitioners' data to determine the validity of these data. See *Tai Ying Metal Industries Co. v. United States*,

712 F. Supp 973, 978 (CIT 1989) ("it is reasonable for Commerce to rely upon the published margin from the LTFV investigation as the best information available without reassessing the record therefrom"). Furthermore, Ta Chen fails to note a prior investigation involving Ta Chen where the Department acted precisely as we have acted here, i.e., using the highest margin from the petition as first-tier BIA. In *Certain Forged Stainless Steel Flanges From Taiwan* Ta Chen was deemed an uncooperative respondent because it "withdrew" from the investigation immediately prior to verification. As first-tier, uncooperative BIA the Department chose the highest margin alleged in the petition, 48 percent, applying this rate to Ta Chen and to two other uncooperative respondents. See *Certain Forged Stainless Steel Flanges From Taiwan*, 58 FR 68859 (December 29, 1993).

The 31.90 percent margin has stood unchallenged for over five years as the first-tier BIA margin and, in fact, still applies to two other Taiwan manufacturers of subject merchandise. See *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan*, 57 FR 53705, 53708 (November 12, 1992). We conclude that use of this margin from the LTFV investigation is entirely consistent with the statute, the Department's regulations, and our past precedent.

We also find inapposite Ta Chen's argument that, since petitioners did not request these reviews, petitioners are satisfied with Ta Chen's existing cash deposit rate. Whether or not petitioners requested these reviews is, at this point, irrelevant, and cannot be construed in any way as evidence of Ta Chen's dumping activities, or lack thereof, during the first and second periods of review. Ta Chen's reference to our determination concerning *Yamaha in Antifriction Bearings From France, et al.* (57 FR 28360) is also entirely inapposite. There, the Department was merely summarizing the extent of Yamaha's cooperation in the review, noting that "Yamaha requested the review, provided the Department with questionnaire responses, and submitted to verification of its response. . . ." Ta Chen posits this one sentence as evidence of a *per se* rule that if a respondent requests a review, it is immune from first-tier BIA. Not only is this contention historically wrong, it ignores Ta Chen's failure to cooperate with the Department. As the Court noted in *Industria de Fundicao*, a respondent may not cap its antidumping

¹³The Court did remand *NSK*, ordering the Department to correct its application of second-tier BIA; the decision to use BIA was, however, upheld.

margins by refusing to cooperate in an administrative review.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made no changes in the margins for Ta Chen. We have determined that Ta Chen's weighted-average margin for the period June 22, 1992 through November 30, 1993 is 31.90 percent. Likewise, Ta Chen's margin for the December 1, 1993 through November 30, 1994 period of review is 31.90 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of these administrative reviews, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will continue to be zero percent (see Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review, 63 FR 38382 (July 16, 1998);

(2) For previously reviewed or investigated companies other than Ta Chen, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: June 11, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-15567 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific & Statistical Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, July 8, 1999, from 10:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton International Hotel, BWI Airport, Baltimore, MD, telephone: 410-859-3300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT:

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purposes of this meeting are to review the summer flounder stock assessment and make recommendations on the status of the summer flounder resources, review the scup rebuilding schedule, and review the surfclam overfishing definition.

Although other issues not contained in this agenda may come before the

Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council office (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: June 15, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-15861 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061499A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: A Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public.

DATES: The bocaccio rockfish and lingcod review panel will meet beginning at 10 a.m., July 12, 1999 and continue until 5 p.m. on July 16, 1999 or as necessary to complete business.

ADDRESSES: The bocaccio rockfish and lingcod review panel will be held in the Plum Room at the Division of Agriculture and Natural Resources Building, University of California, 1 Hopkins Road, Davis, CA 95616.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with Stock Assessment Teams to make necessary revisions, and produce STAR

Panel reports for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before this Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: June 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-15862 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060299B]

Marine Mammals; File No. 633-1483-01

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Center for Coastal Studies (CCS), 59 Commercial Street, P.O. Box 1036, Provincetown, MA 02657, has been issued an amendment to scientific research Permit No. 633-1483.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298 (978/281-9250).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On April 8, 1999, notice was published in the *Federal Register* (64 FR 17147) that an amendment of Permit No. 633-1483, issued March 3, 1999 (64 FR 10276), had been requested by the above-named organization. The requested amendment

has been granted 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 222-226).

The permit now authorizes research on humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sei (*Balaenoptera borealis*), minke (*Balaenoptera acutorostrata*) and blue (*Balaenoptera musculus*) whales, designated under Project II.

Issuance of this amendment, 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 14, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-15860 Filed 6-21-99; 8:45 am]

BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 2, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-15992 Filed 6-18-99; 2:26 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 9, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-15993 Filed 6-18-99; 2:26 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 16, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-15994 Filed 6-18-99; 2:26 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 23, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-15995 Filed 6-18-99; 2:26 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, July 30, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-15996 Filed 6-18-99; 2:26 pm]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, June 29, 1999, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 18, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99-16024 Filed 6-18-99; 2:54 pm]

BILLING CODE 6355-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds To Support AmeriCorps Promise Fellowships in Selected States, Indian Tribes, and U.S. Territories

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) will use up to approximately \$1.1 million to award grants to sponsor AmeriCorps Promise Fellowships in Alaska, Delaware, New Mexico, North Dakota, South Carolina, South Dakota, Virginia and Wyoming, and in the District of Columbia. Indian tribes and programs in U.S. territories are also eligible to apply. AmeriCorps Promise Fellows will spend up to one year serving with organizations that are committed to implementing programs in support of the five goals for children and youth set at the Presidents' Summit for America's Future.

These grants, in the aggregate, will support approximately 80 Fellows. Each Fellow will receive a living allowance of between \$13,000 and \$17,376 based on twelve months of service. Upon successfully completing a term of

service, a Fellow will receive the \$4,725 AmeriCorps education award. The Corporation will issue grants on a fixed amount per Fellow basis of \$13,000 per Fellowship awarded. These amounts exclude the education award. The grants are fixed-amount awards that do not require Corporation monitoring of actual costs incurred.

DATES: All sponsor proposals must be submitted to the Corporation by 5 p.m., Eastern Daylight Time, August 12, 1999. The Corporation anticipates announcing sponsor selections under this announcement no later than September 23, 1999. The project period is negotiable, but generally proposals should indicate a proposed project start date between November 1 and December 31, 1999, and an end date no later than December 31, 2000.

ADDRESSES: Proposals to sponsor one or more Fellows must be submitted to the Corporation at the following address: Corporation for National Service, Attn: Tracy Stone, 1201 New York Avenue NW, Room 9623, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a sponsor application, contact Rosa Harrison at the Corporation for National Service, (202) 606-5000, ext. 433. T.D.D. (202) 565-2799. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. For more information about the Corporation and the activities that it supports, go to <http://www.nationalservice.org>.

Pursuant to the National and Community Service Act of 1990, as amended (the Act), the Corporation may support "innovative and model programs" and may award national service fellowships. 42 U.S.C. 12653b. In addition, the Corporation may approve the provision of education awards to individuals who successfully complete a term of service in "national service positions as the Corporation determines to be appropriate". 42 U.S.C.

12573(7). The federal regulations governing the Corporation, published at 45 CFR 2520 *et seq.*, are available at public libraries or on the Internet at <http://www.law.cornell.edu/cfr/>.

At the Presidents' Summit for America's Future, held in April 1997 in Philadelphia, President Clinton, former Presidents Bush, Carter, and Ford, Mrs. Nancy Reagan, and General Colin Powell, with the endorsement of many governors, mayors, and leaders of the independent sector, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;
2. Safe places with structured activities in which to learn and grow;
3. A healthy start and healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service.

These five goals are now the five fundamental resources—or "promises"—sought by America's Promise—The Alliance for Youth, the national organization leading efforts to follow up on the goals of the Presidents' Summit. For more information about the five goals of the Presidents' Summit, go to <http://www.americaspromise.org>.

As a major partner in this effort, the Corporation devotes a substantial part of its activities to help meet these goals, including the work of AmeriCorps, Learn and Serve America, and the National Senior Service Corps. The AmeriCorps Promise Fellows program provides States and local communities with support to help carry out their plans to provide America's children with these five fundamental resources.

Through this notice, the Corporation invites grant proposals from eligible entities who wish to sponsor one or more AmeriCorps Promise Fellows.

Eligible Sponsors

The Corporation seeks to place Fellows in states, tribes and territories that are not represented by a governor-appointed state commission on national and community service (State Commission) or in which the State Commission has not previously been awarded AmeriCorps Promise Fellowships. The following entities are eligible to apply to become a sponsor:

1. State Commissions in Alaska, Delaware, New Mexico, South Carolina, Virginia and Wyoming;
2. State Education Agencies in the District of Columbia, North Dakota, and South Dakota;
3. State Education Agencies in Alaska, Delaware, New Mexico, South Carolina,

Virginia and Wyoming, if the State Commission is not applying for funding under this Notice. A letter signed by the State Commission Chair or Executive Director verifying that the Commission is not applying for funding under this Notice must accompany the State Education Agency's application to the Corporation; and

4. Local government agencies, institutions of higher education, or public or private nonprofit organizations in the District of Columbia, North Dakota, or South Dakota, or U.S. territories; and

5. Indian tribes (as defined in the National and Community Service Act at 42 U.S.C. 12511(11)).

The Corporation encourages State Commissions and State Education Agencies to collaborate in applying for funding under this Notice and to use their Unified State Plans as the basis for their application. Where both agencies are involved in proposing an AmeriCorps Promise Fellows program for their state, the application should be submitted to the Corporation by the State Commission.

Substance of the Fellowship Program

The AmeriCorps Promise Fellows program is a national service leadership initiative. Designed for those who have demonstrated skill and passion for service to their community, an AmeriCorps Promise Fellowship provides an opportunity to make a unique contribution to organizations helping to meet one or more of the five fundamental needs declared at the Presidents' Summit and being advanced by national, state, and local nonprofit organizations; and the national service network.

Although AmeriCorps Promise Fellows may be placed by a sponsor at a host organization that focuses its resources on only one of the goals of the Presidents' Summit, the host organization must be part of a larger effort (e.g., Community of Promise) that supports the delivery of all of the five fundamental resources to children and young people.

The most important considerations in establishing an AmeriCorps Promise Fellows program are that the prospective Fellows help meet the goals of the Presidents' Summit and that they have the ability to play a leadership role in producing a defined outcome. In this regard, Fellows' activities should principally be capacity-building in nature, seeking to help increase substantially a community's ability to deliver the five fundamental resources. For illustrative purposes, the following

are examples of specific activities or roles Fellows may pursue:

- Coordinating a Community of Promise campaign providing a targeted number of young people with all or several of the five fundamental resources.
- Initiating a program to provide multiple resources to targeted young people, for example, adding a service component and access to dental care to an existing after-school tutoring program.
- Planning or promoting State Education Agency efforts to stimulate service-learning opportunities by K-12 students.
- Expanding Volunteer Center activities to promote the goals of the Presidents' Summit.
- Spearheading immunization efforts aimed at young children and their families.
- Establishing new Federal Work-Study service opportunities and recruiting and placing students in the new positions.
- Recruiting new Communities of Promise.

Although no particular academic credentials or work experience are required, Fellows will be viewed as leaders in the efforts to implement the goals of the Presidents' Summit, and as a group will have an identity tied to this overall effort. Therefore, confidence in the ability of applicants to produce outcomes in support of the goals of the Presidents' Summit, such as the implementation of projects like those described above, is the central criterion for selection. This is evidenced by: Strong academic credentials; demonstrated leadership skills; substantial and successful work experience in a field related to the organization's activities; and experience performing significant service-related activities, particularly various national service leaders' programs, including AmeriCorps leaders, AmeriCorps*VISTA leaders, AmeriCorps*National Civilian Community Corps leaders, and leadership activities in programs sponsored by Learn and Serve America and the National Senior Service Corps.

Fellowships may not be used simply to supplement the numbers of AmeriCorps Members at existing programs already carrying out activities consistent with the goals of the Presidents' Summit. Rather, the role of AmeriCorps Promise Fellows should be to provide higher-level support that will enable an organization to become more involved, or to substantially increase the amount or quality of activities supporting achievement of the Presidents' Summit's five goals.

An AmeriCorps Promise Fellow must: (1) Be at least 17 years of age; (2) be a U.S. citizen, national, or lawful permanent resident alien; and (3) have a high school diploma or GED. Individuals who have already served in two approved national service positions

(a position for which an education award is provided) are, by statute, not eligible for a third education award.

Fellowships must be completed in no less than 10 months and no more than 12 months. Fellows must serve on a full-time basis. To qualify for an education award of \$4,725, a Fellow must perform at least 1,700 hours of service and successfully complete the Fellowship.

Sponsors must provide Fellows a living allowance between \$13,000 and \$17,376 based on a twelve-month term of service. If the term of service is shorter than twelve months, the sponsor must pro-rate the amount of the living allowance.

Sponsors are not required to provide health insurance and/or child care to Fellows or their families. However, the sponsor is encouraged to offer such assistance and may use funds awarded under this Notice for this purpose.

Sponsor's Role

The Corporation anticipates supporting no more than five AmeriCorps Promise Fellowships under each grant. If the sponsor identifies additional non-Corporation resources to support more than five Fellows, including provision of the required living allowance, the sponsor may propose to increase the number of Fellows. In such instances, the Corporation may approve additional education awards subject to their availability, and the number of Fellowships per sponsor may exceed five.

Each sponsor determines the process for the recruitment and selection of AmeriCorps Promise Fellows in its respective area. State Commissions and State Education Agencies are encouraged to use their Unified State Plan as the basis for their plans. The sponsor must certify that the host organization in which the Fellow is being placed is conducting activities that contribute to one or more of the five goals of the Presidents' Summit, and that this is part of a larger effort to provide all five of the fundamental resources to children and youth.

The Corporation anticipates that host organizations generally will be local or state nonprofit organizations that are engaged in activities in support of the goals of the Presidents' Summit. Fellows may serve at a State Commission only under limited circumstances. In proposing such an arrangement, a State Commission must describe in its application how it will comply with (1) The prohibition on State Commissions operating any national service program receiving financial assistance from the Corporation and (2) the prohibition on

a State Commission receiving Corporation assistance to carry out activities that are already supported by its administrative grant from the Corporation. A State Commission proposing this arrangement must also submit a detailed position description for the Fellow demonstrating that the Fellow's responsibilities are directly tied to achieving the goals of the Presidents' Summit.

Sponsors are responsible for ensuring compliance with required elements of the Fellowship program. These requirements, which will be individually described in the grant agreement between the Corporation and the sponsor, include, but are not limited to, the following:

- Providing office space, supplies, and equipment.
- Providing a living allowance.
- Paying and withholding FICA taxes.
- Withholding income taxes.
- Providing unemployment insurance if required by State law.
- Providing workers' compensation if required by State law or obtaining insurance to cover service-related injuries.
- Providing liability insurance to cover claims relating to Fellows.
- Providing adequate training and supervision.
- Ensuring that Fellows not engage in prohibited activities (such as lobbying).
- Complying with statutory prohibitions on uses of assistance (such as displacement, discrimination).
- Providing a grievance procedure that meets statutory standards.
- Verifying and submitting timely documentation relating to each Fellow's eligibility for an education award.
- Providing an adequate financial management system.
- Complying with other reporting requirements.

Contents of the Sponsor Application

Sponsor applications must contain the following information:

1. Background concerning the applicant's current efforts to achieve the goals of the Presidents' Summit.
2. The proposed start date for the AmeriCorps Promise Fellows. Please note that it is strongly encouraged that all Fellows begin service between November 1 and December 31, 1999 to promote esprit de corps among the class of Fellows.
3. An explanation of the method for determining the organizations where Fellows will be assigned that addresses the matters listed below. If host organizations have already been selected, please list the designated organizations and indicate how the following were addressed in making the selection.
 - (a) The process through which these organizations will be selected,

(b) The criteria used to evaluate their suitability for hosting a Fellow(s).

(c) The expected number of Fellows who will serve at each organization,

(d) The supervision, support and member development activities that will be provided for the Fellow(s) at each organization or by the sponsor, and

(e) Background concerning the selected organizations and the roles they are playing in local summit follow-up.

4. A detailed description of the activities that the Fellows will perform that includes:

(a) An explanation of how the activities will support significant growth and/or improvements in the quality of efforts to meet the five goals of the Presidents' Summit;

(b) Clearly defined, outcome-based objectives for:

i. The Fellows' service activities that are linked to the five fundamental resources or efforts to increase community involvement in strategies to deliver all five resources; and

ii. The Fellows' development as leaders in delivering the five fundamental resources; and

(c) A description of how the Fellowship program will complement, enhance, or offer services distinct from other AmeriCorps programs that the applicant may sponsor.

If the Fellow serves at a State Commission, a detailed position description must be provided.

5. A plan for recruiting Fellows that demonstrates an understanding of the Fellows' leadership role in expanding and enhancing activities that deliver on the goals of the Presidents' Summit and indicates the anticipated process for recruiting Fellows, the desired qualifications of Fellows, how these qualifications relate to the proposed Fellows' activities, and the potential sources from which applicants will be recruited.

6. An estimated budget to carry out the program, consistent with the description below.

The application may not exceed 21 double-spaced pages in length; additional instructions concerning the contents of the application are contained in the application package.

Organizations interested in applying for these program funds may participate in conference calls to be held on Thursday, July 15 and Friday, July 30 during which Corporation staff will provide technical assistance to potential applicants. The calls will begin at 1:30 p.m. and conclude at 3:00 p.m. Eastern Daylight Time. To register for either call, please contact Rosa Harrison at (202) 606-5000, ext. 433. Upon

registration, you will be apprised of the (800) number needed for participation.

Budget and Finances

The Corporation will issue grants on a fixed amount per Fellow basis of \$13,000 per Fellowship awarded. These amounts exclude the education award. The grants are fixed-amount awards that do not require Corporation monitoring of actual costs incurred. The cost principles normally applicable to Federal awards do not apply. The sponsor assumes full financial responsibility for the program. Sponsors must provide the additional financial support necessary to carry out their proposed Fellowship program. The sponsor should indicate the amounts and types of additional financial support required for the Fellowship program in the budget narrative of the application.

In addition to the approved grant amount, the Corporation will provide an education award to Fellows who successfully complete their term of service. The Corporation will sponsor a national training event to provide Fellows with an opportunity to come together to assess national progress in meeting the goals of the Presidents' Summit. The Corporation will also promote the availability of these Fellowships.

The Corporation anticipates that these grants will be renewable for up to a two-year period, subject to performance and the availability of appropriations.

Process for Selecting Sponsors

In selecting sponsors, the Corporation will consider: program design (60%), including (in order of importance) Getting Things Done to help achieve the five goals of the Presidents' Summit, recruiting a leadership cadre of Fellows and fostering their continued leadership development, and strengthening communities; organizational capacity (25%); and budget/cost effectiveness (15%). The Corporation will make all final decisions concerning approval of these grants for Fellowships. Given the Corporation's interest in having the common elements for the Fellowships that are described above, the Corporation announces its intent to enter into such negotiations with any sponsor in a manner that may require revisions to the original grant proposal.

The Corporation anticipates that all awards will be granted no later than November 1, 1999. All awards are subject to the availability of federal appropriations.

Dated: June 16, 1999.

Deborah Jospin,

Director, AmeriCorps, Corporation for National and Community Service.

[FR Doc. 99-15794 Filed 6-21-99; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing and Extension of the Public Comment Period for the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94). Navy announced locally that a public hearing would be held on June 24, 1999 at the Guam Hilton for the purpose of receiving oral and written comments on the DEIS. This notice announces to the public that Navy is extending the public comment period for the DEIS until July 30, 1999 and rescheduling the public hearing that was previously announced locally in Territory of Guam Newspapers and direct mailings. Federal and Government of Guam agencies, interested individuals, and organizations are invited to be present or represented at the public meeting that is hereby rescheduled as show below.

DATES: The public meeting will be held on July 15, 1999 at 7:00 p.m.

ADDRESSES: Guam Hilton, Marianas Ballroom, 202 Pale San Vitores Road, Tumon, Guam 96931.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Gibbons (PLN231GG), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860-3134, telephone (808) 471-9338, facsimile (808) 474-5909.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by Council on Environmental Quality regulations (40 CFR Parts 1500-1508), the Navy has prepared and filed with the EPA the DEIS for Disposal and Reuse of Surplus Navy Property Identified in the GLUP '94. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on April 10, 1998. A public

scoping meeting announcement was published on April 18, 19, and 20, 1998, in the Pacific Daily News on Guam. A public scoping meeting was held on May 7, 1998 at the Chamorro Village Main Pavilion, Paseo Complex, Agana, Guam. The notice of availability of the DEIS was published in the **Federal Register** on May 21, 1999.

The proposed action is the disposal of approximately 2,798 acres of surplus Navy property in the Territory of Guam in a manner consistent with the reuse identified by the local redevelopment authority, the Guam Economic Development Authority (GEDA), in its Reuse Plan for GLUP '94 Navy Surplus Properties. The property covered in the EIS has been divided into 20 parcels located in Dededo, Tiyan, Tamuning, Barrigada, Nimitz Hill, Apra Heights, Naval Station, Piti, and Santa Rita. Nineteen parcels were identified as releasable in the GLUP '94. One parcel, the Officers Housing site at Naval Air Station (NAS) Agana, was not considered in the GLUP '94 but was recommended for disposal as part of the 1995 Base Realignment and Closure (BRAC) decision. This parcel was included in GEDA's Reuse Plan and is included in the scope of this EIS.

The DEIS evaluates three reuse alternatives and a "No Action" Alternative. The reuse alternatives are based upon conceptual land use plans documented in GEDA's Reuse Plan and approved by Governor Carl T.C. Gutierrez of Guam. Each reuse alternative proposes various land uses, e.g., residential, commercial, etc., as well as roadway improvements. The "No Action" Alternative assumes Navy's retention of the parcels in caretaker status and continuation of existing leases according to their terms.

The Preferred Alternative recommended by GEDA consists of the following elements: retention of open space for recreation and conservation, single-family affordable housing, a golf resort, commercial centers, warehouse and light industrial space, and agricultural activities. The EIS also evaluates reuse alternatives with lower and higher intensities of development. The Lower Intensity Alternative would retain more open space and involve renovation rather than expansion of certain facilities and less new construction. The Higher Intensity Alternative would provide more new construction, and development densities would approach the maximum allowed under local zoning.

Except for traffic and air quality impacts at one intersection, potentially significant impacts under all of the reuse alternatives can be mitigated to

nonsignificant levels. The impacts which can be mitigated by the local reuse authority to nonsignificant levels include infrequent exceedance of air quality standards during peak-hour traffic at intersections, incompatible land uses and noise, effects on cultural resources, traffic congestion at key intersections, increases in school enrollment in three districts due to new housing development, and cumulative impacts on health care, police, fire, and civil defense services. Unacceptable traffic conditions at the intersection of Route 1 and Route 16 would occur with or without the proposed reuse. Mitigation would compensate for the reuse component of traffic at this intersection, but it would still remain above capacity. The following potentially significant but mitigable impacts are identified for the Higher Intensity Alternative: inadequate capacity of the Agana wastewater treatment plant during peak flow conditions, cumulative solid waste impacts, and impacts of the proposed power plant at Rizal/Afleje beach on the marine environment. The "No Action" Alternative has the least potential for environmental impacts and demands on Guam's infrastructure.

The DEIS has been distributed to agencies and other interested parties. Copies may be reviewed at the Agana, Barrigada, Dededo, Merizo, and Yona public libraries. A limited number of single copies are available upon request from the contact listed above. A public hearing will be held on July 15, 1999 at the Guam Hilton to inform the public of the DEIS findings and to solicit and receive oral and written comments. Government agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. All comments, both oral and written, will become part of the official record. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Gerald Gibbons at the address given above. Comments must be postmarked no later than July 30, 1999 to be considered in the Final EIS.

Dated: June 19, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Liaison Officer.

[FR Doc. 99-15796 Filed 6-21-99; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 16, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Perkins Loan, Federal Work-Study, Federal Supplemental Opportunity Grant Programs.

Frequency: Recordkeeping.

Reporting and Recordkeeping Hour Burden:

Responses: 17,188

Burden Hours: 12,719

Abstract: Campus-based program records are maintained by the institutions that administer the program. Records are necessary to ensure that the institution has followed regulatory procedures in administering these programs and to justify the payments of funds by the Department of Education.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651, or should be electronically mailed to the internet address *Vivian.Reese@ed.gov*, or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202-708-9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-15780 Filed 6-21-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington,

DC 20503 or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 15, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Local Educational Agencies' (LEAs') Collection of Data and Submission of Comprehensive Plan for Coordinating Social and Educational Services Under Title XI, Section 11004 of the Elementary and Secondary Education Act (ESEA) as Amended by the Improving America's Schools Act (Pub. L. 103-382)

Frequency: On occasion.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 20,000.

Abstract: Under Title XI, LEAs may apply to the Secretary for authority to use up to 5 percent of the ESEA funds they receive to develop, implement, or expand a coordinated services project will improve the access of children and their families to social, health and educational services necessary for success in school.

Requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address *Vivian—Reese@ed.gov*, or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Patrick Sherrill at 202-708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-15781 Filed 6-21-99; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Kirtland Area Office; Notice of Floodplain/Wetlands Involvement for Embankment and Streambed Restoration in the Arroyo Seco, Sandia National Laboratories, California

AGENCY: Kirtland Area Office, Department of Energy.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Department of Energy (DOE) is proposing to remove debris and repair erosional damage to streambanks at two channel structures located in the Arroyo Seco, Sandia National Laboratories, California. An existing earthfill crossing that traverses Arroyo Seco and two associated culverts would also be removed as a feature of the proposal. These actions are necessary to restore the runoff carrying capacity of the stream channel, to restore and protect the function of the channel structures, and to restore the integrity of security fencing. Restoration activities associated with the three project features would occur within the 100-year-flood frequency elevation. Two of the three project features are located within channel wetlands. Approximately 2,100 square feet of wetland would be affected. A restoration plan would be prepared to mitigate the loss of wetlands and riparian vegetation.

DATES: Written comments are due to the address below no later than July 7, 1999.

ADDRESSES: Written comments and requests for additional information on this proposed action should be addressed to: Susan Lacy, NEPA Compliance Officer, U.S. Department of Energy, Kirtland Area Office, P.O. Box

5400, Albuquerque, New Mexico 87185-5400, PHONE (505) 845-5542 FAX (505) 845-4710.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

1. Project Description

DOE proposes to implement restorative measures in the channel of Arroyo Seco, Sandia National Laboratories, California. These measures are necessary to restore the runoff capacity of the channel, to restore and protect the function of channel structures, and to restore the integrity of security fencing. Restorative measures would be accomplished at three existing channel structures: (1) The East Buffer Zone Fence Crossing which consists of a concrete hinged grate structure with wingwalls and crossing security fence, (2) a trash rack located upstream of the East Buffer Zone Fence Crossing, and (3) an earthfill channel crossing located south of Building 928. Measures proposed at the hinged grate structure and the trash rack consist of removing accumulated channel debris, filling of eroded channel embankments caused by debris blocking flows through the structures and consequent erosion of structure abutments, restoration of streambed elevations, placement of rock (riprap) for scour protection, and repair of associated security fencing. Approximately 100 cubic yards of earth and two, 48-inch diameter culverts would be removed from the channel crossing. The channel at the crossing would be restored to its original configuration. The removal of the crossing would assist in restoring the original channel capacity.

2. Wetlands and Floodplains

Restoration activities associated with the three project features would occur within the 100-year-flood frequency elevation. Measures associated with the concrete hinged grate structure and the trash rack would involve channel wetlands. Approximately 300 square feet of wetland soils and vegetation would be covered with riprap at the hinged grate structure and about 1,800 square feet of wetland and riparian vegetation would be removed at the trash rack. A restoration plan would be prepared and implemented to mitigate the loss of wetland and riparian

vegetation. The restoration plan would be coordinated with the California Department of Fish and Game.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain/wetlands assessment for this proposed action. After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued in Albuquerque, New Mexico on June 10, 1999.

George K. Laskar,

Assistant Area Manager, Laboratory Operations, U.S. Department of Energy, Kirtland Area Office.

[FR Doc. 99-15868 Filed 6-21-99; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

DATE: Wednesday, July 7, 1999: 6:00-9:30 p.m. Board Meeting.

ADDRESS: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831, (423) 576-0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Environmental Management Integration Initiative.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the address or telephone number listed above. Requests must be received 5 days prior

to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831, or by calling her at (423) 576-0314.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99-15869 Filed 6-21-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 7, 1999: 6 p.m.-9 p.m.

ADDRESSES: Beatty Community Center, 100 "A" Avenue South, Beatty, NV.

FOR FURTHER INFORMATION CONTACT:

Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193-8513, phone: 702-295-0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Ground water update and discussion
- Waste transportation and emergency response update and discussion

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99-15870 Filed 6-21-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 15, 1999: 9 a.m.-5 p.m.; Friday, July 16, 1999: 8:30 a.m.-4 p.m.

ADDRESSES: Double Tree Inn (Hanford House), 802 George Washington Way, Richland, WA, ph: 509-946-7611.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy, Richland Operations Office, P.O. Box 550 (A7-75), Richland, WA 99352; Ph: (509) 373-5647; Fax: (509) 376-1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

July 15, 1999

- Forum with Senior Managers from the Department of Energy, Richland Operations Office, Department of Energy Office of River Protection, U.S. Department of Environmental Protection Agency, and Washington State Department of Ecology, on vision and key issues related to Hanford cleanup (This interactive session is scheduled from 9 a.m. to approximately 3 p.m.)

- FY 2000 Performance Agreements
- Process for responding to Board Advice

July 16, 1999

- Workshop to identify key issues for the Board to follow in FY 2000
- Hanford Draft Solid Waste EIS

Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373-5647.

Issued at Washington, DC on June 17, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99-15871 Filed 6-21-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP99-553-000]

Reliant Energy Gas Transmission Company; Notice of Application

June 16, 1999.

Take notice that on June 11, 1999, Reliant Energy Gas Transmission Company (REGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP99-553-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in Kay County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

REGT proposes to abandon and reclaim a deteriorated delivery lateral line, Line A-3-C, comprised of approximately 2,814 feet of 2-inch dresser-coupled pipe, and a 1-inch rural domestic tap, located in Kay County, Oklahoma, because of safety and economic reasons. REGT states that Line A-3-C has functioned only to deliver gas to one rural customer served by Reliant Energy-Arkla, a distribution division of Reliant Energy Resources Corporation (Arkla). REGT declares that Line A-3-C is deteriorated and exposed, and REGT has experienced annual gas losses of approximately 576 dth (when priced at current gas prices equates to an annual value of \$1,354). REGT asserts that comparatively, in 1998, REGT delivered approximately 123 dth annually to Arkla and received annual revenues of approximately \$26. REGT states that to continue safe and reliable service through Line A-3-C and eliminate the loss of gas, REGT would have to replace this line at an estimated cost of \$22,558, which does not take into account the future costs to operate and maintain such line.

REGT states that Line A-3-C delivers gas to Arkla for further deliveries to a single rural customer, Mr. Elbert Urban. REGT asserts that it has offered \$1,500 as compensation to Mr. Urban for converting his existing gas service to an alternate source of fuel. REGT declares that Mr. Urban has rejected their offer. REGT states that alternatively, Mr. Urban requested that REGT relocate his meter and purchase, at its sole expense, an inactive plastic line along a county road adjacent to Mr. Urban's property. REGT declares that this alternative is unacceptable and uneconomical, due to

the addition of the unknown cost of purchasing the pipe, two road crossings would have to be constructed, requiring the purchase of new pipe, at an estimated cost of \$7,403. Despite the lack of agreement, REGT requests authority to abandon the pipe for safety and economic reasons.

Any person desiring to be heard or to make any protest with reference to said Application should on or before July 7, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 99-15762 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP99-547-000]

Reliant Energy Gas Transmission Company; Notice of Application

June 15, 1999.

Take notice that on June 8, 1999, Reliant Energy Gas Transmission Company (REGT), 1111 Louisiana Street, Houston, Texas 77210, filed an application pursuant to Section 7(b) of the Natural Gas Act for permission approval to abandon pipeline facilities located in Caddo and Bossier Parishes, Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

REGT proposes to abandon by sale and transfer to Reliant Energy Field Services Corp. (REFS) a 4.3 mile segment of an 8-inch line identified as Line LIT-1 in Louisiana. It is stated that the line was installed as an intrastate pipeline used to transport gas supply to REGT's interstate system for delivery to the Shreveport and Bossier City, Louisiana, markets. REGT asserts that it acquired the line from NorAm Intrastate in 1994. REGT requests a determination that following the sale and transfer to REFS the line will be used as a gathering facility and thus exempt from Commission regulation.

REGT proposes to sell the line to REFS at the net book value at the time of closing. It is stated that REGT has no firm transportation services on this line segment. It is asserted that the proposed abandonment would not affect REGT's ability to meet its customer obligations and that no customer would lose service as a result of the abandonment. REGT states that the abandonment to REFS would benefit customers because a non-jurisdictional gatherer has more flexibility to acquire gas supplies and furnish them to customers at competitive prices.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for REGT to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-15769 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-551-000]

Tennessee Gas Pipeline Company; Notice of Application

June 16, 1999.

Take notice that on June 10, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002, filed in Docket No. CP99-551-000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Tennessee to increase the maximum allowable operating pressure (MAOP) for Tennessee's existing La Gloria Line, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.us.online/rims.htm> (call 202-208-2222 for assistance).

Tennessee proposes to increase the MAOP of its 2.4 mile, 4-inch diameter Line No. 403A-100 pipeline (referred to as the La Gloria Line) in Brooks County, Texas, from 765 psig to 891 psig. Tennessee indicates that the proposed MAOP increase will allow Tennessee to consistently deliver natural gas supplies received on the La Gloria Line into its mainline pipeline system. Tennessee further states that the uprate procedures require no construction.

Any person desiring to be heard or making any protest with reference to said application should on or before July 7, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents

filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-15761 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-297-000]

Tennessee Gas Pipeline Company; Notice of Final Reconciliation Report

June 16, 1999.

Take notice that on April 29, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, in accordance with Article 1, Section 4 of the July 27, 1994 PGA Stipulation and Agreement (Stipulation) filed its Final Reconciliation Report for its Account No. 191. Tennessee also filed pro-forma tariff sheets to reflect proposed changes to its FERC Gas Tariff as a result of the final reconciliation and termination of Account No. 191. Tennessee submitted this filing as Docket Nos. RP93-147, RP94-201, RP94-175, RP91-203, RP92-132 (Phase III) and CP94-153 (Not Consolidated)—Final Account No. 191 Reconciliation Report.

Tennessee contends that the purpose of the filing is to report adjustments to

revenues and costs recorded in Tennessee's Account No. 191 since June 1, 1995, now that all of the outstanding imbalances relating to that account have been resolved. Tennessee reports a final net underrecovery in its Account No. 191 of \$3,823,599.

Tennessee avers that copies of the Final Reconciliation Report have been served on all affected customers.

Pursuant to Article I, Section 4 of the Stipulation, any customer that disagrees with the computations in Tennessee's Final Reconciliation Report should file a statement with the Commission explaining the basis of its disagreement no later than 30 days after Tennessee files the Report.

Tennessee proposes to file actual tariff sheets to implement the suggested revisions within 30 days of a Commission Order approving the request changes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 22, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-15766 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-549-000]

Tennessee Gas Pipeline Company and Natural Gas Pipeline Company of America; Notice of Application To Abandon

June 15, 1999.

Take notice that on June 9, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77252-2511 and Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148 (referred to Collectively as Applicants) filed under Section 7(b) of the Natural Gas Act, for

authority to abandon, a certificated gas exchange service. The exchange service has been provided under Tennessee's Rate schedule X-53 in its FERC Gas Tariff, Original Volume No. 2 and Natural's Rate Schedule X-77 in its FERC Gas Tariff, Second Revised Volume No. 2. Applicants state that they no longer need the service and have both consented to its abandonment. The proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Internet at <http://www.ferc.us/online/rims.htm>. (call 202-208-2222 for assistance).

Any person desiring to be heard or make any protest with reference to said application should on or before July 6, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 99-15768 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Application for Amendment for Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Application Type: Application for an Amendment of License to Increase the Normal Maximum Pool Elevation of the Upper Reservoir of the Project.
- b. *Project No.*: 2716-031.
- c. *Date Filed*: May 14, 1999.
- d. *Applicant*: Virginia Electric and Power Company.
- e. *Name of Project*: Bath County Pumped Storage.
- f. *Location*: On Back Creek and Little Back Creek in Bath County, Virginia. The Project occupies federal lands.
- g. *Filed Pursuant to*: 18 CFR 4.200.
- h. *Applicant Contact*: Mr. Edward J. Rivas, Jr., Vice-President-Fossil and Hydro Operations, Virginia Power, 5000 Dominion Blvd., Glen Allen, VA 23060, (804) 273-3990.

i. *FERC Contact*: Any questions on this notice should be addressed to Mohamad Fayyad at 202-219-2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and/or motions*: July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number and sub-dockets (2716-031) on any comments or motions filed.

k. *Description of Filing*: VEPCO is proposing to increase the normal maximum operating level of the upper reservoir from 3,320 feet to 3,321 feet. This will increase the maximum power pool storage by 278 acre-feet.

l. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>, (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-15763 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Project; Notice of Application for Amendment of Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed

with Commission and is available for public inspection:

a. *Application Type:* Application for an Amendment of License to Remove Mile Run Dam and Revise the Project Boundary.

b. *Project No.:* 2916-036.

c. *Date Filed:* May 19, 1999.

d. *Applicant:* East Bay Municipal Utility District.

e. *Name of Project:* Lower Mokelumne River.

f. *Location:* On Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California. The project will not affect any federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contract:* Mr. Jon A. Myers, Manager, Water Resources Planning, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607-4240, (510) 278-1121.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at 202-219-2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* July 15, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the project number and sub-dockets (2916-036) on any comment or notions filed.

k. *Description of Filing:* EBMUD is proposing to remove Mine Run Dam, which is located on Mine Creek on the upstream reach of the project's Comanche Reservoir. The Mine Run Dam was used to control acid mine drainage from the abandoned deep shaft copper mine (Penn Mine). The Mine Run Dam controls the flow of contaminated water from the Pen Mine.

EBMUD plans to remove the Mine Run Dam as a part of the Environmental Protection Agency's (EPA) Lone Germ Solution Project (Remediation Plan) for the Penn Mine Site. The Remediation Plan was mandated by EPA through a Clean Water Act section 309 order.

Please, note that we had public noticed this amendment proposal previously, on January 27, 1999, however on September 13, 1999, EBMUD withdrew its previous application, and filed the current revised application.

1. *Locations of the application:* A copy of the application is available for inspection and reproduction of the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>, (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

www.ferc.fed.us/online/rims.htm, (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

"RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-15764 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
CommissionHydroelectric Project; Notice of
Application Accepted for Filing and
Soliciting Motions To Intervene and
Protests

June 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary Permit.
 - b. *Project No.:* P-11731-000.
 - c. *Date filed:* April 26, 1999.
 - d. *Applicant:* Universal Electric Power Corporation.
 - e. *Name of Project:* Red River Lock and Dam No. 2 Hydro Project.
 - f. *Location:* At the existing U.S. Army Corps of Engineers; Red River Lock and Dam No. 2 on the Red River, near the Town of Simmesport, Rapids County, Louisiana.
 - g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)-825(r).
 - h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115.
 - i. FERC Contact: Ed Lee (202) 219-2809 or E-mail address at Ed.Lee@FERC.fed.us.
 - j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.
- All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.
- The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.
- k. This application is not ready for environmental analysis at this time.
 - l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 2, and would consist of the following facilities: (1) five new steel penstocks, each about 100-foot-long and 10-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of

the dam having an installed capacity of 23,000 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 141 gigawatthours. The cost of the studies under the permit will not exceed \$3,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2-A, Washington, DC 20426, or by calling (202) 219-1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at <http://www.ferc.fed.us/online/rims.htm> or call (202) 208-2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file a competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-15765 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11690-001, AK]

Alaska Village Electric Cooperative, Inc.; Notice of Application Tendered; Notice of Application and Applicant-prepared EA Accepted for Filing; Notice Requesting Interventions and Protests; and Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

June 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Minor Original License.
- b. *Project No.:* 11690-001.
- c. *Date filed:* May 14, 1999.
- d. *Applicant:* Alaska Village Electric Cooperative, Inc.
- e. *Name of Project:* Old Harbor.
- f. *Location:* On Mountain Creek, a tributary to the East Fork of Barling Creek, near Old Harbor, Alaska. The project is located partially on lands of the United States administered by the U.S. Department of the Interior, Kodiak National Wildlife Refuge.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).
- h. *Applicant Contact:* Mr. Daniel Hertrich, Polarconsult, Inc., 1503 West 33rd Avenue, Anchorage, AK 99503, (907) 258-2420.
- i. *FERC Contact:* Nan Allen, nan.allen@ferc.fed.us, 202-219-2938.
- j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenor filing documents with the Commission to serve a copy of that document on

each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project consists of: (1) a 4-foot-high, uncontrolled, concrete diversion located in Mountain Creek, the East Fork of Barling Creek, at an elevation of 860 feet mean sea level; (2) a trash rack, screens, and a de-sander box at the diversion intake; (3) a 16-inch-diameter, 3,293-foot-long high density polyethylene pipe; (4) a 16-inch diameter, 6,966-foot-long steel pipe; (5) a 400-square-foot powerhouse containing one Impulse turbine with a generation capacity of 500 kilowatts (kW) and a maximum hydraulic capacity of 13 cubic feet per second; (6) a 4,270-foot-long buried transmission route that would connect the project with Old Harbor's existing power supply system near the city of Old Harbor; and (7) a 4,270-foot-long access road to the powerhouse.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208-1351. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice. Comments, Protests, or

Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The

Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99-15767 Filed 6-21-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6364-6]

Agency Information Collection Activities; Proposed Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before August 23, 1999.

ADDRESSES: U.S. EPA, Office of Compliance, 401 M Street SW, Washington, DC 20460, Mail code 2223A.

Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260-2740 or by e-mail at farmer.sandy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Belinda Breidenbach, (202) 564-7022/ Facsimile Number (202) 564-0050/e-mail breidenbach.belinda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are subject to NESHAP for Mercury Emissions, 40 CFR Part 61, Subpart E.

Title: NESHAP for Mercury Emissions, OMB Control Number 2060-0097, EPA Number 0113.06, expiration date August 31, 1999.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury emissions (40 CFR Part 61, Subpart E) were proposed on December 7, 1971, promulgated on April 6, 1973, and amended on October 14, 1975 and March 19, 1987. These standards apply to all stationary sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Approximately 298 sources (274 sludge incineration and drying plants and 24 mercury-cell chlor-alkali plants) are currently subject to the standard; and no additional sources are expected to become subject to the standard in the next three years. Mercury is the pollutant regulated under this standard.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. A written report of each period for which hourly monitored parameters fall outside their established limits is required semi-annually for mercury-cell chlor-alkali plants. These notifications, reports and records are required, in general, of all sources subject to NESHAP.

In the Administrator's judgment, mercury emissions from mercury ore processing facilities, mercury chlor-alkali plants, including the cell room ventilation system, and sludge incineration and drying plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

In order to ensure compliance with the standards promulgated to protect public health, adequate recordkeeping and reporting is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as

required by the Clean Air Act. Recordkeeping and reporting are mandatory under this regulation. Records of emission test results and other data needed to determine total emissions shall be maintained at the source and made available for inspection for a minimum of two years.

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.

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: The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 37,068 person-hours. Assumed that there will be no new sources in the next 3 years. Therefore, none of the burden hours for new sources are anticipated to be applicable in the next three years. For each existing source emission test annual emission tests require 12 person hours, semi-annual reports 8 hours and 4 hours are needed to submit notifications on other monitored parameters. Recordkeeping of operating parameters for emission test and mercury leaks require 15 minute per tests. Compilation of data for semi-annual reports require 8 person-hours and the maintenance of data on monitored leaks and monitored parameters require a period of one-half hour. It is assumed plants operate 365 days per year and that all the mercury-cell chlor-alkali plants will have exceedences or leaks semi-annually.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 10, 1999.

John Rasnic,

Director, Manufacturing, Energy and Transportation Division.

[FR Doc. 99-15834 Filed 6-21-99; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-227]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 22, 1999, the Commission approved the application of Sprint Communications Company, L.P. (Sprint) to acquire and operate additional satellite facilities for provision of service between the United States and Cuba. This authorization includes upgrade of an existing private line circuit. Sprint is currently authorized by the Commission to provide service directly to Cuba. The Commission has authorized Sprint to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow Sprint to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, Sprint is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

DATES: Effective January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Chief, Policy and Facilities Branch, International Bureau, (202) 418-1468.

Federal Communications Commission.

Rebecca Arbogast,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 99-15396 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-903]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 13, 1999, the Commission approved the application of Sprint Communications Company, L.P. (Sprint) to lease and operate one additional satellite circuit between the United States and Cuba. Sprint is currently authorized by the Commission to provide service directly to Cuba. The Commission has authorized Sprint to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow Sprint to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, Sprint is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

DATES: Effective May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Chief, Policy and Facilities Branch, International Bureau, (202) 418-1468.

Federal Communications Commission.

Rebecca Arbogast,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 99-15397 Filed 6-21-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1276-DR]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major

disaster for the State of Colorado (FEMA-1276-DR), dated May 17, 1999 and related determinations.

EFFECTIVE DATE: May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 17, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Colorado, resulting from severe storms and flooding on April 29, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James S. Logan of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared major disaster:

Bent, El Paso, Larimer, Otero, and Weld Counties for Individual Assistance.

All counties within the State of Colorado are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99-15812 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1276-DR]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA-1276-DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Colorado is hereby amended to include the Public Assistance program in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1999:

Bent, El Paso, Larimer, Otero, and Weld Counties for Public Assistance (already designated for Individual Assistance).

Crowley, Custer, Elbert, Fremont, Kiowa, Las Animas, and Pueblo Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15818 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1276-DR]

Colorado; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado (FEMA-1276-DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15819 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1276-DR]

Colorado; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Colorado, (FEMA-1276-DR), dated May 17, 1999, and related determinations.

EFFECTIVE DATE: May 26, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Colorado is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1999:

Pueblo County for Individual Assistance (already designated for Public Assistance). (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15820 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3139-EM]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA-3139-EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: May 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of April 27, 1999:

Duval, Nassau, and Clay Counties for appropriate assistance for required emergency protective measures as authorized under Title V of the Stafford Act.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

William F.W. Jones,

Acting Division Director, Infrastructure.

[FR Doc. 99-15809 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3139-EM]

Florida; Amendment #3 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida (FEMA-3139-EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective May 25, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15810 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1278-DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-1278-DR), dated May 28, 1999, and related determinations.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 28, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flash flooding on May 16-17, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act").

I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaperopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Jo Daviess County for Individual Assistance and Public Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dated: June 8, 1999.

James L. Witt,

Director.

[FR Doc. 99-15815 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1277-DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster, for the state of Iowa, (FEMA-1277-DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Butler and Clinton for Public Assistance.
Butler, Clinton, and Crawford for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services

Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99-15811 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1277-DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-1277-DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 21, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms, flooding and tornadoes on May 16, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is determined to be warranted, Federal funds provided under that program will also be

limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties for Individual Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99-15813 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1277-DR]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA-1277-DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 29, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99-15814 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1277-DR]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA-1277-DR), dated May 21, 1999, and related determinations.

EFFECTIVE DATE: May 24, 1999.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 1999:

Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public

Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15821 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1273-DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1273-DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Sumner County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15824 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1273-DR]

Kansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-1273-DR), dated May 4, 1998, and related determinations.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 6, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15825 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1270-DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-1270-DR), dated April 20, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1999:

Cole County for Individual Assistance. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

William F.W. Jones,

Division Director, Response and Recovery Directorate.

[FR Doc. 99-15822 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1272-DR]

Oklahoma; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA-1272-DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Latimer County for Public Assistance. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15823 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1275-DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA-1275-DR), dated May 12, 1999, and related determinations.

EFFECTIVE DATE: May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1999:

Sumner County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99-15816 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1275-DR]

Tennessee; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-1275-DR), dated May 12, 1999, and related determinations.

EFFECTIVE DATE: May 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 19, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15817 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1274-DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA-1274-DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1999:

Titus County for Individual Assistance.
(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-15826 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1274-DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA-1274-DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1999:

Gregg County for Individual Assistance.
(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99-15827 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****Open Meeting, Technical Mapping
Advisory Council**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: July 8, 1999.

Place: The FEMA Conference Operator in Washington, DC will initiate the teleconference. Individuals interested in participating should call 1-800-320-4330 at the time of the teleconference. Callers will be prompted for the conference code, #16, and then connected through to the teleconference.

Time: 2:00 p.m. to 4:00 p.m., EST.

Proposed Agenda:

1. Call to order.
2. Announcements.
3. Action on minutes from May 1999 meeting.
4. Status of letter regarding possible extension of Council's duration.
5. Update on recommendations.
6. Discuss preparation for the 1999 Annual Report.
7. Discuss agenda for September 1999 meeting in Louisville, KY.
8. Discuss agenda for December 1999 meeting in Washington, DC.
9. New business.
10. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646-2756 or by facsimile at (202) 646-4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in September 1999.

Dated: June 14, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-15808 Filed 6-21-99; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL TRADE COMMISSION

[File No. 9723075]

**Tiger Direct, Inc.; Analysis To Aid
Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Andrew Caverly or Colleen Lynch, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, MA 02114-4719, (617) 424-5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 10th, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of

the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To
Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Tiger Direct, Inc. ("Tiger Direct"), a mail order retailer of computer products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint alleges that Tiger Direct violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a)(1), by deceptively advertising its on-site warranty service for Tiger-brand computer systems. Additionally, the complaint alleges that Tiger Direct has violated the Magnuson-Moss Warranty Act ("Warranty Act"), 15 U.S.C. 2301 *et seq.*, and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"), 16 CFR 701; and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Availability Rule"), 16 CFR 702. Under Section 110(b) of the Warranty Act, 15 U.S.C. § 2310(b), violations of the Warranty Act or its Rules are also violations of Section 5 of the FTC Act.

First, the complaint alleges that Tiger Direct violated Section 5 of the FTC Act by misrepresenting that it would provide on-site warranty service to purchasers of Tiger-brand computer systems when notified that the system or any of its parts was defective or had malfunctioned and that it would provide such service within a reasonable period of time after being notified of a problem.

Second, the complaint alleges that Tiger Direct violated the Pre-Sale Availability Rule by failing to disclose material warranty terms or otherwise comply with the Rule. The complaint also alleges that Tiger Direct failed to comply with the requirements of the Disclosure Rule that certain language be

included in written warranties including: what the warrantor will not pay for or provide, where necessary for clarification; a step-by-step explanation of the procedure that the consumer should follow in order to obtain performance of any warranty obligation; a notice that its warranty exclusion of incidental and consequential damages does not apply to consumers in states that prohibit such exclusions; and that a consumer may have other rights that vary from state to state. In addition, the complaint alleges that Tiger Direct violated the Warranty Act by failing to clearly and conspicuously designate its written warranty as "full" or "limited" and by disclaiming all implied warranties, which the Warranty Act prohibits.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Tiger Direct from engaging in similar deceptive acts and practices in the future.

Part I of the proposed order prohibits Tiger Direct from representing that it provides on-site service unless it discloses all limitations and conditions that apply to obtaining on-site service clearly, prominently and in close proximity to the on-site service representation.

Part II of the proposed order provides that Tiger Direct shall provide warranty service within a reasonable period of time after receiving notice from a consumer of a problem. The order defines a reasonable period of time as the time period specified in respondent's promotional materials and advertisements, or if no time period is specified in respondent's promotional materials and advertisements, a period no longer than thirty (30) days after respondent receives notice from a consumer of a computer problem.

Part III of the proposed order contains provisions designed to remedy respondent's violations of the Warranty Act, the Disclosure Rule and the Pre-Sale Availability Rule. It prohibits respondent from failing to make the text of a warranty readily available; failing to disclose a statement of what the warrantor will not pay for or provide; failing to disclose a step-by-step explanation of the procedure the consumer should follow to obtain warranty service; failing to make the necessary disclosures regarding a consumer's rights under state law; failing to properly designate its warranty as full or limited; and disclaiming any implied warranty except as permitted.

Parts IV and V of the proposed order require Tiger Direct to distribute copies

of the order and written instructions regarding its responsibilities and duties under the order and the Warranty Act, including the Disclosure Rule and the Pre-Sale Availability Rule, to certain current and future personnel. Part VI of the proposed order requires Tiger Direct to maintain copies of all such written instructions, as well as copies of warranties and advertising exemplars. Part VII of the proposed order requires Tiger Direct to notify the Commission of any changes in its corporate structure that might affect compliance with the order. Part VIII of the order requires Tiger Direct to file with the Commission one or more reports detailing compliance with the order.

Lastly, Part IX of the proposed order provides for termination of the order after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-15839 Filed 6-21-99; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Request for Expressions of Interest ("RFEI")

A. Background

In January, 1999, the Agency for Health Care Policy and Research (AHCPR) published a request for applications (RFA: HS-99-003, Translating Evidence into Practice [TRIP]) to conduct research related to implementing evidence-based tools and information in diverse health care settings among practitioners caring for diverse populations. Applications were sought for studies that applied innovative strategies for implementing evidence-based tools and information and would be able to demonstrate improved clinical practice and sustained practitioner behavior change.

In fiscal year 2000, AHCPR plans to publish a second research solicitation focused on translating research into practice (TRIP-II). The aim of this solicitation will be to encourage partnerships between health care systems (e.g., integrated health service

delivery systems, academic health systems, managed care programs including HMOs, practice networks, etc.) and researchers to evaluate the effectiveness of different strategies for improving the quality of care. To concentrate the TRIP-II effort, we will ask partners to address at least one of the following priorities:

- The six focus areas selected by the Department of Health and Human Services in which racial and ethnic minorities experience serious disparities in health access and outcomes:

- (a) Infant Mortality
 - (b) Cancer Screening and Management
 - (c) Cardiovascular Disease
 - (d) Diabetes
 - (e) HIV Infection/AIDS
 - (f) Immunizations
- Pediatric Asthma
 - Medical Errors and Patient Safety

AHCPR has a particular interest in health systems that utilize the strengths of information systems for implementing strategies for quality improvement.

B. Purpose

The purpose of this **Federal Register** Notice is to identify health care systems which have begun or plan to develop programs in the above referenced areas and would be willing to partner with a research team in response to the TRIP-II solicitation. When the TRIP-II solicitation (request for applications or RFA) is published, health care systems interested in exploring partnerships with researchers will be listed in the RFA. Health care systems which have already established relationships with researchers—either internally or in academic settings—and who do not wish to be listed in the RFA itself will be eligible to apply. Health care systems which do not have existing relationships with researchers and choose not to respond to this RFEI are not precluded from responding with appropriate research partners to the TRIP-II RFA. The benefit of responding to this RFEI, however, will be helpful in facilitating the development of those relationships.

Along with a letter expressing interest in partnerships, we would also appreciate suggestions and ideas regarding how AHCPR can encourage meaningful partnerships between researchers and health care systems. Suggestions and ideas are welcome independent of letters expressing interest.

C. Dates

We are requesting that letters of interest be submitted no later than August 4, 1999. These letters should

include names, addresses, telephone numbers and e-mail addresses of key contacts in the health care system and/or the academic setting if identified and potential research topic. The letter of interest is not binding and does not enter into the consideration of any subsequent application. The letter should also clearly state willingness to be listed in the RFA or a preference not to be listed.

D. Address

Letters of interest should be addressed to: Carolyn M. Clancy, MD, Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, MD 20852, E-mail: cclancy@ahcpr.gov.

Dated: June 17, 1999.

John M. Eisenberg,
Administrator.

[FR Doc. 99-15865 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Health Care Policy and Research (AHCPR) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Administrator, AHCPR, regarding the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Automated Data Processing Support Services for Agency for Health Care Policy and Research". The RFP was published in the Commerce Business Daily on March 8, 1999.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101-6.1023 and 48 CFR section 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free

exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Health Care Policy and Research—"Automated Data Processing Support Services for Agency for Health Care Policy and Research".

Date: July 8, 1999 (Closed to the public).

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, 5th Floor Conference Room, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact William Yu, Center for Cost and Financing Studies, Agency for Health Care Policy and Research, 2101 Executive Boulevard, Suite 500, Rockville, Maryland, 20852, 301-594-1069.

Dated: June 15, 1999.

John M. Eisenberg,
Administrator.

[FR Doc. 99-15864 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99091]

Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 1999 funds for cooperative agreement programs with non-governmental minority organizations to support: (1) Community-based organizations (CBOs) to develop and implement effective community-based HIV prevention programs for gay men of color (Category A); and (2) non-governmental minority organizations to provide regionally structured and focused capacity-building assistance to CBOs that serve the HIV prevention needs of gay men of color at risk for HIV infection (Category B).

This program addresses the "Healthy People 2000" priority areas of Educational and Community-Based Programs, Human Immuno-deficiency Virus (HIV) Infection, and Sexually Transmitted Diseases (STDs).

The goals for program Category A—Community-Based HIV Prevention Services are to:

1. Provide financial and technical assistance to CBOs so they can provide HIV prevention services to populations of gay men of color for which gaps in services are demonstrated;

2. Support HIV prevention programs that are consistent with the HIV prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan or adequately justify addressing other priorities; and

3. Promote collaboration and coordination of HIV prevention efforts among CBOs; HIV prevention community planning groups; and other local, State, Federal and privately funded programs.

The goals for program Category B—Capacity-Building Assistance Program are to:

1. Improve the capacity of CBOs serving gay men of color to mobilize their communities to increase their awareness, leadership, participation and support for HIV prevention; and

2. Enhance the capacity of CBOs serving gay men of color to effectively participate in, and improve the responsiveness of the HIV prevention community planning process to the HIV prevention needs of gay men of color.

Refer to Section M, "Where to Obtain Additional Information", for dates and times of audio-conferences.

B. Eligible Applicants

Note: Applicants that meet the eligibility requirements for both Categories A and B may apply for both under separate applications. For Category B, applicants may only apply to provide capacity-building assistance to a single racial or ethnic group (that is, African American, Latino, Asian/Pacific Islander, or American Indian/Alaskan Native). For example, if an organization applies to provide capacity-building assistance for African American gay men, that organization may not also apply to provide assistance for Latino gay men.

1. Category A—Community-Based HIV Prevention Services

Eligible applicants for Category A are African American, Latino, Asian/Pacific Islander, and American Indian/Alaskan Native CBOs that provide services to gay men, and that meet the following criteria (also see Proof of Eligibility section):

- a. Have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.

- b. Have a board or governing body composed of greater than 50 percent of the racial/ethnic minority population to be served.

c. Members of the racial/ethnic minority population to be served must serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, outreach worker, prevention case manager, counselor, group facilitator, or trainer).

d. Documentation of an established record of services to the target population is required. An established record is defined as a minimum of two years serving the target population.

e. Two or more racial/ethnic minority CBOs may apply as a collaborative partnership. In a collaborative contractual partnership, one CBO must be the legal applicant and will function as the lead organization in the collaboration. The lead organization must meet criteria a–d specified above and the collaborating CBO(s) must meet criteria b and c specified above.

f. Racial/ethnic minority CBOs currently funded under program announcement 704 that meet criteria a–e above are eligible to apply for funding under this program announcement only as a part of a collaboration with other racial/ethnic minority CBOs.

Note: A CBO can only submit one application under this category; that is, it may apply as an individual organization or as part of a collaboration, but not both.

g. Local affiliates, chapters, or programs of national and regional organizations are eligible to apply. In this case, the local affiliate, chapter, or program applying must meet criteria a–f, above.

h. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this announcement.

2. Category B—Capacity-Building Assistance Program

The Capacity-Building Assistance Program (Category B) will serve four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, RI, VT, PR, U.S. Virgin Islands

Midwest Region: IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY

Eligible applicants for Category B are:
(1) A national minority organization

serving up to four regions either independently or as the lead agency within a coalition; or (2) a regional minority organization serving at least one region either independently or as the lead agency within a coalition; or (3) a local minority organization as the lead agency within a coalition serving one region. A coalition may consist of any combination of national, regional or local minority organizations.

The lead agency must be the legal applicant and all applicants must meet the following criteria:

a. Have a copy of a currently valid IRS Determination letter stating that the organization is a 501(c)(3).

b. Have a documented and established 3-year record of service to community-based organizations serving gay men of color and to gay men of color population(s). Acceptable documentation includes letters of support, agency annual reports, client satisfaction survey summaries, and memoranda of agreement.

c. Have a board or governing body composed of greater than 50 percent of the racial/ethnic minority population to be served. This body must also include representation from members of the target population (i.e. men who have sex with men, including bisexuals, transgenders, and Gay, Bisexual and Transgender (GBT) youth).

d. Have greater than 50 percent of key positions in the applicant organization, including management, supervisory, administrative, and service positions filled by persons of the racial/ethnic population to be served (for example, executive director, program director, fiscal director, trainer, technical assistance provider, curricula development specialist, or group facilitator).

e. Local affiliates, chapters, or programs of national and regional organizations are eligible. In this case, the local affiliate, chapter, or program applying must meet criteria a–d, above.

3. Categories A and B

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Awards will be made in two categories: (A) community-based HIV prevention services; and (B) capacity-building assistance program. Applicants may apply for both categories if eligible; however, separate applications must be submitted for each category.

1. Category A—Community-Based HIV Prevention Services. Approximately \$4,000,000 is available in FY 1999 to fund approximately 20 awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to 4 years. It is expected that the average award will be approximately \$200,000.

Note: Funds to support CBOs to provide HIV prevention services are also available under Program Announcement 99092—Community Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, Program Announcement 99096—HIV Prevention Projects for African American Faith-Based Organizations, and Program Announcement 99047—Human Immunodeficiency Virus Community Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands. Eligible organizations may apply for and receive funding under more than one of these announcements; however, the total combined funding provided to any organization under these four new announcements and those grantees currently funded under Program Announcement 704 (97004) can not exceed \$300,000, and awards will not support the same project activities twice.

2. Category B—Capacity-Building Assistance Program Approximately \$2,400,000 is available in FY 1999 to fund approximately 9 awards. It is expected that awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to five years. It is expected that the average award will be approximately \$300,000.

3. Categories A and B

Funding estimates may change based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving objectives. Satisfactory progress toward achieving objectives will be determined by progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility is required with noncompeting continuation applications.

Use of Funds

1. Category A—Community-Based HIV Prevention Services Funds provided under this Announcement must support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other STDs or substance abuse as a means of reducing or eliminating the risk of HIV transmission may also be supported.

2. Category B—Capacity-Building Assistance Program Funds available under this announcement must support assistance that increases the capacity of CBOs to expand and sustain effective HIV prevention activities for gay men of color whose behavior places them at high risk for HIV and other STDs, and should include the following populations: men who have sex with men, including bisexuals, transgenders, and Gay, Bisexual and Transgender (GBT) youth.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated indirect rate agreement. In the absence of an indirect cost rate agreement, the recipient may request, with detailed justification, a maximum of 10 percent for the executive director. If the organization has an indirect rate that includes the executive director's salary, no additional funds will be provided. Funds will not be provided for the salary of an executive director that is also a member of the organization's Board of Directors.

3. Categories A and B:

Applicants are encouraged to develop coalitions and may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of services) for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

No funds will be provided for direct patient medical care (including substance abuse treatment, medical treatment, or medications) or research.

These funds may not be used to supplant or duplicate existing funding. Funds awarded should be used to enhance or expand existing activities.

Funding Priorities

1. Category A—Community-Based HIV Prevention Services

In making awards under Category A—Community Prevention Services, priority for funding will be given to:

a. Ensuring a national distribution of CBO awards based on AIDS morbidity among racial/ethnic minority populations, and

b. Supporting several CBO collaborations (consisting of two or more minority organizations) in which the applicant (the lead organization) proposes to share resources, strategies, and expertise with a start-up or less experienced HIV prevention organization.

2. Category B—Capacity-Building Assistance Program

In making awards under Category B (Capacity-Building Assistance Program),

priority for funding will be given to: ensure that funding for capacity-building assistance is distributed in proportion to the disease burden for gay men of color in each region.

Interested persons are invited to comment on the proposed funding priorities. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priorities are established. If the funding priorities change because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop E-15, Atlanta, GA 30341-4146.

D. Program Requirements—Category A—(Community-Based HIV Prevention Services)

HIV prevention interventions are specific activities (or set of related activities) using a common method of delivering the prevention messages to reach persons at risk of becoming HIV-infected or, if already infected, of transmitting the virus to others. The goal of HIV prevention interventions is to bring about HIV risk reduction in a particular population.

In order to maximize the effective use of CDC funds, each applicant must conduct at least one of the following priority HIV prevention interventions: (1) HIV Counseling, Testing and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach. A brief description of these priority interventions is provided in Attachment 1. Also, please reference the materials included in the tool kit for additional information about these interventions. The tool kit will be sent with the application packet.

Although activities may overlap from one type of intervention to another (e.g., individual or group level interventions may be a part of a community-level intervention), each applicant must indicate which one of the five interventions is their primary focus.

Because of the resources, special expertise, and organizational capacities needed for success, applicants should carefully consider the feasibility of undertaking more than two of the priority interventions listed. Recipients proposing to conduct more than two of

these priority prevention interventions must demonstrate the capacity to implement them effectively.

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

1. Recipient Activities:

a. Design program activities by using epidemiologic data, needs assessments, and prioritization of groups and interventions.

b. Develop program activities which are consistent with applicable State and local comprehensive HIV prevention plans or adequately justify addressing other priorities.

c. Provide—or assist high risk clients in gaining access to—HIV counseling, testing, and referral for other needed services.

d. Conduct health education and risk reduction interventions for persons at high risk of becoming infected or transmitting HIV to others.

e. Assist HIV-positive persons in gaining access to appropriate HIV treatment and other early medical care, substance abuse prevention services, STD screening and treatment, partner counseling and referral services, psychosocial support, mental health services, TB prevention and treatment, primary HIV prevention such as health education and risk reduction services, and other supportive services. High-risk clients who test negative should be referred to appropriate health education and risk reduction services and other appropriate prevention and treatment services.

f. Ensure adequate protection of client confidentiality.

g. Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the target population.

h. Participate in the HIV prevention community planning process. Participation may include involvement in workshops; attending meetings; if nominated and selected, serving as a member of the group; reporting on program activities; or reviewing and commenting on plans.

i. Incorporate cultural competency and linguistic and developmental appropriateness into all program activities and prevention messages.

j. Coordinate program activities with relevant national, regional, State, and local HIV prevention programs to prevent duplication of efforts.

k. Monitor and evaluate major program and intervention activities and services supported with CDC HIV prevention funds under this cooperative agreement. This should include assessing client satisfaction periodically via quantitative (e.g., periodic surveys) and qualitative methods (e.g., focus groups).

l. Compile "lessons learned" from the project and facilitate the dissemination of "lessons learned" and successful prevention interventions and program models to other organizations and CDC through peer-to-peer interactions, meetings, workshops, conferences, Internet, communications with project officers, and other capacity-building and technology transfer mechanisms.

m. Work with CDC-funded capacity-building assistance programs to meet your and other organizations' capacity-building needs.

n. Develop and implement a plan for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

o. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

p. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's National Prevention Information Network (NPIN) maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants may be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1-800-458-5231 (TTY users: 1-800-243-7012). NPIN's web site is www.cdcnpin.org; the fax number is 1-888-282-7681.

2. CDC Activities

a. As appropriate, link funded applicants to a coordinated national

capacity building and technology transfer network.

b. Provide consultation and technical assistance in planning, implementing, and evaluating prevention activities. CDC may provide consultation and technical assistance both directly and indirectly through prevention partners such as health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

c. Provide up-to-date scientific information on risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Assist in the design and implementation of program evaluation activities, including provision of evaluation forms, if appropriate.

e. Assist recipients in collaborating with State and local health departments, community planning groups, and other federally supported HIV/AIDS recipients.

f. Facilitate the transfer of successful prevention interventions, program models, and "lessons learned" through convening meetings of grantees, workshops, conferences, newsletters, use of the Internet, and communications with project officers. Also facilitate exchange of program information and technical assistance among community organizations, health departments, and national and regional organizations.

g. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

h. Conduct an overall evaluation of this cooperative agreement program.

E. Application Content—Category A—Community-Based HIV Prevention Services

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages (not including the budget or attachments).

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and

printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for both categories (A and B), if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format For Category A—Community-Based HIV Prevention Services

1. Abstract.
2. Assessment of Need and Justification for Proposed Activities.
3. Long-term Goals.
4. Organizational History and Capacity.
5. Program Plan.
6. Program Evaluation Plan.
7. Communications and Dissemination Plan.
8. Plan for Acquiring Additional Resources.
9. Budget and Staffing Breakdown and Justification.
10. Training and Technical Assistance Plan.
11. Attachments.

Instructions For Category A—Community-Based HIV Prevention Services

1. Abstract (not to exceed 2 pages): summarize which intervention category of the five priority HIV prevention interventions—(1) HIV Counseling, Testing, and Referral Services; (2) Individual Level Interventions; (3) Group Level Interventions; (4) Community Level Interventions; and (5) Street and Community Outreach—you intend to implement and your proposed intervention activities. Include the following:

- a. brief summary of the need for the proposed activities;
- b. long-term goals;
- c. brief summary of proposed plan of operation, including the population(s) to be served, activities to be undertaken, and services to be provided; and
- d. brief summary of plans for evaluating the activities of this project.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 5 pages):

- a. Describe the population(s) for which your proposed intervention(s) will provide services.
- b. Describe the impact of the AIDS epidemic on the priority population and their community and any specific environmental, social, cultural, or linguistic characteristics of the priority populations which you have considered

and addressed in developing prevention strategies, such as:

(1) HIV prevalence and incidence (if available), reported AIDS cases, and the proportion that engages in specific risk behaviors (sexual behaviors, substance use, etc.) in the target population;

(2) HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behaviors;

(3) Patterns of substance use and rates of STDs and tuberculosis (TB); and

(4) Other relevant information. (Specify)

c. Identify the need that will be addressed by your proposed intervention(s), and describe how you assessed the need. Include epidemiologic and other data that were used to identify the need. Include a description of existing HIV prevention and risk-reduction efforts provided by other organizations to address the needs of the target population(s), and an analysis of the gap between the identified need and the resources currently available to address the need (i.e., How will the proposed intervention(s) address an important unmet HIV prevention need?).

d. Describe the specific behaviors and practices that the proposed intervention(s) is designed to promote and prevent (e.g., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

e. Describe how your proposed intervention(s) complements the HIV prevention priority populations and interventions identified in the applicable State or local comprehensive HIV prevention plan(s). If the comprehensive HIV prevention plan does not prioritize the needs that you have identified, justify the need and the priority of your proposed intervention activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. State why the funds being applied for in this application are necessary to address the need. A list of the names and telephone numbers of State health department contacts from whom you may obtain a copy of the jurisdiction's comprehensive HIV prevention plan is provided with the application kit;

f. Explain any specific barriers to the implementation of your proposed intervention(s) and how you will overcome these barriers.

3. Long-term Goals (not to exceed 2 pages): Describe the broad HIV prevention goals that your proposed intervention(s) aims to achieve by the end of the project period (four years).

4. Organizational History and Capacity (not to exceed 4 pages)

Describe the following:

a. Organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; committee structure of board of directors; organizational management, administrative and program components; constituent or affiliate organizations or networks; how the organizational structure will support the proposed intervention activities; and how the structure offers the capacity to reach targeted populations. Describe how the organizational structure includes, or has the ability to obtain meaningful input and representation from, members of the target population(s) (for example, gay, bisexual, and Transgender populations, youth at risk, HIV-positive individuals, substance abusers).

b. Past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing interventions similar to the one(s) proposed in this application.

c. The process in your organization for making major programmatic decisions.

d. Mechanisms used by your organization to monitor program implementation and quality assurance.

e. Experience in working or collaborating with governmental and non-governmental organizations, including State and local health departments, local and State non-governmental organizations, national agencies or organizations, community planning groups, and other groups that provide HIV prevention services.

f. Capacity to provide the proposed interventions in a manner that is culturally competent and linguistically and developmentally appropriate, and which responds effectively to the gender, environmental, and social characteristics of the target populations.

g. For any of the above areas in which you do not have direct experience or current capacity, describe how you will ensure that your organization will gain capacity (e.g., through staff development, collaboration with other organizations, or a contract).

5. Program Plan (not to exceed 10 pages): Use this section to describe the specific characteristics of your proposed intervention(s).

a. Involvement of the target population: Describe how the target population is, or will be, involved in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives: Develop process objectives that are specific, measurable, appropriate, realistic, and time-based. Process objectives focus on the projected amount, frequency, and duration of the intervention activities and the number and characteristics of the target population to be served. If applicable, describe how the objectives are related to the prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan. Describe potential barriers to or facilitators for reaching these objectives.

c. Plan of Operation:

(1) Describe the specific activities to be conducted or services to be provided to accomplish the objectives and where these activities or services will take place. Make certain that your proposal addresses all required activities. The following four HERR interventions will be funded: Individual level (including prevention case management [PCM]), group level, community level interventions, and street and community outreach. Each recipient must conduct at least one of these interventions. Applicants should not apply for more interventions than they can conduct effectively.

(2) Describe your mechanisms for soliciting clients into the program and obtaining informed consent.

(3) Describe your staffing plan and the responsibilities each staff position will have in conducting the proposed activities. Describe how the proposed program will be managed, including the location of the program within your organization.

(4) Describe the potential for volunteer involvement in your program. If volunteers will be involved, describe plans to recruit, train, place, and retain volunteers.

(5) Describe how you will market and promote your program in the community.

(6) Describe how you will prioritize the program activities to place emphasis on populations or communities that are at high risk for HIV infection.

d. Appropriateness of Interventions: Describe mechanisms that will be used to ensure client satisfaction. Describe how you will ensure that the proposed interventions and services are culturally competent; sensitive to issues of sexual orientation; developmentally, educationally, and linguistically appropriate; and targeted to the needs of the target populations.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities: Provide a detailed description of the program experience or scientific, theoretical, or conceptual foundation on which the proposed

activities are based and which support the potential effectiveness of these activities for addressing the stated needs.

f. Collaborations, Linkages, and Coordination:

(1) Describe any formal collaborations with State or local health departments, community planning groups, and other appropriate service groups or organizations that will be used in the development and implementation of your program. Describe the respective roles and responsibilities of each collaborating entity in developing and implementing the program.

(2) Specify any and all organizations and agencies with which you will establish linkages and coordinate activities, and describe the activities that will be coordinated with each listed organization. These may include, as appropriate, the following:

- (a) Community groups and organizations, including churches and religious groups;
- (b) HIV/AIDS service organizations;
- (c) Ryan White CARE Title I and Title II planning bodies;
- (d) Schools, boards of education, and other State or local education agencies;
- (e) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;
- (f) Federally funded community projects, such as those funded by the Substance Abuse and Mental Health Services Administrations' (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), the Health and Human Services' Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other Federal entities;
- (g) Providers of services to youth in high risk situations (e.g., youth in shelters);
- (h) State or local departments of mental health;
- (i) Juvenile and adult criminal justice, correctional, or parole systems and programs;
- (j) Family planning and women's health agencies; and
- (k) STD and TB clinics and programs.

(3) Describe how referrals to other service providers will be initiated.

(4) Provide a time line that identifies major implementation steps and assigns approximate dates for the inception and completion of each.

6. Quality Assurance and Program Evaluation Plan (not to exceed 5 pages): The plan should describe when and how evaluation activities will be implemented. At a minimum, the plan should outline strategies for

implementing process evaluation of interventions to determine if the process objectives are being achieved. Indicate which member(s) of the staff will be responsible for implementing the evaluation plan.

Your process evaluation plan should include the following:

a. A list of resources available to the organization to carry out process evaluation (e.g., provider staff, health department staff, data experts to design a system for managing information about proposed interventions, evaluation consultants, NRMOS (National/Regional Minority Organizations)).

b. A list of who will be involved in implementing the evaluation and identify their roles. Describe who will collect, report, enter, and analyze data.

c. A description of the data that will be collected. To assure valid data are collected, established instruments should be used when feasible. Established instruments include those that have been either science-based or previously administered in effective HIV prevention interventions. In addition, data sources should be verifiable through appropriate documentation (such as storing original data for the duration of the cooperative agreement). Examples of data that could be collected include:

- (1) Detailed information on the specific intervention service(s).
- (2) The number of persons who received the service(s) by (a) risk categories (MSM, IDU, etc.) and (b) demographics, such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation.
- (3) When and how often the intervention service was provided.
- (4) Where the intervention service was provided (e.g., CTRPN site, STD clinic, street corner, housing project).
- (5) Documents referral systems, including the number of persons referred; how you intend to determine the success of referral systems (e.g., the number actually receiving services by referral sites); and how well the system functions in identifying referral services.
- (6) Describe client satisfaction with HIV prevention intervention services.

d. Discuss how data will be collected, managed, and monitored over time. Address ways to collect, report, enter, and analyze data as well as how you would use data for program improvement. Describe how often data will be collected. Discuss how data security will be maintained and client confidentiality assured.

e. Discuss how you will assess the performance of staff to ensure that they

are providing information and services accurately and effectively.

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, you may not be able to conduct outcome evaluations (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV incidence after the intervention) with funds provided through this cooperative agreement. CDC will continue to support special projects to evaluate the behavioral and other outcomes of interventions commonly used by CBOs and other organizations, and disseminate information and lessons learned from this research to CBOs, health departments, community planning groups, and other organizations and agencies involved in HIV prevention programs.

7. Communications and Dissemination Plan (not to exceed 2 pages): Describe how you will share successful approaches and "lessons learned" with other organizations.

8. Plan for Acquiring Additional Resources (not to exceed 1 page): Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget/Staffing Breakdown and Justification

a. Detailed Budget: Provide a detailed, separate budget for each intervention proposed (i.e., CTR, individual level, group level, community level, or street and community outreach), with accompanying justification of all operating expenses that is consistent with the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

For contracts and consultant agreements, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

b. Staffing Plan: Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the

identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

10. Training and Technical Assistance Plan (not to exceed 2 pages): Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

11. Attachments

a. Proof of Eligibility.

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A copy of the Internal Revenue Service's determination letter showing their approval of your 501(c)(3) status.

(2) A list of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(3) Documentation that your organization is located and provides services in the geographical area to be served. This documentation could include letters of support, news articles, brochures or flyers, annual reports, memoranda of agreement, or client surveys.

(4) A Table of Organization of existing and proposed staff, including the board of directors, volunteer staff, and their racial/ethnic backgrounds.

(5) Documentation that your organization has an established record

of providing services to the target population for at least two years, and a description of the specific services that have been provided.

(6) Affiliates, chapters, or programs of national or regional organizations must include with the application an original, signed letter from the national or regional organization's chief executive officer assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

(7) A separate sheet of paper stating if your organization is currently funded under CDC Program Announcement 704, Community Based HIV Prevention Projects.

b. Other Attachments.

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place. Memoranda of agreement from health departments should include a statement that they have reviewed your application for these funds.

(2) A list of major community resources and health care providers to which referrals will be made.

(3) Protocols to guide and document training, activities, services, and referrals (e.g., applicants seeking funds for Street and Community Outreach Interventions must provide a description of the policies and procedures that will be followed to assure the safety of outreach staff).

(4) Samples of data collection tools that will be used in performing, monitoring, or evaluating program activities, if available.

(5) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (1) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (2) a summary of the objectives and activities of the funded program(s); and (3) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(6) Independent audit statements from a certified public accountant for the previous 2 years.

(7) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

Note: Materials submitted as attachments should be printed on one side of 8½" × 11" paper. Please do not attach bound materials such as booklets or pamphlets. Rather, submit copies of the materials printed on one side of 8½" × 11" paper. Bound materials may not be reviewed.

F. Evaluation Criteria—Category A—Community-Based HIV Prevention Services

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract. (not scored)
2. Assessment of Need and Justification for the Proposed Activities. (15 points)

a. The extent to which the applicant soundly and convincingly documents a substantial need for the proposed program and activities; and the degree to which the proposed activities are consistent with the Recipient Activities described in the Program Requirements Section. (5 points)

b. The degree to which the applicant describes the specific behaviors and practices that the interventions are designed to promote and prevent (i.e., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs). (5 points)

c. The quality of the applicant's plan to ensure consistency with the State and local comprehensive HIV prevention plans and, if applicable, the adequacy with which the applicant demonstrates the rationale for deviating from the jurisdiction's comprehensive HIV prevention plan. (5 points)

3. Long-term Goals (5 points) The quality of the applicant's stated goals and the extent to which they are consistent with the purpose of this cooperative agreement, as described in this program announcement.

4. Organizational History and Capacity (15 points) The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

a. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach targeted populations; (3 points)

b. Applicant's past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing programs similar to those proposed in this application; (3 points)

c. Applicant's experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (3 points)

d. Applicant's capacity to obtain meaningful input and representation from members of the target population(s) and to provide culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social, and multilingual character of the target audiences, including documentation of any history of providing such services; (3 points) and

e. Plans to ensure capacity to implement proposed program where no direct experience or capacity currently exists within the applicant organization. (3 points)

5. Program Plan. (45 total points)

a. Involvement of the target population (5 points) The degree to which the applicant describes the involvement of the target population in planning, implementing, and evaluating activities and services throughout the project period.

b. Intervention Objectives (5 points) Degree to which the proposed process objectives are specific, measurable, appropriate, realistic, and time-based, related to the proposed activities, and consistent with the program's long-term goals; and the extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation (15 points) The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives.

d. Appropriateness of Interventions (5 points) The degree to which the applicant describes how the proposed priority interventions and services are culturally competent, sensitive to issues of sexual orientation, developmentally appropriate, linguistically-specific, and educationally appropriate.

e. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities (5 points) The degree to which the applicant provides a detailed description of the scientific, theoretical, conceptual, or program

experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

f. Collaborations, Linkages, and Coordination (5 points) Appropriateness of collaboration and coordination with other organizations serving the same priority population(s). At minimum, the applicant provides a description of the collaboration or coordination and a signed memoranda of agreement for each agency with which collaborative activities are proposed, and other evidence of collaboration that describe previous, current, as well as future areas of collaboration.

g. Time line (5 points) The extent to which the applicant's proposed time line is specific and realistic.

6. Quality Assurance and Program Evaluation Plan (10 points) The potential of the evaluation plan to describe when and how evaluation activities will be implemented by the applicant; the extent to which the evaluation plan is realistic and feasible, taking into account the applicant's unique needs, resources, capabilities, and priorities; and the extent to which a plan has been created that will guide the collection of data for improving HIV prevention efforts and informing stakeholders of the progress made in HIV prevention.

7. Communication and Dissemination Plan (5 points) The degree to which the applicant describes how successful approaches and "lessons learned" will be documented and shared with other organizations.

8. Plan for Acquiring Additional Resources (5 points) the degree to which the applicant describes plans to develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. Budget and Staffing Breakdown and Justification (not scored)

a. Budget Appropriateness of the budget for the proposed project.

b. Personnel Appropriateness of the staffing pattern for the proposed project.

10. Training and Technical Assistance Plan (not scored). The extent to which the applicant describes areas in which technical assistance is anticipated in designing, implementing, and evaluating the proposed program and how the applicant will obtain this technical assistance. The extent to which the applicant describes anticipated staff training needs related to the proposed program and how these

needs will be met. The extent to which the applicant describes a plan for providing ongoing training to staff.

Before final award decisions are made, CDC may either make predisciplinary site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of directors.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

G. Program Requirements—Category B Capacity-Building Assistance

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities) below.

For additional information on capacity-building assistance activities, see Attachment 2.

1. Recipient Activities:

a. Conduct regional community needs and resource assessments around issues related to HIV prevention, leadership development, and community mobilization.

b. Develop a regional plan of action to mobilize community and agency resources to meet priority needs related to Community Capacity-Building for HIV prevention.

c. Develop a regional plan of action to provide capacity-building assistance in HIV Prevention Community Planning Effectiveness and Participation.

d. Provide capacity-building assistance to CBOs serving gay men of color populations and community stakeholders in the following areas: Community Capacity-Building for HIV Prevention, and HIV Prevention Community Planning Effectiveness and Participation. These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer (where appropriate and approved by the CDC). See Addendum for additional information.

e. Develop and implement a plan for targeting, engaging, and maintaining long term capacity-building relationships with CBOs serving gay men of color populations and community stakeholders. The plan

should include strategies for conducting ongoing CBO and community stakeholder needs assessments related to areas listed in Section d above. The plan should also include the strategy for developing tailored capacity building packages to be delivered over the course of the project period.

f. Develop a strategy that includes forming a regional community advisory board which includes CDC-funded CBOs, members of the target population(s), and community representatives and other HIV prevention stakeholders. This community advisory board should be involved with providing input into the overall direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services to the target population.

g. Ensure that capacity-building assistance is allocated according to priority capacity-building assistance needs of CBOs and highly affected gay men of color communities and sub-populations, such as gay, bisexual and Transgender youth (GBT Youth); injection drug users and other substance abusers (IDU/SA); and incarcerated, soon-to-be-released and released persons.

h. Develop and implement a system that responds to requests for assistance in Community Capacity-Building; HIV Prevention Community Planning Participation and Effectiveness; and other types of capacity-building assistance from CBOs and gay men of color community stakeholders. This process must include mechanisms for conducting needs assessments, prioritizing requests, assigning staff or consultants, delivering services, reporting on service delivery, and conducting quality assurance.

i. Develop a standardized system for tracking and reporting all capacity-building assistance requests and delivery with CDC assistance as needed.

j. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

k. Develop and implement an effective strategy for marketing capacity-building assistance and services.

l. Participate in a CDC-coordinated capacity-building network.

m. Coordinate program activities with appropriate national, regional, state, and local HIV prevention programs and community planning groups to prevent duplication of efforts and optimize use of resources.

n. Monitor and evaluate the accomplishment of program objectives,

and the process of capacity-building assistance.

o. Facilitate the dissemination of information about successful capacity-building assistance strategies and "lessons learned" through peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

p. Participate in CDC coordinated train-the-trainer opportunities.

q. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

r. Develop a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period.

2. CDC Activities:

a. Serve as the coordinator for CDC's capacity-building programs, which will include organizations providing capacity-building assistance under this program announcement.

b. Provide recipients with consultation in planning, developing, managing, and evaluating capacity-building services. CDC will provide consultation and assistance both directly through CDC and indirectly through contractors; national, regional and local organizations; and peer-to-peer assistance from CDC-funded partners.

c. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

d. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

e. Support train-the-trainer opportunities that enhance capacity-building assistance delivery systems.

f. Facilitate and collaborate in the dissemination of successful capacity-building strategies and "lessons learned" through meetings of grantees, workshops, conferences, and communications.

g. Work with recipients to standardize a system for tracking and reporting all capacity-building assistance requests and delivery.

h. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

i. Coordinate an evaluation of the overall capacity-building assistance program.

H. Application Content—Category B—Capacity-Building Assistance

Use the information in the Program Requirements, Other Requirements, and Application Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages.

Number each page sequentially, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced 12 point or 10 pitch font on 8½" by 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic narrative will not be accepted if placed in the appendices.

Note: Applicants may apply for both categories (A and B), if eligible; however, a separate application must be submitted for each category.

In developing the application, you must follow the format and instructions below:

Format for Category B—Capacity-Building Assistance Program

1. Abstract.
2. Long-term Goals.
3. Organizational History and Capacity.
 - a. Organizational Structure.
 - b. History Providing Community Capacity Development and Other Capacity-Building Assistance to CBOs serving Gay Men of Color populations and communities.
 - c. Capacity for Cultural Competence.
 - d. Current Capability in Providing Capacity-Building Assistance.
 - e. Experience Working with Coalitions (where appropriate) and Current Collaborations.
4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation.
 - a. Characteristics of Gay Men of Color Population(s).
 - b. Capacity-Building Needs.
5. Program Plan.
 - a. Involvement of Local CBOs and HIV Prevention Stakeholders.
 - b. Objectives.

- c. Plan of Operation.
- d. Coordination/Collaboration.
- e. Time line.
- 6. Program Evaluation Plan.
- 7. Communications/Dissemination Plan.
- 8. Plan for Acquiring Additional Resources.
- 9. Budget and Staffing Breakdown and Justification.
 - a. Detailed Budget.
 - b. Mechanisms for Use of Funds.
 - c. Staffing Plan.
- 10. Training and Technical Assistance Plan.
- 11. Attachments.

Instructions for Category B—Capacity-Building Assistance Program

- 1. Abstract (not to exceed 3 pages). Briefly summarize the following:
 - a. Region(s) applying for and the type of organization (national, regional, or local) and, if national or regional, whether applying independently or with a coalition.
 - b. Organizational structure, philosophy, mission, history.
 - c. Long term goals of the proposed project.
 - d. Overview of plan of operation.
 - e. Overview of plan for collaboration and coordination with other capacity-building service providers, state and local health departments, and community planning groups.
 - f. Composition of proposed coalition (where appropriate).
 - g. Future year activities.
- 2. Long-term Goals (not to exceed 1 page).

Describe the broad capacity-building goals that your proposed program aims to achieve over the course of the project period.

3. Organizational History and Capacity (not to exceed 10 pages).

a. Describe your existing organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; board committee structure (including advisory board); board recruitment and training process; organizational management, administrative, and program components; constituent or affiliate organizations or networks; and how the organizational structure offers the ability to provide capacity-building assistance.

b. Describe your organization's history with providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and providing other capacity-building assistance to CBOs serving Gay Men of Color populations and communities. Describe specific assistance or services provided.

c. Describe your organization's capability to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving Gay Men of Color populations. Include a description of the types of services provided and a list summarizing culturally, linguistically, and developmentally appropriate curricula and materials.

d. Describe your organization's capability in developing and implementing capacity-building programs, strategies, or activities (refer to recipient activities section), and in developing and implementing programs similar to the one proposed in this program announcement. If you are proposing to conduct more than two priority prevention interventions, demonstrate your capacity to implement both effectively.

e. Describe your organization's experience, if appropriate, working with a coalition(s) and in collaborating with governmental and non-governmental organizations, including national or regional agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services.

4. Assessing the Need for Community Capacity Development, and HIV Prevention Community Planning Effectiveness and Participation (not to exceed 5 pages).

a. Describe the demographics of the racial/ethnic minority populations you intend to serve. Describe the impact of the HIV and AIDS epidemic on these population(s) and any specific environmental, social, cultural, or linguistic characteristics which will be considered in your capacity-building strategy.

b. Describe the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for Gay Men of Color communities and CBOs serving Gay Men of Color populations in the region(s) you intend to serve. Describe the process for determining these needs, including where appropriate: the use of epidemiologic and other data, resource inventories, regional needs assessments, and the use of gap analyses.

c. Describe how your proposed program complements the HIV comprehensive plans in the region(s) you plan to serve.

5. Program Plan (not to exceed 20 pages).

Describe your proposed program, including:

a. Involvement of Local CBOs and Community HIV Prevention Stakeholders: Describe how CBOs and other community HIV prevention stakeholders within a region will be involved in providing input into the direction of the proposed program and in assessing the proposed program's communication, linkages, performance, and services provided throughout the project period.

b. Objectives: Provide specific, realistic, time-phased, and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the goals described in this announcement. Describe possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation: Describe the following:

(1) the strategies (in detail) that will be used, the activities that will be conducted, and the services that will be provided to meet the proposed goals and objectives and to complete all the required recipient activities (including the provision of services through the use of the "capacity-building assistance delivery mechanisms");

(2) the process for responding to requests for assistance in community capacity development; HIV prevention community planning participation and effectiveness; and other types of capacity-building assistance from CBOs and other HIV prevention stakeholders in the Gay Men of Color community. Include in your description how you will: (a) conduct needs assessments, (b) prioritize requests to place major emphasis on assistance to CBOs and other prevention stakeholders serving Gay Men of Color populations most heavily affected by HIV, (c) assign staff and consultants, (d) deliver services, (e) report on service delivery, and (f) conduct quality assurance;

(3) how your organization will ensure that assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally appropriate, linguistically-specific, educationally appropriate, and targeted to the needs of CBOs and other prevention stakeholders serving Gay Men of Color;

(4) how your organization will market program services;

(5) how the proposed program will be managed and staffed, including the fiscal, administrative, managerial, and personnel infrastructure and resources that will be used to support the proposed capacity-building program;

(6) the placement of the program within your organizational structure and the space that will be used to house the proposed program staff;

(7) the equipment and information management systems that could be used to maintain information related to this announcement; and

(8) the respective roles and responsibilities of your organization and those of each coalition member performing any of the proposed activities or functions.

d. **Coordination and Collaboration:** Describe how you will coordinate and collaborate with other national, regional, state, and local governmental and nongovernmental organizations and HIV prevention providers (see Addendum for examples of collaborating agencies).

e. **Time line:** Provide a time line that identifies major implementation phases and assigns approximate dates for inception and completion.

6. **Program Evaluation Plan** (not to exceed 5 pages). Describe your plan for monitoring progress to determine if the objectives are being achieved and demonstrating that the methods used to deliver the proposed capacity-building services are effective and efficient. At a minimum, the plan should (1) outline strategies for implementing process evaluation of capacity building activities to determine if the process objectives are being achieved, (2) outline strategies for outcome monitoring to determine if the services and methods used to deliver the services are effective and efficient, (3) describe what data will be collected and how this data will be collected, analyzed, and used to evaluate and improve the program, and (4) specify the persons responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

7. **Communication and Dissemination Plan** (not to exceed 2 pages).

Describe how you will share successful approaches and "lessons learned" with other organizations.

8. **Plan for Acquiring Additional Resources** (not to exceed 2 pages).

Describe how you will develop and implement a plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

9. **Budget/Staffing Breakdown and Justification** (not scored).

a. **Detailed Budget:** Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget

item and itemize calculations wherever appropriate.

For contracts and consultants, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

b. **Staffing Plan:** Provide a job description for each position specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project provide job descriptions.

10. **Training and Technical Assistance Plan** (not scored).

Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and discuss how you will obtain needed technical assistance. Also, describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe your plan for providing ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures. This information will assist CDC to better address your needs and help you to identify technical assistance and training providers.

11. **Attachments.**

a. **Proof of Eligibility:** Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A copy of the Internal Revenue Service's determination letter showing their approval of your 501(c)(3) status.

(2) Documentation that your organization has an established record of providing capacity-building services to the CBOs serving Gay Men of Color for at least two years, and a description of the specific services that have been provided.

(3) Section of Bylaws or Agency Charter that indicates organization's national or regional scope of work, if applying as a national or regional organization.

(4) A list and organizational chart of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(5) A list and an organizational chart of existing and proposed staff for this program, their race/ethnicity, their area of expertise, and relevant experience. Include resumes (not to exceed 2 pages per person).

b. **Other Attachments:**

(1) A list of all collaborating or coordinating entities and memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative or coordinating relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place.

(2) Description of coalition organizations and original signed letters from the chief executive officers of each organization assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

(3) A list summarizing services currently delivered and culturally, linguistically, and developmentally appropriate curricula and materials.

(4) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (a) the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (b) a summary of the objectives and activities of the funded program(s); and (c) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are

supported by other funding sources and the activities they are supporting.

(5) Independent audit statements from a certified public accountant for the previous 2 years.

(6) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

I. Evaluation Criteria—Category B—Capacity-Building Assistance Program

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract. (not scored)

2. Long-term Goals. (Total 5 points)

The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this program announcement.

3. Organizational History and Capacity. (Total 35 points)

The extent to which the applicant has demonstrated history and capacity to provide capacity-building assistance and to implement the proposed program.

These criteria include:

a. The extent to which the applicant's organizational structure (including planned collaborations or coalition) will support the proposed program activities. (5 points)

b. The extent to which the applicant demonstrates a history in providing assistance in community capacity development; HIV prevention community planning effectiveness and participation; and other capacity-building assistance to CBOs serving Gay Men of Color and to Gay Men of Color communities heavily affected by HIV and other STDs. (7 points)

c. The extent to which the applicant demonstrates capacity to provide services that respond effectively to the cultural, gender, environmental, social, and multilingual characteristics of CBOs serving Gay Men of Color and to Gay Men of Color Communities. (7 points)

d. The extent to which the applicant demonstrates capability in developing and implementing capacity-building programs, strategies or activities, and in developing and implementing programs similar to those proposed in this application. The extent to which the applicant demonstrates the capacity to effectively implement more than two of the priority prevention interventions, if applicable. (10 points)

e. The extent to which the applicant demonstrates experience and ability in working with coalitions (where appropriate) and in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and

local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services. (6 points)

4. Assessing the Need for Community Capacity Development and HIV Prevention Community Planning Effectiveness and Participation (Total 10 Points) The extent to which the applicant demonstrates an understanding of the need for community capacity development and HIV prevention community planning effectiveness and participation. These criteria include:

a. The extent to which the applicant describes the demographics of the racial/ethnic minority population to be served, the impact of the HIV and AIDS epidemic on this population, and any specific environmental, social, cultural, or linguistic characteristics which will be considered in the capacity-building strategy.

b. The extent to which the applicant describes the priority needs related to community capacity development and HIV prevention community planning effectiveness and participation for CBOs serving Gay Men of Color populations and communities in the region(s) to be served, and the process for determining these needs.

c. The extent to which the applicant describes how the proposed program complements the HIV comprehensive plans in the region(s) to be served.

5. Program Plan. (Total 35 points)

a. Involvement of CBOs. (5 points)

The extent to which CBOs and community HIV prevention stakeholders will be involved in providing input into the direction of the program and the program's communication, linkages, performance, and services provided throughout the project period.

b. Objectives. (5 points)

(1) The extent to which the proposed first-year objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed services; and

(2) The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

c. Plan of Operation. (15 points)

(1) The overall quality of the applicant's plan for providing capacity-building assistance in community capacity development and HIV prevention community planning effectiveness and participation to CBOs serving Gay Men of Color populations and communities, and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives.

(2) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

(3) The extent to which the roles and responsibilities of the primary applicant and each coalition member (where appropriate), collaborating organization, or subcontractor are consistent with the proposed activities.

d. Coordination and Collaboration. (5 points)

(1) The extent to which the applicant describes and documents, as applicable, intended coordination with national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments.

(2) The extent to which the applicant provides memoranda of agreement or understanding as evidence of agreed-upon collaborative relationships.

6. Time line. (5 points)

The extent to which the applicant's proposed time line is specific and realistic.

7. Program Evaluation Plan. (Total 5 points)

The quality of the applicant's evaluation plan for monitoring and evaluating the implementation of proposed services and measuring the achievement of program goals and objectives.

8. Communications and Dissemination Plan. (Total 5 points)

The quality of the applicant's plan for sharing successful approaches and "lessons learned" with other organizations.

9. Plan for Acquiring Additional Resources. (Total 5 points)

The quality of the applicant's plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

10. Budget/Staffing Breakdown and Justification. (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

11. Training and Technical Assistance Plan. (not scored)

The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program.

Before final award decisions are made, CDC may either make predecisional site visits to applicants whose applications are highly ranked or review the items below with the applicant's board of directors.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

J. Submission and Deadline—Categories A and B

Submit the original and two copies of PHS 5161 (OMB Number 0937-0189). Forms are available at the following Internet address: www.cdc.gov/* * * Forms, or in the application kit. On or before August 5, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date;

or

(b) Sent on or before the deadline date and received in time for submission to the Independent Review Group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

K. Other Requirements—Categories A and B

1. Technical Reporting Requirements. Provide CDC with the original plus two copies of:

a. Progress reports quarterly, no more than 30 days after the end of each 3 month period;

b. Financial status report, no more than 90 days after the end of each budget period; and

c. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 3 in the application kit.

AR-4 HIV/AIDS Confidentiality Provisions

AR-5 HIV Program Review Panel Requirements

AR-7 Executive Order 12372 Review

AR-8 Public Health system Reporting Requirements

AR-9 Paperwork Reduction Act Requirements

AR-10 Smoke-Free Workplace Requirements

AR-11 Health People 2000

AR-12 Lobbying Restrictions

AR-14 Accounting System Requirements

L. Authority and Catalog of Federal Domestic Assistance Number—Categories A and B

This program is authorized under Sections 301(a) and 317 of the Public Health Service Act, 42 U.S.C. 241(a) and 247(b), as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

M. Where To Obtain Additional Information—Categories A and B

To receive additional written information and to request an application and tool kit, call NPIN at 1-800-458-5231 (TTY users: 1-800-243-7012); visit their web site: www.cdcnpin.org/program; send requests by fax to 1-888-282-7681; or send requests by e-mail: application-gmc@cdcnpin.org. This information is also posted on the Division of HIV/AIDS Prevention (DHAP) Web site at http://www.cdc.gov/nchstp/hiv_aids/funding/toolkit/.

CDC maintains a Listserv (HIV-PREV) related to this program announcement. By subscribing to the HIV-PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to: listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

Pre-application Audio-conference Information: June 24 (2:30-4:00 p.m. EDT)—June 29 (2:30-4:00 p.m. EDT)

The telephone number for all calls is: 800-311-3437 and the pass code (when asked by the automated voice) is 990238 and the name of the audio-conference (Gay Men of Color).

Prospective applicants are strongly encouraged to participate in one of the scheduled audio-conferences. These audio conferences will include information on the application and business management requirements, and

how to access additional pre-application resources relevant to application development. Prospective applicants are strongly encouraged to read and become familiar with this program announcement before participating in the audio-conferences.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement [99091], Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Mailstop E-15, Atlanta, GA 30341-4146, Telephone (770) 488-2733; E-mail vxm7@cdc.gov.

For program technical assistance, contact: Dr. George Roberts or Mr. Samuel Taveras, Community Assistance, Planning, and National Partnerships Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E-58, Atlanta, GA 30333, Telephone number (404) 639-5280 and (404) 639-5240; Email syt2@cdc.gov or gwr2@cdc.gov.

See also the CDC home page on the Internet: <http://www.cdc.gov>

Dated: June 11, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-15372 Filed 6-21-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Year 2000 Systems Compliance Report to the Department of Health and Human Services.

OMB No: 0970-0191.

Description: Report the Year 2000 readiness of the State systems that support States' (Child Care, Child Support Enforcement, Child Welfare, and Temporary Assistance for Needy Families) programs CORE functions. For each program, identify the major functions must be operational for the program to operate successfully; provide the status of the State's effort to make the automated systems, which support the functions Year 2000 ready.

Respondents: States, District of Columbia, Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 2000	54	5	1	270

Estimated Total Annual Burden Hours: 270.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collectin of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: June 15, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99-15751 Filed 6-21-99; 8:45 am]

BILLING CODE 4184-01-M

notice is given that a food additive petition (FAP 9B4671) has been filed by BetzDearborn, 4636 Somerton Rd., Trevoese, PA 19053. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to expand the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 7, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-15797 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

petition (FAP 9B4675) has been filed by Cytec Industries, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 9, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-15798 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F-1879]

BetzDearborn; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BetzDearborn has filed a petition proposing that the food additive regulations be amended to expand the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial for use in food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))),

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F-1910]

Cytec Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cytec Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98M-0855, 98M-0722, 98M-0835, 98M-0856, 98M-0857, 98M-0897, 98M-0907, 98M-0972, 98M-0999, 99M-0034, 99M-0894, 99M-0237, 99M-0793]

Medical Devices; Availability of Summaries of Safety and Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval application (PMA) approvals. This list is intended to inform the public of the existence and the availability of summaries of safety and effectiveness of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the World Wide Web (WWW) at <http://www.fda.gov/cdrh/pmapage.html>. Copies of summaries of safety and effectiveness are also available by

submitting a written request to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 in the Supplementary Information section of this document, when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2186.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA

approvals and denials by posting them on FDA's home page on the Internet (<http://www.fda.gov>), by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act.

The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant: in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of all PMA applications for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure as explained previously through March 31, 1999. There were no denial actions during this period. The list provides the manufacturer's name, the generic name or the trade name, and the approval date.

TABLE 1.—LIST OF APPROVED PMA'S FROM SEPTEMBER 25, 1998 THROUGH DECEMBER 31, 1998

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P970026/98M-0722	Miriad Ultra Sound, Inc.	Sound Scan 2000 Sound Scan Compact Sound Scan Clinical Bone Sonometer	May 29, 1998
P970034/98M-0855	Ophthalmic Innovations International, Inc.	Ophthalmic Innovations International Modified C-Loop	September 25, 1998
P980017/98M-0835	Possis Medical, Inc.	Perma-Seal Dialysis Access Graft Model 2C20	September 25, 1998
P980018/98M-0857	DAKO A/S	DAKO Herceptest	September 25, 1998
P980025/98M-0856	Logicon RDA	Logicon Caries Detector	September 25, 1998
P960014/98M-0897	Global Therapeutics, Inc.	Magellan-C Percutaneous Transluminal Coronary Angioplasty (PTCA) Catheters Model C22020, C22520, C23020, & C23520	October 5, 1998
P980016/98M-0907	Medtronic, Inc.	Medtronic Gem Dr Model 7271 Dual Chamber Implantable Cardioverter Defibrillator System with Model 9960 (Gem Dr) Applicator	October 9, 1998
P980023/98M-0972	Biotronik, Inc	Phylax Implantable Cardioverter Defibrillator System	October 27, 1998
D970012/98M-0999	American Medical Systems, Inc.	AMS 700 Series Inflatable Penile Prosthesis Product Line; AMS700CX, AMS700CXM, AMS700CX Preconnect, AMS 700 Ultrex and AMS 700 Ultrex Plus	November 2, 1998
P980024/99M-0034	Vysis, Inc.	Path Vysion™; HER-2 DNA Probe Kit	December 11, 1998
P960025/99M-0894	Acromed Corp.	Brantigen I/F Cage® Used with VSP® Spine Plates and Pedicle Screws	February 2, 1999
P980006/99M-0237	Bausch & Lomb Inc.	Pure Vision™ Balafilcon A Visibility Tinted Contact Lens	February 5, 1999
P980041/99M-0793	Beckman Coulter, Inc.	Access AFP Reagents on the Access Immunoassay Analyzer	February 8, 1999

Dated: June 9, 1999.

Linda S. Kahan,

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

[FR Doc. 99-15755 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee, Ophthalmic Drugs Subcommittee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee, Ophthalmic Drugs Subcommittee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 21, 1999, 8:30 a.m. to 5 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting. Current information may also be accessed on the Internet at the FDA Website "www.FDA.GOV".

Agenda: The subcommittee will discuss new drug application (NDA) 21-023 (cyclosporine ophthalmic emulsion, 0.05%, Allergan, Inc.), for treatment of moderate to severe keratoconjunctivitis sicca.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by July 16, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those

desiring to make formal presentations should notify the contact person before July 16, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 16, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99-15752 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Public Availability of Information on Clinical Trials for Investigational Devices Intended to Treat Serious or Life-Threatening Conditions; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting concerning the public availability of information on clinical trials for investigational devices intended to treat serious or life-threatening conditions and the availability of this information in a publicly available data bank. This meeting is being held to assist the agency in preparing a report to Congress required under the FDA Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is inviting written comments and information that may assist FDA in this endeavor.

DATES: The meeting will be held on July 8, 1999, from 1:30 p.m. to 4:30 p.m.; registration will begin at 1 p.m.

ADDRESSES: The meeting will be held at 9200 Corporate Blvd., conference room 020B, Rockville, MD.

FOR FURTHER INFORMATION CONTACT:

Robert R. Gatling, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190, ext. 140, FAX 301-594-2977, or e-mail "rrg@cdrh.fda.gov".

Those persons interested in attending the meeting should fax or e-mail their registration including name, title, firm name, address, telephone, and fax number to Linda J. Lyons at 301-594-

1190, ext. 108 or by fax at 301-594-2977. There is no charge to attend this meeting, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Linda J. Lyons at least 7 days in advance. Comments at the meeting may be limited in time depending on the number of presenters. Presenters should contact Linda J. Lyons by July 5, 1999.

SUPPLEMENTARY INFORMATION: FDAMA (Pub. L. 105-115) was enacted on November 21, 1997. Section 113(a) of FDAMA amends section 402 of the Public Health Service Act (PHS Act) (42 U.S.C. 282) by adding a new section 402(j). This new section directs the Secretary of Health and Human Services (the Secretary), acting through the Director of the National Institutes of Health (NIH), to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions.

Section 113(b) of FDAMA (collaboration and report) directs the Secretary, the Director of NIH, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under new section 402(j) of the PHS Act. In addition, section 113(b) of FDAMA directs the Secretary to prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report on the following:

1. The public health need, if any, for inclusion of device investigations within the scope of the data bank under section 402(j) of the PHS Act;
2. The adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations is required to be publicly disclosed; and,
3. Such other issues relating to section 402(j) of the PHS Act as the Secretary determines to be appropriate.

Elsewhere in this issue of the **Federal Register**, FDA is inviting written comments and information that may assist FDA in preparing their report to Congress. Those questions should also be considered by those making presentations at the public meeting.

Dated: June 14, 1999.

Linda S. Kahan,

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

[FR Doc. 99-15758 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
Registration and Listing Grassroots Meeting for Medical Device Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Registration and Listing Grassroots Meeting for Medical Device Manufacturers. The topic to be discussed is FDA's intention to propose changes to the current medical device registration and listing process. This meeting is being conducted to provide a forum in which FDA can obtain industry views on changes to the device registration and listing system that FDA is currently considering. The changes being considered are aimed at streamlining the collection of registration and listing data, improving the accuracy and quality of the data in the system, and decreasing the time it takes manufacturers to register their establishments and list their devices, while ultimately reducing FDA's cost of maintaining the registration and listing system.

DATES: The meeting will be held on July 15, 1999, 8:30 a.m. to 12 m.; registration will begin at 8 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Minneapolis West (Calhoun Ballroom), 9970 Wayzata Blvd., St. Louis Park, MN, 612-593-1918, FAX 612-593-0150.

FOR FURTHER INFORMATION CONTACT: Bryan H. Benesch, Office of Health and Industry Programs (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-443-6597 ext. 131, e-mail "BHB@CDRH.FDA.GOV".

For registration information: Rhonda L. Mecl, Supervisory Investigator, Minneapolis District Office, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401-1912, FAX 612-334-4134.

Those persons interested in attending the meeting should fax their registration including name, title, firm name, address, telephone, and fax number. There is no charge to attend this meeting, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Rhonda L. Mecl at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Over the past one and a half years, FDA has reviewed the entire registration and listing process to determine if the process can be made more efficient and accurate. This was one of many reengineering efforts conducted by the Center for Devices and Radiological Health (CDRH). This reengineering effort has resulted in a number of suggestions aimed at improving the registration and listing process for both FDA and industry. This meeting will help FDA obtain the medical device industry perspective on the changes under consideration and suggestions for additional changes. FDA has held three meetings on the same subject on April 20 and 21, 1999, in California (64 FR 12813, March 15, 1999) and on May 25, 1999, in Rockville, MD (64 FR 20006, April 23, 1999).

Some of the changes that FDA is currently considering include the following:

(1) Require industry submission of registration and listing information through the World Wide Web (WEB).

What are the advantages and disadvantages to industry and how would industry be affected if WEB submissions were mandated?

(2) Require that owners and parent companies register and list and take responsibility for the registration and listing of their establishments. What is the highest level in a company that should be responsible for registration and listing and how should this level be defined/described?

(3) Require that additional data elements be submitted to FDA, e.g., premarket submission numbers for those devices that have gone through the premarket notification (510(k)), premarket approval, or product development protocol process.

(4) Because of the ease of submission through the WEB, require that firms register and list within 5 days (current requirement is 30 days) of entering into an operation that requires registration and listing.

A summary report of the meeting will be available on CDRH's Registration and Listing Process Reengineering Team website approximately 20 working days after the meeting. The CDRH Registration and Listing Process Reengineering Team home page may be accessed at "<http://www.fda.gov/cdrh/grassroots/reglist.htm>".

Dated: June 13, 1999.

Linda S. Kahan,

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

[FR Doc. 99-15756 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

[Docket No. 99D-1878]

"Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance (dated June 1999) entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)." The draft guidance is intended to provide recommendations for donor screening and supplemental testing for antibody to HCV, and notification of consignees and recipients of prior collections from a donor who later tests repeatedly reactive for antibody to HCV (including single antigen and multiantigen screening tests), notification of consignees and recipients of blood and blood components at increased risk for transmitting HCV. The draft guidance, when final, is intended to supersede the September 1998 guidance entitled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV."

DATES: Written comments on the draft guidance may be submitted at any time, however, comments should be submitted by August 23, 1999, to ensure their adequate consideration in preparation of the final document. Submit written comments on the

information collection provisions by August 23, 1999.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Test for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV)" to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the FAX Information System at 1-888-CBER-FAX or 301-827-3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

For technical/scientific questions, contact Robin M. Biswas, Center for Biologics Evaluation and Research (HFM-325), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-3011, or FAX 301-496-0338.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance (dated June 1999) entitled "Draft Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Prior Collections from Donors with Repeatedly Reactive Screening Test for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test

Results for Antibody to HCV (Anti-HCV)." The draft guidance is intended to provide recommendations for appropriate action when a repeat donor subsequently tests repeatedly reactive for HCV using either a single antigen or multiantigen screening test, commonly referred to as HCV "lookback." The draft guidance provides recommendations for the following: (1) Quarantine (and disposition of products) of prior collections from donors who later test repeatedly reactive for anti-HCV using either a single antigen or multiantigen screening test, (2) supplemental testing and notification of consignees and transfusion recipients, (3) procedures and recordkeeping, (4) review of records of donor testing for "historical" repeatedly reactive donations, and (5) additional testing of donors with no record of supplemental testing on the "historical" repeatedly reactive screening test or with an indeterminate recombinant immunoblot assay 2.0 test result.

On March 20, 1998 (63 FR 13675), FDA announced the availability of "Guidance for Industry: Supplemental Testing and the Notification of Consignees of Test Results for Antibody to Hepatitis C Virus (Anti-HCV)," (the March 1998 guidance). The March 1998 guidance superseded the recommendations related to HCV in FDA's July 19, 1996, guidance entitled: "Recommendations for Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis B Virus (HBV), Hepatitis C Virus (HCV) and Human T-Lymphotropic Virus Type I (HTLV-I)" (the July 1996 guidance). The March 1998 guidance did not, however, supersede the recommendations related to HTLV and HBV in the July 1996 guidance. (Note: The scope of the July 1996 guidance was limited to enzyme immunoassay (EIA) 2.0 and 3.0 screening performed since 1992.)

On June 18, 1998, at a public meeting of its Blood Products Advisory Committee (BPAC), FDA announced plans to respond to public comments submitted to the docket for the March 1998 guidance by issuance of a comprehensive guidance. At the BPAC meeting, FDA announced it was considering changes to the HCV "lookback" policy based on considerations which had been raised by public comments. FDA continued to receive extensive public comments to the docket which were evaluated carefully by CBER. Under the agency's good guidance practices, FDA issued a notice on September 8, 1998, to

withdraw the March 1998 guidance pending issuance of a second comprehensive guidance.

In September 1998, FDA finalized a guidance entitled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV" (the September 1998 guidance). The September 1998 guidance superseded the March 1998 guidance. FDA announced the availability of this document in the **Federal Register** of October 21, 1998 (63 FR 56198).

On January 28, 1999, the Public Health Service Advisory Committee on Blood Safety and Availability (The PHS Advisory Committee) met to consider whether to expand the targeted HCV "lookback" program to include recipients of blood from donors subsequently identified as repeatedly reactive by the single antigen EIA 1.0 screening test for HCV infection that was licensed in 1990. Approximately 80 percent of the EIA 1.0 repeatedly reactive donations occurred before the first supplemental test became available. The PHS Advisory Committee concluded that, for EIA 1.0 repeatedly reactive donations without supplemental testing, it would be reasonable to limit the "lookback" based on the signal to cutoff value of the screening test in cases where supplemental testing had not been done. The PHS Advisory Committee concluded that it would be optimal to perform HCV "lookback" on a subset of the donors testing repeatedly reactive on EIA 1.0 screening tests to capture the vast majority of the true positives and minimize the unnecessary false recipient notifications.

This draft guidance represents the agency's current thinking on the management of prior collections from donors testing repeatedly reactive at a later date using a single antigen or multiantigen screening test for antibody to HCV, including product quarantine, further testing of the donor, and notification of consignees and transfusion recipients. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not

intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

when appropriate, and other forms of information technology.

Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Hepatitis C Virus (HCV); (2) Supplemental Testing, and the Notification of Consignees and Transfusion Recipients of Donor Test Results for Antibody to HCV (Anti-HCV).

This draft guidance recommends that blood establishments prepare and follow written procedures when blood establishments have collected Whole Blood, blood components, Source Plasma, and Source Leukocytes later determined to be at risk for transmitting HCV infections. This draft guidance provides recommendations, similar to the requirements now in effect for HIV "lookback" (21 CFR 610.46 and 610.47 reported and approved under OMB Control No. 0910–0336), to clarify the status of the donor who later tests repeatedly reactive for HCV, to quarantine prior collections from such donors, and to notify consignees and transfusion recipients, as appropriate, based on further testing of the donor. The draft guidance recommends that when a donor who previously donated blood is tested in accordance with this draft guidance on a later donation, and tests repeatedly reactive for antibody to HCV, the blood establishment should perform an additional test using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma, and Source Leukocytes from prior collections so that appropriate action is taken. The draft guidance document recommends that blood establishments and consignees quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors, and if appropriate, consignees should notify transfusion recipients. In addition to these "lookback" recommendations, which are similar to the "lookback" requirements for HIV, this draft guidance recommends a retrospective review of testing records dating back indefinitely to the extent that electronic or other readily retrievable records are available, to identify collections from donors who had tested repeatedly reactive in the past, prior to the existence of guidance recommending "lookback" activities. However, the recommendations provide for the review of records to be limited to a lesser period of time, that is, 12 months

prior to the last negative licensed multiantigen screening test, whenever there is a record of such a prior test. The draft guidance recommends that blood establishments notify consignees of the risk of HCV transmission that exists for prior collections based on the retrospective review of records and the results of the additional testing performed before or as a result of the retrospective review of records. In addition, the draft guidance recommends that blood establishments notify consignees of the risk of HCV transmission that exists for prior collections from a donor who tested repeatedly reactive on a screening test for HCV and for whom the blood establishment has no record of further testing and the repeatedly reactive results cannot be clarified because further testing is impractical or infeasible. This draft guidance recommends that blood establishments maintain records of the source and disposition of all units of blood and blood products for at least 10 years from the date of disposition or 6 months after the latest product expiration date, whichever is the later date. Under 21 CFR 606.160 (reported and approved under OMB Control No. 0910–0116), such records are required to be retained for 5 years. FDA is recommending an extended records retention period because advances in medical diagnosis and therapy have created opportunities for disease prevention or treatment many years after recipient exposure to a donor later determined to be at increased risk for transfusion-transmitted disease. Additionally, methods of recordkeeping have advanced, improving the ability of blood establishments to more easily maintain and retrieve records. Also, this draft guidance recommends that any consignee of a blood establishment notify the transfusion recipients or their physicians of blood and blood components at increased risk for transmitting HCV. The agency is issuing this draft guidance to promote the continued safety of the blood supply, to help provide users with critical information about blood and blood components, and to promote notification to transfusion recipients who have received blood and blood components at risk for transmitting HCV so that recipients may receive medical counseling.

Respondents to this information collection are blood establishments (business and not-for-profit) and consignees of blood establishments, including hospitals, transfusion services, and physicians. The total

reporting and recordkeeping burden is estimated to be 723,508 hours. However, of this total, approximately 715,986 hours would be expended on a one-time basis for establishing the written procedures and doing the one-time retrospective review of records. Therefore, 8,242 hours is estimated as the ongoing annual burden related to this draft guidance. The total ongoing prospective annual burden for blood establishments is estimated to be 2,880 hours. The prospective annual burden for consignees of blood establishments is estimated to be 5,362 hours.

Based on the June 1998 registration records, there are approximately 2,800 FDA registered blood collection facilities in the United States that collect approximately 27 million units of whole blood and source plasma annually of which, based on the Centers for Disease Control and Prevention (CDC) estimates, there are approximately 9,750,000 donations from repeat donors per year. Based on the prevalence of HCV among donors from 1996 to 1998, CDC estimates that 7,200 of those repeat donors per year would test repeatedly reactive for HCV. For each of these donors, the recommendations in this draft guidance call for blood establishments to notify the consignee (transfusion service) two times, once for quarantine purposes and again with additional test results for a total of 14,400 notifications as an annual ongoing burden. Based on estimates from CDC, FDA expects that for the one-time review of records, as many as 1,117,000 blood products would be at increased risk for transmitting HCV. For each of these products, blood establishments would notify consignees to quarantine these products, report additional test results to consignees, and consignees would notify recipients or recipients' attending physicians. In March 1999, CDC estimated that there

could be approximately 566,000 recipients that should be notified after a retrospective review of donor records between May 1990 and June 1998. FDA estimates that a total of 2,234,000 notifications, 1,117,000 affected blood products times 2 notifications, would result from the retrospective review. The total annual responses for blood establishments is estimated to be the combined number of notifications, prospective and retrospective, or 2,248,400. FDA estimates the amount of time for each notification of a consignee by a blood establishment will be approximately 6 minutes (0.1 hours). Consequently, the total estimated reporting burden hours for blood establishments is 224,840 hours. However, the ongoing annual burden not associated with the retrospective review would be 1,440 hours, 14,400 prospective notifications times 0.1 hour per notification.

CDC expects that approximately 2,232 repeat donors who have repeatedly reactive HCV screening test results will confirm positive for HCV each year. Based on CDC's research and information, a donor who confirms positive for HCV will have donated on the average only two previous times and on the average two components will have been made from each donation. Based on this information, there could be 8,936 transfusion recipients that should be notified per year. The total notifications by consignees is estimated to be 574,936 annually, 566,000 recipients notified due to the retrospective review plus 8,936 recipients due to the prospective review. The time estimated for consignees to make a notification is 30 minutes or 0.5 hours on average. This time allows for the possibility of a consignee having to make up to 3 attempts to complete the notification process and creates a total reporting

burden of 287,468 hours. According to the Health Care Financing Administration, there are approximately 6,200 consignees that should be responsible for notification.

In Table 2 of this document, the 40 hours per blood establishment recordkeeper represents the time to develop written procedures for the HCV "lookback" recommendations and to update an estimated 4 HCV repeat reactive records as an ongoing annual burden. FDA estimates that it takes approximately 5 minutes to update each record. Therefore, the total recordkeeping by blood establishments is estimated to be 112,000 hours 2,800 registered blood establishments times 40 hours per establishment. FDA estimates that each consignee recordkeeper would need 16 hours to develop written procedures for the HCV "lookback" notification process and to update approximately 1 to 2 transfusion recipient records. FDA estimates that it takes approximately 5 minutes to update each record. Therefore, the total recordkeeping burden for consignees is estimated to be 99,200 hours. The combined total recordkeeping burden for both blood establishments and consignees is estimated to be 211,200 hours. However, based on the prospective number of repeat donors per year and the number that confirm positive for HCV, the ongoing annual recordkeeping burden may only be 2,334 hours. Over time, we expect the ongoing annual recordkeeping burden to decline as the prevalence of HCV among donors has declined due to the implementation of screening tests for anti-HCV, which helps to reduce the number of persons infected with HCV from the donor pool.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

Collection Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Blood Establishments	2,800	803	2,248,400	0.1	224,840
Consignees	6,200	93	574,936	0.5	287,468
Total					512,308

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

Collection Activity	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
Blood Establishments	2,800	5	10,000	40	112,000
Consignees	6,200	2.5	15,136	16	99,200
Total					211,200

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

Maintenance costs were not estimated for the additional maintenance of records beyond the current 5 years to the recommended 10 years because modern storage technology has markedly reduced the space needed to store records.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this draft guidance to OMB for review. Interested persons may submit comments regarding this information collection by August 23, 1999, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

IV. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: June 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99-15754 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N-1737]

Public Availability of Information on Clinical Trials for Investigational Devices Intended to Treat Serious or Life-Threatening Conditions; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Devices and Radiological Health, is requesting comments concerning the feasibility of including information for device investigations for serious or life-threatening diseases and conditions in a

public data bank. This action is being taken to assist the agency in preparing a report to Congress required under the FDA Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is announcing an open public meeting on this subject.

DATES: Written comments by August 23, 1999.

ADDRESSES: Written comments concerning this document must be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert R. Gatling, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190, ext. 140 or e-mail "rrg@cdrh.fda.gov".

SUPPLEMENTARY INFORMATION: FDAMA (Pub. L. 105-115) was enacted on November 21, 1997. Section 113(a) of FDAMA amends section 402 of the Public Health Service Act (PHS Act) (42 U.S.C. 282) by adding a new section 402(j). This new section directs the Secretary of Health and Human Services (the Secretary), acting through the Director of the National Institutes of Health (NIH), to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions.

Section 113(b) of FDAMA (collaboration and report) directs the Secretary, the Director of NIH, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under new section 402(j) of the PHS Act. In addition, section 113(b) of FDAMA directs the Secretary to prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report on the following:

1. The public health need, if any, for inclusion of device investigations within the scope of the data bank under section 402(j) of the PHS Act;

2. The adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations is required to be publicly disclosed; and,

3. Such other issues relating to section 402(j) of the PHS Act as the Secretary determines to be appropriate.

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) permits the investigational use of devices by experts qualified by scientific training and experience to investigate the safety and effectiveness of such devices. Part 812 (21 CFR part 812) contains the implementing regulations for section 520(g) of the act. In accordance with part 812 and the agency's public information regulations, FDA generally will not disclose the existence of an investigational device exemptions (IDE) application unless its existence has previously been publicly disclosed or acknowledged, until FDA approves an application for premarket approval (PMA) for the device, or until a notice of completion of a product development protocol (PDP) for the device has become effective. The establishment of a data bank intended to contain publicly available information about certain IDE's would require changes in these implementing regulations. Section 113(b) of FDAMA requires the Secretary to evaluate whether public disclosure of IDE information would adversely impact device innovation and research.

The provisions of section 113 of FDAMA apply to drugs for "serious or life-threatening diseases and conditions." Any consideration of inclusion of device trials within the scope of the data bank requires a definition of what types of devices would be covered. FDA does not currently have a definition for "serious" or "life-threatening," as those terms would apply to devices.

In the **Federal Register** of September 18, 1997 (62 FR 48940), FDA published a final rule for treatment use of an investigational device. The rule added § 812.36 (21 CFR 812.36). In the preamble to the final rule, FDA explained that it did not define "serious disease or condition" because the agency concluded that defining the term

could be unduly restrictive and limit the agency's discretion when determining whether certain stages of a disease or condition are "serious." Instead, § 812.36(a) applies the treatment IDE rule to "immediately life-threatening" diseases, and defines that as a stage of a disease in which there is a reasonable likelihood that death would occur within a matter of months or in which premature death is likely without early treatment.

This definition could be used to help define the category of device trials that could be included in a clinical trials data bank. The clinical trials data bank could contain a list of clinical trials, whether Federally or privately funded, of investigational devices for serious or life-threatening diseases, a description of the investigational device, eligibility criteria for patients, the location of clinical trials sites, and a point of contact for those wanting to enroll in the trial. In evaluating the public health need for a device trials data bank and the effects a mandatory public data bank would have on innovation and research, FDA is currently assuming the devices that would fall within the scope of the provision are those intended to treat such "immediately life-threatening" situations, but FDA invites public comment on this issue.

FDA is in the process of consulting with NIH on the feasibility of adding device trials to the data bank. In addition, through this notice, FDA is soliciting comments and information that will help the agency draft its report to Congress under section 113(b) of FDAMA. In particular, FDA seeks input in response to the following questions:

1. Is there a public health need for inclusion of device investigations within the scope of the data bank under 402(j) of the PHS Act?

2. If there is a public health need, what category of device trials should be made publicly available and how should this category be defined? FDA's treatment IDE regulation applies only to devices for which no comparable or satisfactory alternative exists. Should a data bank for IDE's be similarly restricted? Should the trials that become part of the data bank include feasibility/pilot trials or only studies that are intended to demonstrate reasonable assurance of safety and effectiveness?

3. Investigational device trials have historically been smaller in numbers of subjects and numbers of investigational sites than investigational drug trials. What impact, both positive and negative, would the release of information have on these device trials, the sponsors, the investigators, the investigational sites, and the patients?

Will a public data bank create pressures to increase the size of device trials or number of sites in situations where such expansion may increase risk to patients?

4. IDE information is generally protected from public disclosure under FDA regulations. If public disclosure were voluntary, would disclosure by one sponsor put pressure on sponsors of similar investigations to disclose the existence of their studies against their better judgment? Is this in the interest of the public health?

5. If disclosure is mandatory, is it likely to hamper innovations and investment in research and development? Would disclosure of these investigational device trials help or hinder research by increasing patient enrollment?

6. Because sponsors can recover some of the costs of the device research and development under the investigational device regulations, should FDA be concerned that publicly available information concerning investigational device trials will result in undue financial pressure or incentives on the trial sponsors to add subjects to the trials without appropriate consideration of risk? Should FDA be concerned about the possibility that improper promotion and commercialization will occur as a result of a public data bank for IDE trials?

7. Will public disclosure of information about device trials for products to treat serious or life-threatening diseases or conditions affect reimbursement policies of third party payers?

8. What other important information or issues should the agency consider?

FDA is planning a public meeting to give interested parties a chance to present their views on the feasibility, utility, and effects of a data bank for device trials. Information regarding the date and place of this meeting is published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 23, 1999 Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1999.

Linda S. Kahan,

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

[FR Doc. 99-15757 Filed 6-21-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-1081-2N]

Medicare Program; Cancellation of the June 24, 1999, Meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City Metropolitan Area

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

ACTION: Notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of the June 24, 1999, meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City metropolitan area.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4-14-17, Baltimore, MD 21244-1850, (410) 786-6451 (for information about the CPAC).

Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426-5233 (for information about the Kansas City metropolitan area AAC).

SUPPLEMENTARY INFORMATION: This notice announces the cancellation of the June 24, 1999, meeting of the Competitive Pricing Advisory Committee and the Area Advisory Committee for the Kansas City metropolitan area. The meeting will be rescheduled and announced in a subsequent **Federal Register** notice. (Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105-33 (42 U.S.C. 1395w-23 note) and section 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, section 10(a))

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

Dated: June 17, 1999.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

[FR Doc. 99-15986 Filed 6-18-99; 1:45 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority Office of Communications and Operations Support

Part F of the Statement of Organization, Functions, and Delegations of Authority; for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 62, No. 129, pp. 36294-36295, dated Monday, July 7, 1997, is amended to reflect a reorganization in the Office of Communications and Operations Support.

The specific change will transfer the Audit Liaison Staff from the Office of Financial Management to the Office of Communications and Operations Support to ensure timely resolution of all audit findings and recommendations.

The specific amendments to part F are described below:

Section F.10.A.5., Health Care Financing Administration, is amended by the creation of a new Division of Audit Liaison in the Office of Communications and Operations Support, Operations Support Group, and adding the function of this new Division to the Office functional statement. The existing functional statement is superseded by the following revision:

Office of Communications and Operations Support (FAL)

- Serves a neutral broker coordination role, including scheduling meetings and briefings for the Administrator and coordinating communications between and among central and regional office, in order to ensure that emerging issues are identified early, all concerned components are directly and fully involved in policy development/decision making and that all points of view are presented.

- Coordinates and monitors assigned Agency initiatives which are generally tactical, short-term and cross-component in nature (e.g., legislative implementation).

- Provides operational and analytical support to the Executive Council.

- Manages speaking and meeting requests for or on behalf of the Administrator and Deputy Administrator and researches and writes speeches.

- Coordinates agency-wide communication policies to insure that messages for external audiences appropriately incorporate Agency themes.

- Coordinates the preparation of manuals and other policy instructions to insure accurate and consistent implementation of the Agency's programs.

- Manages the Agency's system for developing, clearing and tracking regulations, setting regulation priorities and corresponding work agendas; coordinates the review of regulations received for concurrence from departmental and other government agencies and develops routine and special reports on the Agency's regulatory activities.

- Manages the Agency-wide clearance system to insure appropriate involvement from Agency components and serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary.

- Operates the agency-wide correspondence tracking and control system and provides guidance and technical assistance on standards for content of correspondence and memoranda.

- Formulates strategies to advance overall communications goals and coordinates the design and publication process in electronic and other media for HCFA electronic information, publications and reports to ensure consistency with other information.

- Provides management and administrative support to the Office of the Attorney Advisor and staff.

- Acts as audit liaison with the General Accounting Office (GAO) and the HHS Office of Inspector General (OIG).

The function of this newly-created Division was deleted from the functional statement of the Office of Financial Management.

Dated: May 28, 1999.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

[FR Doc. 99-15806 Filed 6-21-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request to reinstate the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;
2. The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: State Water Research Institute Program.

Current OMB approval number: 1028-0044.

Abstract: Respondents supply information on eligibility for Federal grants to support water-related research and provide performance reports on accomplishments achieved through use of such funds. This information allows the agency to determine compliance with the objectives and criteria of the grant program.

Bureau form number: None.

Frequemcy: Annually.

Description of respondents: State water research institutes.

Annual Responses: 108.

Annual burden hours: 5,832.

Bureau clearance officer: John E. Cordyack, Jr., 703-648-7313.

John E. Schefter,

Chief, Office of External Research.

[FR Doc. 99-15783 Filed 6-21-99; 8:45 am]

BILLING CODE 4310-Y7-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-910-0777-26-262F]

Notice of Relocation/Change of Address/Office Closure; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that on July 19, 1999, the Bureau of Land Management's (BLM) Billings Field Office and the Billings Curation Center will collocate with the (BLM) Montana State Office and move to a new facility.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Brooks, Field Manager, 406-238-1540, BLM Billings Field Office, 810 East Main Street, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: On July 19, 1999, the BLM Billings Field Office will relocate to 5001 Southgate Drive, Billings, Montana 59101. The following business practices will be in effect from July 19 through August 1, 1999:

(A) The office will be closed during the period of July 19 through August 1, 1999. There will be no over-the-counter transactions or phone business during this interim period. The official records (i.e., case files, maps, plats, etc.) will not be available for public inspection. Emergency calls may be directed to 406-255-2888.

(B) The mailing address will change. Effective July 19, 1999, all correspondence should be sent to the following address: P.O. Box 36800, Billings, Montana 59107-6800.

(C) The telephone number will change. Effective August 2, 1999, the new phone number will be: 406-896-5013.

(D) We will resume a full service business on August 2, 1999, at 5001 Southgate Drive, Billings, Montana 59101.

Dated: June 15, 1999.

Sandra Brooks,

Field Manager.

[FR Doc. 99-15772 Filed 6-21-99; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-63256]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec. 28
NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

Containing 2.5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

An easement 40 feet in width along Washington Avenue in favor of the City of Las Vegas for roads, public utilities and flood control purposes. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act,

leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 2, 1999.

Sharon DiPinto,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99-15608 Filed 6-21-99; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. OR-050-1430-00; GP9-0197]

Notice of Intent To Amend Land Use Plan and Notice Of Realty Action: Classification for Direct Sale Of Public Land in Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to amend Resource Management Plan to permit direct sale to Deschutes County.

SUMMARY: In accordance with 43 CFR 1610.2 and 1610.3 the Bureau of Land

Management (BLM) in the State of Oregon, Prineville District, intends to analyze an amendment to the Brothers/La Pine Resource Management Plan (RMP). The purpose of the amendment is to make available for direct sale the following public lands in Deschutes County, Oregon, under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2760, 43 U.S.C. 1713), at not less than the estimated fair market value:

Williamette Meridian

T. 22 S., R. 10 E.,
Tract 38.

Containing 518.8 acres, more or less

The RMP amendment would facilitate the completion of a land sale that is a key component in a program developed by Deschutes County to protect groundwater. The need by the county to acquire this parcel was identified during the Regional Problem Solving Project, which is a State or Oregon sponsored process to evaluate community problems stemming from unregulated development prior to the implementation of state land use planning laws. The Secretary of the Interior may make this parcel available for sale pursuant to Section 7 of the *Oregon Public Lands Transfer and Protection Act of 1998*.

The patent, if issued, may contain certain reservations to the United States and will be subject to valid and existing rights. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of mineral interests.

SUPPLEMENTARY INFORMATION: The Brothers/La Pine RMP (1989) assigns all lands administered by the Prineville District to one of three Land Tenure Zones. Those lands in Zone 1 are identified for retention and may not be transferred out of Federal ownership. While those in Zone 2 may be considered for exchange and those in Zone 3 may be considered for sale or exchange. The regulations at 43 CFR 2711.1-1(a) require that no parcel of public land may be offered for sale until it has been specifically identified in an approved land use plan (i.e. assigned to Land Tenure Zone 3). The parcel proposed for sale is Land Tenure Zone 2, but would be assigned to Land Tenure Zone 3 by this amendment.

The plan amendment and proposed sale will be analyzed in an environmental assessment. The sale is pending until the appropriate environmental analyses and public and interagency reviews are completed.

The plan amendment is anticipated for completion in the summer of 1999.

A 45 day comment period will be provided to allow for additional public involvement. The comment period will be announced through the local media. The need for a public meeting will be evaluated based on the level of public input as a result of public notification procedures. Any public meeting will be announced at least 15 days in advance.

ADDRESSES: Detailed information concerning the plan amendment and the direct sale of public lands is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, 97754.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, pending disposition of this action. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the classification or proposed sale of the lands to the District Manager, Prineville District Office, P.O. Box 550, Prineville, Oregon 97754. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factors not directly related to the suitability of the land for a sale.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: June 9, 1999.

Donald L. Smith,

Assistant District Manager.

[FR Doc. 99-15784 Filed 6-21-99; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

National Park Service

**National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 12, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded

to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 7, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Greene County

Carpenter, Capt. Nathan, House, 2.5 mi. SE of Clinton, Eutlaw vicinity, 99000793

ARKANSAS

Benton County

Sulphur Springs Park Reserve, AR 59, Sulphur Springs, 99000791

Sebastian County

Ayers, William, House, 820 N. 12th St., Fort Smith, 99000792

COLORADO

Denver County

Hover, W.A., and Company Building, 1390 Lawrence St., Denver, 99000794

FLORIDA

Lee County

Bonita Springs School (Lee County MPS), 10701 Dean St., Bonita Springs, 99000800
English, J. Colin, School (Lee County MPS), 120 Pine Island Rd., North Fort Myers, 99000798

Fort Myers Beach School (Lee County MPS), 2751 Oak St., Fort Myers Beach, 99000796
Sanibel Colored School (Lee County MPS), 520 Tarpon Bay Rd., Sanibel, 99000797
Tice Grammer School (Lee County MPS), 4524 Tice St., Tice, 99000799

Palm Beach County

Grandview Heights Historic District, Roughly bounded by Park Pl., Alabama Ave., M St., and S. Lake Ave., West Palm Beach, 99000795

Mango Promenade Historic District, Roughly bounded by S. Dixie Hwy., Austin Ln., Coconut Ln., and Cranesnest Way, West Palm Beach, 99000801

Pinellas County

Mount Olive African Methodist Episcopal Church, 600 Jones St., Clearwater, 99000802

GEORGIA

Harris County

Duke, Welcome P., Log House, 312 Duke Rd., Hamilton vicinity, 99000803

IDAHO

Power County

American Falls Archeological District, Address Restricted, vicinity, 99000804

MASSACHUSETTS

Middlesex County

Old Chestnut Hill Historic District (Boundary Increase), (Newton MRA), Suffolk Rd., Newton, 99000805

MINNESOTA**Winona County**

Winona City Hall, (Federal Relief Construction in Minnesota MPS), 207 Lafayette St., Winona, 99000806

NEW YORK**Delaware County**

Old School Baptist Church of Halcottsville, Old NY 30, Halcottsville, 99000809

Rockland County

Old Sloatsburg Cemetery, Richards Rd., Sloatsburg, 99000807

Ulster County

Guilford—Bower Farm House, Albany Post Rd., New Paltz vicinity, 99000810
Hasbrouck, Maj. Jacob, Jr. House, 193 Huguenot St., New Paltz, 99000808

NORTH CAROLINA**Duplin County**

Boney, W. Stokes, House, (Duplin County MPS), 651 E. Southerland St., Wallace, 99000812

Moore County

Black, J.C., House, 106 McNeill St., Carthage, 99000811

Rutherford County

Cool Springs High School, 382 W. Main St., Forest City, 99000813

PENNSYLVANIA**Philadelphia County**

Germantown Junction Station, 2900 N. Broad St., Philadelphia, 92000940

SOUTH CAROLINA**Bamberg County**

American Telephone and Telegraph Company Building, 124 N. Palmetto Ave., Denmark, 99000815

Hampton County

Pineland, The, The Pineland Lane, Off US 321, Garnett vicinity, 99000814

York County

Clover Downtown Historic District, Jct. of Main and Kings Mountain Sts., Clover, 99000816

WISCONSIN**Brown County**

Broadway—Walnut Historic District, 100 N and part of 100 S Block Broadway; 100 N Block Pearl St., 400 Block W. Walnut St., Green Bay, 99000817

Dunn County

Upper Wakanda Park Mound Group, Address Restricted, Menomonie vicinity, 99000818

Monroe County

Walczak—Wontor Quarry Pit Workshop, Address Restricted, Cataract vicinity, 99000819

[FR Doc. 99-15838 Filed 6-21-99; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 98-7]

Michael J. Pine, D.D.S.; Denial of Application

On October 22, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Michael J. Pine, D.D.S. (Respondent) of Roseburg, Oregon, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f) and 824(a)(1) and (a)(4) for reason that his registration would be inconsistent with the public interest.

Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. Following prehearing procedures, a hearing was held on April 2, 1998, in Eugene, Oregon. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument.

On November 27, 1998, while the matter was still pending before Judge Randall, counsel for the Government filed a Motion to Reopen Record and for Summary Disposition, alleging that Respondent is currently without authority to handle controlled substances in the State of Oregon. The motion was supported by a copy of the Consent Order for Revocation of License entered into by Respondent with the Oregon Board of Dentistry dated June 26, 1998. The Government argued that DEA cannot issue Respondent a registration since Respondent is without state authorization to handle controlled substances. Although Respondent was given the opportunity to file a response to the Government's motion, no such response was filed.

Thereafter, on December 29, 1998, Judge Randall issued her Opinion and Recommended Decision, finding that based upon the evidence before her, Respondent lacks authorization to handle controlled substances in the State of Oregon and therefore he is not entitled to a DEA registration in that state; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for registration be denied. Neither party filed exceptions to her opinion, and on February 5, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety,

and pursuant to 21 CFR 1416.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that by a Consent Order for Revocation of License dated June 26, 1998, the Oregon Board of Dentistry ordered the immediate revocation of Respondent's license to practice dentistry. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice dentistry in Oregon, the state where he has applied to be registered with DEA. The Deputy Administrator further finds that it is reasonable to infer that since Respondent is not authorized to practice dentistry in Oregon, he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here, it is clear that Respondent is not licensed to handle controlled substances in Oregon. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Oregon. See *Dong Ha Chung, M.D.*, 63 FR 11,694 (1998); *Jesus R. Juarez, M.D.*, 62 FR 14,945 (1997).

Since DEA does not have the statutory authority to issue Respondent a DEA registration because he is not currently authorized to handle controlled substances in Oregon, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's application for registration should be denied based upon the grounds alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823

and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Michael J. Pine, D.D.S. on June 5, 1995, be, and it hereby is, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,
Deputy Administrator.

[FR Doc. 99-15748 Filed 6-21-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98-15]

Saihb S. Halil, M.D.; Revocation of Registration; Denial of Request for Modification

On November 6, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Saihb S. Halil, M.D. (Respondent) of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AH1993749, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that his California medical license was revoked effective May 3, 1995, and he is therefore not currently authorized to handle controlled substances in that state. Following subsequent communication between Respondent and DEA, Respondent submitted a letter to DEA dated January 29, 1998, requesting that his DEA Certificate of Registration be modified to reflect a Puerto Rico address. On February 20, 1998, DEA issued an Amended Order to Show Cause to Respondent proposing to revoke his DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1) and (a)(3), and to deny his request to modify his registration and to deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

By letter dated March 2, 1998, Respondent timely filed a request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California on July 1, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. On November 19, 1998, Judge

Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked and that his request for modification and any pending applications for renewal be denied. Neither party filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on January 6, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the findings of fact and conclusions of law of the Administrative Law Judge, and adopts Judge Randall's recommended ruling with one exception. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent was issued DEA Certificate of Registration AH1993749 on March 18, 1983.

Effective July 10, 1995, the Medical Board of California (Board) revoked Respondent's license to practice medicine based upon his patient care in 1987 and 1988. The Board concluded that Respondent's license should be revoked (1) "For gross negligence in his treatment of [3 named patients];" (2) "for repeated acts of negligence in his treatment of [3 named patients];" (3) "for acts and omissions which constitute incompetence in his treatment of [2 named patients];" (4) "for dishonest and corrupt acts in his dealings with [1 named patient];" and (5) "for sexual misconduct with [1 named patient]." Further the Board adopted the state administrative Law Judge's finding that Respondent had been "untruthful in his depositions in 1990, and he [had been] untruthful at trial in 1994."

In October 1995, Respondent submitted a renewal application for his DEA Certificate of Registration listing a California address. On this application, Respondent listed the license number for his revoked California medical license in response to the question regarding the status of his state licensure. Further, Respondent answered "No" in response to the question on the application (hereinafter referred to as the liability question") which asks in relevant part: "Has the applicant ever * * * had a State professional license or controlled

substance registration revoked, suspended denied, restricted or placed on probation, or is any such action pending against the applicant?" At the hearing in this matter, Respondent testified that he had not personally completed this renewal application nor had he signed it.

On November 6, 1996, DEA issued the first Order to Show Cause to Respondent. By letter dated November 22, 1996, Respondent informed DEA that he currently was practicing medicine in Puerto Rico, and requested information concerning what other action he should take in response to the Order to Show Cause. DEA did not reply to Respondent's letter until December 30, 1997. DEA informed Respondent that he needed to request a modification of his DEA registration to reflect his Puerto Rico address. By letter dated January 29, 1998, Respondent requested modification of his DEA Certificate of Registration to reflect a Puerto Rico address.

At the hearing in this matter, Respondent admitted that he lacked in-depth knowledge of the applicable DEA regulations. He further testified that although he has pursued extensive medical training while in Puerto Rico, the training did not include classes concerning the handling of controlled substances.

The Government contends that Respondent's DEA Certificate of Registration must be revoked since he is no longer authorized to practice medicine or handle controlled substances in California, and state authorization is a necessary prerequisite to DEA registration. Further the Government contends that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied based upon Respondent's material falsification of his October 1995 renewal application.

Respondent asserts that his request for modification of his DEA Certificate of Registration should be granted because he did not materially falsify his renewal application; the Government failed to prove that modification of his registration would be inconsistent with the public interest; and the Government is estopped from taking adverse action based upon its failure to process his application in a timely manner. Respondent further asserts that if his request for modification is granted to reflect a Puerto Rico address, then the Government no longer has a basis for revoking his DEA registration.

As to Respondent's estoppel argument, the Deputy Administrator agrees with Judge Randall that "[t]he chronology of agency action in this case

is troubling * * *. Respondent submitted a timely reply to the initial Order to Show Cause requesting further guidance; however the Government did not respond for 13 months.

But, DEA has previously held that:

[P]rinciples of equitable estoppel cannot be applied to deprive the public of the protection of a statute because of the mistaken action, or lack of action, on the part of public officials * * *. Generally, a governmental unit is not estopped when functioning in a governmental capacity.

James Dell Potter, M.D., 49 FR 9970 (1994) (alteration and omission in original).

The Deputy Administrator agrees with Judge Randall's conclusion that "[a]lthough worthy of consideration and concern, such lack of timeliness does not overcome the public interest in this case. Equitable estoppel does not operate under these circumstances to preclude the DEA from protecting the public health and safety." Therefore, the Deputy Administrator must determine whether Respondent's registration should be revoked and his request for modification denied in light of the facts of this case and the relevant law.

Initially, the Deputy Administrator notes that DEA does not have the statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to handle controlled substances by the state in which he or she practices. See 802(21), 823(f), and 824(a)(3). DEA has consistently held that a practitioner may not maintain a DEA registration when the practitioner lacks authority to handle controlled substances in the state in which he or she practices. See, e.g., Charles Milton Waller, D.D.S., 62 FR 34,310 (1997); Suzanne Kirkwood King, M.D., 62 FR 33,680 (1997); *Anne Lazar Thorn, M.D.*, 62 FR 12,847 (1997).

The Deputy Administrator finds that it is undisputed that Respondent is not currently authorized to practice medicine in the State of California, where he is registered with DEA. Therefore, it is reasonable to infer that he is also not authorized to handle controlled substances in that state. As a result, Respondent is not entitled to maintain a DEA registration in that state.

However, Respondent has sought to modify his DEA registration to an address in Puerto Rico where he is authorized to handle controlled substances. Pursuant to 21 CFR 1301.51, requests for modification "shall be handled in the same manner as an application for registration."

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of

Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

The Deputy Administrator agrees with Judge Randall that factors one and five are relevant in this case in determining the public interest. As to factor one, it is undisputed that Respondent's California medical license was revoked in July 1995. However, Respondent is currently licensed to practice medicine and handle controlled substances in the Commonwealth of Puerto Rico.

The Government argues that Respondent's material falsification of his DEA renewal application should be considered under factor five in determining whether Respondent's continued registration is inconsistent with the public interest. Answers to liability questions are considered material, because DEA relies upon such answers to determine whether an investigation is needed prior to granting the application. See Ezzat E. Majd Pour, M.D., 55 FR 47,547 (1990). DEA has consistently held that the test for determining whether an applicant has materially falsified an application for registration is whether the applicant knew or should have known that the information he provided on the application was false. See Herbert J. Robinson, M.D., 59 FR 6304 (1994); Bobby Watts, M.D. 58 FR 46,995 (1993).

Respondent's California medical license was revoked in July 1995, yet he indicated in his October 1995 renewal application that no action had been taken against his state license. Respondent knew or should have known, at the time that his renewal

application was submitted, that his answer to the liability question was false.

As Judge Randall noted, "[a]lthough the Respondent testified that he had not personally completed the renewal application, such an assertion does not relieve him of the responsibility of assuring the truthfulness of information submitted to the DEA on his behalf." The Deputy Administrator agrees with Judge Randall that the Government has presented a prima facie case of material falsification.

The Deputy Administrator also agrees with Judge Randall that Respondent's admission of a lack of in-depth knowledge of controlled substance regulations is relevant under factor five. Registrants must be familiar with the regulations relating to controlled substances to ensure that controlled substances are properly handled and not diverted for illicit purposes.

Judge Randall concluded that Respondent's registration should be revoked based upon his lack of state authorization to handle controlled substances, and that his request for modification of his registration should be denied based upon his material falsification of his renewal application and his admitted lack of knowledge of controlled substance regulations. But Judge Randall further stated that:

given the extraordinary lapse of time since the Respondent's unacceptable medical practices in 1987 and 1988, should the Respondent (1) Apply for a new registration with a truthful application, disclosing his complete license history, and (2) submit evidence of recent training in the handling of controlled substances, then I would recommend that the Deputy Administrator consider granting such an application.

The Deputy Administrator agrees that Respondent's request for modification of his DEA registration to reflect a Puerto Rico address should be denied as inconsistent with the public interest. Respondent was responsible for the material falsification of his renewal application. In addition, his admitted lack of knowledge concerning the proper handling of controlled substances is troubling to the Deputy Administrator. As a result, the Deputy Administrator is not convinced that Respondent can be trusted to responsibly handle controlled substances.

The Deputy Administrator further concludes that since Respondent's request for modification is denied, Respondent is left with his DEA registration in California. Respondent cannot maintain his DEA registration in California based upon his lack of authorization to handle controlled

substances in that state. As a result, his DEA Certificate of Registration must be revoked.

Therefore, the Deputy Administrator agrees with Judge Randall that Respondent's registration must be revoked and his request for modification denied. But, the Deputy Administrator declines to indicate under what circumstances DEA would consider granting any future applications. Any such applications will be considered in light of the facts and circumstances that exist at that time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AH1993749, issued to Saihb S. Halil, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Halil's request to modify his registration, and any pending applications for renewal of his registration, be, and they hereby are, denied. This order is effective July 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-15750 Filed 6-21-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ahmed A. Shohayeb, M.D.; Denial of Applications

On January 28, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed A. Shohayeb, M.D. of California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS4243591 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration and two pending applications, executed on August 20, 1996, and September 11, 1996, for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Shohayeb that should no request for a hearing be filed within 30 days, his hearing right should be deemed waived.

The Order to Show Cause was sent to Dr. Shohayeb by registered mail to his DEA registered address and to the

addresses listed on his two applications for registration, but were returned to DEA unclaimed. A DEA investigator attempted to contact Dr. Shohayeb by telephone, but all telephone numbers listed for Dr. Shohayeb were disconnected. On February 27, 1998, the investigator went to the address listed on Dr. Shohayeb's driver's license and confirmed that Dr. Shohayeb lived at that address, however he was unable to talk to Dr. Shohayeb at that time. The investigator left a copy of the Order to Show Cause under the door.

No request for a hearing or any other reply was received by the DEA from Dr. Shohayeb or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Shohayeb is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that there are indications in the file that Dr. Shohayeb's DEA Certificate of Registration BS4243591, expired on February 28, 1998, and that no renewal applications have been filed for this registration. Therefore the Deputy Administrator concludes that as of February 28, 1998, this registration was no longer valid, and as a result, there is noting to revoke. *See Ronald J. Reigel, D.V.M.*, 63 FR 67,132 (1998). However, there are two pending applications for registration that must be addressed.

The Deputy Administrator finds that effective May 23, 1997, the Medical Board of California (Board) revoked Respondent's license to practice medicine. The Board found that Dr. Shohayeb engaged in sexual misconduct with a patient; he engaged in acts of gross negligence; he advertised his practice of medicine using a name which was not his own or one which was approved by the Board; and he engaged in unprofessional conduct.

The Deputy Administrator finds that Dr. Shohayeb is not currently licensed to practice medicine in the State of California and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he

conducts his business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Shohayeb is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the applications, executed on August 20, 1996 and September 11, 1996 by Ahmed A. Shohayeb, M.D., for registration as a practitioner, be, and they hereby are, denied. This order is effective June 22, 1999.

Dated: June 14, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99-15749 Filed 6-21-99; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for employment authorization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 28, 1999 at 64 FR 4471, allowing for an emergency OMB review and approval and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 22, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the

Office of Management and Budget, Office of Information and Regulatory Affairs, Attention : Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530, 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-765, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information contained in this form will be used by the INS to determine eligibility for work authorization and for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,244,722 responses at 3 hours and 25 minutes (3.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,251,970 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 16, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99-15760 Filed 6-21-99; 8:45 am]

BILLING CODE 4410-10-M

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 "Classification of Women Offenders" 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 classification systems to develop classification instruments and procedures that are valid and appropriate for women offenders. The project will entail an assessment of the current status of classification of women offenders nationally by determining which state systems have initiated the development of classification instruments and operational procedures to address the requirements of this offender population.

Assistance will be provided under this cooperative agreement to at least three agencies requesting technical

assistance in assessing current practices and operational procedures and the impact of their classification systems on women offenders. The recipient of the cooperative agreement will conduct onsite assessments of the classification systems at participating agencies; provide assistance and oversight in revising the instruments and procedures, as necessary; and provide technical assistance and training. Prison systems selected for participation will have the resources necessary to make enhancements, to provide data for analysis, and the capacity to measure outcomes and impact of the classification systems implemented. A steering committee will be appointed by each agency to coordinate activities related to the project. No funds are transferred to state or local governments.

Background: It is assumed that because women offenders represent a small percentage of the total inmate population, and present a lower level of institutional and public risk, many correctional agencies have not addressed the gender-specific and validation concerns related to differences in risks and program needs of women offenders. An evaluation of the procedures and instrument for intake assessment, initial classification and reclassification is required to determine if the objective classification criteria developed for an offender population which is predominately male results in over-classification and inadequate service delivery with the female population.

Classification systems should to be monitored and periodically evaluated to ensure the system is working as designed. Classification systems should also be validated on both the male and female offender population to determine what impact the system has on inmate operations and assessing risks and needs. This cooperative agreement will concentrate on the female population.

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 NIC 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 to plan and evaluate their classification systems to address the

gender-specific issues; develop classification instruments that are valid and appropriate for women offenders to assess risks and needs; guide the agencies in the development of a plan for implementation of changes that may result from this work; and develop detailed reports on each state project and the national assessment. It is anticipated that subject to satisfactory completion of the first phase of work, the recipient of the FY 1999 cooperative agreement will be awarded the cooperative agreement for the continuation of work through a second year in FY 2000, to assist additional correctional agencies and produce a publication.

Authority: Public Law 93-415.

Funds Available: The award will be limited to a maximum total of \$100,000 (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 received by 4:00 p.m. on Friday, July 30, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, D.C. 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, 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 consists of a copy of this announcement and copies of the required forms, 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. Application forms 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, individual, or team with expertise in both prison classification and women offender issues.

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 Application Number: 99P03. 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. 99-15787 Filed 6-21-99; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted

by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The cite following "FR Notice:" refers to the issue of the **Federal Register** where MSHA published the notice that the petitioner was seeking a modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703-235-1910.

Dated: June 16, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M-98-011-C.

FR Notice: 63 FR 11697.

Petitioner: FKZ Coal, Inc.

Regulation Affected: 30 CFR 75.1100-2.

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions.

Docket No.: M-98-022-C.

FR Notice: 63 FR 18232.

Petitioner: Consolidation Coal Company.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to use a spring-loaded metal locking device instead of padlocks for securing battery-charging plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars considered acceptable alternative method. Granted for the Rend Lake Mine with conditions.

Docket No.: M-98-028-C.

FR Notice: 63 FR 29034.

Petitioner: Lodestar Energy.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to use 750 feet of No. 6 cable on Fletcher single boom roof bolters considered acceptable alternative method. Granted for the Baker Mine with conditions.

Docket No.: M-98-030-C.

FR Notice: 63 FR 29034.

Petitioner: Lone Mountain Processing, Inc.

Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system in belt entries considered acceptable alternative method. Granted for the Darby Fork No. 1 and Huff Creek Mine No. 1 with conditions.

Docket No.: M-98-031-C.

FR Notice: 63 FR 29034.

Petitioner: Freeman United Coal Mining Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use 2,400 volt A.C. cables and equipment in by the last open crosscut within 150 feet of gob areas so that they can be used to power continuous mining equipment considered acceptable alternative method. Granted for the Crown II Mine with conditions.

Docket No.: M-98-032-C.

FR Notice: 63 FR 29034.

Petitioner: Mettiki Coal Corporation.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use 4,300 volt cables on high-voltage longwall electric equipment used within 150 feet from pillar workings (longwall gob) considered acceptable alternative method. Granted for the Mettiki Mine with conditions.

Docket No.: M-98-035-C.

FR Notice: 63 FR 29034.

Petitioner: Lone Mountain Processing, Inc.

Regulation Affected: 30 CFR 75.1103-4.

Summary of Findings: Petitioner's proposal to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system considered acceptable alternative method. Granted for the Darby Fork Mine No. 1 with conditions.

Docket No.: M-98-037-C.

FR Notice: 63 FR 29035.

Petitioner: CONSOL of Kentucky, Inc.

Regulation Affected: 30 CFR 75.1101-8.

Summary of Findings: Petitioner's proposal to use a single line of automatic sprinklers for its fire protection system on the main and secondary belt conveyors at the Motts Branch Mine considered acceptable alternative method. Granted for the Motts Branch Mine with conditions.

Docket No.: M-98-044-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.335.

Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings to use; a design criteria in the 10 psi range; and to install the water trap in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M-98-045-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.360.

Summary of Findings: Petitioner's proposal to visually examine each seal for physical damage from the slope gunboat during the pre-shift examination after an air quality reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M-98-046-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month considered acceptable alternative method. Granted for the Mine No. 3 Vein Slope Mine with conditions.

Docket No.: M-98-048-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.1100-2.

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage is not practical considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M-98-049-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.1200.

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine with conditions.

Docket No.: M-98-050-C.

FR Notice: 63 FR 41598.

Petitioner: Joliett Coal Company.

Regulation Affected: 30 CFR 75.1202-1.

Summary of Findings: Petitioner's proposal to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 3 Vein Slope Mine.

Docket No.: M-98-051-C.

FR Notice: 63 FR 41598.

Petitioner: Webster County Coal Corporation.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to establish two continuous monitoring stations to continuously monitor for methane and oxygen; to have an audible alarm signal at a surface location where a responsible person would be on duty at all times while miners are underground, and to train this person in the proper procedures for handling the monitoring system if immediate action is necessary in the event of an emergency or malfunction; to have a certified person check the monitoring stations weekly for air quantity and direction; and to have the results of the check recorded in a book that would be maintained on the surface considered acceptable alternative method. Granted for the Dotiki Mine with conditions.

Docket No.: M-98-053-C.

FR Notice: 63 FR 44291.

Petitioner: Primrose Coal Company.

Regulation Affected: 30 CFR 75.1400.

Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary safety rope connection in place of such devices considered acceptable alternative method. Granted for the Buck Mountain Vein Slope Mine with conditions.

Docket No.: M-98-058-C.

FR Notice: 63 FR 44291.

Petitioner: Rustler Coal Company.

Regulation Affected: 30 CFR 75.1405.

Summary of Findings: Petitioner's proposal to use bar and pin, or link and pin couplers on underground haulage equipment considered acceptable alternative method. Granted for the Archard Slope Mine with conditions.

Docket No.: M-98-059-C.

FR Notice: 63 FR 44291.

Petitioner: CONSOL of Kentucky, Inc.

Regulation Affected: 30 CFR 75.1101-8.

Summary of Findings: Petitioner's proposal to use a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Big Springs No. 1 Mine, and to have the automatic sprinklers located not more than 10 feet apart so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted for the Big Springs No. 17 Mine with conditions.

Docket No.: M-98-068-C.

FR Notice: 63 FR 45865.

Petitioner: Jewell Smokeless Coal Corporation.

Regulation Affected: 30 CFR 77.214.

Summary of Findings: Petitioner's proposal to construct a refuse bench fill in an area containing abandoned mine openings considered acceptable alternative method. Granted for the Dominion Mine No. 25 with conditions.

Docket No.: M-98-071-C.

FR Notice: 63 FR 45866.

Petitioner: Mettiki Coal Corporation.

Regulation Affected: 30 CFR 75.804.

Summary of Findings: Petitioner's proposal to use specially designed high-voltage cables for longwall mining equipment, and to use cables that would be MSHA accepted as flame-resistant and used only for high-voltage longwall equipment; and to train miners performing electrical maintenance on high-voltage cables on the longwall to safely install, splice, and repair the specially designed high-voltage cables considered acceptable alternative method. Granted for the Mettiki Mine with conditions.

Docket No.: M-98-072-C.

FR Notice: 63 FR 45866.

Petitioner: Independence Coal Company, Inc.

Regulation Affected: 30 CFR 75.1700.

Summary of Findings: Petitioner's proposal to plug oil and gas wells using specific procedures outlined in the petition for modification considered acceptable alternative method. Granted for the Justice No. 1 Mine with conditions.

Docket No.: M-98-075-C.

FR Notice: 63 FR 48765.

Petitioner: The Kedco, Inc.

Regulation Affected: 30 CFR 75.503 (18.41(f)).

Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors with a threaded ring and a spring loaded device on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load considered acceptable alternative

method. Granted for the No. 2 Mine with conditions.

Docket No.: M-98-079-C.

FR Notice: 63 FR 50603.

Petitioner: Independence Coal Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to use high-voltage longwall mining equipment and that the nominal voltage of the longwall power circuit(s) would not exceed 4,160 volts considered acceptable alternative method. Granted for the Justice No. 1 Mine with conditions.

Docket No.: M-98-083-C.

FR Notice: 63 FR 58430.

Petitioner: Long Branch Coal.

Regulation Affected: 30 CFR 75.503.

Summary of Findings: Petitioner's proposal to use a threaded ring and a spring loaded device on battery plug connectors on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load considered acceptable alternative method. Granted for Mine No. 23 with conditions.

Docket No.: M-97-049-C.

FR Notice: 62 FR 29371.

Petitioner: Island Creek Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to monitor the water level by a float and if the water level goes away indicating a problem with the seal below water, a set of contacts will close sounding an alarm in the mine-wide monitoring system on the surface; to check the water level each production day; to establish two check points to monitor the affected area; to maintain these check points in a safe condition; to have a certified person test these check points on a weekly basis for methane and the quantity of air; and to have the person making the tests place his/her initials, date, and time in a record book kept on the surface and made available for inspection by interested persons considered acceptable alternative method. Granted for the Ohio No. 11 Mine with conditions for continuous monitoring using intrinsically safe sensors installed as part of the mines AMS and weekly evaluation for methane and oxygen content of the air ventilating the flooded mine seals No. 1 (Old Supply Slope) and No. 2 (Old Belt Slope).

Docket No.: M-97-092-C.

FR Notice: 62 FR 46379.

Petitioner: Peabody Coal Company.

Regulation Affected: 30 CFR 75.364.

Summary of Findings: Petitioner's proposal to monitor methane and oxygen concentrations and the volume

of air at the locations and frequency specified in the petition; to have trained and certified persons conduct the monitoring; and to record the results of the monitoring in a book to be maintained on the surface of the mine considered acceptable alternative method. Granted for the Camp No. 11 Mine with conditions.

Docket No.: M-97-128-C.

FR Notice: 63 FR 2698.

Petitioner: Jim Walter Resources, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M-85-045-C is granted. The Assistant Secretary had granted a modification of 30 C.F.R. 75.1002. The amendment states that where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. Granted for the No. 5 Mine with conditions.

Docket No.: M-97-129-C.

FR Notice: 63 FR 2698.

Petitioner: Jim Walter Resources, Inc.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M-97-129-C is granted. The Assistant Secretary had granted a modification of 30 CFR 75.1002. The amendment states that where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. Granted for the No. 7 Mine with conditions.

Docket No.: M-97-148-C.

FR Notice: 63 FR 5972.

Petitioner: Mountain Coal Company.

Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M-95-183-C is granted. The Assistant Secretary had granted a modification of 30 CFR 75.1002. The petitioner requests that stipulation No. 4 be revised to remove the reference to permissible equipment and to clarify that only the non-permissible equipment being used for purposes of the petition be inspected weekly since the petition is to allow the use of non-permissible equipment for testing and diagnostics purposes within 150 feet of pillar workings considered acceptable alternative method. Granted for the No. 7 Mine with conditions.

Docket No.: M-94-166-C.

FR Notice: 59 FR 67735.

Petitioner: Energy West Mining Company.

Regulation Affected: 30 CFR 75.350.

Summary of Findings: Petitioner request amendments of specific terms and conditions addressing the use of an early warning fire detection system two entry longwall mining systems ventilated with belt air considered acceptable alternative method. Amended for the Trail Mountain Mine with conditions.

Docket No.: M-98-002-M.

FR Notice: 63 FR 41599.

Petitioner: Chemical Lime Company.

Regulation Affected: 30 CFR 56.6306.

Summary of Findings: Petitioner's proposal to load explosives to within one hole of the hole being drilled during the drilling cycle of overburden removal considered acceptable alternative method. Granted for the O'Neal Quarry Mine with conditions.

Docket No.: M-98-004-M.

FR Notice: 63 FR 45866.

Petitioner: Hecla Mining Company.

Regulation Affected: 30 CFR 49.8(b).

Summary of Findings: Petitioner's proposal to conduct 5 10 hour training sessions annually with a minimum of 12 1/2 hours spent under oxygen considered acceptable alternative method. Granted for the Rosebud Mine with conditions.

Docket No.: M-95-017-M.

FR Notice: 61 FR 8307.

Petitioner: Swenson Granite Company, Inc.

Regulation Affected: 30 CFR 56.19003.

Summary of Findings: Petitioner's proposal to amend the Decision and Order Granting Petition for Modification No. M-95-17-M is granted. The Assistant Secretary had granted a modification of 30 C.F.R. 56.19003. The petitioner requests that stipulation No. 4 be revised to be in agreement with revised condition No. 2. Granted for the Gray Quarry Mine with conditions.

Docket No.: M-94-042-M.

FR Notice: 59 FR 55298.

Petitioner: Specialty Minerals, Inc.

Regulation Affected: 30 CFR 56.13020.

Summary of Findings: Petitioner's proposal to establish blow-off stations at various locations in the plant where employees can clean their cloths with forced or compassed air that has an OSHA approved nozzle with pressure not greater than 2 to 6 psi at normal average line pressure considered acceptable alternative method. Granted for the Marble Canyon Mine with conditions.

[FR Doc. 99-15874 Filed 6-21-99; 8:45 am]

BILLING CODE 1510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99-089]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that The Jemison Group, of Houston, Texas, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,694,939, entitled "Autogenic-Feedback Training Exercise Method and System," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Ames Research Center, Mail Stop 202A-3, Moffett Field, CA 94035-1000, telephone (650) 604-5104.

Dated: June 14, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99-15872 Filed 6-21-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 29, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7053A—Brief of Accident: Scenic Airlines Cessna 208B, N12022, Montrose, Colorado, October 8, 1997, operated by the Department of Interior (DOI) and Safety Recommendation to the Federal Aviation Administration (FAA), the DOI, the General Services Administration (GSA) and the National Association of State Aviation Officials (NASAO).

7170—Railroad Accident Summary Report: Derailment of a CSX Freight Train and Subsequent Hazardous Material Release at Cox Landing, West Virginia, June 20, 1998.

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314-6220 by Friday, June 25, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314-6065.

Dated: June 18, 1999.

Rhonda Underwood,

Federal Registration Liaison Officer.

[FR Doc. 99-16025 Filed 6-18-99; 2:49 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[50-387 and 50-388]

PP&L, Inc.; Susquehanna Steam Electric Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. NPF-14 and NPF-22, respectively, issued to PP&L, Inc., (the licensee), for operation of the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the federally observed full participation emergency exercise from November 1999, to October 2000.

The proposed action is in accordance with the licensee's application for an exemption dated January 29, 1999.

The Need for the Proposed Action

Title 10 of the *Code of Federal Regulation*, (10 CFR) Part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the Nuclear Regulatory Commission for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, state and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and

offsite emergency plan in November 1999, which is at the end of the 2-year required interval. Due to Federal agencies scheduling conflicts, the licensee found that its planned November 1999, exercise must now be shifted to October 2000, which is beyond the required 2-year interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 6, 1999, the staff consulted with the Pennsylvania State official, Mr. Stan Maingi of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments. In addition, by letter dated March 11, 1999, from Ms. Vanessa

Quinn, the Federal Emergency Management Agency indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 29, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 14th day of June 1999.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-15658 Filed 6-21-99; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25-7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 25-7, Marital Status Certification, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on

valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1000 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before August 23, 1999.

ADDRESSES: Send or deliver comments to—Victor J. Roy, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2336, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:

Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99-15799 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Information Collection: RI 38-45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. RI 38-45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38-45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 22, 1999.

ADDRESSES: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 99-15800 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

**OFFICE OF PERSONNEL
MANAGEMENT**

**Submission for OMB Review;
Comment Request for Review of an
Information Collection: RI 78-11**

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. RI 78-11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B Medicare.

Approximately 100 RI 78-11 forms are completed annually. Each form requires approximately 10 minutes to complete for an annual estimated burden of 17 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 22, 1999.

ADDRESS: Send or deliver comments to—

Dennis A. Matteotti, Acting Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 99-15801 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

**OFFICE OF PERSONNEL
MANAGEMENT**

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Karen Jacobs, Acting Director, Staffing Reinvention Office, Employment Service (202) 606-0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 7, 1999 (64 FR 24684). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1, 1999, and April 30, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during April 1999.

Schedule B

No Schedule B authorities were established or revoked during April 1999.

Schedule C

The following Schedule C authorities were established during April 1999:

Department of Agriculture

Staff Assistant to the Confidential Assistant to the Secretary of Agriculture. Effective April 1, 1999.

Staff Assistant to the Chief, Natural Resources Conservation Service. Effective April 2, 1999.

Department of the Army (DOD)

Secretary (Office Automation) to the General Counsel of the Army. Effective April 12, 1999.

Department of Commerce

Senior Advisor to the Director, Office of Business Liaison. Effective April 8, 1999.

Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective April 12, 1999.

Department of Defense

Staff Specialist to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective April 9, 1999.

Department of Education

Special Assistant to the Director, Office of Bilingual Education and Minority Languages and Affairs. Effective April 8, 1999.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 8, 1999.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective April 8, 1999.

Confidential Assistant to the Secretary's Regional Representative, San Francisco. Effective April 9, 1999.

Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective April 13, 1999.

Special Assistant to the Assistant Secretary, Office of Post Secondary Education. Effective April 19, 1999.

Confidential Assistant to the Senior Advisor to Secretary on Education Reform. Effective April 26, 1999.

Department of Energy

Special Assistant to the Assistant Secretary for Policy and International Affairs. Effective April 1, 1999.

Department of Health and Human Services

Confidential Assistant to the Deputy Assistant Secretary for Health. Effective April 22, 1999.

Department of Housing and Urban Development

Special Assistant to the Secretary's Representative. Effective April 12, 1999.
Advisor for Management Reform and Operations to the Assistant Secretary for Administration. Effective April 13, 1999.

Senior Advisor to the Assistant Secretary for Community Planning and Development. Effective April 19, 1999.

Special Assistant to the Secretary's Representative, New England. Effective April 21, 1999.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective April 22, 1999.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective April 28, 1999.

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective April 30, 1999.

Department of the Interior

Special Assistant to the Director, Office of Surface Mining. Effective April 8, 1999.

Special Assistant to the Director, Minerals Management Service. Effective April 22, 1999.

Department of Labor

Special Assistant to the Director, Women's Bureau. Effective April 28, 1999.

Department of State

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary, Department Spokesman, Bureau of Public Affairs. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 1, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective April 9, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary. Effective April 15, 1999.

Federal Communications Commission

Special Assistant for Policy and Communication to the Chief, Office of Public Affairs. Effective April 16, 1999.

General Services Administration

Special Assistant to the Regional Administrator, National Capital Region. Effective April 19, 1999.

National Aeronautics and Space Administration

Writer-Editor to the Associate Administrator for Public Affairs. Effective April 2, 1999.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective April 8, 1999.

Senior Public Affairs Officer to the Associate Director for Communications. Effective April 30, 1999.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative for Congressional Relations to the Deputy U.S. Trade Representative. Effective April 27, 1999.

Securities and Exchange Commission

Special Assistant to the Director, Office of Investor Education and Assistance. Effective April 13, 1999.

Small Business Administration

Special Assistant to the Associate Deputy Administrator for Management. Effective April 26, 1999.

Social Security Administration

Confidential Assistant to the Commissioner of Social Security. Effective April 6, 1999.

Special Assistant to the Chief of Staff. Effective April 21, 1999.

United States Information Agency

Special Assistant for Public Diplomacy to the Associate Director, Bureau of Information. Effective April 2, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director, Office of Personnel Management.

[FR Doc. 99-15803 Filed 6-21-99; 8:45 am]

BILLING CODE 6325-01-P

RAILROAD RETIREMENT BOARD**Proposed Collection; Comment Request**

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Pension Plan Reports: OMB 3220-0089.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25-29 years of railroad service. In addition to 25 years of service, a "current connection" with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) the current status of railroad employer pension plans and whether such an employer pension plan causes a reduction to the supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the railroad employer pension is based on a collective bargaining agreement, (d) whether or not the employee made contributions to the pension; and (e) whether the employer pension plan continues when the employer status under the RRA changes.

The RRB currently utilizes Form(s) G-88p (Employer's Supplemental Pension Report), G-88r (Request for Information

About New or Revised Pension Plan), and G-88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from

railroad employers. One response is requested of each respondent. Completion is mandatory. Minor non-burden impacting changes are being proposed to all of the forms in the collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (Min)	Burden (Hrs)
G-88p	2,200	8	293
G-88r	25	10	4
G-88r.1	15	10	3
Total	2,240	300

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.
Chuck Mierzwa,
Clearance Officer.
 [FR Doc. 99-15782 Filed 6-21-99; 8:45 am]
BILLING CODE 7905-01-M

a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 12, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto Senior Counsel, at (202) 942-0527, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act, and currently consists of seven series (the "Funds"). The Adviser, a wholly-owned subsidiary of J.P. Morgan & Co. Incorporated, is registered under the Investment Advisers Act of 1940, and serves as the investment adviser to the Funds.

2. Applicants request relief to permit the Funds to satisfy redemption requests made by shareholders who are "affiliated persons" of the Funds solely by reason of owning, controlling or holding with the power to vote, five

percent or more of a Fund's shares ("Covered Shareholders") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.¹

3. Each Fund's prospectus provides that redemption request generally will be paid in cash, but that the Fund reserves the right to pay redemption requests greater than \$250,000 in whole or in part in-kind. The board of trustees of the Trust, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Non-Interested Trustees"), have determined that it would be in the best interest of the Funds and their shareholders to pay to a Covered Shareholder the redemption price for shares of the Funds in-kind to the extent permitted by certain Funds' election to be governed by rule 18f-1 under the Act.

Applicants' Legal Analysis

Section 17(a)(2) of the Act, in relevant part, makes it unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to knowingly "purchase" from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines "affiliated person" to include any person owning 5% or more of the outstanding voting securities of such

¹ Applicants request that the relief also extend to all future registered open-end management investment companies and their series for which the Adviser or any person controlling, controlled by, or under common control with the Adviser serves as investment adviser. All registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. Any existing or future registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions contained in the application.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23872; 812-10636]

J.P. Morgan Series Trust and J.P. Investment Management Inc.; Notice of Application

June 16, 1999.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an exemption under sections 6(c) and 17(b) the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

Summary of Application: Applicants seek an order to permit redemptions in-kind of shares of certain registered open-end management investment companies by certain affiliated shareholders.

Applicants: J.P. Morgan Series Trust (the "Trust") and J.P. Morgan Investment Management Inc. (the "Adviser").

Filing Dates: The application was filed on April 28, 1997, and amended on March 29, 1999 and May 20, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the affected Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from the provisions of section 17(a) of the Act to permit Covered Shareholders to redeem their shares in-kind from the Funds. The requested order will not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the requested relief satisfies the requirements of sections 6(c) and 17(b). Applicants assert that neither an affected Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standard and that the in-kind redemptions are consistent with the investment policies of the Funds. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Covered Shareholder would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Covered Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding: (a) securities which could not be publicly offered or sold in the United States without registration under the Securities Act of 1933; (b) certain portfolio positions (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with an institutional counterparty to the transaction; (c) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); (d) other assets which are not readily distributable (including receivables and prepaid expenses); and (e) portfolio securities representing fractional shares, odd lot securities and accruals on such securities. Cash will be paid for the portion of the in-kind distribution represented by assets set forth in (a)-(e) less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered Shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Trust's Board, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its prospectus. In addition, the Board will make and approve such changes in the procedures as it deems necessary for monitoring the Fund's compliance with the terms and conditions of this application.

5. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of each such

redemption setting forth the identity of the Covered Shareholder, a description of each security distributed in-kind, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-15847 Filed 6-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41526; File No. SR-CHX-99-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

June 15, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 10, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 28, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,⁴ which render the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Kathleen M. Boege ("Boege"), Associate General Counsel, Exchange to Joseph Morra ("Morra"), Attorney, Division of Market Regulation ("Division"), SEC, dated May 26, 1999 ("Amendment No. 1"). Amendment No. 1 corrected Section II(C) of the proposal, to acknowledge that the Exchange solicited input from firms that serve as CHX specialists for Nasdaq issues that are traded on the CHX pursuant to unlisted trading privileges, and that there was unanimous consent to the proposal by those firms. Amendment No. 1 was filed on May 28, 1999, following several interchanges between Division staff and Exchange staff. The Commission processed Amendment No. 1 on the same day. Consequently, the proposal is deemed to have been filed as of May 28, 1999.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ The filing date of this proposed rule change is May 28, 1999. *see supra* footnote 3.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule,

Technical Equipment (per month)

effective with the May billing statements. The text of the proposed change is below. Additions are in italics; deletions are in brackets.

(e) Equipment/*Technology*/Space Charges

* * * * *

Membership Dues and Fees

* * * * *

Four Screen Rich Units	\$250.00
Three Screen Rich Units	\$208.35
Two Screen Rich Units	\$166.65
Max Floor Broker Terminals	\$37.95
Floor Broker Printer	\$49.95
Specialist Back Post MAX Terminals	\$37.95
<i>OTC/UTP Equipment</i>	
<i>Pentium 450 PC</i>	\$100.00
<i>Two 21" CRTs</i>	\$110.00
<i>Two 15" flat-panel monitors</i>	\$140.00
<i>Two 18" flat-panel monitors</i>	\$250.00
[Specialist] Printer (<i>Listed or OTC/UTP Specialist</i>)	\$49.95

Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.

Tools of the Trade Access

Server and Network Infrastructure Charges

Tools of the Trade and Nasdaq Connection Charges

All Server and Network Infrastructure Charges and all Tools of the Trade and Nasdaq Connection Charges (i.e., the costs of providing access to and use of the Exchange's Nasdaq and Tools of the Trade servers to facilitate OTC/UTP trading) shall be located pro rata on a monthly basis among all specialist firms engaged in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm.

(b) Not applicable.
(c) Not applicable.

* * * * *

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 rule change is to amend the Exchange's schedule of membership dues and fees to pass on to Exchange specialists engaged in trading certain securities on an over-the-counter basis pursuant to unlisted trading privileges (collectively, the "OTC/UTP" specialists) those costs associated with providing new technology and dedicated equipment to the Exchange's OTC/UTP community.

The CHX maintains that due to the recent explosive growth in OTC/UTP trading at the Exchange and the corresponding increase in related technological demands, the Exchange has had to augment its existing CHX computer equipment and network infrastructure, solely to accommodate the Exchange's OTC/UTP specialists. Because the rapid expansion of the OTC/UTP program has necessitated, and will continue to demand, significant expenditures of the Exchange's capital and personnel resources, the Exchange's Finance Committee has determined that the Exchange should not continue to absorb all of the costs incurred by the Exchange in connection with the OTC/UTP program. Accordingly, the Exchange proposes to commence rebilling OTC/UTP specialists for these costs.

The CHX rules expressly authorize the Exchange to "* * * fix and impose other charges or fees to be paid to the Exchange by members and member organizations * * * for the use of equipment or facilities * * *."⁶ Proceeding under this authority, Exchange management developed a proposed fee schedule, identifying the costs that will be passed on to OTC/UTP specialists. The proposed fee schedule

was discussed with specialist firms that will be affected thereby; none of these firms (nor any individual co-specialist) opposed the Exchange's proposal. In light of this consensus, the CHX Finance Committee approved the proposed amendment at its April 13, 1999 meeting and the CHX Board of Governors concurred at its April 15, 1999 meeting.

As reflected in the proposed text set forth above, the costs that the Exchange seeks to pass on to OTC/UTP co-specialists consist of three principal categories. Each category is comprised of costs that are incurred by the Exchange solely on account of the OTC/UTP program. Accordingly, the Exchange believes that it is appropriate to limit pass-through of these costs to OTC/UTP co-specialists on a pro rata basis. The first category, "Server and Network Infrastructure Charges" and "Tools of the Trade and Nasdaq Connection Charges" consists of the costs (including ongoing maintenance and service costs) relating to the Exchanges' new Nasdaq and Tools of the Trade⁷ servers. The second

⁷ Tools of the Trade is a proprietary software enhancement licensed to CHX by Financial Systemware, Inc. This software operates as an overlay on existing OTC/UTP systems and provides for increased functionality and enhanced capacity

⁶ Article XIV, Rule 7(a).

category, "Technical Equipment" assesses the OTC/UTP co-specialist with the cost of computer equipment, monitors and printers dedicated to an OTC/UTP co-specialist's own trading environment. Finally, the "Tools of the Trade Access" category provides for direct rebilling of actual access charges incurred by the Exchange when a co-specialist uses Tools of the Trade for the particular issues traded by the co-specialist.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CHX held a meeting on March 29, 1999, which was attended by the principals of all UTP Specialist Firms, at which time CHX management outlined the proposed fee structure contained in this proposal, and the rationale for imposition of such fees. There was unanimous consent of the UTP Specialist Firms to the imposition of the proposed fees. Subsequently, the proposal was approved unanimously by the CHX committee (referred to as the OTC Committee) responsible for matters having an impact on unlisted trading at the Exchange.⁹

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change (May 28, 1999), the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

with respect to automated quotation display and trade execution.

⁸ 15 U.S.C. 78f(b)(4).

⁹ See Amendment No. 1.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

in furtherance of the purposes of the Act.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-CHX-99-02, and should be submitted by July 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99-15845 Filed 6-21-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41529; File No. SR-DTC-99-08]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Amendments to Organization Certificate and By-Laws

June 15, 1999.

On March 18, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on April 12, 1999, amended a proposed rule change (File No. SR-DTC-99-08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the

¹² In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Federal Register on April 23, 1999.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC is amending its Organization Certificate and By-Laws to increase the size of its Board of Directors, to redesignate its capital stock, and to modernize its Certification of Organization. The amendments are subject to stockholder approval.

A. Increasing the Number of Board Directors

The Boards of Directors of DTC and the National Securities Clearing Corporation ("NSCC") have decided to integrate DTC and NSCC. An initial step in the integration is to propose at this year's annual shareholders' meeting the reelection of DTC's Board of Directors.³ Subject to regulatory approval, the Boards of DTC and NSCC will be restructured so that the same group of individuals will serve as the Board of Directors for each of the two companies.⁴ Through this process and with the inclusion of DTC and NSCC management directors, the Board of Directors for each company will be comprised of twenty-seven people.⁵

DTC's Organization Certificate and By-Laws currently provide for the number of directors of the Board to be not less than five nor more than twenty. In order to accommodate the number of directors resulting from the consolidated plan described above, paragraph "SEVENTH" of the Organization Certificate (which after elimination of paragraph "FOURTH," as described below, will become paragraph "SIXTH") and Article II, Section 2.1 of the By-laws will be amended to provide that the number of directors be not less than seven nor more than twenty-five. Section 2.1 by the By-Law will also be

² Securities Exchange Act Lease No. 41305 (April 16, 1999), 64 FR 20034.

³ The Commission recently approved a similar proposal submitted by NSCC. Securities Exchange Act Release No. 41520 (June 11, 1999) [File No. SR-NSCC-99-08].

⁴ Simply combining DTC's current Board to NSCC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards. As a result, each organization represented will be asked to select only one representative.

⁵ Under the Federal Reserve Act, DTC may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

amended to set the current number of directors at twenty-five.

B. Redesignating DTC's Capital Stock

DTC's Organization Certificate currently limits DTC to only one class of stock, specifically 18,500 shares of capital stock having a par value of \$100.00 per share. All of this stock is issued and outstanding. DTC has informed the Commission that its Board of Directors may in the future wish to consider authorizing the issuance of preferred stock. Therefore, paragraph "THIRD" will be amended, and paragraph "FOURTH" will be eliminated in order to designate the existing class of capital stock as "common stock" and to provide for 1,500,000 shares of preferred stock having a par value of \$100.00 per share.

C. Modernizing the Organization Certificate

DTC's Organization Certificate was originally drafted in 1973. DTC has informed the Commission that provisions of the Organization Certificate relating to DTC's powers refer both explicitly and implicitly to New York State Statutory provisions that are no longer applicable. In addition, the Organization Certificate does not recognize DTC's status as a clearing agency registered with the Commission or provide for powers incidental to that status. Accordingly, paragraph "THIRTEENTH" (which after elimination of paragraph "FOURTH," as described above, will become paragraph "TWELFTH") will be amended to update DTC's Organization Certificate.

II. Discussion

Section 17A(b)(3)(C) of the Act⁶ requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should not affect the representation of DTC's shareholders and participants in the selection of its directors and the administration of its affairs.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-99-08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-15842 Filed 6-21-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41528; File No. SR-MSRB-99-4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules A-3, A-5, A-7, A-11 Through A-15, A-17, D-5, G-1 Through G-3, G-5 Through G-9, G-11 Through G-16, G-18, G-20, G-23, G-27, G-28, G-32, G-34, G-36, G-37 and G-39

June 15, 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 28, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-MSRB-99-4). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On May 21, 1999, pursuant to Rule 19b-4(f)(6), the Board provided the required five day advance notice to the Commission of its intent to file this proposed rule change. In this notice, the Board has represented that this proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. See letter from Ernesto A. Lanza, Associate General Counsel, MSRB, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of technical amendments to rules A-3, A-5, A-7, A-11 through A-15, A-17, D-5, G-1 through G-3, G-5 through G-9, G-11 through G-16, G-18, G-20, G-23, G-27, G-28, G-32, G-34, G-36, G-37 and G-39. The proposed rule change will become operative on July 1, 1999.⁴

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board has adopted a series of technical amendments to Rules A-3, A-5, A-7, A-11, through A-15, A-17, D-5, G-1 through G-3, G-5 through G-9, G-11 through G-16, G-18, G-20, G-23, G-27, G-28, G-32, G-34, G-36, G-37 and G-39 for the purpose of making certain non-substantive changes. These changes are designed to:

- Ensure uniform usage of the term "brokers, dealers and municipal securities dealers" throughout all Board rules;
- Eliminate the usage of the term "municipal securities business" in rules other than rules G-37 and G-38;
- Make certain grammatical corrections;
- Make all rule language gender neutral;
- Correct certain cross-references to other Board rules, SEC rules or federal statutes, including updating the cross-reference in rule G-8(a)(xi) to Section 203 of the Investment Advisers Act of 1940 to take into account the reallocation of regulatory oversight of investment advisers between the Commission and the states effected by the National Securities Markets Improvement Act of 1996 and the rules promulgated thereunder;
- Ensure uniform references to sections and paragraphs within Board rules; and
- Eliminate duplicative, superfluous or obsolete rule language, including elimination of the cross-reference and related language in rule G-12(e)(xvi) regarding subparagraph

⁴ *Id.*

⁶ 15 U.S.C. 78q-1(b)(3)(C).

(b)(i)(D) of rule G-33, which subparagraph was previously deleted by the Board.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)⁵ of the Act. The Board believes that the proposed rule change ensures that existing rule provisions are accurate and understandable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change; (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days from the date of its filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder and will become operative on July 1, 1999.⁶

In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

⁵ Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

⁶ See *supra* note 3.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-99-4 and should be submitted by July 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-15844 Filed 6-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41532; File No. SR-NASD-99-27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Effectiveness of the Pilot Injunctive Relief Rule

June 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change as described in Items I and II below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration ("Code") of the Association to extend the pilot injunctive relief rule for six months. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

10335. Injunctions

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [July 3, 1999] *January 3, 2000*, unless extended by the Association's Board of Governors.

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 III below. NASD Regulation has prepared summaries, set forth in section 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

Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The rule is currently due to expire on July 3, 1999. In July 1998, the NASD filed a rule filing proposing to amend Rule 10335 and to make it a permanent part of the Code. The NASD

filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998. In response to additional comments received regarding both the original rule filing and the amendments, as well as comments from the Commission staff, the NASD is preparing further amendments to the pending rule filing. These amendments will be considered shortly by the National Arbitration and Mediation Committee ("NAMC"). If approved, the amendments will then be considered by the Board of NASD Regulation. NASD Regulation believes that it is in the interest of members and associated persons that the effectiveness of the rule remain uninterrupted pending the filing of amendment to, and Commission action on, the permanent rule filing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the current pilot rule serves the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.³

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 Change Received From Members, Participants, or Others

Written comments were neither solicited or 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, 460 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 also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-27 and should be submitted by July 13, 1999.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act⁴ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act.⁵ Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended primarily to facilitate the disposition of employment disputes and other related disputes concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to new firms. The Commission expects that, during the pilot's extension, NASD Regulation will consider amendments to the proposed rule change to permanently add Rule 10335 to the Code.⁶

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the

benefit of injunctive relief in arbitration pending filing of amendments to, and Commission action on, the rule filing that would amend Rule 10335 and make it a permanent part of the Code. The Commission finds, therefore, that granting accelerated approval of the proposed rule change in consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-99-27) is approved on an accelerated basis through January 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland

Deputy Secretary

[FR Doc. 99-15843 Filed 6-21-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41520; File No. SR-NSCC-99-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Amendments to By-Laws and Temporary Waiver of Certain Provisions of Shareholders Agreement

June 11, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 11, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-99-08) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will amend its By-Laws and will temporarily waive certain provisions of its shareholders agreement in order to increase the size of its Board of Directors.

¹ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78o-3. In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ See Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998) providing notice of File No. SR-NASD-98-49.

³ Telephone conversation between Laura Leedy Gansler, Office of the General Counsel, NASD Regulation, and Daniel M. Gray, Special Counsel, Division of Market Regulation, SEC, on June 14, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Boards of Directors of NSCC and The Depository Trust Company ("DTC") have decided to integrate NSCC and DTC. An initial step in the integration is to propose at NSCC's and DTC's annual meetings in June the reelection of NSCC's Board of Directors by shareholders of NSCC and to propose the reelection of DTC's Board of Directors by the shareholders of DTC. Subject to regulatory approval, the two Boards will then be restructured so that the same group of individuals will serve as the Boards of Directors for each of the two companies.³ Through this process and with the inclusion of DTC and NSCC management directors, the Board of Directors for each company will be comprised of twenty-seven people.⁴

To achieve this result, NSCC will amend Article II, Section 1 of its By-Laws (which currently provides for a Board of 21 Directors) to increase the size of the Board to a maximum of 30 directors. In addition, Section 8(A)(ii) of NSCC's shareholders agreement among NSCC, the New York Stock Exchange Inc./Stock Clearing Corporation, American Stock Exchange Inc./American Stock Exchange Clearing Corporation, and National Association of Securities Dealers Inc./National Clearing Corporation, dated December 15, 1976, as amended, will be

² The Commission has modified the text of the summaries prepared by DTC.

³ Simply combining NSCC's current Board with DTC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards. As a result, each organization represented will be asked to select only one representative.

⁴ Under the Federal Reserve Act, DTC's may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected, DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

temporarily waived.⁵ Further, because some NSCC directors have already served the maximum term of 5 years, Section 8(A)(i) of the shareholders agreement will also be waived.⁶

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act⁷ and the rules and regulations thereunder applicable to NSCC. The proposed rule change will not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act⁸ requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(C) because it should not affect the representation of NSCC's shareholders and participants in the selection of its directors and the administration of its affairs. On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow NSCC to proceed at its annual meeting

⁵ Section 8(A)(i) of NSCC's shareholders agreement sets forth the process for establishing the nominating committee of NSCC's Board of Directors.

⁶ Section 8(A)(ii) of NSCC's shareholders agreement provides, among other things, that no person shall be eligible to serve as a participant for more than five consecutive years.

⁷ 15 U.S.C. 78q-1(b)(3)(A).

⁸ 15 U.S.C. 78q-1(b)(3)(C).

on June 12, 1999, with the steps necessary to modify its Board of Directors so that NSCC and DTC can implement uniform boards.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-NSCC-99-08 and should be submitted by July 12, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-99-08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-15846 Filed 6-21-99; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 99-3p, Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older

AGENCY: Social Security Administration.
ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 99-3p. This Ruling clarifies the Social Security Administration's standards and procedures for the adjudication of disability and blindness

⁹ 17 CFR 200.30-3(a)(12).

claims for individuals age 65 or older under title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act.

EFFECTIVE DATE: June 22, 1999.

FOR FURTHER INFORMATION CONTACT:

Michelle Hungerman, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-2289.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and Agency interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program No. 96.006 Supplemental Security Income.)

Dated: June 14, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Social Security Ruling

Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older

Purpose: To clarify SSA's standards and procedures for the adjudication of title XVI of the Social Security Act (the Act) disability and blindness claims for individuals age 65 or older. In particular, this Ruling explains that:

In general, the regulations and procedures for determining disability for adults under title XVI of the Act who are under age 65 are used when determining whether an individual age 65 or older is disabled.

Adjudicators are required to consider any impairment(s) the individual has, including those that are often found in older individuals.

If an individual age 72 or older has a medically determinable impairment, that impairment will be considered to be "severe."

If the individual's impairment(s) prevents the performance of his or her past relevant work (PRW), or, if the individual does not have PRW, the adjudicator must consider two special medical-vocational profiles showing an inability to make an adjustment to other work before referring to appendix 2 to subpart P of 20 CFR Part 404.

Generally, adjudicators should use the rules for individuals age 60-64 when determining whether an individual age 65 or older can perform other work.

Beginning at age 65, age is considered to be a factor that imposes greater limits on vocational adaptability for individuals who retain the functional capacity to perform medium work. If illiteracy in English or the inability to communicate in English further limits such an individual's vocational scope, a finding of "disabled" is warranted unless the individual's PRW was skilled or semiskilled and provided the individual with transferable skills.

Some individuals age 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a consultative examination (CE). Therefore, adjudicators must make special efforts in situations in which it appears that an individual age 65 or older may not be cooperating.

Citations: Section 5301 of Public Law (P.L.) 105-33, sections 402 and 431 of P.L. 104-193, as amended, sections 1614(a), 1619(b) and 1621(f)(1) of the Act, as amended; 20 CFR Part 404, subpart P, appendices 1 and 2, and 20 CFR Part 416, sections 416.901-416.923, 416.925, 416.926, 416.927-416.986, 416.988-416.994, and 416.995-416.998.

Background: On August 5, 1997, P.L. 105-33, the Balanced Budget Act of 1997, amended P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, and added additional alien eligibility criteria. Under the new criteria, "qualified" aliens who were lawfully residing in the United States on August 22, 1996, and who are disabled or blind as defined in section 1614(a) of the Act are eligible for benefits under title XVI provided all other eligibility requirements are met. Individuals can establish eligibility based on disability or blindness at any age, even on or after attaining age 65.

In addition to qualified aliens, determinations of disability under title XVI also may be needed for other individuals age 65 or older to determine:

State supplements in some States (section 1616 of the Act);

Whether the work incentive provisions of section 1619(b) of the Act are applicable; or

Appropriate deeming of income and resources (section 1621(f)(1) of the Act; 20 CFR 416.1160, 416.1161, 416.1166a, and 416.1204).

For adults (individuals age 18 or older) section 1614(a)(3)(A) of the Act defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

The rules we use to determine if this definition is met are set forth in our regulations in subpart I of 20 CFR Part 416, and appendices 1 and 2 to subpart P of 20 CFR Part 404. Although these rules were, in general, developed for individuals who have not attained age 65, they do recognize that certain characteristics would result in greater vocational adversity as individuals age.

Ruling:

Evaluation Issues

In general, the regulations and procedures for determining disability for adults under title XVI of the Act who are under age 65 are used when determining whether an individual age 65 or older is disabled, except as provided later in this Ruling.

To determine if an adult is disabled as defined in the Act, adjudicators generally use the 5-step sequential evaluation process set out in 20 CFR 416.920.

Step 1—Is the Individual Working?

If the individual is working, and the work is substantial gainful activity (see 20 CFR 416.971-416.976), we will find that the individual is not disabled regardless of his or her medical condition, age, education, or work experience.

Step 2—Does the Individual Have a Severe Impairment?

At step 2 of the sequential evaluation process, a determination is made about whether an individual has a medically determinable impairment and whether the individual's medically determinable impairment—or combination of impairments—is "severe." An individual who does not have an impairment or combination of impairments that is "severe" will be found not disabled.

An impairment(s) is considered "severe" if it significantly limits an

individual's physical or mental abilities to do basic work activities. An impairment(s) that is "not severe" must be a slight abnormality, or a combination of slight abnormalities, that has no more than a minimal effect on the ability to do basic work activities. It is incorrect to consider an impairment to be "not severe" because the impairment's effects are "normal" for a person of that age.

As in any claim, adjudicators must consider signs, symptoms, and laboratory findings when determining whether an individual age 65 or older has a medically determinable impairment (see 20 CFR 416.908 and 416.928). The likelihood of the occurrence of some impairments increases with advancing age; e.g., osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing. Adjudicators are required to consider any impairment(s) the individual has, including impairments like the ones listed above that are often found in older individuals. It is incorrect to disregard any of an individual's impairments because they are "normal" for the person's age.

When an individual has more than one medically determinable impairment and each impairment by itself is "not severe," adjudicators must still assess the impact of the combination of those impairments on the individual's ability to function. A claim may be denied at step 2 only if the evidence shows that the individual's impairments, when considered in combination, are "not severe"; i.e., do not have more than a minimal effect on the individual's physical or mental ability(ies) to perform basic work activities.

Special Rule for Individuals Age 72 or Older

Generally, we use step 2 of the sequential evaluation process as a "screen" to deny individuals with impairments that would have no more than a minimal effect on their ability to work even if we considered their age, education, and work experience. However, with advancing age, it is increasingly unlikely that individuals with medically determinable impairments will be found to have minimal limitations in their ability to do basic work activities. By age 72, separate consideration of whether an individual's medically determinable impairment(s) is "severe" does not serve the useful screening purpose that it does for individuals who have not attained age 72. Therefore, if an individual age 72 or older has a medically

determinable impairment(s), that impairment(s) will be considered to be "severe," and evaluation must proceed to the next step of the sequential evaluation process.

Step 3—Does the Individual Have an Impairment(s) That Meets or Equals an Impairment Listed in Appendix 1?

When an individual has a severe impairment(s) that meets or medically equals the requirements for one of the impairments in the Listing of Impairments in appendix 1 to subpart P of 20 CFR Part 404, and meets the duration requirement, the individual is disabled.

When Disability Cannot Be Found at Step 3—Assessing Residual Functional Capacity

When the individual does not have an impairment(s) that meets or equals the requirements for a listed impairment, the adjudicator is required to assess the individual's residual functional capacity (RFC). The RFC assessment is an adjudicator's finding about the ability of an individual to perform both physical and mental work-related activities despite his or her impairment(s). The assessment considers all of the individual's medically determinable impairments, including those that are "not severe," and all limitations or restrictions caused by symptoms, such as pain, that are related to the medically determinable impairment(s). The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, or an individual's own statement of what he or she is able or unable to do.

When assessing RFC in an initial claim, an adjudicator should not find that an individual has limitations or restrictions beyond those caused by his or her medically determinable impairment(s). Limitations or restrictions due to factors such as age, height, or whether the individual has ever engaged in certain activities in his or her PRW (e.g., lifting heavy weights) are, per se, not considered in assessing RFC. (See SSR 96-8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Step 4—Does the Individual Have an Impairment(s) That Prevents Him or Her From Performing Past Relevant Work?

The RFC assessment discussed above is first used at step 4 of the sequential evaluation process to determine whether the individual is capable of doing PRW. The rules and procedures

we use to make this determination for individuals under age 65 are also applicable to individuals age 65 or older. This includes consideration of whether the individual can perform his or her PRW as he or she actually performed it or as it is generally performed in the national economy. If the individual's PRW was performed in a foreign economy, we will generally only consider whether the individual can perform his or her PRW as he or she described it. However, if the work the individual did in a foreign economy also exists in the U.S. economy, we will consider whether he or she can perform the work as it is generally performed in the national economy. If the individual can perform his or her PRW, he or she will be found not disabled.

(See SSR 82-40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.")

Step 5—Can the Individual Do Other Work?

The last step of the sequential evaluation process requires us to determine whether an individual can do other work considering his or her RFC, age, education and work experience.

Special Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work

If the individual's impairment(s) does preclude the performance of PRW, or if the individual does not have PRW, two special medical-vocational profiles must be considered before referring to appendix 2 to subpart P of 20 CFR Part 404. The special profiles are discussed in SSR 82-63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work."

The "arduous unskilled physical labor" profile applies when an individual:

- Is not working;
 - Has a history of 35 years or more of arduous unskilled physical labor;¹
 - Can no longer perform this past arduous work because of a severe impairment(s); and
 - Has no more than a marginal education (generally 6th grade or less).
- The "no work experience" profile applies when an individual:
- Has a severe impairment(s);
 - Has no past relevant work;
 - Is age 55 or older; and
 - Has no more than a limited education (generally, 11th grade or less).

If either of these profiles applies, a finding of "disabled" must be made. This finding is made without considering the criteria in appendix 2 to subpart P of 20 CFR Part 404.

Applying the Criteria in Appendix 2 to Subpart P of 20 CFR part 404

If the special medical-vocational profiles are not applicable, we use the rules in appendix 2 to subpart P of 20 CFR Part 404 to determine whether the individual has the ability to do other work. The highest age category used in appendix 2 is age 60–64, “closely approaching retirement age.” However, we have longstanding internal procedures that direct our adjudicators to use the rules for ages 60–64 when making determinations for individuals age 65 or older at step 5.

Under those rules, individuals age 65 or older who are limited to “sedentary” or “light” work will be found disabled unless their PRW provided them with transferable skills or they are at least a high school graduate and their education provides for direct entry into skilled work. As set out in sections 201.00(f) and 202.00(f) of appendix 2, to find transferability of skills for individuals age 65 or older who are limited to sedentary or light work, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.¹

Individuals age 65 or older who can perform the full range of medium work are found disabled when they have no more than a marginal education and their PRW was unskilled or they had no PRW, or when they have no more than a limited education and no PRW. In addition, some individuals who do not meet these criteria may also be found disabled as set forth in the next section.

Special Rule for Determining Disability for Individuals Age 65 or Older Who Can Perform Medium Work But Who Are Illiterate in English or Unable To Communicate in English

Section 203.00 of appendix 2 contains rules used to make disability determinations for individuals who retain the functional capacity to perform medium work. The capacity to perform medium work also includes the capacity to perform light and sedentary work, and represents the capability to perform a substantial number of jobs. For individuals under age 65 considered under this section, this capability represents a substantial vocational scope even for individuals who are illiterate in English or unable to communicate in English.

However, beginning at age 65, the individual's age is considered to be a

factor that imposes greater limits on vocational adaptability. If illiteracy in English or the inability to communicate in English further limits such an individual, a finding of “disabled” is warranted unless the individual's PRW was skilled or semiskilled and provided the individual with transferable skills. For a finding of transferability of skills to medium work for an individual age 65 or older, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

Duration

As indicated earlier, the likelihood of the occurrence of some impairments, such as osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing, increases with advancing age. Moreover, such impairments are more likely to be chronic than acute. Therefore, adjudicators must be especially careful before concluding that an impairment in an individual age 65 or older will not meet the 12-month duration requirement.

Development Issues

Developing Allegations of Impairment(s)

When obtaining the medical history of an individual age 65 or older, it is important to be alert to and address allegations of impairments that are commonly associated with the aging process, such as osteoporosis, arthritis, loss of vision, hearing loss, and memory loss. Allegations may be raised in response to specific questions about the individual's impairment(s); e.g., on Form SSA-3368-BK. However, adjudicators must also be alert to allegations raised in other evidence in the file. For example, questionnaires about activities of daily living may contain statements like “I have difficulty walking or climbing stairs because my legs hurt,” “I can't clean my apartment because my back hurts,” or “I don't read much anymore because I don't see well.” These statements constitute allegations of impairment(s). Therefore, adjudicators must:

Review the case file thoroughly to identify all allegations or other indications of impairment.

Be aware that the medical evidence or third party statements can raise additional allegations.

When contacting an individual age 65 or older, be alert to statements indicating the presence of an impairment(s) commonly associated with the aging process.

Consider all signs or symptoms indicative of an impairment(s), including those impairments caused by degenerative changes associated with the aging process.

Purchasing Medical Evidence

Our regulations, at 20 CFR 416.912(f) and 416.917, indicate that we will purchase CEs when the individual's medical sources cannot or will not give us sufficient medical evidence about the individual's impairment for us to determine if he or she is disabled. Section 416.919f further provides that we will purchase only the specific examinations and tests that we need to make a determination or decision. Due to the wide range of allegations contained in cases of individuals age 65 or older, evidence addressing more than one body system may need to be purchased. In these situations, it is usually appropriate to purchase general medical examinations rather than examinations targeted at particular body systems. This will ensure that all allegations of impairment are evaluated, and will reduce the burden on the individual. For example, if the individual alleges back and knee pain, shortness of breath on exertion, and numbness and weakness in his or her arm, a general medical examination would usually be preferable to separate orthopedic, neurologic, and respiratory or cardiac examinations.

Failure To Cooperate

Individuals filing for benefits based on disability or blindness have certain responsibilities for furnishing us with, or helping us obtain, needed evidence. Our regulations at 20 CFR 416.912(c), 416.916, and 416.918 describe these responsibilities. However, due to factors such as possible language barriers or limited education, some individuals age 65 or older may not understand, or be able to comply with, our requests to submit evidence or attend a CE.

If it appears that an individual age 65 or older is not cooperating, adjudicators must take the following additional actions when the individual does not have an appointed representative, or when the appointed representative has asked us to deal directly with the individual.

If an individual age 65 or older has not supplied evidence or taken an action we requested and still need, the adjudicator must:

Contact the individual to determine why he or she has not complied with our request. If it appears that the individual needs personal assistance, including interpreter assistance, to

¹ However, for individuals residing in the Fifth, Sixth, and Eighth Federal judicial circuits, see Acquiescence Rulings AR 95-1(6), AR 99-2(8), and AR 99-3(5).

complete forms, request field office assistance.

Contact a third party (i.e., someone other than the individual's representative) if one has been identified, about assisting the individual at the same time the adjudicator contacts the individual.

If an individual age 65 or older did not attend a CE, the adjudicator must:

- Contact the individual to determine why he or she did not attend the CE.
- Make at least two attempts at different times on different days to contact the individual by telephone. (A busy signal does not constitute an attempt.)
- Send the claimant a call-in letter if telephone contact is not possible or successful.
- Contact a third party, if one has been identified, about assisting the claimant at the same time contact is attempted with the claimant.
- When contact is made with the individual or the third party, explain that the CE is for evaluation purposes only, and that no treatment will be required.
- Reschedule the CE if the individual had a good reason for not attending the prior CE (e.g., he or she had transportation problems or was out of the country at the time of the CE) and indicates a willingness to attend a rescheduled CE.

Non-English-Speaking or Limited-English-Proficiency Individuals

For all the development issues discussed above, adjudicators must remember that we are responsible for obtaining the services of a qualified interpreter if the individual requests or needs one. This includes providing an interpreter at a CE if the CE provider is not sufficiently fluent in the individual's language.

EFFECTIVE DATE: This Ruling is effective on the date of its publication in the **Federal Register**.

CROSS-REFERENCES: SSR 82-40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country"; SSR 82-61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed"; SSR 82-62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General"; SR 82-63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work"; SSR 85-28, "Titles II and XVI: Medical Impairments That Are Not Severe"; SSR 96-3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment Is Severe"; SSR 96-8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"; AR 95-1(6), "Preslar

v. Secretary of Health and Human Services, 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; AR 99-2(8), "Kerns v. Apfel, 160 F.3d 464 (8th Cir. 1998)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; AR 99-3(5), "McQueen v. Apfel, —Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act"; and Program Operations Manual System, sections DI 22505.015, DI 22510.018, DI 22510.019, DI 23515.010, DI 23515.025, DI 25010.001, SI 00502.142, and GN 00203.001.

¹ Training, or isolated, brief, or remote periods of semiskilled or skilled work will not preclude a finding of arduous unskilled work if such training or experience did not result in skills that enable the individual to do other work.

[FR Doc. 99-15972 Filed 6-21-99; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

Overseas Presence Advisory Panel (OPAP)

[Public Notice #3068]

Meeting Notice; Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Monday, June 28, 1999, from 9 a.m. to 1 p.m. at the U.S. Department of State. Pursuant to section 10(d) of the Federal Advisory Committee Act abd 5 U.S.C. 552b [c] [1], it has been determined that the meeting will be closed to the public. The Panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. The agenda includes a discussion of sensitive information relating to the Panel's final draft report of ongoing findings and recommendations concerning Embassies and Consulates overseas; this would include, but not be limited to, intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information, contact Marilyn Shapiro, Overseas Presence Advisory Panel, Department of State, Washington, D.C. 20520; phone: 202-647-6427.

Dated: June 18, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99-15983 Filed 6-18-99; 2:32 pm]

BILLING CODE 4710-35-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1999-5838]

Commercial Fishing Industry Vessel Advisory Committee (CFIVAC); Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications; extension of application deadline.

SUMMARY: The Coast Guard extends the deadline for applying to be a member of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). CFIVAC provides advice and makes recommendations to the Coast Guard on the safety of the commercial fishing industry.

DATES: Applications must reach the Coast Guard on or before July 9, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G-MSO-2), U.S. Coast Guard, room 1210, 2100 Second Street SW., Washington, DC 20593-0001; by calling 202-267-0214; or by faxing 202-267-4570. Submit applications to the same address. This notice and the application forms are available on the internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Commander Randy Clark, Assistant Executive Director of CFIVAC, rclark@comdt.uscg.mil, or LTJG Karen Weaver, kweaver@comdt.uscg.mil, telephone 202-267-0214, fax 202-267-4570.

SUPPLEMENTARY INFORMATION: The Coast Guard originally requested people to apply for membership to the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) in the June 2, 1998, **Federal Register** [USCG-1998-3882]. Several applications were received; however, the Coast Guard is providing more time for applicants. If you applied in response to the June 2 notice you do not need to submit another application. All applications submitted will be considered for the positions available.

CFIVAC is a Federal advisory committee covered by 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988, Pub. L. 100-424, the Coast Guard established

CFIVAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. CFIVAC consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of equipment for vessels to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or personnel qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which chapter 45 applies and persons representing the marine insurance industry.

CFIVAC meets at least once a year in different seaport cities nationwide. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for six positions that expire or become vacant in October 1999 in the following categories: (a) Commercial Fishing Industry (four positions); (b) General Public (one position); (c) Equipment Manufacturers (one position).

Persons selected as general public members are required to complete a Confidential Financial Disclosure Report, OGE Form 450, on an annual basis. Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Each member serves for a term of three years. A limited portion of the membership may serve consecutive terms. Members of the CFIVAC serve without compensation from the Federal Government, although travel reimbursements and per diem are provided.

In support of the policy of the Department of Transportation on ethnic and gender diversity, the Coast Guard

encourages applications from qualified women and members of minority groups.

Dated: June 11, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99-15759 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Brunswick County, North Carolina.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Brunswick County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, Federal Highway Administration, Suite 410, 310 New Bern Avenue, Raleigh, North Carolina 27601, Telephone: (919) 856-4350, extension 133.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a second bridge to Oak Island in Brunswick County, North Carolina. The proposed improvement will involve the construction of the second high-rise bridge over the Atlantic Intracoastal Waterway from SR 1105 (Middleton Avenue) to the mainland and the construction of a two-lane roadway with partial control of access on new location from the waterway to NC 211. The proposed action also includes widening the existing SR 1105 from SR 1104 (Beach Road) to the Atlantic Intracoastal Waterway and replacing Bridge No. 206 over Davis Canal. The proposed improvements are considered necessary to provide an increased level of service on the existing road system by increasing traffic capacity and would provide additional access onto and off of the island. Alternatives under consideration include (1) no-build, (2) transportation system management (TSM), (3) mass transit, (4) improve existing facilities, and (5) construction of a new bridge and roadway over the Intracoastal waterway.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local

agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on the Federal programs and activities apply to this program)

Issued on: June 10, 1999.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 99-15785 Filed 6-21-99; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0029]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed from a private sector sales broker to submit an offer to VA on behalf of a prospective purchaser of a VA-acquired property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to

Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0029" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-5079 or FAX (202) 275-5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

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

Titles and Form Numbers

a. Offer to Purchase and Contract of Sale, VA Form 26-6705.

b. Credit Statement of Prospective Purchaser, VA Form 26-6705b.

c. Addendum to VA Form 26-6705 (Virginia), VA Form 26-6705d
OMB Control Number: 2900-0029.

Type of Review: Revision of a currently approved collection.

Abstract: a. VA Form 26-6705 is used by the private sector sales broker to submit an offer to the VA on behalf of a prospective purchaser of a VA-acquired property. The form will be prepared for each proposed contract submitted to the VA. If the VA accepts the offer to purchase, it then becomes a contract of sale. The form defines the terms of sale, provides the prospective purchaser with a receipt for his/her earnest money deposit, eliminates the need for separate transmittal of a purchase offer and develops the contract without such intermediate processing steps and furnishes evidence of the station decision with respect to the acceptance of the contract as tendered. Without this information, a determination of the best offer for a property cannot be made.

b. VA Form 26-6705b is used as a credit application to determine the creditworthiness of a prospective purchaser in those instances when the prospective purchaser seeks VA vendee financing, along with VA Form 26-6705. In such sales, the offer to purchase will not be accepted until the purchaser's income and credit history have been verified and a loan analysis has been completed, indicating loan approval. Without this information, the creditworthiness of a prospective purchaser cannot be determined and the offer to purchase cannot be accepted.

c. VA Form 26-6705d is an addendum to VA Form 26-6705 for use in Virginia. It includes requirements of State law which must be acknowledged by the purchaser at or prior to closing.

Affected Public: Individuals or households.

Estimated Annual Burden: 57,917 hours.

a. VA Form 26-6705—35,000 hours.

b. VA Form 26-6705b—22,500 hours.

c. VA Form 26-6705d—417 hours.

Estimated Average Burden Per Respondent: 20 minutes (average).

a. VA Form 26-6705—21 minutes.

b. VA Form 26-6705b—20 minutes.

c. VA Form 26-6705d—5 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Total Respondents: 172,500.

a. VA Form 26-6705—100,000.

b. VA Form 26-6705b—67,500.

c. VA Form 26-6705d—5,000.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99-15788 Filed 6-21-99; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0086]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine an applicant's eligibility for Loan Guaranty benefits, and the amount of entitlement available.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0086" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

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

Title: Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26-1880.

OMB Control Number: 2900-0086.

Type of Review: Extension of a currently approved collection.

Abstract: The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information furnished on VA Form 26-1880 is necessary for VA to make a determination on whether or not the

applicant is eligible for Loan Guaranty benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 130,910 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 523,639.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99-15789 Filed 6-21-99; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0090]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the suitability and placement of potential volunteers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0090" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273-8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of

Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

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

Title: Application for Voluntary Service, VA Form 10-7055.

OMB Control Number: 2900-0090.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used to assist personnel of both voluntary organizations, which recruit volunteers from their membership, and the VA in selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers.

Affected Public: Individuals or households, Not-for-profit institutions.

Estimated Total Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99-15790 Filed 6-21-99; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0191]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the qualifications and acceptability of those management brokers who apply to participate in the VA management broker program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0191" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Designation as Management Broker, VA Form 26-6685.

OMB Control Number: 2900-0191.

Type of Review: Extension of a currently approved collection.

Abstract: It is the general policy of the VA to utilize the services of local brokers in the sale and management of VA-owned properties. Generally management activities are conducted by staff personnel only when the property is in close proximity to a VA field station and no reputable local brokers are willing to represent the VA. Each management broker wishing to represent the VA must submit a signed VA Form 26-6685. The information collected on the form, as well as other relevant material, such as a credit report, is used to determine the qualifications and acceptability of those management brokers who apply to participate in this program.

Affected Public: Business or other for profit.

Estimated Annual Burden: 63 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally on-time.

Estimated Number of Respondents: 250.

Dated: May 12, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99-15791 Filed 6-21-99; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0563]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the feasibility of conducting additional scientific research on "health hazards" resulting from exposure to dioxin and herbicides used in Vietnam.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0563" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273-8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501 " 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Army Chemical Corps Vietnam Veterans Health Study, Phase II, VA Form 10-20998(NR).

OMB Control Number: 2900-0563.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: In July 1993, the Institute of Medicine of the National Academy of Sciences (IOM) issued its report "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam" containing six research recommendations including a recommendation that this proposed study of Army Vietnam Chemical Corps veterans be conducted. The Secretary of Veterans Affairs approved the IOM research recommendations in general and informed the Congress of his decision by letter of September 27, 1993. If the information for the study is not collected, VA will not be able to do the study and will have failed to comply with the intent of Congress when Public Law 102-4, the "Agent Orange Act of 1991" was enacted. In addition, the results of the study will be valuable to VA in formulating compensation and medical benefits policies for veterans of the Vietnam War.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Total Annual Burden: 2,531 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,375.

Dated: May 10, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99-15792 Filed 6-21-99; 8:45 am]

BILLING CODE 8320-01-P

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1992-99]

RIN 1115-AF47

Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens

Correction

In rule document 99-15032 beginning on page 32146 in the issue of Tuesday, June 15, 1999, make the following correction:

§ 214.2 [Corrected]

On page 32148, in the third column, in § 214.2(j)(1)(iv), in the fifth line, "any" should be "Any".

[FR Doc. C9-15032 Filed 6-21-99; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41488; File No. SR-AMEX-98-42]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

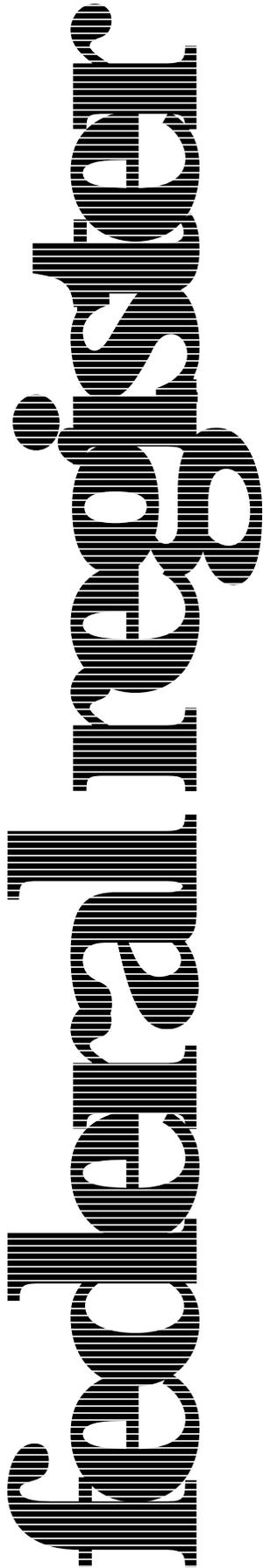
Correction

In notice document 99-14990, beginning on page 31886, in the issue of Monday, June 14, 1999, make the following correction:

On page 31886, in the third column, under the heading, add "June 7, 1999".

[FR Doc. C9-14990 Filed 6-21-99; 8:45 am]

BILLING CODE 1505-01-D



Tuesday
June 22, 1999

Part II

**Department of
Housing and Urban
Development**

24 CFR Part 902
Public Housing Assessment System
(PHAS) Amendments to the PHAS;
Proposed Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 902

[Docket No. FR-4497-P-01]

RIN 2577-AC08

**Public Housing Assessment System
(PHAS) Amendments to the PHAS**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Public Housing Assessment System regulation at 24 CFR part 902 to provide additional information and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction in public housing, including the technical review of physical inspection results and appeals of PHAS scores. The rule would also implement certain recently enacted statutory amendments. The purpose of the Public Housing Assessment System is to function as a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

DATES: Comment Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U. S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at (888)-245-4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Additional information is available from the REAC Internet Site,

<http://www.hud.gov/reac>. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established a new system for the assessment of America's public housing. The new system, the Public Housing Assessment System (PHAS), is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999, and replaces the Public Housing Management Assessment Program (PHMAP). HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

Under the PHAS, HUD evaluates a PHA based on the following four indicators: (1) The physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' assessment (through a resident survey) of the PHA's performance. Each of the four PHAS indicators is assigned a maximum value as follows:

(1) Physical Condition—maximum 30 points: the PHA's score is based on the results of physical inspections of PHA properties performed by REAC contractors. The results are electronically transmitted to the REAC.

(2) Financial Condition—maximum 30 points: the PHA's score is initially based on unaudited financial information prepared in accordance with generally accepted accounting principles (GAAP) and electronically submitted by the PHA to the REAC. The PHA's submission is then audited by an Independent Public Accountant (IPA) and the audit results are electronically transmitted to the REAC, which reassesses the PHA's score based on the audit results. The financial condition of the PHA is assessed on its entire operations.

(3) Management Operations—maximum 30 points: the PHA's score is based on an electronic certification made by the PHA and verified by an IPA. This performance indicator uses six of the same indicators as the current Public Housing Management Assessment Program.

(4) Resident Service and Satisfaction—maximum 10 points: the PHA's score is based, in part, on responses to a resident survey managed by the PHA and collected by the REAC. The PHA's score is also based on the survey results, the PHA's level of implementation of the resident survey and the PHA's follow-up actions on survey results. Implementation and follow-up plans are in the form of an electronic certification made by the PHA. Follow-up plans may be verified by an IPA.

With respect to PHAS Indicators #2, #3 and #4, a PHA is required to electronically submit its year-end financial statements, and its management operations and resident service and satisfaction certifications, within two months after the end of its fiscal year. Information necessary to conduct the physical condition assessment will be obtained from HUD-contracted inspectors during the fiscal year being assessed and scored through electronic transmission of the data.

On the basis of these four indicators, HUD's REAC calculates a composite score for each PHA. The PHAS composite score represents a single score for a PHA's entire operation under the four indicators. The PHAS composite score will determine whether a PHA is performing well or is not performing well. The PHAS composite score is derived from the scores calculated for each of the four indicators. The composite PHAS score will be issued by the REAC for each PHA one month after the PHA submits its year-end financial data and certifications.

Adjustments to the PHAS score may be made after a PHA's audit report for the year being assessed is transmitted to the REAC. If material differences (as defined in GAAP guidance) are noted between the unaudited and audited results, a PHA's PHAS score will be adjusted in accordance with the audited results.

As provided in the PHAS final rule issued on September 1, 1998, a PHA will be scored with a corresponding designation of high performer, standard performer, or troubled performer, including troubled with respect to a PHA's performance under the modernization component under PHAS Indicator #3. (As discussed later in this preamble, the reference to modernization assistance is replaced with a reference to Capital Fund assistance.)

A PHA designated as troubled will be referred to the appropriate HUD office, including but not limited to, HUD's Office of Troubled Agency Recovery, for

oversight and remedial action. A PHA that does not correct identified deficiencies within a maximum of two years from the date that the PHA is designated as troubled will be referred to the Departmental Enforcement Center (DEC) for further action.

High performer PHAs will be eligible for various incentives. However, relief from any standard procedural requirement does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations and other handbook requirements.

This proposed rule would amend the PHAS regulation at 24 CFR part 902 to provide additional information, and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction indicators and for the technical review of physical inspection results, and appeals of PHAS scores.

II. Proposed Amendments to PHAS

Brief Overview

This rule would make the following amendments to the current PHAS rule at 24 CFR part 902:

(A) Revise the PHAS rule to reflect conforming changes made necessary by recently enacted statutory amendments.

(B) Reference a series of notices, published in the **Federal Register** on May 13, 1999, that describe the scoring process for each of the four PHAS Indicators, and describe the process for requesting and granting a technical review of physical inspection results, or appeal of an overall PHAS score.

(C) Add language, under PHAS Indicator #1, that would clarify that vacant units not under lease at the time of inspection will not be inspected.

(D) Modify the designation of "troubled" performer to provide a subdesignation or category that identifies the particular performance area (physical, financial, or management) in which a PHA is troubled.

A. Statutory Amendments Related to the PHAS

Sections 564 and 565 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) amend section 6(j) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437d(j)), the statutory authority for assessment of public housing. This rule would revise the PHAS regulation at 24 CFR part 902 to incorporate these statutory amendments, as discussed in this Section III of the preamble.

Capital Fund Assistance Replaces Modernization Assistance. Section 564 makes conforming changes to the 6(j) references to modernization (mod) funding under section 14 of the 1937 Act by substituting "the Capital Fund under section 9(d)" for "section 14".

This rule makes the appropriate conforming changes in part 902 to replace the references to section 14 and modernization funding.

Utility Consumption Replaces Energy Consumption. The term "energy consumption" in the indicator at section 6(j)(1)(D) was statutorily changed to "utility consumption" and this rule amends part 902 to reflect this change.

Four New Indicators for Assessment of PHAs. Section 564 adds four new indicators for the evaluation of performance by public housing agencies.

(1) The first of these indicators requires an evaluation of the extent to which a public housing agency coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents. This statutory amendment is addressed under PHAS Indicator #3, Management Operations, by including economic self-sufficiency grant goals in management sub-indicator #6, security and economic self-sufficiency. Economic self-sufficiency is assessed using comparable measurements as PHMAP Indicator #7, subcomponent (a) (see 24 CFR 901.40).

(2) The second new indicator requires an evaluation to the extent to which a public housing agency provides public housing residents with opportunities for involvement in the administration of public housing. The determination that residents are provided the opportunity for involvement in the administration of public housing is provided for under PHAS Indicator #4, Resident Service and Satisfaction. The resident survey includes questions that address the statutory amendment, including: (i) Involvement in a resident organization to determine the percentage of residents involved in a PHAS recognized resident organization, which is the primary vehicle of providing opportunities for involvement in the administration of public housing; (ii) issues communicated from a PHA to its resident population to determine whether a PHA communicates to its residents issues that are related to the administration of public housing; and (iii) the responsiveness of a PHA to resident input to determine whether a PHA acts upon the recommendations of residents regarding involvement in the administration of public housing after such communication has taken place. In

addition, a PHA's follow-up plan, if applicable, will specifically address a PHA's provision of opportunities for resident involvement in the administration of public housing.

(3) The third new indicator added by section 564 of the Public Housing Reform Act requires an assessment of the extent to which a public housing agency implements effective screening and eviction policies and other anticrime strategies; and coordinates with local government officials and residents in the project on implementation of such strategies. The effective policies and anticrime strategies portion of this statutory indicator has already been implemented on a discretionary basis in the security sub-indicator of PHAS Indicator #3, Management Operations. Component #1 of the security sub-indicator addresses this statutory requirement and provides for the maximum amount of points to a PHA that coordinates with local government officials and its residents on the implementation of anticrime strategies.

(4) The fourth indicator added by section 564 examines the extent to which the public housing agency is providing acceptable basic housing conditions. This indicator is given additional emphasis by a related requirement in the section 564 amendment to section 6(j) of the 1937 Act that provides that an agency "that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing." HUD construes "acceptable basic housing conditions" to be synonymous with the standards of decent, safe, sanitary and in good repair (DSS/GR). HUD also finds that the statutory amendment is consistent with HUD's existing PHAS regulation. Under PHAS, if an agency fails to receive a passing score under PHAS Indicator #1, Physical Condition, the agency is troubled.

Amendment to On-site, Independent Assessment Provision. Section 564 amends the 6(j) provision relating to on-site, independent assessments of PHAs by striking the narrow exception that such an assessment will not duplicate any "review conducted under section 14(p)" and replacing it with a broader exception that the assessment will not duplicate any "comparable and recent review". This amendment permits HUD to conduct these assessments through a greater variety of sources, including its HUBs and its Troubled Agency Recovery Centers (TARCs).

Review by Independent Auditor. The section 564 amendment provides in relevant part that:

To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require an independent auditor to review documentation or other information maintained by a public housing agency pursuant to this section to substantiate each certification submitted by the agency or corporation relating to the performance of that agency or corporation.

This section also provides that: "The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 9, amounts sufficient to pay for the reasonable costs of any review under this paragraph." Section 902.60 of the PHAS rule is amended to reference HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Resident Management Corporations. The final provision of section 564 addressed by this rule provides, that, "the Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies." This provision is already implemented in the PHAS, under which RMCs are scored for those functions which they contract to undertake.

Substantial Default. Section 565 of the Public Housing Reform Act makes extensive amendments to the substantial default provisions of section 6(j)(3) of the 1937 Act. These amendments, however, are consistent with the existing PHAS regulation, or provide additional options for HUD to take into account circumstances that constitute a substantial default, and require no further regulatory implementation by HUD. Section 565(d), titled "Implementation", specifically provides that, "The Secretary may administer the amendments made by subsection (a) as necessary to ensure the efficient and effective initial implementation of this section."

B. PHAS Scoring Process, Technical Review of Physical Inspection Results and PHAS Appeals

This proposed rule, as noted earlier, in this preamble, includes information about the PHAS scoring process for each of the four PHAS Indicators, and provides the procedures for requesting and granting a technical review of physical inspection results and PHAS appeals, generally. This information already was provided by HUD in notices published on May 13, 1999 (64 FR 26160; 64 FR 26166; 64 FR 26218; 64 FR 26222; 64 FR 26232; and 64 FR 26236). Four of these notices discussed in detail

the scoring process for each of the four PHAS Indicators, and the process for requesting and granting a technical review of physical inspection results and PHAS appeals.

This preamble does not repeat the information provided in these notices. They will be republished in the **Federal Register** of June 23, 1999. Any changes or clarifications to the May 13, 1999, notices will be identified in the individual notices published in that issue. The proposed regulatory text covers the technical review and appeal processes discussed in the May 13, 1999 notice.

C. No Inspection for Vacant Units Not Under Lease

This proposed rule clarifies that vacant units not under lease at the time of inspection will not be inspected under the PHAS. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident has vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

D. Identification of a PHA's Performance Problems

The proposed rule modifies the designation of "troubled" performer to identify the particular performance area (physical, financial, or management) in which a PHA is troubled. The proposed rule provides that a PHA that achieves less than 60 percent of the points under any one of three main PHAS Indicators (Indicator #1—Physical Condition; Indicator #2—Financial Condition; or Indicator #3—Management Operations) will be categorized as substandard physical, substandard financial, or substandard management performer.

III. Section-by-Section Overview of PHAS Amendments

For the convenience of the reader, the entire PHAS regulation is being published in this proposed rule, although not every section of the current

PHAS regulation is being amended. The publication of the entire rule allows the reader to see how the proposed amendments would appear in the codified regulation. HUD is seeking comment on the sections of the rule that are proposed to be amended. To assist the reader in identifying those sections of the existing PHAS regulations that are revised and the new sections that are being added, the following provides section-by-section overview of the amendments being proposed by this rule. If the section is not listed below, then this means that no changes are proposed to be made by HUD to the section.

Subpart A—General Provisions

Section 902.3 (Scope). Only a minor editorial change is made to this section. The last sentence which awkwardly begins with the words "PHAS' adherence" is changed to read "A PHA's adherence."

Section 902.7 (Definitions). This section is amended to revise the following definitions: *deficiency*, *improvement plan* and *work order deferred for modernization*. The following definitions are added to this section: *days* and *property*. The definition of "improvement plan" is revised to change "indicator" to "sub-indicator" and define the acronym "MOA." The definition of "work order deferred for modernization" is revised to replace the word "modernization" with "Capital Fund." Additionally, in this section, the references to numbers are spelled out (for example "3" becomes "three").

Subpart B—PHAS Indicator #1: Physical Condition

Section 902.20 (Physical Condition Assessment). This section is amended to include the section 564 language pertaining to "acceptable basic housing conditions" (paragraph a) and to clarify that this phrase is synonymous with HUD's physical condition standards of decent, safe, sanitary and in good repair. This section also is revised to exclude from physical condition assessment, vacant units not under lease at the time of physical inspection (paragraph b).

Section 902.23 (Physical Condition Standards for Public Housing—Decent, Safe, Sanitary and in Good Repair (DSS/GR)). This section is amended by dividing existing paragraph (a) into two paragraphs. New paragraph (b) lists the major inspectable areas of public housing. Existing paragraph (b) which references Appendix A to part 902 (Areas and Items to be Inspected) is removed. The areas and items to be

inspected are part of the Item Weights and Criticality Levels document, which is referenced in this part. Former paragraph (a)(6) which addresses health and safety concerns becomes new paragraph (c).

Section 902.24 (Physical Inspection of Properties). This new section is added.

Section 902.25 (Physical Condition Scoring and Thresholds). This section is amended to reference the scoring process described in the PHAS Notice on the Physical Condition Scoring Process. A new paragraph (c) is added to this section to define the overall PHA Physical Condition Indicator score. Former paragraph (c) on Thresholds becomes paragraph (d) and adds language that provides that if a PHA's physical condition score falls below a minimum threshold of 60 percent of the available points, the PHA shall be identified as a substandard physical agency. (As noted below, similar changes are made to §§ 902.33 and 902.45).

Section 902.26 (Physical Inspection Report). This new section is added.

Subpart C—PHAS Indicator #2: Financial Condition

Section 902.30 (Financial Condition Assessment). Paragraph (b) of this section is amended to cross-reference to the components of the PHAS Financial Indicator listed in § 902.33.

Section 902.33 (Financial Reporting Requirements). Paragraph (a) of this section is amended to reference the Financial Data Schedule (FDS). Paragraph (b) of this section is amended to provide that a PHA must submit its unaudited financial information to HUD two months after the end of the PHA's fiscal year. The PHA's audited financial information must be submitted within nine months of the end of the PHA's fiscal year. Additionally, the time periods designated in days were converted to months.

Section 902.35 (Financial Condition Scoring and Thresholds). Paragraph (a) of this section is amended to reference the scoring process described in the PHAS Notice of the Financial Condition Scoring Process. A new paragraph (b) is added to list the components of PHAS Indicator #2, which are currently listed in paragraph (a) of the existing regulation, and with the following revisions: "utility consumption" replaces "energy consumption"; and under the "Occupancy Loss" component, the phrase "non-occupancy of dwelling units" replaces "vacancy". Existing paragraph (b) on Thresholds becomes paragraph (c), and adds language concerning substandard financial agency.

Subpart D—PHAS Indicator #3: Management Operations

Section 902.40 (Management Operations Assessment). Paragraph (b) of this section is amended to remove the reference to inclusion of a non-statutory indicator (security). This indicator is now statutory.

Section 902.43 (Management Operations Performance Standards). Paragraph (a) of this section is amended to note that the components and grades for each sub-indicator of the Management Operations Indicator are the same as those for the corresponding indicator under PHMAP, unless otherwise noted in this section. The term "indicator" used throughout this section is replaced by "sub-indicator." Paragraph (a)(2) is amended to replace reference to modernization assistance with the Capital Fund. Paragraph (a)(6) is amended to reflect the new statutory indicators added by the Public Housing Reform Act.

Paragraph (b) of this section is amended to clarify that the reporting required under PHAS Indicator #3 is to be electronically submitted to HUD.

Section 902.45 (Management Operations Scoring and Thresholds). This section is revised to reference the PHAS Notice on the Management Operations Scoring Process. Paragraph (b) on Thresholds is revised to add the language concerning substandard management agency.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

Section 902.50 (Resident Service and Satisfaction). The heading of paragraph (b) of this section is amended. A new paragraph (c) is added to clarify that the reporting required under PHAS Indicator #4 is to be electronically submitted to HUD.

Section 902.51 (Updating of Resident Information). This new section is added.

Section 902.52 (Distribution of Survey to Residents). This new section is added.

Section 902.53 (Resident Service and Satisfaction Scoring and Thresholds). Paragraph (a) is revised to organize the existing information in a more logical fashion. Additionally, a new paragraph (a)(2) is added to reference the PHAS Notice on the Resident Service and Satisfaction Scoring Process.

Subpart F—PHAS Scoring

Section 902.60 (Data Collection). This section is amended to change the references to days in this section to months (e.g. 60 days is changed to two months). In paragraph (e) of this section the reference to mod-troubled is

replaced by reference to troubled with respect to Capital Fund assistance. Paragraph (f) is amended to reflect HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Section 902.63 (PHAS Scoring). Paragraph (a) is revised to provide that a PHAS score will be issued for each PHA one month after a PHA submits its year-end financial data certifications, which replaces an issuance date of 60 to 90 days after the end of the PHA's fiscal year. Paragraph (d) of this section is revised to reference RMCs and AMEs.

Section 902.67 (Score and Designation Status). Paragraph (c) of this section is amended to include language concerning identification of the particular area in which a PHA is troubled (e.g., substandard physical, substandard financial, substandard management). A new paragraph (d) is added to provide that designations may be withheld under certain circumstances.

Section 902.68 (Technical Review of Results of PHAS Indicators #1 or #4). This new section is added.

Section 902.69 (PHA Right of Petition and Appeal). Paragraph (a) is revised to remove subparagraph (a)(2). A new paragraph (b) is added, and existing paragraphs (c) and (d) become part of paragraph (b).

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for High Performers). Existing paragraph (a)(1) is subdivided into two paragraphs. Subparagraph (a)(1)(A) contains the information currently found in existing paragraph (a)(1). Subparagraph (a)(1)(B) provides relief for annual physical inspections for high scoring PHAs.

Section 902.73 (Referral to an Area HUB/Program Center). In paragraph (g) of this section, reference to remedies for substantial default is added.

Section 902.75 (Referral to a TARC). The introductory paragraph of this section is revised to provide that remedial action may include a determination of priority of needs and referral the HUD/Program Center. Paragraph (a) is revised to reflect that within 30 days of notification to a PHA of troubled designation, HUD, not necessarily the TARC, will take appropriate action. In paragraph (c)(6) the reference to mod-troubled is removed and replaced with reference to the new Capital Fund. Paragraph (d) is revised to reflect the new statutory language.

IV. Request for Comment

In addition to requesting public comment on this proposed rule, HUD is specifically requesting comment on the following:

(1) HUD seeks comment on the four scoring process notices (the Physical, Financial, Management and Resident Services and Satisfaction scoring process scoring notices) published elsewhere in this issue of the **Federal Register**;

(2) Although HUD proposes to inspect only occupied units, HUD is concerned that PHAs make appropriate efforts to have as many units on line and occupied as possible. For example, PHAs should be keeping units unoccupied for modernization or unit turnover for the minimum possible time. The rule addresses this concern to an extent in the PHAS finance and management indicators. HUD requests comments whether this concern should be addressed further, and seeks suggestions and recommendations on ways to do address this matter in the PHAS rule or elsewhere (e.g., other regulations).

(3) Although HUD has not proposed to penalize PHAs in the PHAS score for missing or inoperable smoke detectors because of the extent to which this may not be within a PHA's control, HUD is very concerned about this issue in view of the critical importance of fire prevention. Because of the safety risk presented by missing or inoperable smoke detectors, HUD is considering whether the PHAS rule should provide, at the final rule stage, some consequence to PHAs for missing or inoperable smoke detectors (particularly if the number is high), including possibly a reduction in a PHA's physical inspection score. HUD requests comments on this option, and solicits suggestions how the availability of working smoke detectors can be encouraged further, either in the PHAS rule or elsewhere.

(4) HUD requests comments on ways of improving the economic self-sufficiency sub-indicator so that it may be implemented more effectively, and specifically seeks comments on whether the sub-indicator is properly weighted and appropriately placed in the rule as part of management sub-indicator #6 (see § 902.43(a)(6)).

(5) HUD seeks comments on the consequences to PHAs of withholding designation as provided in new paragraph (d)(2) of § 902.67.

(6) HUD also requests comments on how PHAs should be assessed with respect to their responsibility to submit occupancy data to the Multifamily

Tenant Characteristics System (MTCS) in an accurate, complete and timely manner.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the PHAS regulation at 24 CFR part 902 were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2535-0106. This rule adds no new information collection requirements to that rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to provide additional information on the PHAS scoring process and to revise certain procedures and establish others in accordance with recently enacted statutory requirements. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to revise part 902 of title 24 of the Code of Federal Regulations to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

- Sec.
 902.1 Purpose and general description.
 902.3 Scope.
 902.5 Applicability.
 902.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

- 902.20 Physical condition assessment.
 902.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
 902.24 Physical inspection of PHA properties.
 902.25 Physical condition scoring and thresholds.
 902.26 Physical Inspection Report.
 902.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

- 902.30 Financial condition assessment.
 902.33 Financial reporting requirements.
 902.35 Financial condition scoring and thresholds.
 902.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

- 902.40 Management operations assessment.
 902.43 Management operations performance standards.
 902.45 Management operations scoring and thresholds.
 902.47 Management operations portion of total PHAS points.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

- 902.50 Resident service and satisfaction assessment.
 902.51 Updating of resident information.
 902.52 Distribution of survey to residents.
 902.53 Resident service and satisfaction scoring and thresholds.
 902.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

- 902.60 Data collection.
 902.63 PHAS scoring.
 902.67 Score and designation status.
 902.68 Technical review of results of PHAS Indicators #1 or #4.
 902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

- 902.71 Incentives for high performers.
 902.73 Referral to an Area HUB/Program Center.
 902.75 Referral to a TARC.
 902.77 Referral to the Departmental Enforcement Center.
 902.79 Substantial default.
 902.83 Interventions.
 902.85 Resident petitions for remedial action.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the Management Operations Indicator and the Resident Service and Satisfaction Indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as

fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) This part is applicable beginning October 1, 1999.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

§ 902.7 Definitions.

As used in this part:
Adjustment for physical condition (project age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 902.5(c), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

- (1) By dividing the total of—
 - (i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;
 - (ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and
 - (iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;
- (2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days in this part, unless otherwise specified refer to calendar days.

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical problem condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in § 902.24)

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

Property is a project/development with a separate identifying project number.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that

fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous three years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year when there are less than three months remaining before the end of the PHA fiscal year from the time the work order was generated, under the PHA's Capital Fund program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with

the DSS/GR standard. All occupied units will be inspected. However, any vacant units not under lease at the time of the inspection will not be inspected. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident have vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards measure a PHA's performance in maintaining the major physical areas of public housing (paragraph (b) of this section). These standards also identify health and safety deficiencies that require correction (paragraph (c) of this section).

(b) *Major Inspectable Areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of

health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* The score for PHAS Indicator 11 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection.

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. (1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very important	4
Important	3
Contributes	2
Slight contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Deficiencies means the specific problems, comparable to Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

Dictionary of Deficiency Definitions refers to the Dictionary of Deficiency Definitions document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document.

Inspectable area (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; common areas; and dwelling units.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels Document refers to the Item Weights and Criticality Levels document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been

considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document.

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Score means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. To note that smoke detectors are inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although noted, inoperable or missing smoke detectors do not reduce the score.

Severity means one of three levels, severe, major or minor, that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions".

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with Civil Rights/Nondiscrimination Requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD Access to PHA properties.* PHAs are required by the Annual Contributions Contract to provide the government with full and free access to all facilities contained in the project. PHAs are required to provide HUD or its representative with access to the project, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given

"0" points for the project or projects involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA through appropriate application of the adjustment.

(1) *Adjustments in three areas.* Adjustments to the PHA physical property score will be made in three factually observed and assessed areas (inspectable areas):

- (i) Physical condition of the site;
- (ii) Physical condition of the common areas on the property; and
- (iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

- (i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.
- (ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (property age) and neighborhood environment. HUD will adjust the physical score of a PHA's property subject to both the physical

condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify on form HUD-50072, PHAS Certification, the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular

properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Overall PHA Physical Condition Indicator score.* The overall physical inspection score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties for the PHA.

(d) *Thresholds.* (1) The physical inspection score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report, which allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(b) The following items are listed in the Physical Inspection Report:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for site, buildings and units, with H&S deductions for buildings combined for exteriors, systems and common areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the electronic format using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year for the reporting period. A PHA must submit its audited data using the FDS within nine months of the fiscal year end.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (see 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the point values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates. Under PHAS Indicator #2, the REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Components of PHAS Indicator #2.* The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is the number of months a PHA can operate on the Expendable Fund Balance without additional resources. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Days Receivable Outstanding* is the average number of days tenant receivables are outstanding.

(4) *Occupancy Loss* is the loss of potential rent due to non-occupancy of dwelling units.

(5) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(6) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(c) *Thresholds.* (1) In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations**§ 902.40 Management operations assessment.**

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, as provided in § 902.43.

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those for the corresponding indicator under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #—vacancy rate and unit turnaround time.* This management sub-indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management sub-indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the 1937 Act, which remain unobligated by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program and the Vacancy Reduction Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have 9(d) capital funding.

(3) *Management sub-indicator #3—rents uncollected.* This management

sub-indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management sub-indicator #4—work orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management sub-indicator #5—PHA annual inspection of units and systems.* This management sub-indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management sub-indicator #6—Security and Economic Self-Sufficiency.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the project on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction/economic self-sufficiency grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator under PHMAP except as may be otherwise noted. Instead of using the Grade A description in Component #1, Tracking and Reporting Crime Related Problems, of PHMAP Indicator #8, Security, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and

the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(iii) The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will get credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* A PHA is required to electronically submit a certification of its performance under each of the management operations sub-indicators.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program office and assistance will be given to the PHA to transmit its management operations certification.

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3,

REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, the REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* At the completion of the resident survey process as described in this subpart, a PHA must certify that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their resident service and satisfaction certification.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local

government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its resident service and satisfaction certification.

(3) If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

§ 902.51 Updating of resident information.

(a) *Electronic updating.* The scoring process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident and unit information by PHAs.

(b) *Unit address update and verification.* The scoring process for PHAS Indicator #4 begins with ensuring accurate information about the PHA's units.

(1) PHAs will be required to electronically update unit address information initially obtained by the REAC from the recently revised form HUD 50058, Family Report. The REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within 30 calendar days of submission of the list of current units to the PHA by the REAC, and the address information is not valid, the REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA would not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* The preferred method for updating a unit address list is electronic updating.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC.

(3) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

§ 902.52 Distribution of survey to residents.

(a) *Sampling.* A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey result to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (i.e., work order response);

(B) Communications (i.e., perceived effectiveness);

(C) Safety (i.e., perception of personal security);

(D) Services (i.e., recreation and personal programs); and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, the REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to be altered. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring**§ 902.60 Data collection.**

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for

purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part (see § 902.1(e)).

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date. If all certifications or year-end financial information are not received within three months past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators, sub-indicators and components certified to, which shall result in a troubled designation or identification as troubled with respect to the program for assistance from the Capital Fund under section 9(d).

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any

supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by 42 U.S.C. 1437(d)(j)(6). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 902.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA one month after a PHA submits its year-end financial data and certifications.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If

significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA (or RMC or AME as the case may be) shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 902.67 Score and designation status.

Designation status corresponding to score. A PHA will be scored with a corresponding designation of status as follows:

(a) *High Performer.* A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard Performer.* A PHA that is not a high performer but achieves a total PHAS score of not less than 60 percent shall be designated a standard performer. All standard performers must correct reported deficiencies. A PHA that achieves a total PHAS score of less than 70 percent, but not less than 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(c) *Troubled Performer.* (1) *Overall troubled PHAs.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under more than one of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* A PHA that achieves less than 60 percent of the total points available under one of the following indicators, PHAS Indicators #1, #2, or #3, shall be categorized as substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(d) *Withholding designation.* (1) In *exceptional circumstances*, even though a PHA has satisfied all of the PHAS

Indicators for high or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated a standard performer. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

§ 902.68 Technical review of results of PHAS Indicator #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS

score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of a resident survey results, the REAC will review the PHA's file and evidence submitted by the PHA. If the REAC's review determines that an error has been documented, the REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

(a) *Petition for removal of troubled designation and appeal of refusal to remove troubled designation.* A PHA may:

(1) Petition for removal of troubled designation; and

(2) Appeal any refusal to remove such designation.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(2) To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than 30 calendar days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred. An appeal submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(3) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of

Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(4) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) A PHA's project(s) that receives a physical inspection score of 90 percent or greater shall be subject to a physical inspection of that project(s) every other year rather than annually. For example, project A received a physical inspection score of 94 percent and project B received a physical inspection score of 78 percent. Project A will receive a physical inspection every other year and project B will receive a physical inspection annually.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the

provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70 percent is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator, sub-indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. An RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator, sub-indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan.* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's) Improvement Plan submitted to the HUB/Program Center through the RMC's PHA, and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30

calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default. In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

Upon a PHA's designation of troubled (including PHAs categorized as substandard), in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action, which may include a determination of priority of needs and referral to the HUB/Program Center. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined by HUD:

(a) *Recovery Plan and Memorandum of Agreement (MOA).* Within 30 days of notification of the designation of a troubled PHA, HUD will take action to develop a Recovery Plan or MOA. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a MOA as described in paragraph (c) of this section.

(b) *PHA review of Recovery Plan and MOA.* The PHA will have 10 days to review the Recovery Plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the Plan with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of Agreement.* The final MOA is a binding contractual

agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* (1) Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation or substandard

status, or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled or substandard status, or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and/or achieve a score of at least 60 percent of the total points available under each PHAS Indicator.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute a MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the DEC, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), *substantial improvement* is defined as an increase of at least 50 percent of the points needed to achieve a passing PHAS score. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five-point increase to

continue recovery efforts in the TARC. If the PHA fails to achieve the five-point increase, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center.

(a) Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 902.75 constitutes a substantial default in accordance with § 902.79 and shall result in referral to the DEC. The DEC is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the DEC including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g), in its PHAS score in 1 year following issuance of the failed score is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

- (i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;
- (ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;
- (iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;
- (iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA

shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 902.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the

PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or

organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

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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.

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