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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–210–AD; Amendment 39–11376; AD 99–21–30]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Mitsubishi MU–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Raytheon Model Mitsubishi MU–300 airplanes, that requires revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. The amendment also requires installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, the amendment requires converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration. The actions specified by this AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Effective November 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tina Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Mitsubishi MU–300 series airplanes was published in the **Federal Register** on February 26, 1997 (62 FR 8648). That action proposed to require revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. (That AFM revision was previously required in AD 94–25–10.) That action also proposed to require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, that action proposed to require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration.

FAA Response to Comments

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

Request To Withdraw the Proposal

One commenter states that the requirements of the proposal would require the addition of expensive and unnecessary equipment that does not provide any benefit to safety. The commenter also states that any competent pilot would already have the anti-ice systems engaged before the annunciator light of the proposed ice detector would illuminate. Additionally, the commenter asserts that during past experience in operating several different Raytheon BE–400 series airplanes, the annunciator of the ice detector, which is identical to the proposed ice detector, did not illuminate during icing conditions. Therefore, the commenter concludes that the proposed installation of the ice detector would not provide any additional warning or benefit to the pilot. Based on those comments, the FAA infers that the commenter is requesting that the proposal be withdrawn.

The FAA does not concur that the proposal should be withdrawn. The FAA considers that installation of the ice detector and the corresponding Airplane Flight Manual revision, as proposed, will alert pilots to turn on the airplane anti-ice systems in advance of the time that ice may be visually detected (especially during night operations). Extensive FAA flight testing on a similar airplane model (Beechcraft Model 400A series airplanes) indicated that the ice detector consistently and reliably illuminated during icing encounters. Since the advance notice provided by the ice detector will permit the pilot to engage the anti-ice system in a timely manner, accumulation of ice on the horizontal tail will be reduced. Therefore, the FAA has determined that the requirements of this AD are appropriate and necessary.

Request To Require the Manufacturer Cover Costs

This same commenter requests that, if the FAA insists on issuing the proposed rule, the FAA hold the manufacturer responsible for covering costs associated with the installation of the ice detector. The commenter states that if the kit is to be required, this would indicate a flaw in the design of the airplane. The commenter advises that the manufacturer has agreed to cover the cost of the ice detector for the Raytheon BE–400 series airplanes.

The FAA does not concur with the commenter's request that the FAA require the manufacturer to cover the

cost of installing the ice detector. The FAA recognizes that the general obligation of the operator to maintain aircraft in an airworthy condition is vital, but sometimes expensive. The FAA considers that, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD. However, the manufacturer, not the FAA, determines if the manufacturer will cover the cost of implementing a particular action. Therefore, no change in this regard is necessary to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 89 Model MU–300 airplanes of U.S. registry will be affected by this proposed AD.

The AFM revision that is currently required by AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), for Model MU–300 airplanes takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required AFM revision will be $5,340, or $60 per airplane.

The ice detector installation that is required in this AD action for all airplanes will take approximately 80 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,000 per airplane. Based on these figures, the cost impact on U.S. operators of the installation required by this AD is estimated to be $1,050,200, or $11,800 per airplane.

The new AFM revisions that are required by this AD action for all airplanes will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these estimated figures, the cost impact on U.S. operators of the new AFM revisions will be $5,340, or $60 per airplane.

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

The conversion of the configuration of the airplane that is specified in this AD action as an option for Diamond I airplanes, if accomplished, will require actions related to the airframe and the engine. The airframe portion of the conversion will take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $50,000 per airplane. The engine portion of the conversion should be accomplished during a regular engine overhaul; therefore, it will require no additional work hours. Required parts for this action will cost approximately $260,000 per airplane. Based on these figures, the cost impact of the conversion on U.S. operators, who elect to accomplish it, is estimated to be $319,600 per airplane.

If accomplished, the option for modification of the warning horn system that is specified in this AD action for Diamond I airplanes will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $600 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators will be $960 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–21–30 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11376. Docket 96–NM–210–AD.

Applicability: All Model Mitsubishi MU–300 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 otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) For all airplanes: Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than -8 degrees C.

or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees

Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD.''

(b) For Diamond I airplanes, as identified in Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) through (b)(4) of this AD:

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Convert the airplane from the Diamond I configuration to the Diamond IA configuration in accordance with Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984; and accomplish the AFM revision required by paragraph (c)(3) of this AD. Or

(ii) Modify the warning horn system of the landing gear in accordance with Attachment 1 of Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(4) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration. This may be accomplished by inserting a copy of Diamond I Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(c) For Diamond IA airplanes: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system.

This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria. This may be accomplished by inserting a copy of Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(d) Accomplishment of the requirements of paragraph (b) or (c) of this AD, as applicable, constitutes terminating action for the requirements of AD 94–25–10, amendment 39–9094 [and paragraph (a) of this AD.] Following accomplishment of paragraph (b) or (c) of this AD, as applicable, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraphs (a), (b)(2), (b)(4), (c)(2), and (c)(3) of this AD, the actions shall be done in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996; and Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984. Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages, Pages 1, 2.	2	June 1, 1984.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 30, 1999.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27563 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–382–AD; Amendment 39–11386; AD 99–22–08]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes, that requires revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve. This amendment is prompted by a report indicating that the pneumatic augmentation valve may go fully open when an engine fails during initial climb prior to deactivation of the second segment climb switch. The actions specified by this AD are intended to prevent opening of the pneumatic augmentation valve, which could result in significant loss of thrust from the remaining engine and consequent inadequate initial climb performance of the airplane.

DATES: Effective November 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information

may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on August 6, 1999 (64 FR 42868). That action proposed to require revising the wiring of the air conditioning pneumatic supply control, if applicable, and revising the wiring of the pneumatic augmentation valve.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,500 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 to 6 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts cost will be nominal. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $42,000 and $252,000, or between $60 and $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–22–08 McDonnel Douglas: Amendment 39–11386. Docket 98–NM–382–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in the McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 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 (b) 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 opening of the pneumatic augmentation valve during initial climb following an engine failure, which could result in significant loss of thrust on the remaining engine and consequent inadequate initial climb performance of the airplane, accomplish the following:

Modification

(a) Within 3 years after the effective date of this AD, revise the wiring of the air conditioning pneumatic supply control, if applicable, and revise the wiring of the pneumatic augmentation valve, in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998, or Revision 04, dated October 16, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) The modification shall be done in accordance with McDonnell Douglas Service Bulletin DC9–36–012, Revision 03, dated February 3, 1998; or McDonnell Douglas Service Bulletin DC9–36–012, Revision 04, dated October 16, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical

Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 30, 1999.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27562 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–178–AD; Amendment 39–11387; AD 99–22–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires an inspection of the crew rest area heat exchangers to detect deflection or interference with the flight control cables; and various follow-on actions. This action also requires replacement of certain nutplate attachment rivets that attach the heat exchangers to the airframe with stronger rivets. This amendment is prompted by a report of interference between insulation blankets adjacent to the heat exchangers and flight control cables. The actions specified in this AD are intended to prevent a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane.

DATES: Effective November 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, System and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that the rudder and elevator of a Boeing Model 747–400 series airplane were ''stiff.'' Further investigation revealed that the nutplate attachment rivets that attach the crew rest area (CRA) heat exchangers to the airframe at station 1920 had failed. When the CRA air supply fan was on, air pressure caused the heat exchangers to deflect downwards and push adjacent insulation blankets into the flight control cables, causing the stiffness of the flight controls. This condition, if not corrected, could result in reduced maximum deflection of the rudder and elevator surfaces, which could result in reduced controllability of the airplane.

Examination of failed rivets revealed that the rivets were not made of 2017-T4 aluminum, which was the rivet material specified in the engineering drawings. Instead, the rivets were made of lower-strength 1100–F aluminum. The airplane manufacturer has determined that rivets made of the proper material were installed during production on airplanes after line number 1205.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999, which describes procedures for inspection of the CRA heat exchangers to detect deflection or interference with the flight control cables; and an inspection of the heat exchanger panels, pitot-static tubes, and air distribution ducts in that area to detect damage, if necessary. If any damage is detected, the alert service bulletin specifies to contact the manufacturer for repair instructions. The alert service bulletin also describes procedures for performing an electrical conductivity measurement of the nutplate attachment rivets that attach the heat exchangers to the airframe to determine the rivet material, and replacement of certain rivets with stronger rivets. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as described below.

Differences Between Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

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

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection would be $120 per airplane.

It would require approximately 3 hours to accomplish the required replacement, at an average labor rate of

$60 per work hour. Required parts would cost approximately $17 per airplane. Based on these figures, the cost impact of this replacement would be $197 per airplane.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–178–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–22–09 Boeing: Amendment 39–11387. Docket 99–NM–178–AD.

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999; 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 a reduction in maximum rudder and elevator surface deflection due to the separation of heat exchangers from the body frame, which could result in reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Within 400 flight hours or 30 days after the effective date of the AD, whichever occurs earlier, perform a one-time general visual inspection of the crew rest area (CRA) heat exchangers to detect deflection or interference with the flight control cables, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Replacement

(b) If no deflection or interference is detected, within 6,000 flight hours after accomplishment of the inspection required by paragraph (a) of this AD, measure the electrical conductivity of the nutplate attachment rivets that attach the heat exchangers to the airframe at station 1920 to determine the rivet material, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. Prior to further flight, replace any rivets not made of 2017–T4 aluminum with rivets made of 2017–T4 aluminum, in accordance with the alert service bulletin.

(c) If any deflection or interference is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform a one-time general visual inspection of the CRA heat exchanger panels, pitot-static tubes, and air distribution ducts in the area of station 1920 to detect damage, in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. If any damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) Remove the nutplates and attachment rivets that attach the heat exchangers to the airframe at station 1920, and replace with new nutplates and rivets made of 2017–T4 aluminum,

in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2430, dated June 10, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 10, 1999.

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

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27561 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–59–AD; Amendment 39–11390; AD 99–22–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model AS332C, L, and L1 helicopters, that requires replacing certain electrical modules with airworthy electrical modules. This amendment is prompted by the discovery of several defective electrical modules. The actions specified by this AD are intended to prevent loss of electrical continuity, which could cause loss of critical systems and subsequent loss of control of the helicopter.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model AS332C, L, and L1 helicopters was published in the **Federal Register** on May 20, 1999 (64 FR 27483). That action proposed to require replacing certain electrical modules with airworthy electrical modules.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for two nonsubstantive changes that have been made to paragraph (b) and Note 2 of the AD. In paragraph (b), the NPRM incorrectly states that alternative methods of compliance (AMOC) or adjustments of the compliance time may be approved by the ''Manager, Rotorcraft Certification Office, Rotorcraft Directorate.'' This is incorrect and has been changed to state that the Manager, Regulations Group, Rotorcraft Directorate, is responsible for approving any AMOC or adjustment of the compliance time. Note 2 of the NPRM states that information concerning the existence of approved AMOC may be obtained from the ''Rotorcraft Certification Office;'' this is also incorrect and has been changed to state that information may be obtained from the ''Regulations Group.'' The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 320 work hours per helicopter to replace all affected modules, and that the average labor rate is $60 per work hour. Required parts will cost approximately $23,484, but the helicopter manufacturer has stated that the parts will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,600 to replace all affected modules.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–22–12 Eurocopter France: Amendment 39–11390. Docket No. 98–SW–59–AD.

Applicability: Model AS332C, L, and L1 helicopters, certificated in any category.

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

Compliance: Required within 300 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first, unless accomplished previously.

To prevent loss of electrical continuity, which could cause loss of critical systems, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace each ''CONNECTRAL'' green electrical module that does not have a white dot on the face and that has a manufacturing code 95/16 through 96/21 engraved on a side, with an airworthy electrical module. Those manufacturing codes identify modules manufactured between the beginning of the 16th week of 1995 and the end of the 21st week of 1996.

Note 1: Eurocopter France Service Bulletin No. 01.00.51, dated May 4, 1998, pertains to the subject of this AD.

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

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

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

(d) This amendment becomes effective on November 30, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 98–254–070(A), dated July 1, 1998.

Issued in Fort Worth, Texas, on October 18, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–27791 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–62–AD; Amendment 39–11388; AD 99–22–10]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain General Electric Aircraft Engines CF34 series turbofan engines, that establishes new life limits for certain high pressure compressor (HPC) spools, stage 9 HPC disks, and rear HPC spools. This amendment is prompted by a cyclic life analysis using increased stress levels resulting from manufacturing discrepancies. The actions specified by this AD are intended to prevent HPC spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GEAE) Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines was published in the **Federal Register** on April 5, 1999 (64 FR 16364). That action proposed to require removal from service of forward HPC spools, part number (P/N) 6078T56P01; rear HPC spools, P/N 6087T01P03 and 6087T01P04; and stage 9 HPC disks, P/N 5087T46P01 or 5087T46P02. The affected parts must be removed prior to accumulating cycles in service beyond new, reduced cyclic life limits.

Comment Received

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

The commenter supports the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 600 engines of the affected design in the worldwide fleet. The FAA estimates that 28 engines installed on aircraft of US registry will be affected by the requirement within this AD to replace the forward spool. The FAA has calculated the prorated cost for forward spool replacements to be $36,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. Therefore, the FAA estimates the total cost impact for replaced forward spools to be $1,022,000.

The FAA estimates that 200 engines installed on aircraft of US registry will be affected by the requirement to replace the stage 9 disk. The FAA has calculated the prorated cost for stage 9 disk replacements to be $3,500 per engine, based on the estimated new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. The FAA estimates the total cost impact for replaced stage 9 disks to be $700,000.

The FAA estimates that 300 engines installed on aircraft of US registry will be affected by the requirement to replace the rear spool. The FAA has calculated the prorated cost for rear spool replacements to be $8,900 per engine, based on the new part cost divided by the original life limit, multiplied by the number of cycles that will be reduced by the AD requirement. Therefore, the FAA estimates the total cost impact for replaced rear spools to be $2,670,000.

The FAA has determined that it will take no additional work hours per engine to remove affected components, as removal would take place at available opportunities. Based on these figures, the total cost impact of the AD on US operators is estimated to be $4,392,000.

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–22–10 General Electric Aircraft Engines: Amendment 39–11388. Docket 98–ANE–62–AD.

Applicability: General Electric Aircraft Engines (GEAE) Models CF34–1A, –3A, –3A1, and –3A2 turbofan engines, installed on but not limited to Canadair aircraft models CL–600–2A12, –2B16, and –2B19.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) spool and disk cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service the following HPC spools and disks prior to accumulating cycles in service beyond new, reduced cyclic life limits, and replace with a serviceable part, as follows:

(1) For forward HPC spools, part number (P/N) 6078T56P01, which have accumulated fewer than 6,000 cycles since new (CSN) on the effective date of this AD, remove prior to accumulating 6,000 CSN.

(2) For forward HPC spools, P/N 6078T56P01, which have accumulated 6,000 or more CSN on the effective date of this AD, remove at the next shop visit after the effective date of this AD, but prior to accumulating 12,000 CSN.

(3) For the purpose of this AD, engine shop visit is defined as engine disassembly that includes separation of the compressor section from the fan section front frame and from the combustion section combustion chamber frame.

(4) For stage 9 HPC disks, P/N 6087T01P03 or 6087T01P04, remove prior to accumulating 20,000 CSN.

(5) For rear HPC spools, P/N 5087T46P01 or 5087T46P02, remove prior to accumulating 17,000 CSN.

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

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

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

(d) This amendment becomes effective on December 27, 1999.

Issued in Burlington, Massachusetts, on October 18, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27788 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–09]

Establishment of Class E Airspace: York County, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from the surface within a 6.5 mile radius of the York Airport (THV). The increased traffic at the airport and its capacity to accept flights operating under Instrument Flight Rules via a Standard Instrument Approach Procedure (SIAP) makes it desirable to establish Class E airspace designated as a surface area.

EFFECTIVE DATE: 0901 UTC, Nov. 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On August 4, 1999 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at York Airport, York County, PA was published in the **Federal Register** (64 FR 42301–42302). Controlled airspace extending upward from the surface is needed to accommodate the increased traffic. The notice proposed to establish controlled airspace extending upward from surface to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning 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 to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. E airspace areas designations for airspace extending upward from the surface are published in paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, 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 Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at York County, PA extending upward from the surface to accommodate operations conducted under Instrument Flight Rules. Additional controlled airspace upward from the surface will enhance the safety of flights operating in the vicinity of the York Airport.

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 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—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface

* * * * *

AEA PA E2 York County, PA [New]

York Airport (THV) PA
GRP (lat. 39°55′12″N. x long. 76°52′39″W.)

That airspace extending upward from the surface within a 6.5-mile radius of the York Airport.

* * * * *

Issued in Jamaica, New York, on October 5, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–27829 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–4]

RIN 2120–AA66

Modification of Federal Airway Victor 108 (V–108) in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Federal Airway V–108. Specifically, this action includes a reference to the Hugo Very High Frequency Omnidirectional Range/ Tactical Air Navigation (VORTAC) as part of the legal description of V–108. This action is editorial and does not change the actual airway as currently used or depicted on aeronautical charts.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 (part 71) by inserting a reference to the Hugo VORTAC in the legal description of V–108. The Hugo VORTAC is part of the existing charted V–108 but was inadvertently omitted from the legal description of V–108 published on December 12, 1997. Since this action merely involves an editorial change to the legal description of V–108, and does not involve a change in the dimensions or operating requirements of the airway, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Domestic VOR Federal airway designations are published in paragraph 6010(a) of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

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 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 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–108 [Revised]

From Santa Rosa, CA, via Scaggs Island, CA; INT Scaggs Island 131° and Concord, CA, 276° radials; 7 miles wide (4 miles N. and 3 miles S. of centerline), Concord; Linden, CA. From Meeker, CO; via Red Table, CO; Black Forest, CO; Hugo, CO; 74 miles, 65 MSL, Goodland, KS; Hill City, KS.

* * * * *

Issued in Washington, DC, on October 15, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–27826 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29814; Amdt. No. 1956]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPS, an effective date at leAst 30 days after publication is approved.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 15, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part of 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, indentified as follows:

** * * Effective November 4, 1999*

Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain) ILS RWY 30R, Amdt 10
Minneapolis, MN, Minneapolis-St Paul Intl (Wold-Chamberlain) ILS PRM RWY 30R, Amdt 5
Madison, WI, Dame County Regional-Truax Field, ILS RWY 21, Orig

** * * Effective December 2, 1999*

Ankeny, IA, Ankeny Regional, GPS RWY 36, Amdt 2
Atlantic, IA, Atlantic Muni, GPS RWY 12, Amdt 1
Iowa City, IA, Iowa City Muni, GPS RWY 30, Amdt 2
Pella, IA, Pella Muni, GPS RWY 16, Amdt 1
Midland, TX, Midland Intl, GPS RWY 10, Orig

** * * Effective December 30, 1999*

Mountain Village, AK, Mountain Village, GPS RWY 2, Orig
Mountain Village, AK, GPS RWY 20, Orig
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 9, Amdt 1
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 27, Amdt 1
Brooksville, FL, Hernando COunty, GPS RWY 2, Orig
Brooksville, FL, Hernando County, GPS RWY 9, Amdt 1
Brooksville, FL, Hernando County, GPS RWY 20, Amdt 1
Brooksville, FL, Hernando County, GPS RWY 27, Amdt 1
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 6
Brooksville, FL, Hernando County, ILS RWY 9, Amdt 2
Fort Wayne, IN, Smith Field, GPS RWY 13, Orig
Lyons, KS, Lyons-Rice County Muni, VOR/DME–A, Amdt 3
Lyons, KS, Lyons-Rice County Muni, NDB RWY 17R, Amdt 6
Lyons, KS, Lyons-Rice County Muni, GPS RWY 17R, Orig
Lyons, KS, Lyons-Rice County Muni, GPS RWY 35L, Orig
Belfast, ME, Belfast Muni, GPS RWY 15, Amdt 1
Belfast, ME, Belfast Muni, GPS RWY 33, Amdt 1
Belfast, ME, Belfast Muni, NDB RWY 15, Amdt 3
Maple Lake, MN, Maple Lake Muni, GPS RWY 28, Orig
Jackson, MS, Hawkins Field, VOR/DME RNAV RNAV RWY 16, Amdt 4A, CANCELLED
Walls, MS, Twinkletown, RADAR–1, Amdt 2A, CANCELLED
Delaware, OH, Delaware Muni, NDB RWY 10, Orig
Delaware, OH, Delaware Muni, NDB RWY 10, Amdt 4, CANCELLED
Clinton, OK, Clinton Muni, NDB, RWY 35, Amdt 7
Clinton, OK, Clinton Muni, GPS, RWY 35, Amdt 1
Center, TX, Center Muni, NDB RWY 17, Amdt 2
Center, TX, Center Muni, GPS RWY 17, Amdt 1
Center, TX, Center Muni, GPS RWY 35, Orig
Houston, TX, West Houston, VOR–B, Amdt 3
Houston, TX, West Houston, NDB RWY 15, Amdt 2
Houston, TX, West Houston, NDB RWY 33, Amdt 3
Houston, TX, West Houston, VOR/DME RNAV RWY 15, Amdt 3
Houston, TX, West Houston, VOR/DME RNAV RWY 33, Amdt 3
Houston, TX, West Houston, GPS RWY 15, Orig
Houston, TX, West Houston, GPS RWY 33, Orig
Odessa, TX, Odessa-Schlemeyer Field, VOR–A, Amdt 6
Odessa, TX, Odessa-Schlemeyer Field, NDB RWY 20, Amdt 4
Odessa, TX, Odessa-Schlemeyer Field, GPS–B, Orig
Odessa, TX, Odessa-Schlemeyer Field, GPS RWY 20, Orig
Wichita Falls, TX, Kickapoo Downtown Airpark, RADAR–1, Amdt 3, CANCELLED
Berkeley Springs, WV, Potomac Airpark, VOR RWY 29, Amdt 6
Fairmont, WV, Fairmont Muni-Frankman Field, VOR/DME–A, Orig
Fairmont, WV, Fairmont Muni-Frankman Field, VOR/DME RWY 22, Amdt 4, CANCELLED
Fairmont, WV, Fairmont Muni-Frankman Field, GPS RWY 22, Amdt 1
Moundsville, WV, Marshall County, GPS RWY 24, Orig
Summersville, WV, Summersville, GPS RWY 4, Amdt 2
Summersville, WV, Summersville, GPS RWY 22, Amdt 2

[FR Doc. 99–27831 Filed 10–25–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29815; Amdt. No. 1957]

Standard Instruction Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Fight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPSs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the

amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAP contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 15, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 94 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/04/99	TX	Robstown	Nueces County	FDC 9/7780	GPS RWY 13, ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7622	NDB or GPS RWY 15 AMDT 19a...
09/30/99	MN	Minneapolis	Airlake	FDC 9/7694	VOR or GPS RWY 11 AMDT 1...
09/30/99	MN	Minneapolis	Airlake	FDC 9/7695	ILS RWY 29 ORIG...
09/30/99	MN	St Paul	Lake Elmo	FDC 9/7696	NDB or GPS RWY 3 AMDT 3B...
09/30/99	MN	St Paul	Lake Elmo	FDC 9/7698	GPS RWY 31 ORIG...
09/30/99	MN	St Paul	St Paul Downtown Holman Field	FDC 9/7693	NDB or GPS RWY 30 AMDT 7B...
10/01/99	SD	Pierre	Pierre Regional	FDC 9/7719	VOR/DME or TACAN or GPS RWY 7 AMDT 4...
10/04/99	FL	Plant City	Plant City Muni	FDC 9/7773	NDB RWY 9 AMDT 1...
10/04/99	FL	Plant City	Plant City Muni	FDC 9/7775	GPS RWY 9 ORIG...
01/05/99	NH	Laconia	Laconia Muni	FDC 9/7805	ILS RWY 8 ORIG...
10/05/99	VA	Charlottesville	Charlottesville-Albemarle	FDC 9/7816	GPS RWY 21 ORIG...
10/05/99	VA	Charlottesville	Charlottesville-Albemarle	FDC 9/7818	ILS RWY 3 AMDT 12B...
10/06/99	FL	Lakeland	Lakeland Linder Regional	FDC 9/7851	VOR or GPS RWY 27, AMDT 5A...
10/06/99	FL	Lakeland	Lakeland Linder Regional	FDC 9/7853	VOR or GPS RWY 9, AMDT 2...
10/06/99	FL	Plant City	Plant City Muni	FDC 9/7841	VOR RWY 27, AMDT 3...
10/06/99	IN	Terre Haute	Sky King	FDC 9/7822	VOR or GPS–A AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
10/06/99	KY	Mount Sterling	Mount Sterling-Montgomery County	FDC 9/7846	NDB or GPS RWY 3, AMDT 1A...
10/06/99	SC	Myrtle Beach	Myrtle Beach Intl	FDC 9/7811	ILS RWY 35 ORIG–B...
10/06/99	VA	Charlottesville	Charolottesville-Albemarle	FDC 9/7833	NDB RWY 3 AMDT 15A...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7881	VOR or GPS–A AMDT 5...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7882	VOR or GPS–B ORIG...
10/07/99	CA	Riverside	Riverside Muni	FDC 9/7883	VOR or GPS RWY 9 AMDT 9...
10/07/99	MO	St Louis	Lambert-St Louis Intl	FDC 9/7896	LDA/DME RWY 30L, AMDT 2B...
10/07/99	PA	Pittsburgh	Allegheny County	FDC 9,7898	ILS RWY 28 AMDT 27B...
10/07/99	VT	Rutland	Rutland State	FDC 9/7893	LOC/DME 1 RWY 19 AMDT 2...
10/08/99	CA	Watsonville	Watsonville Muni	FDC 9/7936	NDB or GPS–B AMDT 1A...
10/08/99	CA	Watsonville	Watsonville Muni	FDC 9/7937	VOR/DME or GPS–A ORIG–A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7942	VOR RWY 4, AMDT 17...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7945	ILS RWY 22, AMDT 3A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7947	NDB or GPS RWY 4, AMDT 14A...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7948	VOR/DME RWY 22, AMDT 8...
10/08/99	LA	Monroe	Monroe Regional	FDC 9/7949	VOR/DME RWY 32, AMDT 2...
10/12/99	OR	Aurora	Aurora State	FDC 9/8014	LOC RWY 17, ORIG...

[FR Doc. 99–27830 Filed 10–25–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29786; Amdt. No. 1954]

Standard Instruction Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have

been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington DC, on October 1, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35, [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
08/30/99	CA	Ramona	Ramona	FDC 9/6551	VOR DME or GPS–A AMDT 1B... This corrects 9/6551 Published in TL 99–21
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7166	GPS RWY 28L, AMDT 1...
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7175	VOR/DME or TACAN RWY 28L, AMDT 1A...
09/13/99	ID	Boise	Boise Air Terminal/Gowen Field	FDC 9/7177	HI ILS RWY 10R, AMDT 2...
09/15/99	NC	Greenville	Pitt-Greenville	FDC 9/7215	NDB RWY 19, AMDT 14C...
09/15/99	NC	Greenville	Pitt-Greenville	FDC 9/7216	ILS RWY 19, AMDT 2D...
09/16/99	CO	Colorado Springs	City of Colorado Springs Muni	FDC 9/7244	ILS/DME RWY 17L ORIG–B...
09/16/99	KS	Olathe	New Century Aircenter	FDC 9/7251	NDB or GPS RWY 35, AMDT 4B...
09/16/99	VA	Danville	Danville Regioinal	FDC 9/7261	GPS RWY 20, ORIG...
09/17/99	AZ	Flagstaff	Flagstaff Pulliam	FDC 9/7294	ILS/DME RWY 21 ORIG–A...
09/17/99	IA	Cresco	Ellen Church Field	FDC 9/7292	GPS RWY 15, ORIG...
09/21/99	AR	Rogers	Rogers Muni-Carter Field	FDC 9/7418	ILS RWY 19, AMDT 2...
09/21/99	AR	Walnut Ridge	Walnut Ridge Regional	FDC 9/7417	LOC RWY 17, AMDT 2B...
09/21/99	AZ	Casa Grande	Casa Grande Muni	FDC 9/7404	VOR RWY 5 AMDT 4...
09/21/99	AZ	Casa Grande	Casa Grande Muni	FDC 9/7406	ILS/DME RWY 5 AMDT 6...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7400	GPS RWY 7R ORIG–A...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7401	GPS–1 ORIG–A...
09/21/99	AZ	Phoenix	Phoenix-Deer Valley Muni	FDC 9/7402	NDB or GPS RWY 25L, AMDT 3...
09/21/99	AZ	Window Rock	Window Rock	FDC 9/7399	VOR DME or GPS–A ORIG...
09/21/99	CA	Palm Springs	Desert Resorts Regional	FDC 9/7416	VOR DME or GPS RWY 30 ORIG...
09/21/99	NV	Lovelock	Derby Field	FDC 9/7403	VOR or GPS–C ORIG...
09/21/99	NV	Lovelock	Derby Field	FDC 9/7408	GPS RWY 1 ORIG...
09/21/99	OR	Aurora	Aurora State	FDC 9/7396	GPS RWY 35, AMDT 1...
09/22/99	AZ	Grand Canyon	Grand Canyon National Park	FDC 9/7437	ILS DME RWY 3 AMDT 3...
09/22/99	AZ	Lake Havasu City	Lake Havasu City	FDC 9/7434	VOR DME or GPS–A ORIG–A...
09/22/99	AZ	Tucson	Ryan Field	FDC 9/7431	NDB/DME or GPS RWY 6R AMDT 1...
09/22/99	AZ	Tucson	Ryan Field	FDC 9/7433	ILS RWY 6R AMDT 5...
09/22/99	AZ	Winslow	Winslow-Lindbergh Regional	FDC 9/7439	VOR or GPS RWY 11 AMDT 4...
09/22/99	MA	Pittsfield	Pittsfield Muni	FDC 9/7464	NDB RWY 26 AMDT 4...
09/23/99	AZ	Grand Canyon	Grand Canyon National Park	FDC 9/7476	VOR RWY 3 AMDT 4...
09/23/99	AZ	Tucson	Ryan Field	FDC 9/7475	NDB or GPS–D AMDT 1...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7494	VOR or GPS RWY 4L AMDT 5C...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7495	VOR RWY 22R AMDT 4B...

FDC Date	State	City	Airport	FDC No.	SIAP
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7496	VOR/DME or GPS RWY 22R AMDT 4B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7497	NDB RWY 4L AMDT 2C...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7498	NDB RWY 22R AMDT 7B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7499	ILS RWY 22L ORIG (CAT I & II)...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7500	ILS RWY 22R AMDT 4B...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7501	ILS RWY 4R ORIG...
09/23/99	OH	Wilmington	Airborne Airpark	FDC 9/7502	ILS RWY 4L AMDT 4...
09/23/99	PA	Pittsburgh	Allegheny County	FDC 9/7478	ILS RWY 10 AMDT 3A...
09/24/99	MI	Benton Harbor	Southwest Michigan Regional	FDC 9/7533	ILS RWY 27 AMDT 6C...
09/27/99	PA	Pittsburgh	Allegheny County	FDC 9/7594	ILS RWY 28 AMDT 27B...
09/28/99	MO	Poplar Bluff	Poplar Bluff Muni	FDC 9/7627	GPS RWY 36, ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7628	VOR or GPS RWY 1 AMDT 11...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7629	GPS RWY 22 ORIG...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7630	ILS RWY 15 AMDT 21B...
09/28/99	VT	Burlington	Burlington Intl	FDC 9/7631	ILS/DME RWY 33 ORIG–A...

[FR Doc. 99–27926 Filed 10–25–99 8:45 am]
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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 19

[T.D. 99–78]

RIN 1515–AC41

Customs Bonded Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the filing of certain inventory reports by bonded warehouse proprietors. Instead of requiring that these reports be filed with Customs, the document requires that bonded warehouse proprietors maintain these inventory reports after their preparation. In some instances when the inventory report is prepared, a letter must be submitted to Customs certifying that the report has been prepared. As amended, the port director is the Customs officer to whom certification letters must be submitted and to whom the annual report covering smelting or refining operations must be submitted. These changes and other changes made by this document are intended to simplify inventory recordkeeping procedures for warehouse proprietors. The changes are consistent with Customs' movement toward a post-audit environment and the spirit of ''shared responsibility'' embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act.

EFFECTIVE DATE: November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Edward Bowles, Senior Auditor, Regulatory Audit Division, (202–927–0071).

SUPPLEMENTARY INFORMATION:

Background

By a document published in the **Federal Register** (64 FR 16868) on April 7, 1999, Customs proposed several amendments to part 19, Customs Regulations (19 CFR part 19), concerning the submission to Customs of certain inventory reports covering merchandise in a bonded warehouse. Instead of requiring that certain reports be filed with Customs, the document proposed to amend the Customs Regulations to require that bonded warehouse proprietors maintain these inventory reports after their preparation. In certain instances, when the inventory report is prepared, a letter must be submitted to Customs certifying that the report has been prepared. Under the proposed amendment, the port director would be the Customs officer to whom certification letters would be submitted and to whom the annual report covering smelting or refining operations would be submitted. These proposed changes and other changes contained in the proposed rule were intended to simplify inventory recordkeeping procedures for warehouse proprietors and are consistent with Customs' movement toward a post-audit environment and the spirit of ''shared responsibility'' embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182).

Adoption of Proposal

No comments were received from the public in response to the proposed rule. Following further consideration and review of the matter, Customs has determined that the proposed rule published in the **Federal Register** (64 FR 16868) on April 7, 1999, should be adopted as a final rule without change.

The Regulatory Flexibility Act and Executive Order 12866

The amendments are intended to simplify inventory recordkeeping procedures for warehouse proprietors and be consistent with Customs' movement toward a post-audit environment and the spirit of ''shared responsibility'' embodied in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do the amendments result in a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collections of information contained in this rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the following OMB control numbers: 1515–0093 for bonded warehouse proprietor's submissions; 1515–0121 for information to be supplied by owners or lessees in support of applications to establish a bonded warehouse facility; 1515–0127 for applications by manufacturers to bond (or discontinue a previously bonded) an establishment engaged in the smelting or refining of metal-bearing materials; and 1515–0135 for records of smelting or refining operations showing receipt and disposition of each

shipment of material. This document restates the collections of information without substantive change.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning suggestions for reducing the burden of the collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

List of Subjects in 19 CFR Part 19

Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Warehouses.

Amendments to the Regulations

Part 19, Customs Regulations (19 CFR part 19), is amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19, and the relevant sectional authority citation, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

* * * * *

2. Section 19.12 is amended by revising the seventh and eighth sentences of paragraph (d)(3), by revising the first sentence of paragraph (g), adding a sentence thereafter, and revising the last sentence of paragraph (g), and by revising the first sentence, respectively, of paragraphs (h)(1) and (h)(3), to read as follows:

§ 19.12 Inventory control and recordkeeping system.

* * * * *

(d) *Accountability for merchandise in a warehouse.* * * *

(3) *Theft, shortage, overage or damage.* * * * The proprietor must also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. * * *

* * * * *

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on Customs Form (CF) 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CF 300, a letter signed by the proprietor certifying that the CF 300 has been prepared, is available for Customs review, and is accurate. * * * An alternative format may be used for providing the information required on the CF 300.

(h) *Annual reconciliation.* * * *

(1) *Report.* Instead of preparing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. * * *

* * * * *

(3) *Certification.* The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. * * *

* * * * *

3. Section 19.17 is amended by revising the first and second sentences of paragraph (g) to read as follows:

§ 19.17 Application to establish warehouse; bond.

* * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting or refining warehouses are included under one blanket smelting and refining bond, an overall statement must be prepared and maintained by the principal named in the bond by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. If the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction. * * *

4. Section 19.19 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 19.19 Manufacturers' records; annual statement.

* * * * *

(b) Every manufacturer engaged in smelting or refining, or both, must prepare and submit to the port director at the port nearest which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: September 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–27965 Filed 10–25–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–140–FOR; State Program Amendment No. 98–4]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed additions of rules concerning blaster certification. Indiana intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of

Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. IND–1659), Indiana sent us an amendment to its program under SMCRA. This amendment replaces State Program Amendment No. 94–6, which we approved in the March 10, 1995, **Federal Register** (60 FR 13038). Indiana sent the amendment, which amends the Indiana Administrative Code (IAC), at its own initiative.

We announced receipt of the amendment in the July 15, 1999, **Federal Register** (64 FR 38165). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on August 16, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Withdrawal of Previously Approved Amendment

Indiana notified us in its letter dated July 23, 1997 (Administrative Record No. IND–1578), that the statutory time frame for approving State Program Amendment No. 94–6 had expired prior to final approval. We approved this amendment, dated December 7, 1994 (Administrative Record No. IND–1416), on March 10, 1995 (60 FR 13038). Since Indiana did not adopt the amendment, we are removing our approval and amending 30 CFR 914.15 to reflect this decision.

B. 310 IAC 12–8–4.1, Application for Certification

Indiana proposed to add this section to require persons wishing to become certified blasters to submit an application for certification to the department. The application must be in writing, on forms supplied by the department, and completed in accordance with the application instructions. If an application form is incomplete, the department will notify the applicant of the deficiencies. The applicant will then have thirty days to provide the required information. If the applicant does not provide the required information, the department will terminate the application. The director or an authorized representative may verify the information shown on the application. Finally, if the department terminates the application, the applicant will not be considered for certification. However, the applicant may submit a new application at any time.

Federal regulations at 30 CFR 850.15(a) require regulatory authorities to certify for a fixed period those candidates qualified to accept responsibility for blasting operations. We find that the proposed regulations at 310 IAC 12–8–4.1 are consistent with the Federal regulations at 30 CFR 850.15(a).

C. 30 IAC 12–8–8.1, Renewal

Indiana proposed to add this section to require a certified blaster to renew his or her certification every three years. The request for renewal must be submitted to the department in writing, on forms supplied by the department, within thirty days prior to expiration of the certificate. The department will approve the renewal request if the certified blaster has worked at least twelve months of the preceding thirty-six as a certified blaster and is not in violation of 310 IAC 12–8–9. If the certified blaster does not renew his or her certification within one year after expiration, the certificate will no longer be renewable. A blaster must then submit a new application for certification. The department will send a renewal notice to each registrant at least two months before expiration of certification. Finally, the renewal notice and all other communications will be sent to the last address the registrant gave to the department. Failure to receive a renewal notice does not relieve the certified blaster of the obligation to renew his or her certification.

Federal regulations at 30 CFR 850.15(c) allow a regulatory authority to require periodic reexamination, training, or other demonstration of continued blaster competency. The proposed regulations at 310 IAC 12–8–8.1 are consistent with the Federal regulations at 30 CFR 850.15(c). Therefore, we approve them.

IV. Summary and Disposition of Comments

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1660). By letter dated July 19, 1999 (Administrative Record No. IND–1661), the Mine Safety and Heath Administration (MSHA) responded to our request by stating that Indiana's amendment does not conflict with MSHA regulations or policies.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1660). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 8, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1660), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by

Indiana on July 1, 1999. We approve the rules that Indiana proposed with the provision that they be published in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

For reasons discussed in finding III.A., we are also amending 30 CFR Part 914 by removing the approval of an amendment that Indiana submitted on December 7, 1994.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 6, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by removing the entry for ''Original amendment submission date'' of December 7, 1994, and by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
July 1, 1999	October 26, 1999	310 IAC 12–8–4.1; –8.1.

[FR Doc. 99–27846 Filed 10–25–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 924

[SPATS No. MS–015–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to regulations concerning formal hearings; bond release; hydrologic balance; cessation orders; formal review of citations; definitions; areas where mining is prohibited or limited; performance bonds; pre-blasting surveys; permitting; inspections; coal exploration; qualified laboratories; disposal of excess spoil; coal mine waste impounding structures; backfilling and grading; roads; and coal preparation plant performance standards. The State also proposed to correct typographical errors and make other non-substantive revisions. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining,

135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior approved the Mississippi program. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. MS–0373), Mississippi sent us an amendment to its program under SMCRA. Mississippi sent the amendment in response to required program amendments at 30 CFR 924.16(f)–(h), (j), (k), (m), and (n). The amendment also included changes made at Mississippi's own initiative. Mississippi proposed to amend the Mississippi Surface Coal Mining Regulations.

We announced receipt of the amendment in the July 26, 1999, **Federal Register** (64 FR 40326). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on August 25, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not discuss below concern minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Non-Substantive Revisions and Correction of Typographical Errors

1. Mississippi assigned an incorrect section number (Section 5343.) to its regulatory provisions for ''Use of Explosives: Pre-blasting Survey.'' Mississippi proposed to change this incorrect section number to Section 5349.

2. Mississippi proposed to correct typographical errors and to make other non-substantive revisions in the following sections: Section 105. Definitions; Section 407. Contents of Application for Exemption; Section 413. Conditions of Exemption and Right of Inspection and Entry; Section 1105. Areas Where Mining is Prohibited or Limited; Section 2103. Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations; Section 2105. Coal Exploration Compliance Duties; Section 2313. Permit Term Information; Section 3113. Review of Permit Applications; Section 3121. Permit Terms; Section 3509. Permit Renewals: Completed Applications; Section 3713. Qualified Laboratories; Section 5359. Disposal of Excess Spoil: General Requirements; Section 5377. Coal mine waste: Impounding structures; Section 5391. Backfilling and Grading: General Grading Requirements; Section 5393. Backfilling and grading: Thin Overburden; Section 53111. Roads: General; Section 5703. Steep Slopes: Backfilling and grading: Steep slopes; and Section 5903. Coal Preparation Plants: Performance Standards.

Correction of these typographical errors and other non-substantive revisions clarify the existing regulations. These revisions are no less effective than the Federal regulations and will not negatively impact the effectiveness of the Mississippi regulations.

B. Revisions to Mississippi's Regulations that are Required at 30 CFR 924.16

1. Section 3301. Formal Hearing

In accordance with the Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367, we required the State to add provisions at section 3301(b) that pertain to temporary relief concerning permit decisions. Mississippi revised paragraph (b) to read as follows:

> Any party may file a petition for temporary relief from the Permit Board's action in conjunction with the filing of the request for a formal hearing or at any time before a final decision is issued by the Permit Board after a formal hearing.

We find that the provision at section 3301(b) is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(f).

2. Section 4501. Procedures for Seeking Release of Performance Bond

Mississippi proposed to revise paragraph (c) to clarify that Federal, State, and local governmental agencies which have special expertise with respect to any environmental, social, or economic impact involved in the coal mining operation are allowed to file written objections to the proposed bond release and to request public hearings. We find that the provision at section 4501(c) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 800.40(f) and no less stringent than section 519(f) of SMCRA. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(g).

3. Section 5333. Hydrologic Balance: Surface- and Ground-Water Monitoring

Mississippi proposed to revise paragraph (b)(3)(A) to require the operator to demonstrate that the coal mining operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas. We find that the provision at section 5333 is substantively identical to and is no less effective than the counterpart Federal regulation at 30 CFR 816.41(e)(3)(i). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(h).

4. Section 6501. Cessation Orders

Mississippi proposed to revise paragraph (c)(4) to replace a reference to § 53–9–69 with a reference to § 6509. We find that the provision at section 6501(c)(4) is substantively the same as and no less effective than the counterpart Federal regulation at 30 CFR 843.11(c)(4). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(j).

5. Section 6511. Formal Review of Citations

a. At paragraph (a), Mississippi proposed to add a requirement that the Commission notify parties in writing of the time and place of the hearing at least five working days before the hearing date. We find that the provision at section 6511(a) is consistent with and no less stringent than section 525(a)(2) of SMCRA and no less effective than the Federal regulation at 43 CFR 4.1167. Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(k). Mississippi also proposed to revise paragraph (a) to require interested parties to request formal reviews within

30 days of the date of the Commission, the Executive Director, or the Executive Director's authorized representative took the action that is being contested during the formal review. We are approving this revision because it is consistent with and no less stringent than section 525(a)(1) of SMCRA.

b. Mississippi proposed to revise paragraph (1)(1) by changing the reference room § 6511(e) to § 6511(a). We find that the provision at section 6511(1)(1) is substantively identical to and no less effective than the counterpart Federal regulation at 43 CFR 4.1186(a)(1). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(m).

c. Mississippi proposed to revise paragraph (n)(9) to read as follows:

(9) Any party desiring to appeal a decision of the Commission granting or denying an application for expedited review may appeal to and seek relief from the appropriate chancery court pursuant to § 53–9–77.

We find that the provision at section 6511(n)(9) is consistent with and no less effective than the counterpart Federal regulation at 43 CFR 4.1187(f). Therefore, we are approving this revision and removing the required program amendment at 30 CFR 924.16(n).

C. Revisions to Mississippi's Regulations That the State Made at Its Own Initiative

1. Section 105. Definitions

Mississippi proposed to revise the definition for performance bond to read as follows:

Performance Bond—a surety bond, collateral bond, letter or letters of credit, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the act, these regulations, this program and the requirements of the permit and reclamation plan.

In the above definition for performance bond, Mississippi added ''letter or letters of credit.'' We are approving this revision because a letter or letters of credit is a form of collateral bond in accordance with the Federal regulations at 30 CFR 800.21(b). Therefore, Mississippi's definition of performance bond is no less effective than the Federal definition of performance bond at 30 CFR 701.5.

2. Section 1105. Areas Where Mining Is Prohibited or Limited

Mississippi proposed to revise paragraph (c) to read as follows:

(c) on any lands which will adversely affect any publicly owned park or any place included on the National Register of Historic Places, unless approved jointly by the Permit Board and the federal, state or local agency with jurisdiction over the park or place;

Mississippi is clarifying that the Mississippi Environmental Quality Permit Board (Permit Board) and not the Mississippi Commission on Environmental Quality (Commission) is the State entity which must along with certain other government agencies jointly approve surface coal mining operations on any lands which will adversely affect any publicly owned park or any place included on the National Registry of Historic Places. Therefore, we are approving this revision because it is substantively the same as the counterpart Federal regulation at 30 CFR 761.11(c).

3. Section 3119. Permit Approval and Denial Actions

Mississippi proposed to add new paragraph (b)(2) to read as follows:

(2) Notwithstanding any of the foregoing provisions of this Section, no time limit under the act or this Section requiring the Permit Board to act shall be considered expired from the time the Permit Board requests further information under § 3113(d) until the final decision of the Permit Board.

Mississippi's proposed new regulation pertains to decisions regarding permit issuance. Mississippi proposed that time limits imposed by its Act or this section of its regulations will not expire during a certain time period if the Permit Board requests, from permit applicants, information on current violations by those permit applicants. The time period runs from the time the Permit Board requests the information until the time the Permit Board makes its final decision on the permit.

If a current violation exists, section 3113(d) of the Mississippi regulations mandates that the Permit Board require the applicant or the person who owns or controls the applicant to submit certain information to the Permit Board before it can issue a permit. This requirement is substantively identical to the Federal regulations at 30 CFR 773.15(b)(1) (i)–(ii). Also, section 3113(b) states that the Permit Board shall not issue a permit if any surface coal mining and reclamation operation owned or controlled by the applicant or any person who owns or controls the applicant is currently in violation of the State Act, Federal Act, any corresponding State or Federal regulations, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection. This regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.15(b)(1).

Although, we do not have a counterpart Federal regulation or statute to Mississippi's proposed new regulation and in light of the provisions in the State regulations at sections 3113 (b) and (d) and the Federal regulations at CFR 773.15 (b) and (b)(1) (i)–(ii), it makes sense that any corresponding time frames imposed during the permit approval process must be adjusted accordingly. The adjustments are necessary because of the time that will be required for the State to make the request to applicants for information on current violations and because of the time that will be required for the applicant to receive the request and to respond to it. Therefore, we are approving the addition of this new proposed regulation because it is not inconsistent with the Federal regulations at 30 CFR 773.15 (b) and (b)(1) (i)–(ii).

4. Section 4310. Form of the Performance Bond

Mississippi proposed to add the language ''a letter or letters of credit'' to the list of acceptable forms of performance bond at new paragraph (4). Mississippi also redesignated old paragraph (4) as new paragraph (5). We are approving the revision because a letter or letters of credit is a form of collateral bond in accordance with the Federal regulations at 30 CFR 800.21(b).

5. Section 4303. Terms and Conditions of the Bond

Paragraph (g) of this section pertains to letters of credit. Mississippi proposed to revise paragraph (g)(6) by replacing the term ''indemnity agreement'' with the term ''letter of credit.'' We are approving this revision because Mississippi is merely identifying the form of indemnity agreement which, in this particular regulation, is a letter of credit.

6. Section 4701. General

Mississippi proposed to revise paragraph (a) to read as follows:

(a) Except as in compliance with § 4701(b), the Commission shall proceed to cause the forfeiture of all or part of a bond or other collateral accepted pursuant to Chapter 43 for any permit where required or authorized by § 4705.

Mississippi is clarifying that it can proceed to forfeit in whole or in part, not just bonds, but other collateral accepted according to Chapter 43. Form, Condition and Terms of Performance Bonds and Liability Insurance. Mississippi is also clarifying that the forfeiture will occur unless it decides to

withhold forfeiture according to section 4701(b). We are approving this revision because it is consistent with and no less effective than the Federal regulations at 30 CFR 800.50 (a), (a)(1) and (2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record No. MS–0376). We received comments from two agencies.

Comment 1: In a letter dated July 30, 1999, the Mine Safety and Health Administration stated that it had no comments regarding the amendment (Administrative Record No. MS–0377).

Response: No response is necessary.

Comment 2: The U.S. Army Corps of Engineers in a letter dated August 18, 1999, stated that the proposed amendment should specify all measures in the International System of Units (SI) in lieu of the inch-pound (IP) system (Administrative Record No. MS–0379).

Response: The appropriateness of Mississippi's use of the IP system is not at issue in this rulemaking because the State did not propose any changes pertaining to measures. In addition, the Federal regulations at 30 CFR Part 700 to end do not require states to specify measures in the SI.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. MS–0377). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 19, 1999, we requested comments on Mississippi's amendment (Administrative Record No. MS–0377), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Mississippi on July 1, 1999. We approve the regulations that Mississippi proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Mississippi to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Office 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 4, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
July 1, 1999	October 26, 1999.	Sections 105; 407; 413; 1105 (c)–(d); 2103; 2105; 2313; 3113; 3119; 3121; 3301(b); 3509; 3713; 4301; 4303(g)(6); 4501(c); 4701(a); 5333(b)(3)(A); 5349; 5359; 5377; 5391; 5393; 53111; 5703; 5903; 6501(c)(4); 6511 (a), (l)(1), & (n)(9).

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (f), (g), (h), (j), (k), (m) and (n).

[FR Doc. 99–27845 Filed 10–25–99; 8:45 am]
BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Mailing Online Market Test: Changes in Domestic Classifications and Fees—Final Rule

AGENCY: Postal Service.

ACTION: Final rule; market test termination.

SUMMARY: This serves notice that the United States Postal Service is terminating the Mailing Online market test on October 29, 1999. The Postal Service originally intended that the test, which began on October 30, 1998, would end at a time tied to action on a Request for a Mailing Online experiment. However, such Request has been delayed. Postal management has made the operational decision to end the market test, in accordance with the Postal Rate Commission's Rules of Practice which specify that market tests ordinarily last only one year. This rule makes conforming changes to the Domestic Mail Manual.

EFFECTIVE DATE: October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Kenneth N. Hollies, (202) 268–3083.

SUPPLEMENTARY INFORMATION: On July 15, 1998, pursuant to its authority under 39 U.S.C. section 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a Request for a Recommended Decision on a Market Test Classification and Fee Schedule and a Recommended Decision on an Experimental Classification and Fee Schedule for Mailing Online Service. The PRC designated the filing as Docket No. MC98–1 and published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** on July 23, 1998 (63 FR 39600).

The Postal Service's Request to the PRC proposed that the Postal Service be permitted to establish new classifications and fees for Mailing Online, first as a market test and later as an experiment. The market test was to permit assessment of the features and viability of the new service while providing input for PRC and Postal Service consideration of the experiment and perhaps a permanent form of Mailing Online. The market test was to be a limited one involving up to 5,000 customers, starting in Tampa, Florida and the northeastern United States.

On October 7, 1998, the Commission issued its favorable Opinion and Recommended Decision on the market test. The Postal Service Governors voted on October 16, 1998, to accept the Commission's recommendation. Operation of the market test subsequently commenced on October 30, 1998.

On May 3, 1999, the Board of Governors, in Resolution No. 99–5, directed the withdrawal of the request for an experiment in consideration of major changes that had occurred in the structure of the Postal Service's presence on the Internet. These changes rendered inaccurate the factual foundation underlying the earlier request for a Mailing Online experiment.

Accordingly, the market test is being terminated at the end of one year based on operational considerations. This decision also accords with the PRC's Rules of Practice, 39 CFR 3001.162, which specify that market tests ordinarily last only up to one year. The Postal Service is now providing notice that operation of the Mailing Online market test will cease at approximately 1:59 p.m. EST on Friday, October 29, 1999.

Background

Mailing Online is a service that allows postal customers with access to a personal computer and the Internet to transmit electronic documents to a postal Web site for subsequent batching and transmission to a contract printer, who creates and presents the physical mailpieces for entry into the mailstream. Payment for postage and mailpiece preparation is made Online via credit card.

The Postal Service remains committed to Mailing Online and has not abandoned the project despite termination of the market test. Development of the single-channel USPS.com Internet presence continues and activities related to Mailing Online are being closely coordinated, although they are both under development and still being tested. Postal management hopes to ask the Governors to authorize the filing of a new request for a Mailing Online experiment, based upon the USPS.com architecture, in the near future.

Because of the limited scope of the market test, the Postal Service earlier did not solicit comment on its implementation. Similarly, the Postal Service finds no need to solicit comment on its termination.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as follows:

E Eligibility

* * * * *

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

* * * * *

1.3 Matter Closed Against Postal Inspection

[Revise 1.3 by removing reference to documents created and mailed by means of Mailing Online to read as follows:]

Matter closed against postal inspection must be mailed as First-Class Mail or Express Mail. Electronic documents created for possible

transmission as First-Class Mail are closed against inspection. Hard copy versions of electronic documents, while being prepared for entry as First-Class Mail, also are closed against postal inspection. The USPS may open mail other than First-Class Mail or Express Mail to determine whether the proper rate of postage is paid. Material wrapped or packaged so that it cannot be examined easily or cannot be examined without destruction or serious damage is closed against postal inspection and is charged the appropriate First-Class Mail or Express Mail rate.

* * * * *

4.0 FEES

4.1 Presort Mailing

[Revise 4.1 to remove references to Mailing Online mailers to read as follows:]

A First-Class Mail presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail rates. Payment of one fee allows a mailer to enter mail at all those rates. Persons or organizations paying this fee may enter clients' mail as well as their own mail. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

* * * * *

E140 Automation Rates

1.0 BASIC STANDARDS

[Revise 1.1b by removing reference to Mailing Online in G093 to read as follows:]

1.1 All Pieces

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

b. Be part of a single mailing of at least 500 pieces of automation rate First-Class Mail, subject to 1.2.

* * * * *

E611 All Standard Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Postal Inspection

[Revise 1.2 by removing reference to documents created in electronic form by means of Mailing Online to read as follows:]

Standard Mail is not sealed against postal inspection except for electronic documents retained by the Postal Service, which are sealed against postal inspection. Regardless of physical closure, the mailing of articles at Standard Mail rates constitutes consent by the mailer to postal inspection of the contents.

* * * * *

E612 Additional Standards for Standard Mail (A)

* * * * *

4.0 BULK RATES

* * * * *

4.7 Annual Fees

[Revise 4.7 by removing reference to fees in G093 to read as follows:]

Standard Mail (A) is subject to an annual mailing fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Each mailer who enters mail at Standard Mail (A) rates paid with a meter or precanceled stamps must pay an annual mailing fee at each post office of mailing; a mailer paying this fee may enter clients' mail as well as the mailer's own. The mailer whose permit imprint appears on pieces in a mailing paid with a permit imprint must show that permit number on the postage statement and must pay the annual mailing fee for that permit; this fee is in addition to the fee for an application to use permit imprints.

* * * * *

4.9 Preparation

[Revise 4.9b by removing reference to Mailing Online in G093 to read as follows:]

Each Standard Mail (A) mailing is subject to these general standards:

* * * * *

b. Each mailing must contain at least 200 pieces or 50 pounds. See E620 for volume requirement eligibility unique to Presorted Standard rate mailings. Other volume standards can also apply, based on the rate claimed.

* * * * *

G General Information

* * * * *

[Remove G093, Mailing Online, and remove the preceding headings G000 and G090.]

* * * * *

P040 Permit Imprints

5.0 MAILINGS

5.1 Minimum Quantity

[Remove 5.1d, which provided for Mailing Online permit imprint mailings.]

* * * * *

These revisions will be incorporated into the pages of the Domestic Mail Manual. An appropriate amendment to 39 CFR 111.3 will be published in the **Federal Register** to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–27906 Filed 10–25–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6462–7]

RIN 2060–AF26

National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing publicly owned treatment works (POTW). The primary hazardous air pollutants (HAP) emitted by these sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

With this final rule, the EPA is requiring air pollution controls on a new or reconstructed treatment plant at a POTW that is a major source of HAP. The standards also require that new and existing POTW treating regulated waste streams from an industrial user, for the purpose of allowing that industrial user to comply with another NESHAP, meet the treatment and control requirements of the other relevant NESHAP.

EFFECTIVE DATE: October 26, 1999.

ADDRESSES: *Docket.* Docket No. A–96–46, containing information considered

by the EPA in development of the promulgated standards, is available for public inspection from 8 a.m. to 5:30 p.m., Monday through Friday, at the following address in room M–1500, Waterside Mall (ground floor): US Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Responses to Comments Document. The responses to comments document for the promulgated standards may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777, or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 605–6000 or (800) 553–6847 or via the Internet at www.fedworld.gov/ntis/ntishome/html. Please refer to ''National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works—Background Information for Final Standards: Summary of Public Comments and Responses'' (EPA–453/R–99–008, October 1999).

The document contains the following: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, and (2) a summary of the changes made to the standards since proposal. This document is also available for downloading from the Technology Transfer Network (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule or the analyses performed in developing this rule, contact Mr. Robert Lucas, Waste and Chemical Processes Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884, facsimile number (919) 541–0246, electronic mail address ''lucas.bob@epa.gov''. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA regional representatives. For a listing of EPA Regional contacts, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Electronic Access. These final standards and all other information considered by the EPA in the development of the final standards are available in Docket Number A–96–46 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). Electronic versions of documents from the Office of Air and Radiation (OAR) are available through the EPA's OAR Technology Transfer Network Web site (TTNWeb). The TTNWeb is a collection of related Web sites containing information about many areas of air pollution science, technology, regulation, measurement, and prevention. The TTNWeb is directly accessible from the Internet via the World Wide Web location at the following address: ''http://www.epa.gov/ttn''. Electronic versions of this preamble and rule are located under the OAR Policy and Guidance Information Web site, at ''http://www.epa.gov/ttn/oarpg/'', under the **Federal Register** notices section. If more information on the TTNWeb is needed, contact the Systems Operator at (919) 541–5384.

EPA Regional Offices

Director, Office of Environmental Stewardship, Attn: Air Compliance Clerk
U.S. EPA Region I, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023, (617) 918–1740

Umesh Dholakia
U.S. EPA Region II, 290 Broadway Street, New York, NY 10007–1866, (212) 637–4023

Dianne Walker
U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–3297

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U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–6793

Jim Yang (6EN–AT)
U.S. EPA Region VI, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, (214) 665–7578

Gary Schlicht
U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7097

Tami Thomas-Burton
U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6581

Ken Bigos
U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1200

Dan Meyer
U.S. EPA Region X, 1200 Sixth Street, Seattle, WA 98101, (206) 553–4150

Regulated Entities. Entities potentially regulated by this action are publicly owned treatment works. Regulated categories and entities include:

Category	Standard Industrial Classification (SIC) codes	North American Industrial Classification System (NAICS) codes	Examples of potentially regulated entities
Industry (3) Not affected Federal Government	4952	22132	Sewage treatment facilities, and federally owned treatment works.
State/local/tribal governments	4952	22132	Sewage treatment facilities, municipal wastewater treatment facilities, and publicly owned treatment works.

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 that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this promulgated action, you should carefully examine the applicability criteria in section III. A of this document and in 40 CFR 63.1580. If you have 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. National emission standards for hazardous air pollutants from POTW were proposed in the **Federal Register** on December 1, 1998 (63 FR 66084). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Clean Air Act (Act), judicial review of the final rule is available 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. Only an objection to this action which was raised with reasonable

specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

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

I. Background
A. Source Category Description
B. Overview of HAP Emissions from POTW
II. Summary of Considerations Made in Developing This Standard
A. Source of Authority
B. Stakeholder and Public Participation
III. Summary of Promulgated Standards
A. Affected Sources and Applicability
B. Requirements
IV. Summary of Impacts
V. Significant Comments and Changes to the Proposed Standards
A. Major Source Determination
B. Co-location With Other Sources of HAP Emissions
C. Control Requirements
D. Federally Owned Treatment Works
VI. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Unfunded Mandates
F. Executive Order 12875
G. Executive Order 13084
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 12612

I. Background

A. Source Category Description

The EPA's initial list of categories of major sources of HAP emissions, established under section 112(c)(1) of the Act, included POTW. This list was published on July 16, 1992 (57 FR 31576). The POTW source category is defined in the supporting documentation for the initial source category list. The POTW source category ''includes emissions from wastewaters which are treated at a POTW.''

These wastewaters are produced by industrial, commercial, and domestic sources. Emissions from these wastewaters can occur within the collection system (sewers) as well as during treatment at the POTW. Control options include, but are not limited to, reduction of HAP's at the source before they enter the collection system, add-on emission controls on the collection system and at the POTW, and/or treatment process modifications/substitutions. (Documentation for Developing the Initial Source Category List, EPA–450/3–91–030, July 1992)

Section 112(e)(5) of the Act defines POTW by referring to the definition of treatment works in title II of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act. As set forth in section 212(2), 33 U.S.C. 1292(2), treatment works include the wastewater treatment units themselves, as well as intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. Any of these devices which are publicly owned may be a POTW. The wastewater collected, transmitted, and treated by such POTW may be generated by industrial, commercial, and/or domestic sources.

B. Overview of HAP Emissions From POTW

The HAP emitted by POTW originate in wastewater streams discharged by industrial, commercial, and other facilities. Since POTW can receive any HAP constituent, potentially, POTW can have emissions of any HAP. Currently, the primary HAP constituents associated with POTW sources include xylenes, methylene chloride, toluene, ethyl benzene, chloroform, tetrachloroethylene, benzene, and naphthalene.

Each of these HAP can cause adverse health effects provided sufficient exposure. For example, exposure to methylene chloride can adversely affect the central nervous system and has been shown to cause liver and lung cancers in animals, while benzene is known to cause cancer in humans.

Hazardous air pollutants present in wastewater entering POTW treatment plants can biodegrade, adhere to sewage sludge, volatilize to the air, or pass through (remain in the discharge) to receiving waters. Within the POTW source category, wastewater treatment units are the most likely source for HAP emissions, but wastewater collection systems (including transport systems) and other devices may also have emissions.

II. Summary of Considerations Made in Developing This Standard

A. Source of Authority

Section 112 of the Act addresses stationary sources of HAP. Section 112(b) of the Act, as amended, lists 188 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emissions of HAP from stationary sources by establishing national emission standards.

The statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT) to major sources. Section 112(a)(1) of the Act defines a major source as:

* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

Section 112(d)(3) prescribes a minimum level of control for major sources of HAP, referred to as the MACT floor.

Section 112(e)(5) of the Act required the EPA to promulgate a MACT standard for publicly owned treatment works by November 15, 1995. Under section 112(j)(2) (the ''MACT hammer''), if the EPA failed to promulgate a POTW MACT standard by November 15, 1997, major sources in the POTW category would be required to submit, within 18 months (by May 15, 1999), an application for a permit which would impose MACT requirements on a case-by-case basis. Although the EPA was unable to meet this deadline, on May 14, 1999, the EPA promulgated a rule (64 FR 26311) which extended the section 112(j) permit application deadline for this source category until December 15, 1999. The obligation for facilities to file a permit application under section 112(j)(2) is eliminated by the promulgation of these final standards.

B. Stakeholder and Public Participation

As prescribed in section 112(n)(3) of the Act:

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions.

During the development of these final standards, representatives of POTW and sanitation districts were extensively consulted. The EPA worked closely with a trade association known as the Association of Metropolitan Sewerage Agencies (AMSA) for approximately 7 years.

A database comprising information supplied by the AMSA was used in the evaluation of HAP emissions and emissions control for POTW. Estimates of organic HAP emissions from model

sources were developed by the EPA based on information supplied by the AMSA, including most of the modeling inputs used for the EPA WATER8 emissions estimation model.

III. Summary of Promulgated Standards

This section provides a summary of the final standards contained in 40 CFR part 63, subpart VVV. The full regulatory text is printed in today's document and is also available in Docket No. A–96–46, directly from the EPA, or from the Technology Transfer Network (TTN) on the EPA's electronic bulletin board. More information on how to obtain a copy of the final regulation is provided in the **SUPPLEMENTARY INFORMATION** section of this document.

A. Affected Sources and Applicability

The wastewater treatment plant at a POTW is the affected source for this subpart. The subpart is applicable only to POTW that are located at facilities which are major sources of HAP emissions. In addition, the final rule exempts facilities which are not required to develop a pretreatment program under 40 CFR part 403.

B. Requirements

The final standards for POTW do not require any additional controls for existing non-industrial POTW treatment plants. New or reconstructed non-industrial POTW treatment plants must reduce their HAP emissions. This is accomplished by using covers and control devices on the POTW treatment units up to, but not including, the secondary treatment units.

In response to comments that the control requirements for new or reconstructed non-industrial POTW were too prescriptive and did not account for the differences between POTW treatment plants, the final standards include an alternative compliance option. Using the available HAP data provided by the trade association, the EPA calculated a fraction emitted value equivalent to applying covers and control devices on treatment units up to, but not including, the secondary treatment units. Under this option, each month, facilities calculate the fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant. Facilities must demonstrate that the annual rolling average of the fraction emitted does not exceed 0.014. Facilities can use any combination of pretreatment, wastewater treatment plant modifications, and control devices to meet the fraction emitted limit.

The POTW which provide treatment and control for a waste stream regulated by an industrial MACT are defined as industrial POTW treatment plants. Under the industrial discharger's MACT, the POTW provides air pollution control, generally under a contractual agreement. Today's POTW standard makes these controls directly enforceable on the POTW. An owner or operator of a new or reconstructed industrial POTW treatment plant must comply with the existing source MACT or the new or reconstructed MACT for non-industrial POTW, whichever is more stringent.

IV. Summary of Impacts

There are approximately 16,000 POTW nationwide that receive and treat approximately 113.6 million cubic meters per day (30 billion gallons per day) of domestic, commercial, and industrial wastewater. It was not possible to survey each facility and make a major source determination. Although only six major sources have been identified, the EPA knows that additional major sources will be subject to these standards. Based on discussions with POTW representatives, the EPA believes that these additional major sources do not have different emission sources or controls than the six identified facilities. Today's final rule does not add new requirements for these existing facilities.

Several POTW have been identified as possible industrial POTW. In addition, as more industrial NESHAP are promulgated, the EPA believes that more POTW could be used by industries to comply with the requirements of their industrial NESHAP. Today's final rule does not require any additional control, but it does make the industrial NESHAP control requirements directly enforceable on the POTW.

Current information from POTW representatives projects no new or reconstructed major POTW for the next 5 years. Thus, the EPA does not expect that any facilities will be required to apply the emission controls included in today's final rule, and the EPA projects minimal impacts from today's action.

V. Significant Comments and Changes to the Proposed Standards

Nineteen comment letters were received on the proposed rule. The commenters included State and local air pollution agencies, owners and operators of POTW, trade organizations, representatives of academia, and private citizens. A detailed discussion of these comments and responses can be found in the Background Information Document for the Final Standards (EPA–453/R–99–008).

The EPA's review of the significant issues raised by the commenters resulted in several changes to the proposed rule. This section summarizes the significant comments and provides the EPA's response to those comments.

A. Major Source Determination

The EPA developed a methodology which included a number of ways by which a POTW could determine if their treatment plant was a major source of HAP emissions. The methods developed were presented in a tiered approach to provide maximum flexibility and were primarily intended to assist the thousands of POTW treatment plants that are not major sources. Several comments were received that opposed including any methodology for major source determination.

Due to title V, part 70 determinations, a POTW and its local air pollution regulatory authorities should have agreement on the methods by which the POTW estimates emissions from wastewater treatment operations. Therefore, the EPA has removed procedures for major source determination, and has referred to 40 CFR part 63, Subpart A—General Provisions, for the definition of a major source.

The procedures that were removed from the standards, along with additional guidance, will be included in a future document on estimating emissions from POTW. The EPA will continue to provide assistance on the use of the WATER8 model. Requests for guidance on emissions estimation for the purpose of major source determination will be addressed on an ''as-needed'' basis, and may be obtained by consulting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of today's final rule.

B. Co-Location With Other Sources of HAP Emissions

Several commenters believed that if a POTW treatment plant is not a major source, then it should not be considered a major source if it is co-located with another major source. These commenters recommended that the emissions should be based on actual emissions from the wastewater treatment portion of the POTW and should not include emissions from co-located sources (*e.g.*, portable internal combustion engines). -

The term ''major source'' is defined in 40 CFR part 63, Subpart A—General Provisions, and includes the requirement for considering emissions

and the potential for emissions from co-located sources when determining major source status. Therefore, the major source determination must be based on facility-wide emissions.

C. Control Requirements

Several commenters believed that it was inappropriate to require POTW to be subject to §§ 63.693 through 63.697 of 40 CFR part 63, Subpart DD—National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations. The commenters stated that the best-controlled facility, on which the EPA based its MACT floor for new and reconstructed facilities, does not comply with these standards.

In response to the comments, the EPA has removed requirements from §§ 63.693 through 63.697 of 40 CFR part 63 which are not appropriate for POTW. In particular, the final rule does not require the use of an organic vapor analyzer to check for leaks in either the closed-vent system or the covers on tanks.

In addition, the EPA has added an alternative compliance option based on a modeling study of the control requirements. This alternative compliance option allows a new or reconstructed source to comply by demonstrating, for units up to, but not including the secondary treatment, that the weighted fraction emitted does not exceed 0.014 based on an annual average. Facilities calculate the weighted fraction emitted by dividing the sum total of HAP emissions by the sum total of HAP loading to the wastewater treatment plant.

A POTW may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard. Facilities can determine the appropriate control efficiency for a particular control device. However, the POTW must document these calculations and demonstrate continuous compliance to the Administrator's satisfaction. In this context, continuous compliance refers to an annual rolling average of the fraction of the HAPs in the wastewater treated by the POTW which are emitted to the air.

D. Federally Owned Treatment Works

One commenter questioned whether Federally Owned Treatment Works (FOTW) should be subject to this rulemaking. The commenter suggested that FOTW should be excluded from the POTW source category because the term ''publicly owned treated works'' has been used more narrowly in other statutory contexts.

The EPA notes that many treatment works owned and operated by municipalities, States, and intermunicipal or interstate agencies are essentially the same in design, in operation, and in the types of wastewater that are treated as treatment works operated by the Federal government. Regulations developed under the Clean Water Act generally require that both types of facilities meet the same control requirements. EPA does not believe that it would be a constructive use of governmental resources to promulgate a separate MACT standard for FOTW. In addition, EPA believes that the inclusion of FOTW within the POTW source category is consistent with the intent of the Federal Facility Compliance Act of 1992.

EPA understands the confusion which could be caused by differences in the meaning of the term ''publicly owned treatment works'' in differing regulatory contexts. By including treatment works owned by the Federal government in the POTW source category, EPA does not intend to alter in any way the manner in which the term ''publicly owned treatment works'' has been interpreted or applied under any other statute or in any other regulation. Accordingly, EPA has revised the definition of POTW in this rule both to recognize this distinction and to confirm the intent of EPA to include FOTW in this source category.

VI. Administrative Requirements

A. Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The OMB has deemed this regulatory action significant and requested review of this final rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that 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 reasonably feasible alternatives considered by the EPA.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to 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. 1891.02), and a copy may be obtained from Sandy Farmer by mail at the OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

Generally, respondents are required to submit one-time reports of (1) start of construction for new facilities, and (2) anticipated and actual start-up dates for new facilities. For sources constructed or reconstructed after the effective date of the relevant standard, the regulation requires that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

For POTW facilities, the public reporting and recordkeeping burden is

estimated to average 41 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. No capital costs are anticipated.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of certain proposed and final rules unless the agency certifies that the rule in question will not have a significant economic impact on a substantial number of small entities. The EPA's findings in this section are the result of the statutory requirements of the RFA as amended by the Small Business Regulatory Enforcement Fairness Act.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants would be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of 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 aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

F. Executive Order 12875

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

Today's rule is required under section 112 (e)(5) of the Clean Air Act. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

In developing this rule, the EPA consulted with these governments to enable them to provide meaningful and timely input in the development of this rule. As discussed in section II.B of this document, consultation opportunities included presumptive MACT partnerships, stakeholder meetings, and participation on the internal working group that prepared these final standards. State and local regulatory agencies are expected to be in favor of this final rule. Prior to publication of the proposed rule, some representatives of local governments had expressed concerns about the emission models and testing used to determine area source status. The EPA worked with these representatives in developing this final rule, and their concerns should be resolved with the publication of this final rule.

G. Executive Order 13084

Under Executive Order 13084, the EPA may not issue a regulation that is

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

This final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule imposes no new requirements on existing industrial or non-industrial POTW treatment plants or new industrial POTW treatment plants. The EPA is uncertain whether any new non-industrial POTW treatment plants will be of sufficient size to be subject to this rule, but the number of affected sources would be very small in any case and would not be likely to be located in the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This final rulemaking includes technical standards and requirements for taking measurements. Consequently, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods and tests required by this final rule, all of which are methods or tests previously promulgated. This final rule includes methods that measure: (1) Vapor leak detection (EPA Method 21); (2) volatile organic compound concentration in vented gas stream (EPA Method 18); (3) volumetric flow rate of the vented gas stream (EPA Methods 2, 2A, 2C, or 2D); and (4) sampling site location (Method 1 or 1A). These EPA methods are found in Appendix A to 40 CFR parts 60, 63, and 136.

Except for EPA Methods 2 and 2C (Appendix A to 40 CFR part 60), no other potentially equivalent methods for the methods and tests in the rule were found in the NSSN database search. The EPA identified one Chinese (Taiwanese) National Standard (CNS) which may potentially be an equivalent method to EPA Methods 2 and 2C. The CNS method is CNS K9019 for measuring velocity and flow rates in stack gases.

However, the EPA does not believe that CNS K9019 is a voluntary consensus method. It is unlikely that CNS K9019 was considered by industry groups or national standards setting organizations, because it was not developed in the U.S. and there is no available information about it in the U.S.

To confirm this, the EPA requested comments at proposal on whether any U.S. industry has adopted CNS K9019 as a voluntary consensus method. The EPA also requested comments on whether any potential voluntary consensus methods existed that could be allowed in addition to the methods in the proposed rule. No potential voluntary consensus methods were submitted with the public comments on the proposed version of this final rule. The EPA interprets this to mean that no applicable voluntary consensus standards are available for POTW.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 26, 1999.

J. Executive Order 12612

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255, August 10, 1999) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. This rule is not likely to have a substantial direct effect on States because it imposes no new control requirements on existing treatment works, and because the incremental cost of any required controls for new sources would not be significant in the context of the construction of new facilities. Moreover, since the authority to regulate any affected sources will be routinely delegated to State permitting authorities, this rule should have no substantial effect on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Pretreatment, Publicly owned treatment works, Reporting and recordkeeping requirements.

Dated: October 15, 1999.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart VVV to read as follows:

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

Sec.

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Table 1 to Subpart VVV—Applicability of 40 CFR Part 63 General Provisions to Subpart VVV

Applicability

§ 63.1580 Am I subject to this subpart?

(a) You are subject to this subpart if the following are all true:

(1) You own or operate a publicly owned treatment works (POTW) that includes an affected source (§ 63.1595);

(2) The affected source is located at a major source of hazardous air pollutant (HAP) emissions; and

(3) Your POTW is required to develop and implement a pretreatment program as defined by 40 CFR 403.8 (for a POTW owned or operated by a municipality, state, or intermunicipal or interstate agency), or your POTW would meet the general criteria for development and implementation of a pretreatment program (for a POTW owned or operated by a department, agency, or instrumentality of the Federal government).

Note to paragraph (a)(2): See § 63.2 of the national emission standards for hazardous air pollutants (NESHAP) general provisions in subpart A of this part for a definition of major source.

(b) If your existing POTW treatment plant is not located at a major source as of October 26, 1999, but thereafter becomes a major source for any reason other than reconstruction, then, for the purpose of this subpart, your POTW treatment plant would be considered an existing source.

(c) If an industrial major source complies with applicable NESHAP requirements by using the treatment and controls located at your POTW, your POTW is considered to be a major source regardless of whether you otherwise meet the applicable criteria.

(d) If you reconstruct your POTW treatment plant, then the requirements for a new or reconstructed POTW treatment plant, as defined in § 63.1595, apply.

§ 63.1581 Does the subpart distinguish between different types of POTW treatment plants?

Yes, POTW treatment plants are divided into two subcategories. A POTW treatment plant which does not meet the characteristics of an industrial POTW treatment plant belongs in the non-industrial POTW treatment plant subcategory as defined in § 63.1595.

Industrial POTW Treatment Plant Description and Requirements

§ 63.1582 What are the characteristics of an industrial POTW treatment plant?

(a) Your POTW is an industrial POTW treatment plant if an industrial discharger complies with its NESHAP by using the treatment and controls located at your POTW. Your POTW accepts the regulated waste stream and provides treatment and controls as an agent for the industrial discharger. Industrial POTW treatment plant is defined in § 63.1595.

(b) If, in the future, an industrial discharger begins complying with its NESHAP by using the treatment and controls at your POTW, then on the date that the industrial discharger certifies compliance, your POTW treatment plant will be considered an industrial POTW treatment plant.

(c) If your POTW treatment plant accepts one or more specific regulated industrial waste streams as part of compliance with one or more other NESHAP, then you are subject to all the requirements of each appropriate NESHAP for each waste stream, as described in the following section. In the case of overlapping NESHAP requirements, the more stringent of the requirements will apply.

§ 63.1583 What are the emission points and control requirements for an industrial POTW treatment plant?

(a) The emission points and control requirements for an existing industrial POTW treatment plant are specified in the appropriate NESHAP(s) for the industrial user(s) (see § 63.1582). For example, an existing industrial POTW treatment plant that provides treatment for a facility subject to subpart FF of this part, the National Emission Standard for Benzene Waste Operations, must meet the treatment and control requirements specified in § 61.348(d)(4) of this chapter.

(b) The emission points and control requirements for a new or reconstructed industrial POTW treatment plant are either those specified by the particular NESHAP(s) which apply to the industrial user(s) who discharge their waste for treatment to the POTW, or those emission points and control requirements set forth in § 63.1586. The set of control requirements which applies to a particular new or reconstructed POTW is that set which requires the most stringent overall control of HAP emissions. If you are uncertain which set of requirements is more stringent, this determination should be made in consultation with the permitting authority. Reconstruction is defined in § 63.1595.

§ 63.1584 When do I have to comply?

(a) *Existing industrial POTW treatment plant.* If you have an existing industrial POTW treatment plant, the appropriate NESHAP(s) for the industrial user(s) sets the compliance date, or the compliance date is 60 days after October 26, 1999, whichever is later.

(b) *New industrial POTW treatment plant.* If you have a new industrial POTW treatment plant, you must be in compliance as soon as you begin accepting the waste stream(s) for treatment. If you begin accepting a specific regulated industrial waste stream(s) for treatment, you must be in compliance by the time specified in the appropriate NESHAP(s) for the industrial user(s).

§ 63.1585 How does an industrial POTW treatment plant demonstrate compliance?

(a) An existing industrial POTW treatment plant demonstrates compliance by operating treatment and control devices which meet all

requirements specified in the appropriate industrial NESHAP(s). Requirements may include performance tests, routine monitoring, recordkeeping, and reporting.

(b) If you have a new or reconstructed industrial POTW plant, you must first determine whether the control requirements set forth in the applicable industrial NESHAP(s) or the control requirements applicable to a new or reconstructed nonindustrial POTW under § 63.1586 would require more stringent overall control of HAP emissions. You must then meet whichever set of requirements is more stringent. If you determine that the controls required by the applicable industrial NESHAP(s) are more stringent, you demonstrate compliance by operating treatment and control devices which meet all requirements specified in those industrial NESHAP(s). If you determine that the controls required for a new or reconstructed nonindustrial POTW are more stringent, you demonstrate compliance by meeting all requirements in §§ 63.1586 through 63.1590.

Non-industrial POTW Treatment Plant Requirements

§ 63.1586 What are the emission points and control requirements for a non-industrial POTW treatment plant?

There are no control requirements for an existing non-industrial POTW treatment plant. The control requirements for a new or reconstructed non-industrial POTW treatment plant are as follows:

(a) Covers on the emission points up to, but not including, the secondary influent pumping station or the secondary treatment units. These emission points are treatment units that include, but are not limited to, influent waste stream conveyance channels, bar screens, grit chambers, grinders, pump stations, aerated feeder channels, primary clarifiers, primary effluent channels, and primary screening stations. In addition, all covered units, except primary clarifiers, must have the air in the headspace ducted to a control device in accordance with the standards for closed-vent systems and control devices in § 63.693 of subpart DD of this part, except you may substitute visual inspections for leak checks rather than Method 21 of Appendix A of part 60 of this chapter. Reconstructed is defined in § 63.1595.

(1) Covers must be tightly fitted and designed and operated to minimize exposure of the wastewater to the atmosphere. This includes, but is not limited to, the absence of visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) If wastewater is in a treatment unit, each opening must be maintained in a closed, sealed position, unless plant personnel are present and conducting wastewater or sludge sampling, or equipment inspection, maintenance, or repair.

(b) As an alternative to the requirements in paragraph (a) of this section, you may comply by demonstrating, for all units up to the secondary influent pumping station or the secondary treatment units, that the fraction emitted does not exceed 0.014. You must demonstrate that for your POTW, the sum of all HAP emissions from those units divided by the sum of all HAP mass loadings results in a annual rolling average of the fraction emitted no greater than 0.014. You may use any combination of pretreatment, wastewater treatment plant modifications, and control devices to achieve this performance standard; however, you must demonstrate, to the Administrator's satisfaction that:

(1) You have accurately determined your POTW's annual HAP mass loadings and your POTW's annual HAP emissions as of the date of start-up;

(2) Your POTW meets the fraction emitted standard of 0.014 or less; and

(3) Your POTW has established procedures to demonstrate continuous compliance which are consistent with the criteria set forth in § 63.1588(c)(4).

§ 63.1587 When do I have to comply?

If your POTW treatment plant began construction on or after December 1, 1998, you must comply with all provisions of this subpart either immediately upon startup, or by six months after October 26, 1999, whichever date is later.

§ 63.1588 What inspections must I conduct?

(a) If your treatment units are required to have covers, you must conduct the following inspections:

(1) You must visually check the cover and its closure devices for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the supporting wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) You must perform an initial visual inspection with follow-up inspections at least once per year.

(3) In the event that you find a defect on a treatment unit in use, you must repair the defect within 45 days. If you cannot repair within 45 days, you must notify the EPA or the designated State authority immediately and report the reason for the delay and the date you expect to complete the repair. If you find a defect on a treatment unit that is not in service, you must repair the defect prior to putting the treatment unit back in wastewater service.

(b) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the inspection and monitoring requirements of § 63.695(c) of subpart DD of this part.

(c) To comply with the performance standard specified in § 63.1586(b), you must develop an inspection and monitoring plan. This inspection and monitoring plan must include, at a minimum, the following:

(1) A method to determine, to the satisfaction of the Administrator, the influent HAP mass loading, *i.e.*, the annual mass quantity for each HAP entering the wastewater treatment plant.

(2) A method to determine, to the satisfaction of the Administrator, your POTW's annual HAP emissions for all units up to and including the secondary influent pumping station or up to and not including the secondary treatment units as of October 26, 1999. The method you use to determine your HAP emissions, such as modeling or direct source measurement, must:

(i) Be approved by your EPA Regional Office, State, or local regulatory agency for use at your POTW;

(ii) Account for all factors affecting emissions from your plant including, but not limited to, emissions from wastewater treatment units; emissions resulting from inspection, maintenance, and repair activities; fluctuations (*e.g.*, daily, monthly, annual, seasonal) in your influent wastewater HAP concentrations; annual industrial loading; performance of control devices; or any other factors that could affect your annual HAP emissions; and

(iii) Include documentation that the values and sources of all data, operating conditions, assumptions, etc., used in your method result in an accurate estimation of annual emissions from your plant.

(3) Documentation, to the satisfaction of the Administrator, that your POTW meets the fraction emitted standard of 0.014 or less, *i.e.*, the sum of all HAP emissions from paragraph (c)(2) of this section divided by the sum of all HAP mass loadings from paragraph (c)(1) of

this section results in a fraction emitted of 0.014 or less as described in paragraph (c)(4) of this section.

(4) A method to demonstrate, to the satisfaction of the Administrator, that your POTW is in continuous compliance with the requirements of § 63.1586(b). Continuous compliance means that your emissions, when averaged over the course of a year, do not exceed the level of emissions that allows your POTW to comply with § 63.1586(b). For example, you may identify a parameter(s) that you can monitor that assures your emissions, when averaged over the entire year, will meet the requirements in § 63.1586(b). Some example parameters that may be considered for monitoring include your wastewater influent HAP concentration and flow, industrial loading from your permitted industrial dischargers, and your control device performance criteria. Where emission reductions are due to proper operation of equipment, work practices, or other operational procedures, your demonstration must specify the frequency of inspections and the number of days to completion of repairs. You must, at a minimum, perform the following each month to demonstrate that your annual rolling average of the fraction emitted is 0.014 or less:

(i) Determine the average daily flow of the wastewater entering your POTW treatment plant for the month;

(ii) Determine the flow-weighted monthly concentration of each HAP in your influent listed in Table 1 to subpart DD of this part;

(iii) Using the current month's information in paragraphs (c)(4)(i) and (ii) of this section, determine a total annual loading (Mg/year) of each HAP entering your POTW treatment plant;

(iv) Sum up the values in paragraph (c)(4)(iii) of this section and determine a total annual loading value (Mg/year) for all HAP entering your POTW treatment plant for the current month;

(v) Based on the current month's information in paragraph (c)(4)(iii) of this section along with source testing and emission modeling, for each HAP, determine annual emissions (Mg/year) from all wastewater units up to, but not including, secondary treatment units;

(vi) Sum up the values in paragraph (c)(4)(v) of this section and determine the total annual emissions value for the month for all HAP from all wastewater units up to, but not including, secondary treatment units;

(vii) Calculate the fraction emitted value for the month by dividing the total annual HAP emissions value from paragraph (c)(4)(vi) of this section by the total annual loading from paragraph (c)(4)(iv) of this section; and

(viii) Average the fraction emitted value for the month determined in paragraph (c)(4)(vii) of this section, with the values determined for the previous 11 months, to calculate an annual rolling average of the fraction HAP emitted.

§ 63.1589 What records must I keep?

(a) To comply with the equipment standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record for each treatment unit inspection required by § 63.1588(a). You must include a treatment unit identification number (or other unique identification description as selected by you) and the date of inspection.

(2) For each defect detected during inspections required by § 63.1588(a), you must record the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date the repair to correct the defect is completed.

(3) In the event that repair of the defect is delayed, in accordance with the provisions of § 63.1588(a), you must also record the reason for the delay and the date you expect to complete the repair.

(4) If you own or operate a control device used to meet the requirements for § 63.1586, you must comply with the recordkeeping requirements of § 63.696(a), (b), (g), and (h).

(b) To comply with the performance standard specified in § 63.1586(b), you must prepare and maintain the following records:

(1) A record of the methods and data used to determine your POTW's annual HAP emissions as determined in § 63.1588(c);

(2) A record of the methods and data used to determine that your POTW meets the fraction emitted standard of 0.014 or less, as determined in § 63.1588(c); and

(3) A record of the methods and data that demonstrates that your POTW is in continuous compliance with the requirements of § 63.1588(c).

§ 63.1590 What reports must I submit?

(a)(1) If you have an existing nonindustrial POTW treatment plant, you are not required to submit a notification of compliance status. If you have a new or reconstructed nonindustrial POTW treatment plant, you must submit to the Administrator a notification of compliance status, signed by the responsible official who must certify its accuracy, attesting to whether your POTW treatment plant has complied with this subpart. This notification must be submitted initially, and each time a notification of compliance status is required under this subpart. At a minimum, the notification must list—

(i) The methods that were used to determine compliance;

(ii) The results of any monitoring procedures or methods that were conducted;

(iii) The methods that will be used for determining continuing compliance;

(iv) The type and quantity of HAP emitted by your POTW treatment plant;

(v) A description of the air pollution control equipment (or method) for each emission point; and

(vi) Your statement that your POTW treatment plant has complied with this subpart.

(2) You must send this notification before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in this subpart.

(b) After you have been issued a title V permit, you must comply with all requirements for compliance status reports contained in your title V permit, including reports required under this subpart. After you have been issued a title V permit, and each time a notification of compliance status is required under this subpart, you must submit the notification of compliance status to the appropriate permitting authority, as described in § 63.1580(d), following completion of the relevant compliance demonstration activity specified in this subpart.

(c) You must comply with the delay of repair reporting required in § 63.1588(a).

(d) If your State has not been delegated authority, you must submit reports to your EPA Regional Office. If your State has been delegated authority, you must submit reports to your delegated State authority, and you must send a copy of each report submitted to the State to your EPA Regional Office. Your EPA Regional Office, at its discretion, may waive this requirement for any reports.

(e) You may apply to the Administrator for a waiver of recordkeeping and reporting requirements by complying with the requirements of § 63.10(f) of subpart A of this part.

(f) If you own or operate a control device used to meet the requirements of § 63.1586(a), you must submit the reports required by § 63.697(b) of subpart DD of this part, including a notification of performance tests; a performance test report; a startup,

shutdown, and malfunction report; and a summary report.

(g) To comply with the performance standard specified in § 63.1586(b), you must submit, for approval by the Administrator, an initial report explaining your compliance approach 90 days prior to beginning operation of your new or reconstructed POTW. You must also submit a startup, shutdown, and malfunction report.

General Requirements

§ 63.1591 What are my notification requirements?

(a) If you are subject to this subpart, and your State has not been delegated authority, you must submit notifications to the appropriate EPA Regional Office. If your State has been delegated authority you must submit notifications to your State and a copy of each notification to the appropriate EPA Regional Office. The Regional Office may waive this requirement for any notifications at its discretion.

(b) You must notify the Administrator in writing no later than 120 calendar days after the effective date of this subpart (or within 120 calendar days after your POTW treatment plant becomes subject to the relevant standard), and you must provide the following information:

(1) Your name and address;

(2) The address (*i.e.*, physical location) of your POTW treatment plant;

(3) An identification of these standards as the basis of the notification and your POTW treatment plant's compliance date; and

(4) A brief description of the nature, size, design, and method of operation of your POTW treatment plant, including its operating design capacity and an identification of each point of emission for each HAP, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each HAP.

(c) You must notify the Administrator if your data show that you are no longer in continuous compliance.

§ 63.1592 Which General Provisions apply to my POTW treatment plant?

Table 1 to this subpart lists the General Provisions (40 CFR part 63, subpart A) which apply to POTW treatment plants.

§ 63.1593 How will the EPA determine if I am in compliance with this subpart?

(a) The Administrator will determine compliance with this subpart by reviewing your reports and records or by inspecting your POTW treatment plant.

(b) If you fail to comply with any or all of the provisions of this subpart, you will be considered in violation of this subpart. For example, failure to perform any or all of the following, specified in § 63.1588, would be a violation: failure to visually inspect the cover on your treatment unit, failure to repair a defect on a treatment unit in use within the specified time period, failure to report a delay in repair, failure to determine your POTW's annual HAP emissions when your new or reconstructed POTW becomes subject to this subpart, failure to demonstrate that your POTW achieves an HAP fraction emitted of 0.014, or failure to demonstrate that your POTW is in continuous compliance with the requirements of § 63.1586(b).

(c) Your POTW treatment plant may be exempted from compliance with this subpart if the President determines that the technology to implement these standards is not available, and that it is in the national security interests of the United States to do so. This exemption may last for up to 2 years at a time and may be extended for additional periods of up to 2 years each.

§ 63.1594 Who enforces this subpart?

If the Administrator has delegated authority to your State, then the State enforces this subpart. If the Administrator has not delegated authority to your State, then the EPA Regional Office enforces this subpart.

§ 63.1595 List of definitions.

Affected source means the group of all equipment that comprise the POTW treatment plant.

Area source means any stationary source of HAP that is not a major source.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the waste material managed in a treatment unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the treatment unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the treatment unit, or a cover may be formed by structural features permanently integrated into the design of the treatment unit. The cover and its closure devices must be made of suitable materials that will minimize exposure of the waste material to the atmosphere, to the extent practical, and will maintain the integrity of the cover and its closure devices throughout its intended service life.

Fraction emitted means the fraction of the mass of HAP entering the POTW wastewater treatment plant which is emitted prior to secondary treatment. The value is calculated using the following steps:

(1) Determine mass emissions from all equipment up to but not including secondary treatment for each HAP listed in Table 1 to subpart DD of this part;

(2) Sum the HAP emissions (ΣE);

(3) sum the HAP mass loadings (ΣL) in the influent to the POTW wastewater treatment plant; and

(4) Calculate the fraction emitted ($f_e$monthly) using $f_e\text{monthly}=\Sigma E/\Sigma L$.

HAP means hazardous air pollutant(s).

Industrial POTW means a POTW that accepts a waste stream regulated by an industrial NESHAP and provides treatment and controls as an agent for the industrial discharger. The industrial discharger complies with its NESHAP by using the treatment and controls located at the POTW. For example, an industry discharges its benzene-containing waste stream to the POTW for treatment to comply with 40 CFR part 61, Subpart FF—National Emission Standard for Benzene Waste Operations. This definition does not include POTW treating waste streams not specifically regulated under another NESHAP.

Industrial user means a nondomestic source introducing any pollutant or combination of pollutants into a POTW. Industrial users can be commercial or industrial facilities whose wastes enter local sewers.

Non-industrial POTW means a POTW that does not meet the definition of an industrial POTW as defined above.

Publicly owned treatment works (POTW) means a treatment works, as that term is defined by section 112(e)(5) of the Clean Air Act, which is owned by a municipality (as defined by section 502(4) of the Clean Water Act), a State, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the Federal Government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources. As used in this regulation, the term POTW refers to both any publicly owned treatment works which is owned by a State, municipality, or intermunicipal or interstate agency and therefore eligible to receive grant assistance under the Subchapter II of the Clean Water Act, and any federally owned treatment works as that term is described in section 3023 of the Solid Waste Disposal Act.

POTW treatment plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source such that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source.

Secondary treatment means treatment processes, typically biological, designed to reduce the concentrations of dissolved and colloidal organic matter in wastewater.

Waste and wastewater means a material, or spent or used water or waste, generated from residential, industrial, commercial, mining, or agricultural operations or from community activities that contain dissolved or suspended matter, and that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated in a publicly owned treatment works.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
§63.1		APPLICABILITY.
§63.1(a)(1)	Yes	Terms defined in CAAA.
§63.1(a)(2)	Yes	General applicability explanation.
§63.1(a)(3)	Yes	Cannot diminish a stricter NESHAP.
§63.1(a)(4)	Yes	Not repetitive. Doesn't apply to section 112(r).
§63.1(a)(5)	Yes	Section reserved.
§63.1(a)(6)–(8)	Yes	Contacts and authorities.
§63.1(a)(9)	Yes	Section reserved.
§63.1(a)(10)	Yes	Time period definition.
§63.1(a)(11)	Yes	Postmark explanation.
§63.1(a)(12)–(14)	Yes	Time period changes. Regulation conflict. Force and effect of subpart A.
§63.1(b)(1)	Yes	Initial applicability determination of subpart A.
§63.1(b)(2)	Yes	Operating permits by States.
§63.1(b)(3)	No	Subpart VVV specifies recordkeeping of records of applicability determination.
§63.1(c)(1)	Yes	Requires compliance with both subpart A and subpart VVV.
§63.1(c)(2)(i)	Yes	State options regarding title V permit.
§63.1(c)(2)(ii)–(iii)	No	State options regarding title V permit.
§63.1(c)(3)	Yes	Section reserved.
§63.1(c)(4)	Yes	Extension of compliance.
§63.1(c)(5)	No	Subpart VVV addresses area sources becoming major due to increase in emissions.
§63.1(d)	Yes	Section reserved.
§63.1(e)	Yes	Title V permit before a relevant standard is established.
§63.2	Yes	DEFINITIONS.
§63.3	Yes	UNITS AND ABBREVIATIONS.
§63.4		PROHIBITED ACTIVITIES AND CIRCUMVENTION.
§63.4(a)(1)–(3)	Yes	Prohibits operation in violation of subpart A.
§63.4(a)(4)	Yes	Section reserved.
§63.4(a)(5)	Yes	Compliance dates.
§63.4(b)	Yes	Circumvention.
§63.4(c)	Yes	Severability.
§63.5		CONSTRUCTION AND RECONSTRUCTION.
§63.5(a)(1)	Yes	Construction and reconstruction.
§63.5(a)(2)	Yes	New source—effective dates.
§63.5(b)(1)	Yes	New sources subject to relevant standards.
§63.5(b)(2)	Yes	Section reserved.
§63.5(b)(3)	Yes	No new major sources w/out Administrator approval.
§63.5(b)(4)	Yes	New major source notification.
§63.5(b)(5)	Yes	New major sources must comply.
§63.5(b)(6)	Yes	New equipment added considered part of major source.
§63.5(c)	Yes	Section reserved.
§63.5(d)(1)	Yes	Implementation of section 112(I)(2)—application of approval of new source construction.
§63.5(d)(2)	Yes	Application for approval of construction for new sources listing and describing planned air pollution control system.
§63.5(d)(3)	Yes	Application for reconstruction.
§63.5(d)(4)	Yes	Administrator may request additional information.
§63.5(e)	Yes	Approval of reconstruction.
§63.5(f)(1)	Yes	Approval based on State review.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§ 63.5(f)(2)	Yes	Application deadline.
§ 63.6		COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS.
§ 63.6(a)	Yes	Applicability of compliance with standards and maintenance requirements.
§ 63.6(b)	Yes	Compliance dates for new and reconstructed sources.
§ 63.6(c)	Yes	Compliance dates for existing sources apply to existing industrial POTW treatment plants.
§ 63.6(d)	Yes	Section reserved.
§ 63.6(e)	Yes	Operation and maintenance requirements apply to new sources.
§ 63.6(f)	Yes	Compliance with non-opacity emission standards applies to new sources.
§ 63.6(g)	Yes	Use of alternative non-opacity emission standards applies to new sources.
§ 63.6(h)	No	POTW treatment plants do not typically have visible emissions.
§ 63.6(i)	Yes	Extension of compliance with emission standards applies to new sources.
§ 63.6(j)	Yes	Presidential exemption from compliance with emission standards.
§ 63.7		PERFORMANCE TESTING REQUIREMENTS.
§ 63.7(a)	Yes	Performance testing is required for new sources.
§ 63.7(b)	Yes	New sources must notify the Administrator of intention to conduct performance testing.
§ 63.7(c)	Yes	New sources must comply with quality assurance program requirements.
§ 63.7(d)	Yes	New sources must provide performance testing facilities at the request of the Administrator.
§ 63.7(e)	Yes	Requirements for conducting performance tests apply to new sources.
§ 63.7(f)	Yes	New sources may use an alternative test method.
§ 63.7(g)	Yes	Requirements for data analysis, recordkeeping, and reporting associated with performance testing apply to new sources.
§ 63.7(h)	Yes	New sources may request a waiver of performance tests.
§ 63.8		MONITORING REQUIREMENTS.
§ 63.8(a)	Yes	Applicability of monitoring requirements.
§ 63.8(b)	Yes	Monitoring shall be conducted by new sources.
§ 63.8(c)	Yes	New sources shall operate and maintain continuous monitoring systems (CMS).
§ 63.8(d)	Yes	New sources must develop and implement a CMS quality control program.
§ 63.8(e)	Yes	New sources may be required to conduct a performance evaluation of CMS.
§ 63.8(f)	Yes	New sources may use an alternative monitoring method.
§ 63.8(g)	Yes	Requirements for reduction of monitoring data.
§ 63.9		NOTIFICATION REQUIREMENTS.
§ 63.9(a)	Yes	Applicability of notification requirements.
§ 63.9(b)	Yes	Initial notification requirements.
§ 63.9(c)	Yes	Request for extension of compliance with subpart VVV.
§ 63.9(d)	Yes	Notification that source is subject to special compliance requirements as specified in § 63.6(b)(3) and (4).
§ 63.9(e)	Yes	Notification of performance test.
§ 63.9(f)	No	POTW treatment plants do not typically have visible emissions.
§ 63.9(g)	Yes	Additional notification requirements for sources with continuous emission monitoring systems.
§ 63.9(h)	Yes	Notification of compliance status when the source becomes subject to subpart VVV.
§ 63.9(i)	Yes	Adjustments to time periods or postmark deadlines or submittal and review of required communications.
§ 63.9(j)	Yes	Change of information already provided to the Administrator.
§ 63.10		RECORDKEEPING AND REPORTING REQUIREMENTS.
§ 63.10(a)	Yes	Applicability of notification and reporting requirements.
§ 63.10(b)(1)–(2)	Yes	General recordkeeping requirements.
§ 63.10(b)(3)	No	Recording requirement for applicability determination.
§ 63.10(c)	Yes	Additional recordkeeping requirements for sources with continuous monitoring systems.
§ 63.10(d)	Yes	General reporting requirements.
§ 63.10(e)	Yes	Additional reporting requirements for sources with continuous monitoring systems.
§ 63.10(f)	Yes	Waiver of recordkeeping and reporting requirements.
§ 63.11		FLARES AS A CONTROL DEVICE.
§ 63.11(a) and (b)	Yes	If a new source uses flares to comply with the requirements of subpart VVV, the requirements of § 63.11 apply.
§ 63.12	Yes	STATE AUTHORITY AND DESIGNATION.
§ 63.13	Yes	ADDRESSES OF STATE AIR POLLUTION CONTROL AGENCIES AND EPA REGIONAL OFFICES.

TABLE 1 TO SUBPART VVV—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV—Continued

General provisions reference	Applicable to subpart VVV	Explanation
§63.14	Yes	INCORPORATION BY REFERENCE.
§63.15	Yes	AVAILABILITY OF INFORMATION AND CONFIDENTIALITY.

[FR Doc. 99–27799 Filed 10–25–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 99–176]

Interception and Recording of Telephone Conversations by Commission Personnel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules with respect to the interception and recording of telephone conversations by agency personnel. The rules are being amended because the current GSA regulations have been repealed. The amended rules no longer make reference to the GSA regulations and the rule amendments clarify that the Inspector General has authority to intercept or monitor telephone conversations without obtaining a written authorization from the General Counsel.

DATES: Effective October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Diskin, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Adopted: July 13, 1999.

Released: July 16, 1999.

1. Sections 0.41(l) and 0.251(f) of our rules, 47 CFR 0.41(l) and 0.251(f) govern the duties and responsibilities of the Office of General Counsel with respect to the interception and recording of telephone conversations by agency personnel. The rules currently in effect refer to and reflect General Service Administration (GSA) regulations regarding the interception of telephone conversations. These GSA regulations have been repealed. Because GSA regulations no longer contain any specific provisions regarding the manner in which government agencies monitor the interception and recording of telephone conversations by agency personnel, we are amending our rule to delete reference to these regulations. The authority of the Office of the General Counsel to issue any necessary written determinations with respect to these matters remains generally unchanged. However, because the Office of the Inspector General may deem it necessary to intercept or monitor telephone conversations in the conduct of audits or investigations, the rule amendments clarify that the Inspector General has such authority to do so without obtaining a written authorization from the Office of General Counsel.

2. Because these rule changes involve rules of agency organization, procedure or practice, prior notice and public comment procedures are not required. *See* 5 U.S.C. 553 (b)(3)(A).

3. Pursuant to sections 4(i), 4(j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 155(c) and 303(r), it is *hereby ordered* that Part 0 of the Commission's Rules is amended and effective October 26, 1999.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Privacy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225 unless otherwise noted.

2. Section 0.41(k) is revised to read as follows:

§ 0.41 Functions of the Office.

* * * * *

(k) To issue determinations on matters regarding the interception and recording of telephone conversations by Commission personnel. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone conversations as necessary in the conduct of investigations or audits.

* * * * *

3. Section 0.251(f) is revised to read as follows:

§ 0.251 Authority delegated.

* * * * *

(f) The General Counsel is delegated authority to issue written determinations on matters regarding the interception of telephone conversations. Nothing in this paragraph, however, shall affect the authority of the Inspector General to intercept or record telephone conversations as necessary in the conduct of investigations or audits.

* * * * *

[FR Doc. 99–27427 Filed 10–25–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102099B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

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

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS projects that the initial portion of the annual commercial quota for red snapper will be reached on November 5, 1999. This closure is necessary to protect the red snapper resource.

DATES: Effective noon, local time, November 5, 1999, until noon, local time, February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Roy E. Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery

Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 1999. Those regulations split the red snapper commercial fishing season into two time periods, the first commencing at noon on February 1, with two-thirds of the annual quota (3.06 million lb (1.39 million kg)) available, and the second commencing at noon on September 1, with the remainder of the annual quota available. During the fall commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the **Federal Register**. Based on current statistics, NMFS projects that the available commercial quota of 4.65 million lb (2.11 million kg) for red snapper will be reached on November 5, 1999. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed from noon on November 5, 1999, until noon, local time, on February 1, 2000. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, November 5, 1999.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, November 5, 1999, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Dated: October 21, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–27922 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 101999A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 1999, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require the publication of this notification to advise the State of New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective from 0001 hours, November 1, 1999, through 2400 hours, December 31, 1999.

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

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 1999 calendar year was set equal to 11,110,300 lb (5,039,547 kg)(64 FR 9088, February 24, 1999). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, or 790,948 lb (358,768 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1998, a total of 823,093 lb (373,349 kg) were landed in New York, creating a 59,674 lb (27,068 kg) overage that was deducted from the amount allocated for landings in the State during 1999 (64 FR 46596, August 26, 1999). The resulting 1999 quota for New York is 790,006 lb (358,341 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and that no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New York will have attained its quota for 1999 as of November 1, 1999.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 1, 1999, further landings of summer flounder in New York by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective the same date, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

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

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

Dated: October 21, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–27923 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990301058–9225–02; I.D. 011499B]

RIN 0648–AL56

Fisheries of the Northeastern United States; Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved portions of Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. This rule would implement framework provisions for amending management measures for these fisheries, restrict the size of domestic harvesting vessels permitted in the Atlantic mackerel fishery without restricting the size of processing vessels, and implement an operator permit requirement for the surf clam and ocean quahog fisheries. The purpose of these amendments is to meet the requirements of the Sustainable Fisheries Act (SFA) of October 1996 (SFA).

DATES: Effective November 26, 1999.

ADDRESSES: Copies of the SFA amendments, the environmental assessments (EA), the regulatory impact reviews, and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION: Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP (collectively referred to as the SFA Amendments) were prepared by the Mid-Atlantic Fishery Management Council (Council) to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA. Background concerning the development of the SFA Amendments was provided in the notice of proposed rulemaking (64 FR 16891, April 7, 1999), and is not repeated here. This final rule implements approved management measures contained in the SFA Amendments intended to eliminate overfishing, rebuild many of the associated stocks, comply with the provisions of the SFA, and achieve other goals. The SFA Amendments were partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on April 28, 1999.

Upon evaluation of the SFA Amendments as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, disapproved several provisions of the amendments. The disapproved measures include the scup rebuilding schedule, the scup bycatch provision, the surf clam overfishing definition (OFD), and the deficient essential fish habitat (EFH) portions of all three of the SFA amendments. The deficient portions include: Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Section 2.2.3.8—Fishing Impacts on EFH,, and Section 2.2.4— Options for Managing Adverse Effects from Fishing in Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. NMFS has notified the Council of the disapprovals and made recommendations for addressing the deficiencies noted.

Measures Approved in SFA Amendments

This final rule implements revisions to the Summer Flounder, Scup, and Black Sea Bass FMP, the Atlantic Mackerel, Squid, and Butterfish FMP, and the Atlantic Surf Clam and Ocean Quahog FMP by adding a framework adjustment process in addition to the annual specification setting process for each of the fisheries.

This final rule also revises regulations implementing the Atlantic Mackerel, Squid, and Butterfish FMP by revising the maximum fishing mortality rate (F) for *Illex* squid to F_{MSY} to reflect better the goal of achieving maximum sustainable yield (MSY) on a continuing basis, and restricting the size of domestic harvesting, but not processing, vessels permitted in the Atlantic mackerel fishery. A vessel permitted in the Atlantic mackerel fishery may not exceed either of the following specifications: (1) 165 ft (50.3 m) in length overall (LOA) and 750 gross registered tons (GRT), or (2) a shaft horsepower (shp) of 3,000 shp.

Comments and Responses

Forty-six written comments on the SFA Amendments were received during the comment period established by the notice of availability of the SFA Amendments, which ended March 29, 1999 (64 FR 4065, January 27, 1999). These comments were considered by NMFS in its decision to approve partially the SFA Amendments on April 28, 1999. In addition, NMFS received 10 comments during the comment period specified for the proposed rule, which ended on May 24, 1999. A number of the comments received on the proposed rule did not specifically address the proposed regulations. In fact, many of these letters referenced existing provisions in the management structures for each of the fisheries that were not proposed for revision under the SFA Amendments. Since those existing provisions had already been found to comply with the Magnuson-Stevens Act under reviews for both previous actions and the SFA Amendments, and were not revised in the SFA Amendments, NMFS determined that it would be inappropriate to address those comments in this final rule. Comments received during the specified comment

periods pertaining to either the SFA Amendments or the proposed rule are addressed here.

General

Comment 1: One commenter supported the complete adoption of the SFA Amendments.

Response: Comment noted. NMFS, however, did not approve all of the SFA Amendments. Upon evaluation of the SFA Amendments, as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, only partially approved the SFA Amendments. The measures disapproved were described in the preceding summary section and are not repeated here.

Atlantic Mackerel Vessel Size Restriction

Comment 2: Four comment letters, including three form letters representing 18 comments, supported the size restriction for vessels harvesting Atlantic mackerel. Commenters felt the action was necessary to slow the growth of the fishery while markets develop, and called the restriction ''proactive'' rather than ''reactive.'' *Response*: NMFS approved this measure and supports the Council's intent to control access to the Atlantic mackerel fishery and fully develop a controlled access provision in a forthcoming amendment to the Atlantic Mackerel, Squid, and Butterfish FMP. This restriction and the publication of the control date (September 12, 1997) begins the process of addressing the Council's concerns about overcapitalization.

The Council established a control date for the Atlantic mackerel fishery of September 12, 1997 (62 FR 48047). The advance notice of proposed rulemaking informed the public that anyone entering the Atlantic mackerel fishery after that date could not be assured access to the fishery if a program to limit such access is developed. The control date and vessel size restriction give the Council time to develop a limited entry program without fear of an influx of vessels having high fishing power and capacity.

Comment 3: One commenter questioned the need for the vessel size restriction, noting that the restriction did not appear in Section 1.1—Purpose and Need for Action, and appeared to contradict the FMP objective that states the goal of promoting ''the growth of the U.S. commercial fishery, including fishery for export.'' The commenter also questioned how the size restriction achieves the greatest overall benefit to the Nation (as defined by ''optimum'' under National Standard 1).

Response: NMFS believes that the vessel size restriction falls within the scope of the FMP objective of promoting the growth of the commercial Atlantic mackerel fishery. The vessel size restriction does not contradict that, or any other, objective of the FMP. The Council developed this provision not to prevent the growth of the commercial fishery, but rather to control its growth. The Council was concerned about the possibility of rapid overcapitalization of the fishery and of significant increases in harvest potential. Furthermore, the Council was concerned about providing high priority to historical participants in the Atlantic mackerel fishery as it considered development of a limited access system. The vessel size restriction in Amendment 8 helps protect against rapid overcapitalization and significant increases in harvest potential, while also allowing historical participants to remain in the fishery.

The term ''optimum yield'' (OY) refers to the yield from a fishery that will provide the greatest overall benefit to the Nation, prescribed by MSY, and reduced by social, economic, or ecological factors. National standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continual basis, the OY from each fishery for the U.S. fishing industry. National standard 1 does not require justification of the vessel size restriction by explaining how it achieves the greatest overall benefit to the Nation. Nevertheless, the Magnuson-Sevens Act authorizes consideration of social, economic, biological, and ecological factors in the development of conservation and management measures. The vessel size restriction reflects legitimate concerns about such factors, including overcapitalization, harvest potential, historical participation, and the impact on the resource due to possible overcapitalization and increased harvest potential.

Comment 4: One commenter stated that no environmental impact analysis was conducted on the size restriction nor was any rationale put forward for the specific size parameters.

Response: An environmental assessment was prepared for Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP and concluded that approval and implementation of the proposed action, which included the vessel size restriction, would not significantly affect the quality of the human environment. As a result, an environmental impact statement was not required. In Amendment 8, the Council explained that the vessel size restrictions were developed in response to concerns about the rapid overcapitalization of the mackerel fleet by the entry of large vessels with significant harvest potential and, by implication, the effect such a rapid chance in the fishery may have on the resource. By preventing such a rapid change in the fishery, the vessel size restriction constitutes a proactive means of protecting the resource and, therefore, would not have an adverse impact on the environment.

An analysis of the parameters of the Atlantic mackerel vessel size restriction was conducted by the Council in Amendment 8. The analysis investigated the vessels currently participating in the mackerel fishery, including vessel size necessary to participate successfully. The size limits adopted represent the upper bound of those permitted vessels that have been shown to harvest Atlantic mackerel successfully. Thus, the size restriction caps the size parameters of individual vessels in the fleet to those which currently exist in the fishery. Only new, larger vessels are precluded from entering the fishery by this restriction.

Comment 5: Thirty-three commenters opposed the vessel size restriction. Opposition to the measure focused mainly on fairness, equity, and conservation and management rationale. Commenters felt that the provision was an attempt by competitors to ''reserve the resource for themselves,'' would impact only one fishing vessel, and violated several national standards.

Response: The size restriction for vessels harvesting Atlantic mackerel is not intended to single out an individual, corporation, or other entity, but is intended to preclude large, high capacity vessels from entering the fishery. This restriction is designed to address a class of vessels and to prevent rapid overcapitalization while the Council develops a limited access program for the Atlantic mackerel fishery in a future action. NMFS found the action in compliance with the national standards.

Comment 6: The Council submitted language to clarify the Atlantic mackerel vessel size restriction. Specifically, the Council reaffirmed that it intends the restriction to be applied to vessels that exceed any one of the two following criteria: (1) 165 ft LOA and 750 GRT; (2) shaft horsepower of 3,000 shp.

Response: NMFS had raised concerns about the specific language of the restriction both during the Council meetings and after Amendment 8 was submitted during informal discussions with Council staff. It was not clear

whether the Council's intent was to adopt the vessel size restriction language of the American Fisheries Act, the Department of Commerce appropriations bill language, or the language developed by the New England Fishery Management Council for the Atlantic Herring FMP. Because of the subtle differences between all of these varying provisions, NMFS chose to publish the most restrictive provision in the proposed rule and solicit comment. No comments on the precise wording of the measure were received. However, based on the Council's clarification of its intent, the Council's clarification is accepted and adopted in this final rule.

Overfishing Definitions

Comment 7: One commenter felt that the OFDs for both scup and black sea bass were not sufficiently precautionary. The commenter cites technical recommendations that $F_{0.1}$ be adopted for both species.

Response: The Council adopted F_{MAX} = 0.32 as a fishing mortality reference point proxy for F_{MSY} for black sea bass, and F_{MAX} = 0.26 as a proxy for F_{MSY} for scup. Scientific advice recommended a more conservative reference point, $F_{0.1}$ = 0.18 as a proxy for F_{MSY} for black sea bass, and $F_{0.1}$ = 0.15 as a proxy for F_{MSY} for scup, to compensate for the uncertainty in the assessment of both. NMFS approved the OFDs for scup and black sea bass because they were conceptually sound, albeit less conservative and risk averse than those recommended by scientists.

Comment 8: One commenter felt that, for scup and black sea bass, the rebuilding plans specified in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP were not adequate and should be disapproved. The commenter stated that, ''given the level of uncertainty [in the assessment data for scup], a much greater level of caution'' is necessary.

Response: NMFS agrees that the rebuilding plan specified for scup was not adequate, and, therefore, disapproved that provision because of the minimal probability that the stock could rebuild to the minimum biomass index within 10 years. The combination of the less conservative choice of mortality reference point by the Council (see comment 7 and response) and the general decline of this fishery is risk-prone and the rebuilding program warranted disapproval.

The rebuilding plan for black sea bass was not disapproved because the current rebuilding schedule for black sea bass is less risk-prone for a stock that has been relatively stable, albeit at low levels, for the past decade. In contrast, the scup stock indices have been trending downward during that time and the rebuilding schedule posed an unacceptably high risk.

Comment 9: Three commenters found the *Illex* OFD confusing.

Response: Since the OFDs are very technical in nature, they are also often confusing. Since the commenters did not specify what they found to be confusing in particular about the definition, it is difficult to respond. During development of Amendment 8, there was some confusion surrounding the estimation of the harvestable yield in the *Illex* squid fishery that would arise from the OFD. For the purposes of this response, NMFS will assume this is the point about which the commenter is confused. Rather than explain the calculations that were made which, again, would necessarily be technical, NMFS points out that an error was made that is corrected by this rule. This correction results in an increased harvest of *Illex* squid from 18,000 to 22,800 metric tons (mt). This revision—incorporating the intended, correct value—was approved by NMFS as part of the review of Amendment 8.

Comment 10: One commenter supported the *Illex* squid OFD.

Response: Comment noted. As noted, the *Illex* squid OFD was approved, as corrected (see comment 9 and response).

Essential Fish Habitat (EFH)

Comment 11: Two commenters considered the EFH portions of the SFA Amendments to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designations, noting that EFH appeared to be designated in an arbitrary manner, over the range of the species, and included coastal state and estuarine waters. The commenter opposed what he interpreted to be a requirement for EFH to be further designated by ''project proponents.'' Another commenter supported the identification of EFH, noting that a broad designation of EFH was mandatory, especially where a stock is overfished and loss of habitat is considered to be a contributing factor. The commenter also supports the designation of submerged aquatic vegetation as habitat area of particular concern (HAPC) due to its value as nursery habitat.

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

The specific methodology used by the Council for designating EFH was based on the highest relative density of each life stage for each species. This methodology was developed by scientists at the Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats.

Under the consultation provisions of the Magnuson-Stevens Act, a Federal agency must consult with NMFS when a proposed project has the potential to impact adversely any area of EFH that has been designated by the Council. The EFH regulations at 50 CFR 600.920(g) require that Federal agencies submit an EFH Assessment that describes the effects of the action on EFH. No requirement exists for further designation of EFH by project applicants.

Comment 12: A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the SFA Amendments are not based on the best available science, nor sufficiently supported. Two commenters contended that the recommended measures do not take into consideration current practices, are likely to be in conflict with measures being pursued under

other regulatory programs, and may cause severe over regulation. One commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

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

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

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

Comment 13: Two commenters stated that the SFA Amendments contain no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenters suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. One commenter contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

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

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

Comment 14: A commenter stated that the SFA Amendments generally failed to address the potential for significant adverse impacts of these amendments on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

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

In the EAs included with the SFA Amendments, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of these SFA Amendments. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and will ensure a workable review process.

An analysis of the rule with respect to the requirements of the RFA concluded that the SFA Amendments would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis was prepared. Further, no specific management measures were submitted regarding the EFH designation. Any changes in management provisions that arise as a result of the measures enacted by these SFA Amendments (such as a framework adjustment) will be reviewed for their economic impacts when submitted.

Comment 15: A number of commenters stated that the amendment did not adequately address fishing impacts to EFH, and urged NMFS to disapprove these sections. Commenters stated that work plans to implement additional HAPCs and gear management measures should be developed.

Response: NMFS agrees that the Council did not adequately address adverse impacts to EFH from fishing gear, and as a result, has disapproved three sections of the SFA Amendments that relate to EFH.

In letters to the Council dated September 4, 1998, and October 2, 1998, NMFS identified the need for improvements in these sections and provided specific recommendations. Although the Council attempted to address many of the comments provided by NMFS, the SFA Amendments fell short of the requirements set forth in both the SFA and the EFH regulations. In order to comply with the EFH regulations, the disapproved sections must be revised to discuss specifically how each of the fishing equipment types used in areas designated as EFH affect EFH. The SFA Amendments state that the gears expected to have the most adverse impact are hydraulic clam dredges and the scallop dredge, and note a number of discernable effects, but conclude that the effects are minimal. The SFA Amendments should be revised to give a clearer explanation of the basis for its conclusion about the magnitude and permanence of any adverse effects.

Section 2.2.4 of all three amendments states that evidence of various gear impacts on bottom habitat have been presented to the Council, and that all mobile gear contacting the sea floor has potential impact to EFH. However, the Council concludes that these effects are not ''identifiable'' and that for this reason and lack of quantifiable information, no management measures will be proposed. Although the Council may be correct that no new management measures are practicable, the SFA Amendments do not contain a sufficient discussion or analysis to support this conclusion. The three amendments should be revised either to provide a clear rationale for the conclusion that no new management measures are practicable, in accordance with 50 CFR 600.815(a)(3)(iii) and (iv); or to propose new management measures that

address, to the extent practicable, any identifiable adverse effects.

Although NMFS agrees that the development of schedules for the identification of HAPCs and gear management measures could be useful, these activities are not required by either the Magnuson-Stevens Act or the EFH regulations.

Other Comments

Comment 16: Three commenters felt that the analyses and discussion of bycatch were not adequate, particularly with respect to the scup and summer flounder fisheries. One of the commenters referred to discards in these fisheries as ''significant'' and ''a clear problem'', respectively, and noted that minimizing scup bycatch has taken on a special urgency in light of what is believed to be a large year class in 1997.

Response: NMFS agrees that the bycatch provision for scup was not adequate, and disapproved the provision as inconsistent with National Standard 9. Measures for scup in the Summer Flounder, Scup, and Black Sea Bass FMP do not reduce bycatch adequately or minimize bycatch mortality. The most recent assessment for scup, conducted at the 27th stock assessment workshop (SAW–27) advised reducing F ''substantially and immediately'' and noted that reducing discards (especially in small mesh fisheries) would have the most impact in that regard. NMFS acknowledges that data with respect to identifying primary discard sources sufficient to implement management measures are limited. Still, it is envisioned that the Council would take the precautionary approach to develop measures to reduce discards as a result of this disapproval. The most recent stock assessment for summer flounder (SAW–25) did not express similar concerns for that fishery, although NMFS contemplates that the Council will take the precautionary approach when establishing future actions for this fishery as well.

NMFS supports action related to this issue, particularly as a follow-up to the discussions of scup discards in the April 27, 1999, workshop held by the Council's Comprehensive Management Committee. This Committee is charged with investigating alternatives to address scup discards, such as gear modification and season/area closures.

Comment 17: In addition to non-compliance with National Standard 9, one commenter believes the Summer Flounder, Scup, and Black Sea Bass FMP does not comply with National Standard 8, the requirement to take into account the impact of regulations on fishing communities, and National Standard 10 on safety at sea. Specifically, the commenter feels that the Council gave only ''cursory treatment'' to the changes the summer flounder state-by-state quota has had on fishing communities and that the quota created unsafe conditions for industry participants.

Response: NMFS approved the continuation of the state-by-state allocation of summer flounder quota under Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass FMP. The Council and Commission agreed that, although the state-by-state system has some problems, it is the most flexible in that it allows states to implement subquotas and trip limits to manage best their individual fisheries. Review of Amendment 10 included a review for consistency with the new National Standards, 8, 9, and 10. During that review, the quota allocation was found consistent with the national standards and other applicable law.

Comment 18: One commenter charges that the amendments do not address Magnuson-Stevens Act National Standards 1 (prevent overfishing), 2 (best available scientific information), and 7 (unnecessary duplication). The commenter stated that the Council ''appeared to avoid serious discussion'' of addressing overfishing and rebuilding overfished stocks.

Response: NMFS notes that the commenter did not elaborate on its assertion that the SFA Amendments violated several national standards. However, of the three FMPs reviewed under this rule, comprising a total of nine separate species, three of those species are considered overfished under their revised OFDs (summer flounder, scup, and black sea bass). The SFA Amendments continue the rebuilding programs already established for these species. These rebuilding programs called for an end to overfishing of the summer flounder resource in 1998, of scup in 2002, and of black sea bass in 2003. These schedules continue to direct the Council to design annual measures to achieve specific fishing mortality rates. However, as noted earlier in this document, the Council will be required to develop a more rigorous rebuilding program for scup. The scientific advice advocates for more conservative rebuilding measures, and NMFS agrees that more could have been done in this regard. However, only the scup rebuilding schedule was found so deficient as to compel disapproval (see response to comment 8), while those for summer flounder and black sea bass were determined to be adequate.

NMFS finds no evidence that the best scientific information was not used by the Council, consistent with National Standard 2.

With regards to the commenter's assertion that the SFA Amendments violate National Standard 7, NMFS assumes, for the purpose of responding to this comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation processes.

Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act. Section 305(b)(2) of the Magnuson-Stevens Act states: ''Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.'' Other Federal statutes, such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA require consultation or coordination between NMFS and other Federal agencies. EFH consultations will be conducted, to the extent possible, under existing review processes and within existing time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The SFA Amendments contain conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

Framework Adjustment Procedures

Comment 19: Six commenters supported the framework provisions.

Response: Comment noted. NMFS also supports the approved framework provisions.

Comment 20: One commenter objects to inclusion of the OFD in the framework procedure, and states that it is ''not a typical management measure'' and is, therefore, inappropriate to include there.

Response: NMFS disagrees that inclusion of OFDs into the list of items that may be altered by framework adjustment is inappropriate. OFDs, and their related thresholds and targets, while not management measures, may change as stocks rebuild and those values are recalculated. Therefore, it is appropriate and scientifically sound that the Council have the ability to adjust OFDs as improved information becomes available without going through the formal amendment process.

Pertinent Data/Reporting Methodology

Comment 21: One commenter felt that the use of the available data (vessel trip

reports (VTR) and observer data) to describe discards is not ''valid or defensible.'' The commenter notes ''ample evidence'' from public comment that discards are more substantial than reported. The Council should, according to the commenter, undertake ''an effort to reach out to fishermen for a more complete documentation of their fluke [summer flounder] discards.''

Response: While NMFS acknowledges that data are limited in describing discards in many fisheries, anecdotal information presented at public forums is often contradictory and difficult to assimilate into a form useful for quantitative analysis. Currently, industry participants are required by law to report discards, truthfully and accurately, in their VTR logbooks. Industry cooperation in filling out these reports accurately is essential to provide managers and scientists with timely information to evaluate the condition of resources. The information is also necessary to evaluate the effectiveness of current management measures and to validate the information received through dealer reports. It is in industry's best interest to fill out these logbooks accurately and completely so that regulations are based on data that portray the industry correctly.

Comment 22: One commenter feels that the SFA Amendments do not comply with the mandate to establish a standardized reporting methodology for addressing discards.

Response: NMFS disagrees. The SFA Amendments do not establish a standardized reporting system because such a system already exists. The existing program includes the VTR system and sea sampling. The VTR system was established in 1993 in response to industry concerns that the voluntary reporting system did not provide complete information about their particular fishery, port, or vessel. The VTR system reaches all fishermen, even those in remote locations, and records important information concerning fishing operations, including data on gear and areas fished, as well as species kept and discarded.

The sea-sampling program is designed primarily to observe fishing operations in fisheries that have interactions with protected resources such as marine mammals and turtles. However, information on bycatch is also collected on these sampled trips. In addition, the Administrator, Northeast Region, NMFS (Regional Administrator), may request any vessel holding a moratorium permit for summer flounder, scup, or black sea bass, or a permit for mackerel, squid, or butterfish, to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

Changes from the Proposed Rule

In § 648.4, paragraph (a)(5)(iii) is revised to reflect the request by the Council to clarify the language limiting the size and horsepower of a vessel permitted to harvest Atlantic mackerel. In § 648.14, paragraph (p)(10) is added for the same reason.

In § 648.5, paragraph (d) is revised to eliminate the optional information submission of the applicant's social security number.

In § 648.7, the last two sentences of paragraph (c) are removed, as they refer to sections that were modified in previous actions.

Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass fisheries prohibited the transfer of summer flounder at sea (62 FR 63872, December 3, 1997). Language in § 648.7(f)(3) includes reporting requirements for at-sea processors. This language conflicts with the prohibited action specified at § 648.13(d). Therefore, the language in § 648.7 is revised to reflect the intent of Amendment 10 to prohibit transfer of summer flounder at sea.

In § 648.21, paragraph (e) is removed, as it is redundant with the inseason adjustment process established under the framework provision in § 648.24.

Section 648.106 Sea Turtle Conservation, is revised by removing the old language and adding a reference to the current regulations implementing these measures under the authority of the Endangered Species Act (ESA) 50 CFR parts 222 and 223. This revision was discussed in the preamble to the proposed rule for this action (64 FR 16891, April 7.1999), however, the regulatory text was inadvertently omitted from the proposed rule. Because the public was notified and comment was invited on the change as part of the proposed rule, NMFS publishes the text as final.

Classification

This rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities.

While no comments were received specifically regarding this certification, one commenter did state that the SFA Amendments generally failed to address the potential for significant adverse impacts on non-fishing entities, as required under the RFA. This comment was addressed in the preamble (see the response to comment 14), and did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

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

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB under OMB control numbers 0648–0202 and 0648–0229. The requirements and their estimated response times are as follows:

1. Under OMB control number 0648–0202, surf clam and ocean quahog operator permits at 1 hour per response,

2. Under OMB control number 0648–0202, mackerel at-sea processor permits at 5 minutes per response, and

2. Under OMB control number 0648–0229, mackerel dealer weekly reporting for at-sea processors at 2 minutes to complete the dealer purchase report (Form 88–30), and 4 minutes to summarize and call-in the weekly interactive voice response report.

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(5)(iii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(5) * * *

(iii) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under § 648.6(a)(2).

* * * * *

3. In § 648.5, paragraphs (a) and (d) are revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or, as of November 26, 1999, Atlantic surf clams and ocean quahogs, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit.

* * * * *

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant.

* * * * *

4. In § 648.6, paragraphs (a) and (c) are revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* (1) *Dealer permits.* All NE multispecies, sea scallop, summer flounder, surf clam, and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. All mackerel, squid, and butterfish dealers and all scup and black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species.

(2) *At-sea processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

(c) *Information requirements.* Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

* * * * *

5. In § 648.7, the last two sentences of paragraph (c) are removed and paragraph (f)(3) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any mackerel, or squid, or butterfish, or scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

* * * * *

6. In § 648.14, paragraph (p)(10) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(p) * * *

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

* * * * *

7. In § 648.20, paragraph (c) is revised to read as follows:

§ 648.20 Maximum optimum yield (OYs).

* * * * *

(c) *Illex*—catch associated with a fishing mortality rate of F_{MSY}.

* * * * *

8. In § 648.21, paragraph (b)(2)(i) is revised and paragraph (e) is removed to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} (F = 0.25) at 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at 450,000 mt spawning stock biomass (½ B_{MSY}).

* * * * *

9. Section 648.24 is added under subpart B to read as follows:

§ 648.24 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description

and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

10. In § 648.73, paragraph (a)(4) is added to read as follows:

§ 648.73 Closed areas.

(a) * * *

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20' N. latitude.

* * * * *

11. Section 648.77 is added under subpart E to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels) description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set aside quota for scientific research, vessel tracking system, optimum yield range.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

12. Section 648.106 is revised to read as follows:

§ 648.106 Sea Turtle conservation.

Sea turtle regulations are found at 50 CFR parts 222 and 223.

13. Section 648.107 is added under Subpart G to read as follows:

§ 648.107 Framework adjustments to management measures.

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, if after reviewing the Council's recommendation and supporting information:

(i) NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

14. Section 648.127 is added under subpart H to read as follows:

§ 648.127 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

15. Section 648.147 is added under subpart I to read as follows:

§ 648.147 Framework adjustments to management measures.

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

[FR Doc. 99–27921 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 102099A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 24, 1999 until 2400 hrs A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish

Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with section 206(b)(1) of the American Fisheries Act (AFA), 50 percent of the remainder of the pollock TAC in the BSAI, after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species, shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999), and subsequent reallocation (64 FR 56474, October 20, 1999), established the final 1999 amount of pollock allocated for processing by the inshore component of the Bering Sea subarea as 424,187 metric tons.

NMFS prohibited directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI effective October 6, 1999 (64 FR 55438, October 13, 1999) in accordance with § 679.20(d)(1)(iii) with the expectation that the directed fishing allowance would be caught by that date.

NMFS has determined that as of October 16, 1998, 10,600 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the pollock TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP and AFA objective of providing the pollock TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: October 20, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–27876 Filed 10–21–99; 3:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 206
Tuesday, October 26, 1999

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–3 PR]

Olives Grown in California; Revisions to Handling Requirements and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on revisions to the handling requirements under the California olive marketing order and announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. The olive marketing order regulates the handling of olives grown in California, and is administered locally by the California Olive Committee (committee). This rule would establish exemption and safeguard requirements for handlers desiring to ship a small portion of their olives as new packaged olive products for test marketing and market development projects. If implemented, this rule would help provide uniform procedures under the order and improve overall program administration.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 148 and Marketing Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to handling requirements under the order for olives grown in California. The revision would implement procedures and reporting requirements for handlers desiring to use a small portion of their olives to test market and initiate market development projects for new packaged olive products. The procedures include completion and submission of a new form, the COC Form 155, and approval by committee staff. This rule also announces AMS's intention to request a revision to the currently-approved information collection requirements issued under the marketing order.

Sections 932.51 and 932.52 of the olive marketing order authorize regulatory requirements regarding the handling of California packaged olives. Such requirements include incoming and outgoing handling requirements with regard to quality, size, and style of olives. Certain of these requirements are implemented under § 932.149. Styles of olives include whole, pitted, sliced, segmented (wedged), halved, chopped, and broken pitted. Under this proposal, handlers would be permitted to use other styles of olives and to add other ingredients to the finished product, such as flavorings, pieces of garlic, or jalapeno peppers.

Section 932.55 of the order provides authority for exempting from any or all requirements handlers handling olives which are used for specified purposes, including shipments of olives used to facilitate the conduct of marketing research and development projects. Section 932.55 of the order also provides authority for the committee to recommend rules, regulations, and safeguards necessary to ensure that

olives exempted under the provisions of this section are handled only as authorized.

Section 932.155 of the order's rules and regulations provides specific safeguards for certain special purpose shipments of packaged olives. However, these regulations do not include requirements and procedures related to shipping packaged olives for test marketing and market development. In the past, the committee has on occasion approved such marketing projects. This rule proposes revising § 932.155 for the purpose of clarifying the language and to include an exemption and safeguards in the rules and regulations for shipments of new packaged products for test marketing and market development. This would clarify existing practices in the regulations, and would establish uniform procedures for all handlers to ensure that the handling of new product packaged olives exempted under the provisions of § 932.55 will be handled only as authorized. Such new products could include packaged olives of different styles than those earlier mentioned containing various ingredients or flavorings, such as pieces of garlic, or jalapeno peppers.

The proposed rule includes a new form, the COC 155. Prior to engaging in test marketing and initiating market development projects for a new product, a handler would be required to file the COC 155 with the committee. The form includes: (1) The name and address of the requesting handler; (2) the quantity of olives to be utilized (limited to not more than five percent of the applicant handler's crop year acquisitions); (3) specific market outlet; (4) flavorings or other ingredients added to the olives; (5) style of olives used; (6) type of olives used, either black or green ripe; (7) container sizes; (8) varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.; (9) sizes of olives utilized; (10) approximate dates on which the new product will be packaged; (11) place of inspection; (12) certification that all assessments and reporting in effect under the marketing order will be met prior to shipment; (13) certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service; (14) purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and (15) an estimate of the amount of time required to complete the market-test. The committee shall promptly approve or deny the application, and may add limitations to any such approval.

Any product remaining at the end of the test-market period shall be disposed of according to paragraph (a) of § 932.155, which specifies procedures for disposing of packaged olives in the production of olive oil, donating to a charitable organization, and by dumping.

On December 10, 1998, the committee met to discuss the recommendation. Additional discussion occurred at various subcommittee meetings prior to the December 10, 1998, committee meeting.

According to the committee, demand for packaged olives has remained relatively stagnant in recent years. The committee believes that to improve returns to producers and handlers, handlers must have the flexibility to respond to shifting trends in the marketplace by test marketing new products. Handlers must be allowed the opportunity to try marketing innovative new products free from certain marketing order obligations, such as style and flavor requirements, which appear to be too restrictive for these new products. Such shipments, will, therefore, be exempt from the requirements of § 932.149. Because it appears that such shipments can comply with all other order requirements, they will remain applicable. This would allow the handlers to respond to marketing opportunities and requests from buyers, which could result in increased olive sales. In addition, since handlers have large amounts of capital invested in their processing plants, any increase in the amount of olives processed yields a reduction of per unit processing costs, which is a benefit to handlers and producers.

It has been the industry's experience that the ability to ship new products for test marketing and market development helps to encourage handlers to develop new product lines. The committee believes that this option should continue to be available, allowing handlers to take advantage of additional marketing opportunities to expand the market for processed olives. Adding procedures to the rules and regulations will help clarify the existing practice, and will provide uniform requirements for handlers.

Therefore, when the committee met in December, it unanimously recommended modifying the rules and regulations to specify procedures and reporting requirements to permit handlers to ship a small portion of their olives for new packed olive products for test marketing and market development projects. In addition, the committee recommended development of a new form, the COC Form 155, that handlers interested in test marketing and market development projects for new olive products must complete and file with the committee.

The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the Inspection Service is aware of the product.

The new COC Form 155 will require a revision in the information collection requirements under the order. It is estimated that COC Form 155 would require 20 minutes for the applicant handlers to complete. It is expected that this could result in an increased reporting burden to handlers. The increased burden is estimated to be 20 minutes per handler annually. If all three handlers applied, the COC Form 155 would add 1 hour in total annual hours to the current response burden.

The information collection requirements contained in the referenced § 932.155 will require approval by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 3 handlers subject to regulation under the order and approximately 1,200 producers of olives in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. None of the olive handlers may be classified as small entities. The majority of producers may be classified as small entities.

A review of historical and preliminary information pertaining to the current fiscal year (January 1 through December 31) indicates that the total grower revenue for the 1999 crop year (August

1 through July 31) is estimated to be approximately $39,500,000, and the average grower revenue approximately $33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule would revise § 932.155 to include requirements for handlers desiring to ship olives to test markets and initiate market development projects for small quantities of new olive products. This rule would also reformat § 932.155 for purposes of clarity.

An alternative to this action would be to maintain the status quo, whereby the regulations would not address the needs of handlers desiring to ship new products for test marketing and market development. However, the committee and the Department believe that regulations should be modified to address these needs. This would help ensure uniform requirements and procedures are followed by handlers who desire to test market and initiate market development projects. Such activity could ultimately result in increasing sales of processed olives.

Under this proposed rule, the committee would review written requests from handlers interested in test marketing and market development of new product lines. Such requests would be made on a new form, the COC 155, which would require uniform information from all applicant handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This new form is anticipated to be utilized when handlers have developed new product lines which they desire to test market. Accordingly, this action would impose an additional reporting or recordkeeping requirement on three olive handlers by requiring COC Form 155 to be filed prior to the test marketing of a new canned olive product. The form is estimated to take approximately 20 minutes to complete. There are only three handlers regulated under the order, and the additional burden created by the use of this form by all handlers is estimated to be 1 annual hour.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meeting was widely publicized throughout the olive industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue. The committee is comprised of 16 members, of which 8 are producers and 8 are handlers. Each of the three handler entities is presently represented on the committee. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request a revision to a currently approved information collection for olives grown in California, Marketing Order No. 932.

Title: Olives Grown in California, Marketing Order 932.

OMB Number: 0581–0142.

Expiration Date of Approval: October 31, 2000.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California olive marketing order program, which has been operating since 1965.

The California olive marketing order authorizes the issuance of quality, size, and inspection requirements. The order also has authority for research and development projects, including paid advertising. Pursuant to section 8e of the Act, import grade and size requirements are implemented on olives imported into the United States.

The order and its rules and regulations authorize the California Olive Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to olive supplies, shipments, dispositions, and other information necessary to effectively carry out the purpose of the Act and the order. California olives are shipped year-round and these forms are used accordingly.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of a requirement for handlers to file a form with the committee for approval to ship new olive products to be test marketed.

The committee believes that to improve returns to producers and handlers, handlers should be encouraged to look for outlets for new product lines. One method to encourage development of new products is to continue to allow test marketing of such products by including authority in the rules and regulations that is uniformly applied to all handlers. The information supplied by the applicant handler would provide the committee with information necessary to ensure that the product is used for test marketing or for marketing development projects and that the inspection service is aware of the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average ⅓ hour per response.

Respondents: California olive handlers.

Estimated Number of Respondents: 3

Estimated Number of Responses per Respondent: one annually.

Estimated Total Annual Burden on Respondents: 1 hour.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (2) 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) 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0142 and California Olive Marketing Order No. 932, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address and will become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All responses to this notice will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 932.155, paragraphs (a) and (b) are revised to read as follows:

§ 932.155 Special purpose shipments.

(a) The disposition of packaged olives covered by § 932.152(d) which are not reprocessed, and new packaged olive products covered under paragraph (b) of this section which have not been disposed of by the end of the test market period, shall be handled in conformity with the applicable provisions of this paragraph.

(1) Under supervision of the Inspection Service, such packaged olives may be disposed of for use in the production of olive oil or dumped.

(2) Such packaged olives may be disposed of to a charitable organization for use by such organization, provided the following conditions are met:

(i) Any handler who wishes to so dispose of olives shall first file a written application with, and obtain written approval thereof from, the committee. Each such application shall contain at least:

(A) The name and address of the handler and the charitable organization;

(B) The physical location of the charitable organization's facilities;

(C) The quantity in cases, the variety, size, can size, and can code of the packaged olives; and

(D) A certification from the charitable organization that such olives will be used by the organization and will not be sold.

(ii) Prior to approval, the committee shall perform such verification of the accuracy of the information on the application as it deems necessary. The committee may deny any application if it finds that the required information is incomplete or incorrect, or has reason to believe that the intended receiver is not a charitable organization, or that the handler or the organization has disposed of packaged olives contrary to a previously approved application. The committee shall notify the applicant and the organization in writing of its approval, or denial, of the application. Any such approval shall continue in effect so long as the packaged olives covered thereby are disposed of consistent with this section. The committee shall notify the handler and the organization of each such termination of approval. The handler shall furnish the committee upon demand such evidence of disposition of the packaged olives covered by an approved application as may be satisfactory to the committee.

(b) In accordance with the provisions of § 932.55(b), packaged olives to be used in marketing development projects may be handled without regard to § 932.149 provided the following conditions are met. Such olives must be identified to the satisfaction of the Inspection Service and kept separate from other packaged olives. The handler shall submit to the committee for its approval ''COC Form 155'' at least 10 working days prior to the shipment of such packaged olives to test markets, and report progress or changes to the committee, as requested. The applicant handler shall provide the following information on COC Form 155:

(1) The quantity of olives to be utilized (limited to not more than five percent of the handler's crop year acquisitions);

(2) Specific market outlet;

(3) Flavorings or other ingredients added to the olives;

(4) Style of olives used;

(5) Type of olives used, either black or green ripe;

(6) Container sizes;

(7) Varieties used, whether Ascolano, Barouni, Manzanillo, Mission, Sevillano, etc.;

(8) Sizes of olives utilized;

(9) Approximate dates when the new product will be packaged;

(10) Name and address of requesting handler;

(11) Place of inspection;

(12) Certification that all assessment and reporting requirements in effect under the marketing order will be met prior to shipment;

(13) Certification that all such fruit will be kept separate from other packaged olives and will be so identified by control cards or other means acceptable to the Inspection Service;

(14) Purpose and nature of the request, whether for test marketing, evaluation, market research, etc.; and

(15) An estimate of the amount of time required to complete the test. The committee shall promptly approve or deny the application, and may add limitations to any such approval. Upon approval, the applicant handler shall notify the Inspection Service. Packaged olives so identified and remaining unused at the end of the approved test-market period shall be disposed of according to paragraph (a) of this section.

* * * * *

Dated: October 18, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–27744 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP 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 British Aerospace BAe Model ATP airplanes. This proposal would require modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-

icing system. 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 chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–201–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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–201–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–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that there were six reports of failures, including four double failures, of the engine intake de-icing system. The failures were attributed to chafing and consequent damage to system wiring due to vibration within the engine, and contamination of electrical connectors and plugs by oil and water. Damage to system wiring or contamination of the electrical connectors or plugs could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin ATP–30–056, dated June 11, 1999. The service bulletin describes procedures for modification of the engine intake ducts to provide new cable routes and improved contamination protection of connectors on the engine intake de-icing system. The procedures for modification include inspection of cable looms, wires, electrical connectors, and associated hardware for damage; and replacement of damaged parts with new or serviceable parts. The service bulletin also specifies procedures to reroute and modify the flexible duct cable loom and inlet duct power loom, and to install new connector boots and backshells to seal electrical connectors. These procedures are intended to increase the reliability of the engine intake de-icing system by eliminating chafing of electrical wires and protecting electrical connectors from contamination. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The British Aerospace service bulletin references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 56 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $33,600, or $3,360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft

[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–201–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) 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 chafing and subsequent damage to the engine intake de-icing system wiring, and contamination of electrical connectors and plugs; which could result in loss of engine intake de-icing capability, accretion of ice in the intake duct, ice ingestion, and consequent engine flameout; accomplish the following:

Modification

(a) Within 180 days after the effective date of this AD, accomplish the modification of the engine intake ducts (including inspection of the cable looms, wires, electrical connectors, and associated hardware for damage; replacement of damaged parts with new or serviceable parts; rerouting and modification of the flexible duct cable loom and inlet duct power loom; and installation of new connector boots and backshells on electrical connectors on the engine intake de-icing system) to provide new cable routes and improved contamination protection of connectors on the engine intake de-sicing system, in accordance with British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999.

Note 2: British Aerospace Service Bulletin ATP–30–056, dated June 11, 1999, references Dunlop Limited Aviation Division Service Bulletin ACA1324–30–96, dated June 11, 1999, as an additional source of service information to accomplish the modification.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Issued in Renton, Washington, on October 20, 1999.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27940 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that would have required initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by correcting an omission of the compliance time for accomplishment of the initial inspection for certain airplanes. The actions specified by this new proposed AD are intended to prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by November 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–240–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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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–240–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–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 5, 1999 (64 FR 438). That NPRM would have required initial and repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective actions, if necessary. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That condition, if not corrected, could result in fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to that NPRM.

Omission of Compliance Time

Two commenters state that paragraph (a) of the proposed AD does not address a time frame for accomplishment of the proposed actions. Both commenters note that the compliance deadline in the service bulletin is 27,000 total flight cycles, and assume that the FAA's intent was to follow that compliance time.

The FAA acknowledges that paragraph (a) of the proposed AD does not specify a compliance time. It was the FAA's intent to follow the same compliance time as that specified in the service bulletin; the compliance time was inadvertently omitted from the NPRM. This error has been corrected, and, due to this omission, the revised rule will be issued as a supplemental NPRM.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Request To Allow Latest Service Bulletin Revisions

One commenter states that for paragraphs (b) and (c), respectively, ATR Service Bulletins ATR72–53–1013 and ATR72–53–1019, both Revision 3, were issued January 22, 1999. The commenter requests that the AD reference Revision 3 of both of these bulletins instead of Revision 2, as currently referenced. Revision 3 of the service bulletins provides a compliance time of 36,000 total flight cycles, which is consistent with the French AD and this NPRM.

The FAA concurs with the commenter's request. Revisions 2 and 3 of the service bulletins mentioned above are technically equivalent. This supplemental NPRM will be revised to reference Revision 3; however, Note 2 is revised to also allow compliance with Revision 2 prior to the effective date of the AD.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1018 (14 U.S.-sregistered airplanes), it would take approximately 250 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,880 per airplane. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $348,320, or $24,880 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1013, Revision 2 (2 U.S.-registered airplanes), it would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $360, or $180 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1019, Revision 2 (2 U.S.-registered airplanes), it would take approximately 100 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $12,000, or $6,000 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1028 (2 U.S.-registered airplanes), it would take approximately 5 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $600 or $300 per airplane, per inspection cycle.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–52–1033, and ATR72–52–1029, Revision 1 (2 U.S.-registered airplanes), it would take approximately 145 work hours per airplane to accomplish the proposed door stop fitting 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 stop fittings replacement proposed by this AD on

U.S. operators is estimated to be $17,400 or $8,700 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1 (2 U.S.-registered airplanes), it would take approximately 30 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $3,600, or $1,800 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2 (2 U.S.-registered airplanes), it would take approximately 8 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $960, or $480 per airplane.

For airplanes identified in Avions de Transport Regional Service Bulletin ATR72–53–1020 (14 U.S.-registered airplanes), it would take approximately 6 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions proposed by this AD on U.S. operators is estimated to be $5,040, or $360 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:

Aerospatiale: Docket 98–NM–240–AD.

Applicability: Model ATR72 series airplanes, certificated in any category; listed in the following Avions de Transport Regional Service Bulletins:

- ATR72–52–1018, dated May 18, 1995;
- ATR72–53–1013, Revision 2, dated March 22, 1993;
- ATR72–53–1019, Revision 2, dated October 15, 1996;
- ATR72–52–1028, dated July 5, 1993;
- ATR72–52–1033, dated April 28, 1995;
- ATR72–52–1029, Revision 1, dated November 16, 1994;
- ATR72–53–1021, Revision 1, dated February 20, 1995;
- ATR72–53–1014, Revision 2, dated October 15, 1992; and
- ATR72–53–1020, dated October 6, 1992.

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 (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage and the passenger and service doors, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes on which Aerospatiale Modification 03191 (reference Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995) has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a preliminary inspection of the existing fasteners to determine if the fasteners are out of tolerance in accordance with paragraph 2.C.(1) of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR72–52–1018, dated May 18, 1995. Depending on the results of the inspection, prior to further flight, accomplish the requirements in paragraphs (a)(1) and (a)(2), or (a)(2) and (a)(3), of this AD, as applicable, as specified by paragraph 2.C.(1) of the service bulletin.

(1) Remove the fasteners and inspect the fastener holes to determine if they are out of tolerance or cracking, in accordance with Part A of the Accomplishment Instructions of the service bulletin. Perform a visual inspection of the holes for correct tolerance, and a high frequency eddy current (HFEC) inspection for cracking.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) Remove the existing fasteners and inspect the fastener holes for correct tolerance in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(i) If any discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) or its delegated agent.

(ii) If no discrepancy is detected, prior to further flight, replace the cargo compartment door hinges with new hinges in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) Remove the existing fasteners, repair, and replace the cargo compartment door hinges with new hinges in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) For airplanes having serial numbers 108 through 210 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the key holes located on main frames 25 and 27 of the fuselage, between stringers 14 and 15, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1013, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (b) of this AD.

(2) If any rivet is missing, prior to further flight, perform an eddy current inspection of the affected key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, install rivets in all affected key holes, in accordance with the service bulletin. If installation of rivets is not possible, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(ii) If any crack is detected during the inspection required by paragraph (b)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(c) For airplanes having serial numbers 108 through 207 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if rivets are installed in the tooling and key holes located on the standard frames of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1019, Revision 3, dated January 22, 1999.

(1) If all rivets are installed, no further action is required by paragraph (c) of this AD.

(2) If any rivet is missing, prior to further flight, perform a visual inspection of the affected tooling and key holes to detect cracks, in accordance with the service bulletin.

(i) If no crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, install new rivets in all affected tooling and key holes, in accordance with the service bulletin.

(ii) If any crack is detected during the inspection required by paragraph (c)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(d) For airplanes on which Aerospatiale Modification 03775 (reference Avions de Transport Regional Service Bulletin ATR72–52–1029, Revision 1, dated November 16, 1994) or Aerospatiale Modification 03776 (reference Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the plug door stop fittings of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1028, dated July 5, 1993.

(1) If no crack is detected, repeat the eddy current inspection required by paragraph (d) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected, prior to further flight, replace the cracked stop fittings with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995, or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that fitting.

(e) For airplanes on which Aerospatiale Modification 03775 or Aerospatiale Modification 03776 has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, replace the plug door stop fittings of the forward and aft passenger and service doors with new, improved fittings, in accordance with Avions de Transport Regional Service Bulletin ATR72–52–1033, dated April 28, 1995; or ATR72–52–1029, Revision 1, dated November 16, 1994; as applicable. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD.

(f) For airplanes on which Aerospatiale Modification 02986 (reference Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995) has not been accomplished: Prior to the accumulation of 18,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks in the rivet holes of the door surround corners of the forward and aft passenger and service doors, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1021, Revision 1, dated February 20, 1995.

(1) If no crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, modify the rivet holes, and replace the door surround corners with modified corners, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (f) of this AD, prior to further flight, repair and modify in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(g) For airplanes on which Aerospatiale Modification 02397 (reference Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1014, Revision 2, dated October 15, 1992.

(1) If no crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, install reinforcement angles on the left and right sides of external stringer 4 at frames 24 and 28 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(h) For airplanes on which Aerospatiale Modification 03185 (reference Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992) has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracks of the rivet holes located on stringer 11 of frame 26 of the fuselage, in accordance with Avions de Transport Regional Service Bulletin ATR72–53–1020, dated October 6, 1992.

(1) If no crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, install doublers and stringer clips on the left and right sides on stringer 11 of frame 26 of the fuselage, in accordance with the service bulletin.

(2) If any crack is detected during the inspection required by paragraph (h) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Avions de Transport Regional Service Bulletins ATR72–53–1013, dated June 10, 1991, or Revision 1, dated June 12, 1992, or Revision 2, dated March 22, 1993; ATR72–53–1019, dated May 13, 1993, or Revision 1, dated November 11, 1994, or Revision 2, dated October 15, 1996; ATR72–52–1029, dated July 20, 1994; or ATR72–53–1014, Revision 1, dated June 30, 1992; are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(i) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 4: The subject of this AD is addressed in French airworthiness directive 92–046–012(B)R4, dated November 5, 1997.

Issued in Renton, Washington, on October 20, 1999.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27939 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–32–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45/50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/50 series turbofan engines. This proposal would require initial and repetitive inspections for cracks in the stage 14 high pressure compressor (HPC) disk lock slots, and removal from service of certain disks, at the first piece-part level or HPC rotor module level exposure, after 6,000 cycles since new (CSN). This proposal is prompted by reports of stage 14 HPC disk lock slot cracks discovered during shop fluorescent penetrant inspections. The actions specified by the proposed AD are intended to prevent stage 14 HPC disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–32–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Events Leading to This Proposed Rule

The Federal Aviation Administration (FAA) has received reports of stage 14 high pressure compressor (HPC) disk lock slot cracks discovered on General Electric Company (GE) CF6–45/50 series turbofan engines during routine shop fluorescent penetrant inspections. The investigation revealed higher stresses in the load and lock slots than prior analyses have predicted. Two populations or groups of disks have been identified. One group of disks was produced from forgings with coarser grain sizes than the other group of disks and therefore is less resistant to fatigue crack initiation. The referenced GE CF6–50 Alert Service Bulletins (ASB) 72–A1144, dated March 19, 1998, or ASB 72–A1144, Revision 1, dated May 13, 1999, define these forging groups by serial numbers and describe the applicable inspection procedures for each disk forging group. This condition, if not corrected, could result in a stage 14 HPC disk failure, which could result in uncontained engine failure and damage to the aircraft. The stage 14 HPC rotor disks are no longer being manufactured, and have been replaced with a stage 11–14 spool shaft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive inspections for cracks in the stage 14 HPC disk lock slots in accordance with procedures and intervals defined by forging group, and would require the removal from service of certain disks at the first piece-part level exposure or HPC rotor module level exposure above 6,000 CSN. The actions would be required to be accomplished in accordance with the ASB's described previously.

Cost Impact

There are approximately 1,538 engines of the affected design in the worldwide fleet. The FAA estimates that 460 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,600 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,263,200.

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:

General Electric Company: Docket No. 98–ANE–32–AD.

Applicability: General Electric Company (GE) Model CF6–45/50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing Company 747 series, and McDonnell Douglas Corporation DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) 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 a stage 14 high pressure compressor (HPC) disk failure, which could result in uncontained engine failure and damage to the aircraft, accomplish the following:

Inspections

(a) Perform initial inspections of HPC stage 14 disks, part numbers (P/N's) 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with serial number (SN) prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 6,500 cycles since new (CSN) or less on the effective date of this AD before accumulating 9,800 CSN.

(2) Inspect disks with more than 6,500 CSN on the effective date of this AD no later than the next engine shop visit (ESV) after the effective date of this AD or before accumulating an additional 3,300 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.

(b) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04, with SN prefixes GWN, MPO, RRY, and SNL, and disk SN's SNE00001 through SNE00017, and disk SN's SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 9,800 CSN at the time of the last inspection, perform repetitive inspections no later than 9,800 CSN or before accumulating 3,300 cycles since last inspection (CSLI), whichever occurs later.

(2) For disks with 9,800 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3,300 CSLI.

(c) Perform initial inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) Inspect disks with 4,200 CSN or less on the effective date of this AD before accumulating 7,500 CSN.

(2) Inspect disks with more than 4,200 CSN but less than 9,000 CSN on the effective date of this AD at the next ESV after the effective date of this AD, before accumulating an additional 3,300 CIS after the effective date of this AD, or before accumulating 11,000 CSN, whichever occurs first.

(3) Inspect disks with 9,000 CSN or greater on the effective date of this AD, at the next ESV after the effective date of this AD, or before accumulating an additional 2,000 CIS after the effective date of this AD, whichever occurs first.

(d) Perform repetitive inspections of HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, in accordance with paragraphs 2.A. through 2.B. of GE CF6–50 ASB No. 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999, and the following schedule:

(1) For disks with less than 7,500 CSN at the time of the last inspection, perform repetitive inspections no later than 7,500 CSN or before accumulating 3,300 CSLI, whichever occurs later.

(2) For disks with 7,500 CSN or greater at the time of the last inspection, perform repetitive inspections no later than 3300 CSLI.

Removal from Service

(e) Remove from service prior to further flight stage 14 HPC disks that equal or exceed the reject criteria established by GE CF6–50 ASB 72–A1144, dated March 19, 1998, or ASB No. 72–A1144, Revision 1, dated May 13, 1999.

(f) Remove from service, HPC stage 14 disks, P/N's 9080M34P03, 9080M34P04, 9080M34P05 and 9349M91P04 with SN prefixes SNG and SNE, except disk SN's SNE00001 through SNE00017 and SNE01101 through SNE01110, with greater than 6,000 CSN after the effective date of this AD, at the next piece-part level exposure or at the next HPC rotor module level exposure after the effective date of this AD.

Terminating Action

(g) Replacement of the stage 14 HPC disk, P/N's 9080M34P03, 9080M34P04, 9080M34P05, 9349M91P04, with a stage 11–14 spool shaft is terminating action for the inspection requirements of this AD.

Reporting Requirements

(h) Report the results of inspections that equal or exceed the reject criteria within five days of the inspection to: Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299. The following information must be included in the report:

(1) HPC Stage 14 rotor disk P/N,

(2) HPC Stage 14 rotor disk SN,

(3) HPC Stage 14 rotor disk CSN,

(4) HPC Stage 14 rotor disk CSLI, and

(5) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Definitions

(i) For the purpose of this AD, the following definitions apply:

(1) HPC Rotor disassembly occurs if any of the HPC

Rotor bolted flange joints are separated, such as the Stage 2 joint to accomplish the Stage 3–9 Spool inspection.

(2) Piece-part exposure is defined as disassembly and removal of the stage 14 disk from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the disk.

(3) An engine shop visit is defined as the introduction of an engine into a shop where a major engine flange is separated. The following maintenance actions are not considered engine shop visits for the purpose of this AD:

(i) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;

(ii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;

(iii) Introduction of an engine into a shop solely for replacement of the Accessory Gearbox or Transfer Gearboxes;

(iv) Introduction of an engine into a shop for any combination of exceptions specified in paragraphs (i)(3)(i) through (i)(3)(iii).

Alternate Methods of Compliance

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

Special Flight Permit

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

Issued in Burlington, Massachusetts, on October 20, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27938 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–79–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This proposal would require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts. This proposal is prompted by recent component test data. The actions specified by the proposed AD are intended to prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE–79-AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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–ANE–79–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–79–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

General Electric Company (GE), the manufacturer of CF6–80C2 series turbofan engines, recently conducted component tests and analysis of low pressure rotor shafts that resulted in the need to reduce the cyclic life limit of fan mid shafts, part number (P/Ns) 9326M74P04 and P/N 9326M74P05. The analysis revealed high stress in the fan mid shaft spline teeth, which results in reduced component cyclic life. This condition, if not corrected, could result in fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require removal from service of affected fan mid shafts prior to reaching a new, lower cyclic life limit, and replacement with serviceable parts.

Economic Analysis

There are approximately 1,796 engines of the affected design in the worldwide fleet. The FAA estimates that 230 engines installed on aircraft of US registry would be affected by this proposed AD and that required parts would cost approximately $90,085 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $20,719,600.

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:

General Electric Company: Docket No. 98–ANE–79–AD.

Applicability: General Electric Company (GE) CF6–80C2 series turbofan engines, with fan mid shafts, part number (P/N) 9326M74P04 or P/N 9326M74P05, installed. These engines are installed on but not limited to Airbus Industrie A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fan mid shaft failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

Removal From Service

(a) Remove from service affected fan mid shafts and replace with a serviceable part, as follows:

Note 2: GE CF6–80C2 Service Bulletin (SB) No. 72–958, dated December 10, 1998, contains information on this subject.

(1) For fan mid shafts that have accumulated 9,000 or more cycles-since-new (CSN) on the effective date of this AD, remove from service within 3,500 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 15,000 CSN, whichever occurs first.

(2) For fan mid shafts that have accumulated 1,800 CSN or more, but less than 9,000 CSN on the effective date of this AD, remove from service within 5,000 CIS, or prior to accumulating to 12,500 CSN, whichever occurs first.

(3) For fan mid shafts that have accumulated less than 1,800 CSN on the effective date of this AD, remove from service prior to accumulating 6,800 CSN.

Note 3: GE CF6–80C2 SB 72–750, Revision 2, dated September 4, 1998, contains information on reworking fan mid shafts that results in changing the part number. After that rework, this AD would not apply to engines containing the reworked fan mid shaft.

New Life Limits

(b) Except for the provisions of paragraph (a) of this AD, no fan mid shafts, P/N 9326M74P04 or 9326M74P05, may remain in service beyond 6,800 CSN.

Alternate Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

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

Issued in Burlington, Massachusetts, on October 20, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–27937 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–09]

Proposed revision of Class E airspace, Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the Lakeview, OR, Class E Airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) at the Lake County Airport, Lakeview, OR.

DATES: Comments must be received on or before December 10, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

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

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comment 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–ANM–09.'' 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 the light of comments received. All comments submitted will be available for examination at the address above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. 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 Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Lakeview, OR, in order to accommodate a new SIAP to the Lake County Airport, Lakeview, OR. This amendment would provide additional airspace at Lakeview, OR, to meet current criteria standards associated with SIAP holding patterns. This action also incorporates the name change of the airport from Lakeview Airport to Lake County Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Lake County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published Paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ANM OR E5 Lakeview OR [Revised]

Lake County Airport, OR
(Lat. 42°09′40″N, long. 120°23′56″W)

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Lake County Airport, and within 1.8 miles each side of the 180° bearing from the Lake County Airport extending from Airport to 7 miles south of the Lake County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 42°45′00″N, long. 120°46′00″W; to lat. 42°45′00″N, long 120°12′00″W; to lat. 41°41′00″N, long. 120°12′00″W; to lat. 41°41′00″N, long. 120°46′00″W, to the point of beginning; that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00′00″N, on the east by a line extending from lat. 44°00′00″N, long. 120°00′04″W, to the north edge of V–122 at long. 119°00′04″W, on the south by the north edge of V–122, and on the west by the east edge of V–165.

* * * * *

Issued in Seattle, Washington, October 12, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–27828 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–13]

Proposed Amendment to Class E Airspace; Leonardtown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Class E airspace area at Leonardtown, MD. Amendments to the Standard Instrument Approach procedures (SIAP) for the Global Positioning System (GPS) and VHF Omni Range (VOR) RWY–11 have made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before November 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace, Branch, AEA–520, Docket No. 99–AEA–13, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel,

AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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, 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 action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AEA–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Leonardtown, MD. Amendments to the SIAP, GPS and VOR RWY–11 for St. Marys County Airport make it necessary for additional controlled airspace extending upward from 700 feet AGL to be allocated to accommodate the SIAP and for IFR Operations at the airport. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 740.9G, dated September 1, 1999, and effective September 16, 1999, 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points dated September 1, 1999, and effective September 16, 1999, is proposed to be amended as follows:

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

* * * * *

AEA MD E5 Leonardtown, MD [Revised]

St. Marys County Airport, Leonardtown, MD
GRP (lat. 38°18′56″ N., long. 76°33′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of St. Marys County Airport, and within 4 miles each side of the PXT 293° radial extending from the 6.2 mile radius of the St. Marys Airport to 22 miles northwest of the PXT VORTAC.

* * * * *

Issued in Jamaica, New York, on October 2, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–27928 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Negotiated Rulemaking Committee notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the

employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 a.m. to approximately 5:00 p.m. on each day on Tuesday, November 16th and Wednesday, November 17th, 1999.

ADDRESSES: This Committee meeting will be held at the offices of the U.S. Department of Labor, Room C–5515, Conference Room #4, 200 Constitution Avenue, NW, Washington, DC. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend who need special accommodations should contact, at least 4 business days in advance of the meeting, Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219-7346). This is not a toll-free number.

Agenda

The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA, (29 U.S.C. 1002(40)). The agenda for the November meeting includes discussion of a possible consensus recommendation for a proposed rule and of the contents of a report to the Secretary of Labor under the Negotiated Rulemaking Act.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, November 9, 1999, to Ellen Goodwin, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Goodwin or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Goodwin at the address above. Papers will be accepted and included in the record of the meeting if received on or before November 9, 1999.

Signed at Washington, DC, this 20th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27907 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424 and 484

[HCFA–1103–N]

Medicare Program; Open Town Hall Meeting on November 8, 1999 To Present an Overview of the Home Health Prospective Payment System Proposed Rule Followed by a General Home Health Listening Session

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to provide information on the home health prospective payment system (HH PPS) proposed rule. The proposed rule will be published in October 1999 in the **Federal Register**. In addition, there will be a general home health listening session.

DATES: The HH PPS town hall meeting is scheduled for Monday, November 8, 1999, from 10 a.m. until 3 p.m., E.S.T. The HH PPS presentation will be followed by the general home health listening session, which is scheduled for Monday, November 8, 1999, from 3:15 p.m. until 5:15 p.m., E.S.T.

ADDRESSES: The meeting will be held in the HCFA Central Office Main Auditorium, 7500 Security Boulevard, Baltimore, MD 21244 with satellite broadcast viewing areas located in Boston, Chicago, and Dallas. The general home health listening session will be held in the HCFA Central Office Main Auditorium only, and there will be no satellite broadcast of this session.

FOR FURTHER INFORMATION CONTACT:
Sharon Ventura, (410) 786–1985 (for information on the overview of the HH PPS proposed rule).
Gina Perantoni, (410) 786–3219 (for information on the general home health listening session).

SUPPLEMENTARY INFORMATION:

Background

The home health prospective payment system (HH PPS) proposed rule will be published in the **Federal Register** in October 1999. We are planning to hold a town hall meeting on Monday, November 8, 1999, which is during the 60-day comment period to brief the public on the proposed rule. We will not be accepting oral comments on the rule at this meeting. Written comments during the 60-day comment period are

welcome. We anticipate interested parties to include: the home health agency (HHA) industry association representatives, HHA administrators and owners, home care professionals, university-based and private research organizations, Congressional members and staff, home care software vendors, beneficiary advocates, and any other interested parties.

In this meeting, we will provide an overview of the HH PPS proposed rule and will focus on a number of its key components and present past and current research efforts related to the HH PPS.

This meeting will be broadcast live from the HCFA Central Office Main Auditorium and will include three satellite broadcast viewing sites in Boston, Chicago, and Dallas. All four sites have a capacity of approximately 500 individuals. The audiences viewing the broadcast via satellite will have the ability to participate in the question-and-answer period at the end of this presentation. For those who cannot attend in Baltimore, the address of the downlink sites, registration information, and satellite coordinates for this presentation will be posted on the HCFA website www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled ''Events, Meetings, and Workgroups.''

The meeting will conclude with a question-and-answer session including the HCFA Central Office location as well as the three-satellite downlink sites. The toll-free phone number to call to participate will be broadcast during the meeting.

At the conclusion of the satellite broadcast, a 2-hour listening session is planned for participants in Baltimore only in the HCFA Central Office Main Auditorium during which time we will listen to concerns related to home health issues in general. This is a listening session only and not part of the HH PPS overview presentation.

In order to participate in the general home health listening session, individuals must sign up at 10 a.m. on the day of the town hall meeting. Presenters will be limited to the first 20 people who sign up. A sign up sheet will be available outside of the HCFA Main Auditorium. Individuals must limit their presentation to 3 minutes in length. We also ask that the oral presenters provide their statements in writing. Individuals who are unable to present oral statements may submit their statements in writing. We believe this will enable us to better consider all the concerns raised during this general home health listening session.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

AFYA Inc. will handle registration for all four meeting sites. Individuals must register following the directions posted on the HCFA website, www.hcfa.gov. Once individuals are on this website, they will need to highlight the red bullet, in the lower right hand corner, titled ''Events, Meetings, and Workgroups.''

Each participant will receive a confirmation letter as receipt of registration. Each participant will be provided with a meeting agenda at the time of the meeting. If individuals have any questions regarding registration, they should contact the AFYA Event Management Help Desk at (800) 377–9921.

Authority: Section 1895 of the Social Security Act (42 U.S.C. 1395fff).

Dated: October 21, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–27995 Filed 10–25–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, 3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to requests from the public, the Bureau of Land Management (BLM) is extending the comment period on the proposed rule to amend regulations on locating, recording, and maintaining mining claims or sites. You may comment on this rule for an additional 90 days.

DATES: You should submit your comments on the proposed rule by January 24, 2000. In developing a final rule, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: If you want to comment, you may:

(1) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, N.W., Washington, D.C.;

(2) Mail comments to: Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C St., N.W., Washington, D.C. 20240; or

(3) Send comments by way of the Internet to: WOComment@blm.gov. If you submit your comments electronically, please submit them as an ASCII file to minimize computer problems and include ''Attn: AD31'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–0350.

You may review the public comments received on the proposed rule at BLM's Regulatory Affairs Group office, 1620 L St., N.W., Room 401, Washington, D.C., during regular business hours (7:45 am to 4:15 pm) Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355 or Ted Hudson in Regulatory Affairs at (202) 452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–(800) 877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The original proposed rule appeared in the **Federal Register** on August 27, 1999 (64 FR 47023). The initial comment period expires on October 26, 1999.

Dated: October 20, 1999.

Sylvia V. Baca,

Assistant Secretary of the Interior—Designate.

[FR Doc. 99–27870 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–00]

RIN 1004–AD22

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental proposed rule; reopening of comment period on draft environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) announces the reopening of the comment period on our

surface management proposed rule (43 CFR part 3809) and the associated draft environmental impact statement (EIS). We are taking this action to carry out a provision of a recently enacted law requiring us to reopen the comment period on the proposed rule. This action enables the public and other interested parties to comment on the proposed rule and the draft EIS following publication of a report by the National Academy of Sciences (NAS) on hardrock mining on Federal lands. We are supplementing the proposed rule with recommendations from the NAS study and raising some related topics. And, we are responding to comments on our estimate of burden hours associated with the proposed rule.

DATES: Send your comments to reach BLM by February 23, 2000.

ADDRESSES: You may mail comments to Bureau of Land Management, Administrative Record, Nevada State Office, PO Box 12000, Reno, Nevada 89520–0006. You may hand-deliver comments to BLM at 1340 Financial Boulevard, Reno, Nevada 89520. Submit electronic comments and other data to WOComment@blm.gov. For other information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Electronic access and filing address.''

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339.

SUPPLEMENTARY INFORMATION:

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I. How Can I Comment on the Proposed Rule and Draft EIS?

Electronic Access and Filing Address

You may view an electronic version of this supplemental proposed rule; the February 9, 1999, proposed rule; and the draft EIS on BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include ''Attention: RIN 1004-AD22'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, call us directly at 202/452–5030.

Written Comments

Your written comments on the proposed rule or draft EIS should be specific and confined to issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, you should reference the specific section or paragraph of the proposed rule or draft EIS that you are addressing. Refer to the February 9, 1999, proposed rule (64 FR 6422) or the February 17, 1999 notice of availability of the draft EIS (64 FR 7905) for detailed information.

You need not re-submit comments that you sent us previously. We will consider comments submitted during the previous comment period, as well as comments submitted during this new comment period, when we prepare the final rule and final EIS.

We are not required to consider, or include in the Administrative Record for the final rule, comments that we receive after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

BLM will make comments, including names, street addresses, and other contact information of respondents, available for public review at our Nevada State Office (See **ADDRESSES**) during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. We will also make comments available at our Washington, DC office, 1620 L Street, NW, Room 401, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Requests for Confidentiality

Individuals who send us comments on the proposed rule may request confidentiality. If you wish to request that BLM consider withholding your name; street address; and other contact information, such as Internet address, FAX or phone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Why is BLM Re-Opening the Comment Period?

On February 9, 1999, we published in the **Federal Register** a proposed rule to revise the regulations governing mining operations involving metallic and some other minerals on public lands administered by BLM. See 64 FR 6422. We call these regulations the surface management regulations. They are located in subpart 3809 of part 3800 of Title 43 of the Code of Federal Regulations (43 CFR Part 3800, subpart 3809). For this reason, they are also called the ''3809'' regulations. The comment period opened on February 9, 1999, and closed on May 10, 1999. We issued the notice of availability for the draft environmental impact statement (EIS) that analyzes the potential impacts of the 3809 regulations on February 17, 1999 (64 FR 7905). The comment period on the draft EIS also closed on May 10, 1999.

In the 1998 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, sec. 120(a)), Congress directed BLM to pay for a study by the National Academy of Sciences (NAS) Board on Earth Sciences and Resources. The study was to examine the environmental and reclamation requirements relating to mining of locatable minerals on Federal lands and the adequacy of those requirements to prevent unnecessary or undue degradation of Federal lands in each State in which such mining occurs. The law directed NAS to complete the study by July 31, 1999.

In the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, sec. 3002), Congress prohibited the Department of the Interior from completing its work on the February 9, 1999, proposed rule and issuing a final rule until we provide at least 120 days for public comment on the proposed rule after July 31, 1999. The NAS has now completed and published its study, entitled, ''Hardrock Mining on Federal Lands.'' Accordingly, we are reopening the comment period on the proposed rule for 120 days. This action will allow the public to comment on the proposed

rule in the context of the NAS report. In addition, we are reopening the comment period on the associated draft EIS for the same period.

III. How Can I Obtain a Copy of the National Academy of Sciences Report?

The National Academy of Sciences has posted the report on its Internet site. The address is *www.nap.edu/catalog/9682.html.* You can request a paper copy of the report by contacting NAS at National Academy of Sciences, Board on Earth Sciences and Resources, 2101 Constitution Avenue, NW, Washington, DC 20418; telephone: 202/334–2744. If you gave BLM an address with your comment on the proposed rule, draft EIS, or during the scoping process for the EIS, BLM has already arranged for NAS to mail you a copy of the study; you need not request another copy.

IV. Which NAS Recommendations Identify Regulatory Gaps?

The NAS study contains a number of recommendations for the coordination of Federal and State regulations to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation. Some of the recommendations are directed at BLM's regulatory framework. Others are aimed at the Forest Service, at changes in laws, or at areas that are not regulatory in nature, such as the recommendation to create a management information system.

BLM is carefully considering *all* of the NAS recommendations and seeks public comment on their validity and relevance to the proposed rule. Because the baseline for the study was the existing regulatory framework rather than the revisions to that framework that we proposed on February 9, 1999 (64 FR 6422), some of the NAS recommendations that are directed at BLM's regulatory framework overlap with the 3809 proposed rule.

In the interest of full and informed public comment on the proposed rule, we are including in this supplemental proposed rule those NAS recommendations that identify gaps in the existing regulations. This notice contains the verbatim text of the 3809-related NAS recommendations that identify regulatory gaps, along with explanatory material that highlights areas where we are particularly interested in receiving public comment. By doing so, we don't prejudge the validity of the NAS recommendations, and we reserve the right to adopt, modify, or decline to adopt any NAS recommendation. Under the Administrative Procedure Act, we must provide the public with adequate notice and an opportunity to comment on proposed regulatory changes (5 U.S.C. 553). Therefore, we are notifying you that we are considering one or more of the NAS recommendations and asking you for comments.

NAS Recommendation: ''Financial assurance should be required for reclamation of disturbances to the environment caused by all mining activities beyond those classified as casual use, even if the area disturbed is less than five acres.''

Request for Comments: Our 3809 proposed rule would require a financial guarantee for any operation greater than casual use. See proposed § 3809.552(a). BLM and the NAS study agree that lack of financial guarantee for notice-level operations constitutes a gap in the current rules.

However, the NAS study and the 3809 proposed rule differ concerning how financial guarantee amounts should be established. The NAS study recommends that we establish ''standard bond amounts'' for certain types of activities in specific kinds of terrain, especially for the activities of prospectors, small exploration companies, and small miners. According to the NAS study, BLM should use these standard bond amounts, which would be in the form of a certain number of dollars per acre of land disturbed, instead of detailed calculations of bond amounts based on the engineering design of a mine or mill. The 3809 proposed rule would base financial guarantee amounts on the estimated reclamation cost as if BLM were to contract with a third party to reclaim an operation following the requirements of the reclamation plan. See proposed § 3809.552(a).

We specifically request comments on whether standard bond amounts would be preferable to actual-cost financial guarantees. We are particularly interested in comments on how the standard amounts should be set; that is, should we base them on standard industry cost estimating manuals, recent actual cost experience, certified estimates from third-party professional engineers, or on something else. The BLM regulation that was remanded by the Federal courts in May 1998 set minimum standard bond amounts of $1,000 per acre (or fraction thereof) for notices and $2,000 per acre (or fraction thereof) for plans of operations. We would also like comments on whether and under what circumstances departures from the standard bond amounts (up or down) are appropriate.

NAS Recommendation: ''Plans of operations should be required for mining and milling operations, other than those classified as casual use or exploration activities, even if the area disturbed is less than five acres.''

Request for Comments: This recommendation reflects the NAS observation that unnecessary or undue degradation occurs on some notice-level mining operations. Our 3809 proposal agrees that this is a problem and contained two options for addressing it. Proposed § 3809.11 (Alternative 1) would limit use of notices by requiring a plan of operations where, among other things, operations involve leaching or use of chemicals (proposed § 3809.11(f)) or are in national monuments and national conservation areas administered by BLM (proposed § 3809.11(j)(7)). Proposed § 3809.11 (''Forest Service'' Alternative) would limit use of notices by requiring a plan of operations whenever there is ''significant disturbance of surface resources,'' regardless of the size of the disturbance.

The NAS recommendation, if adopted by BLM into the 3809 regulations, would have the effect of requiring a plan of operations for all mining and milling operations regardless of the size of the disturbance, thereby limiting notices to exploration activities. This approach is somewhat different from the two options in our proposal. We are asking the public specifically to comment on incorporating this NAS recommendation into the 3809 regulations; that is, whether we should limit the use of notices to exploration activities and require plans of operations for all other mining and milling operations, regardless of the size of the disturbance. We are particularly interested in comments on what activities we should consider ''exploration'' and eligible for a notice. For example, the NAS study specifically mentions ''bulk sampling,'' which it identifies as extraction of 10 to 1,000 tons or more of presumed ore, as a kind of advanced exploration activity that should generally be authorized by a plan of operations, not a notice.

In addition to the two options in our proposal and the NAS recommendation discussed above, BLM is also considering another option, namely, to require an operator to file a plan of operations if BLM determines that proposed notice-level operations may adversely affect proposed or listed threatened or endangered species or their designated critical habitat. This approach would not be as restrictive as the NAS recommendation, but would limit the use of notices to a greater degree than that allowed under Alternative 1 of the proposed rule. In

these circumstances, BLM could work to comply with the Endangered Species Act through a programmatic agreement with the appropriate agency, either the Fish and Wildlife Service or the National Marine Fisheries Service. We specifically request comments on this issue.

NAS Recommendation: ''BLM and the Forest Service should revise their regulations to provide more effective criteria for modifications to plans of operations, where necessary, to protect the federal lands.''

Request for Comments: NAS based this recommendation on comments it received that expressed concern about the ability of BLM and the Forest Service to require modifications of plans of operations in light of new circumstances or information, such as acid drainage, problems with water balance, adequacy of approved containment structures, mine closure, or discovery of impacts on wells and springs. We agree with this concern that the ability to require operators to make necessary modifications is essential to prevent unnecessary or undue degradation, and for this reason, we included provisions addressing this issue in our 3809 proposal. See proposed §§ 3809.430 to 3809.432.

The NAS study also raised the issue of whether our regulations should require a periodic review or reopening of plans of operations as a way of addressing changes in the operation or new information that may arise. We specifically request comments from the public on whether we should require this type of periodic review of plans of operations, and if so, what the interval between reviews should be, that is, one year, two years, five years, or longer.

NAS Recommendation: ''BLM and the Forest Service should adopt consistent regulations that (a) define the conditions under which mines will be considered to be temporarily closed; (b) require that interim management plans be submitted for such periods; and (c) define the conditions under which temporary closure becomes permanent and all reclamation and closure requirements must be completed.''

Request for Comments: NAS based this recommendation on the fact that temporary closures as a result of low mineral prices may cause environmental problems if appropriate management measures are not undertaken. The NAS study takes the position that land management agencies need to have the authority to require an operator to close a mine properly, rather than allowing it to remain in limbo if poor market conditions persist.

We agree with this concern, and our proposal contains provisions applicable to notices and plans of operations that would require an operator who stops conducting operations for any period of time to maintain public lands within the project area in a safe and clean condition, prevent unnecessary or undue degradation, and maintain an adequate financial guarantee. See proposed §§ 3809.334 and 3809.424. If the period of non-operation is likely to cause unnecessary or undue degradation, these provisions allow BLM to require the operator to take all steps necessary to prevent unnecessary or undue degradation and require the operator to remove all structures, equipment, and other facilities and reclaim the project area. In the case of plans of operations, our 3809 proposed rule would allow BLM to review operations that are inactive for 5 consecutive years to determine if we should terminate the plan of operations and direct final reclamation and closure. We also proposed a number of provisions to address abandonment of operations and forfeiture of financial guarantee. See, for example, proposed §§ 3809.424(a)(4) and 3809.595 through 3809.599.

We are interested in receiving public comments on whether we should define the conditions under which we will consider mines to be temporarily closed, and if so, how. Proposed §§ 3809. 334(b)(2) and 3809.424(a)(2) use the term ''extended period of non-operations for other than seasonal operations.'' We intended that the field staff have some flexibility in applying this concept. An alternative approach would be to specify an appropriate period of time after which we would consider an inactive operation to be temporarily closed, such as 90 days, 180 days, one year, or longer.

With regard to the NAS recommendation that we require an interim management plan for periods of temporary closure, we would like public comment on whether this requirement would be a significant burden and on what should be included in the interim management plan, such as security measures to protect the public and wildlife from danger, erosion control measures, water treatment plans, waste disposal, equipment removal, and the like.

We would also like public comments on the NAS recommendation that we define the conditions under which temporary closure becomes permanent and triggers final reclamation and closure. Under proposed § 3809.424(a)(3), we would review plans of operations (but not notice-level operations) after five consecutive years of inactivity. We do not view this proposed provision as precluding us from reviewing operations after shorter periods of inactivity, if circumstances warrant. Other approaches might include requiring periodic review or reopening of plans of operations regardless of whether the operation is inactive or not, as discussed above, or using indicators of potential future site activity, such as the presence of equipment or maintenance work on facilities and structures, to guide us in determining whether a temporarily closed operation should be permanently closed.

NAS Recommendation: ''Federal land managers in BLM and the Forest Service should have both (1) authority to issue administrative penalties for violations of their regulatory requirements, subject to appropriate due process, and (2) clear procedures for referring activities to other federal and state agencies for enforcement.''

Request for Comments: The NAS bases this recommendation on the fact that the existing 3809 regulations require BLM field staff to seek a court injunction to compel an operator to respond to a notice of noncompliance—an often slow and lengthy process. The NAS study takes the position that administrative penalties are a credible and expeditious means to secure compliance. We agree with the NAS concern, and our proposal included provisions outlining enforcement actions and administrative penalties. See §§ 3809.600 through 3809.604 and 3809.700 through 3809.703. We included due process provisions in our appeals section, proposed § 3809.800. We also proposed to address the issue of coordination of enforcement efforts with State agencies through our Federal/State Agreements provisions. See, for example, proposed §§ 3809.201 and 3809.202.

We request public comments on whether, in light of the NAS recommendation, we should have additional enforcement and penalty provisions.

NAS Recommendation: ''BLM and the Forest Service should plan for and assure the long-term post-closure management of mine sites on federal lands.''

Request for Comments: The NAS study based this recommendation on the view that current regulatory programs have only recently focused on post-closure management needs of mine sites on Federal lands. According to the NAS study, Federal land managers and those conducting operations on Federal lands

should address the following management requirements for each site:

- Measures needed to preserve future mineral access;
- Residual public safety hazards and the need for fences, signs, and other features that must be periodically checked and maintained;
- Measures needed to assure the integrity of closed waste units, including the monitoring of tailings pond caps and waste rock and leach pad covers and their possible repair because of erosion or other failure, and the checking of adit plugs for continued effectiveness;
- Long-term environmental monitoring required to assure that the site remains stable and does not become a source of off-site contamination and the implementation of appropriate corrective measures;
- The operation and maintenance of any water treatment facilities required to maintain water quality compliance of the site over the long term; and
- A financial assurance to ensure implementation of these post-closure management requirements.

The NAS study also highlighted the importance of ensuring funding for long-term or perpetual water treatment facilities.

We agree with this concern, and our proposed rule addresses this issue in a number of ways. For example, we are proposing to require operators to establish a trust fund or other funding mechanism, where BLM identifies the need for it, to ensure continuing long-term treatment to achieve water quality standards and for other long-term, post-mining maintenance requirements. See proposed § 3809.552(c). The 3809 proposal would also put operators and mining claim holders on notice that they are jointly and severally liable for obligations that accrue while they held their interests, and that relinquishment, forfeiture, or abandonment of a mining claim doesn't relieve them of their responsibility. See proposed § 3809.116. We also propose that bond release wouldn't release mining claimants or operators from their reclamation obligation. See proposed § 3809.592. BLM believes that, taken together, these proposed provisions would provide funding for, and address the issue of responsibility for, long-term post-closure management. As the NAS study points out, however, there may be a need for additional measures. For this reason, we invite public comment on whether the 3809 regulations should incorporate any of the specific measures identified by the NAS study and listed above, and require, for example, that an operator address them in a post-mine closure plan that BLM would have to approve before release of the financial guarantee.

V. How Would BLM Regulate the Use of Suction Dredges?

This part of the supplemental proposed rule clarifies the intent and meaning of the February 9, 1999 proposed rule and discusses two additional options for regulating the use of suction dredges. Proposed § 3809.11(h) (Alternative 1) contains provisions that would regulate the use of suction dredges. We believe, based on several comments we received, that confusion may exist about the intent and meaning of those proposed provisions. For this reason, we want to clarify that for portable suction dredges with an intake diameter of more than 4 inches, BLM proposed that an operator would have to submit to BLM a notice or plan of operation, whichever is appropriate.

Under the proposal, if operations involve the use of a portable suction dredge with an intake diameter of 4 inches or less, the operator would not have to submit to BLM a notice or plan of operations if two conditions were met. First, the State would have to give some sort of authorization to use the dredge, such as a permit. Second, BLM and the State would have to have a written agreement under which BLM agrees that the State will authorize the use of dredges. Both conditions would have to be met. In cases where a State does not regulate suction dredges, an operator would have to submit to BLM a notice or plan of operations, whichever is appropriate, regardless of the size of the dredge.

The proposal would continue current policy that use of a portable suction dredge is not casual use. The Interior Board of Land Appeals has ruled that suction dredges fall within the definition of ''mechanized earth moving equipment'' at 43 CFR 3809.0–5, which are specifically not considered casual use. See *Pierre J. Ott,* 125 IBLA 250, and *Lloyd L. Jones,* 125 IBLA 94. We hope this clarifies what we meant in the February 9, 1999, proposal and encourage the public to comment on it again.

Also in response to comments on the proposed rule, we want to identify two options that we are considering and request public comment on them. We are considering adopting provisions that would enable an operator to use a portable suction dredge under a State authorization regardless of the size of the dredge. That is, instead of deferring to State regulation only when the dredge is under 4 inches, as originally proposed, we would allow an operator to use any size dredge if it was regulated by the State and the State and BLM have an agreement to this effect. This option would constitute a relaxation of the original proposal.

The other option we are considering is to require a plan of operations for the use of a portable suction dredge, regardless of intake diameter, when the dredge would be used in a waterway that supports species of fish that are listed, or proposed to be listed, as threatened or endangered under the Endangered Species Act. This option is intended to prevent impacts to fish populations and their spawning grounds or nests and represents an incremental tightening of the original proposal. We request public comment on these two options. A final rule could incorporate one or both of these options.

VI. How Does BLM Define Certain Terms Used in This Subpart?

In our proposed definition of ''casual use,'' we said that casual use doesn't include use of motorized vehicles in areas designated as ''closed'' to off-road vehicles (proposed § 3809.5). This means that if an operator planned to use an off-road vehicle in a closed area, the operator would have to file a notice or proposed plan of operations, whichever is appropriate. We would like to clarify that this wouldn't mean that use of off-road vehicles in areas designated as ''open'' or ''limited'' is totally unrestricted. Use of off-road vehicles is regulated under BLM's existing regulations. See 43 CFR part 8340. Generally, off-road vehicle use is permitted on those areas and trails designated as open to off-road vehicle use; however, any person operating an off-road vehicle on those areas and trails designated as ''limited'' must conform to all restrictions applicable to those areas and trails. To make this clear, the final rule could include a cross-reference to BLM's off-road vehicle regulations.

VII. Under What Circumstances May an Operator Not Begin Operations 15 Business Days After Filing a Notice?

Under proposed § 3809.313, an operator couldn't begin operations 15 business days after filing a notice in certain circumstances, including if BLM determines that an on-site visit is necessary (proposed § 3809.313(d)). We would like to clarify that if BLM determined that a site visit is necessary to determine if a proposed or listed threatened or endangered species is present or would be affected by the planned operation, we would notify the operator not to begin operations until

the site visit could take place and BLM could make its determination.

VIII. How Would BLM Pay for Interim Site Care and Maintenance Until We Issue a Reclamation Contract?

Proposed § 3809.552 addresses what an individual financial guarantee must cover. Based on our experience with recent bond forfeitures, we believe it is important to extend the provisions of that section to cover situations where interim site care and maintenance is necessary while BLM or a State regulator is developing and executing third-party reclamation contracts. For example, when an operator forfeits a financial guarantee, the site of operations is rarely reclaimed. BLM or the State regulatory must arrange for a third-party contractor to complete reclamation. This process takes time, during which site conditions usually deteriorate. We need the ability to quickly redeem a portion of the financial guarantee to fund interim site care and maintenance until the reclamation contract takes effect so as to prevent adverse environmental impacts. This is consistent with concerns expressed in the NAS study about mine closures.

We are including in this reopening notice proposed revisions to previously proposed § 3809.552. The revisions would require the financial guarantee to cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party reclamation contracts are being developed and executed. We would also require that the portion of the financial guarantee set aside for this purpose be immediately redeemable by BLM. See the proposed regulatory language at the end of this notice.

In addition, recent events at at least one closed mine make it advisable to clarify that our current policy is that a surety continues to be responsible for obligations that accrue while the surety's bond is in effect, unless a suitable replacement bond or other financial guarantee would cover those obligations. Even if a surety wishes to cancel the bond or other financial guarantee, the surety would remain responsible following the cancellation for obligations that accrue while the surety held the bond, unless a subsequent bond or other financial guarantee covers those obligations.

IX. Would BLM Allow State Director Review of Decisions?

Section 3809.800(a) of the February 9, 1999, proposed rule would allow any person adversely affected by a decision made under the 3809 regulations to appeal the decision to the Interior Board of Land Appeals (IBLA). See 64 FR 6468. The proposal also stated that review of a decision by the BLM State Director would take place if consistent with part 1840 of Title 43, Code of Federal Regulations. Currently, part 1840 does not authorize State Director review.

It may be in the best interest of operators and other affected parties to have the opportunity to pursue a possibly shorter appeals avenue than that provided by IBLA. We are proposing adding provisions to subpart 3809 that would allow both operators and other adversely affected parties the option of appealing first to the BLM State Director. This would not be a mandatory step, and a party could proceed directly to the IBLA if he or she so chooses. If an appeal is filed with the BLM State Director, the State Director would have 7 business days from receipt of the appeal to decide whether to consider it. If so, the State Director would follow the procedures referenced in part 1840. If an affected party appeals to the State Director and another affected party appeals to IBLA, then the State Director would defer to IBLA. Affected parties would have the right to appeal the State Director's decision to IBLA. We request comment from the general public and the regulated industry on whether allowing the option of appealing to the BLM State Director would be beneficial.

X. How Did BLM Meet Its Procedural Obligations?

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed rule and consider alternatives that would minimize the rule's impact on small entities (5 U.S.C. 601–612). However, the RFA ''does not require that agencies necessarily minimize a rule's impact on small entities if there are significant legal, policy, factual, or other reasons for the rule's having such an impact.'' (The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, U.S. Small Business Administration, Office of Advocacy, Washington, DC, 1998, p. 12).

The RFA permits the head of a federal agency to forego the preparation of an initial regulatory flexibility analysis (IRFA) upon a written certification that a rule will not have a ''significant economic impact on a substantial number of small entities'' (SBA, p. 22). In addition, ''* * * if an agency is uncertain of the impact, it is recommended that the agency err on the side of caution and perform an IRFA with the available data and information, and solicit comments. * * * Then if appropriate the agency can certify on the final rule'' (SBA, p. 23).

In our February 9, 1999, proposed rule, we determined under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities (64 FR 6449). We reached this initial conclusion on the basis of the initial regulatory flexibility analysis (IRFA) we prepared for the proposed rule. Under the RFA, an agency must publish and make available for public comment an IRFA, unless the agency can certify based on a preliminary assessment or threshold analysis that the proposed rule will not have a significant economic impact on a substantial number of small entities. The IRFA describes the impacts of the proposed alternatives on small entities and describes any alternatives that would minimize the impact while accomplishing the stated objectives. BLM released an IRFA with the proposed rule on February 9, 1999. The comment period for this IRFA ended May 10, 1999. We are reopening it for 120 days. BLM's analysis of the public record developed in connection with the proposed rule will help it determine whether or not the final version of the rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be prepared if it is determined that the final rule will have a significant effect on a substantial number of small entities.

Paperwork Reduction Act

Several commenters on the proposed rule expressed the view that, based on their experience with the existing regulations, BLM underestimated the paperwork burden associated with the proposed rule. It appears from the comments that the commenters assumed that our burden estimate included all paperwork burden, both existing and proposed, as if no other State or Federal agencies imposed any paperwork burden on mining operations.

We would like to point out that, in accordance with the Paperwork Reduction Act and the Office of Management and Budget's instructions for estimating paperwork burden, we are estimating only the increment of paperwork imposed by the proposed regulations over and above the paperwork burden imposed by the existing regulations. We also correctly didn't include in our estimate any

paperwork requirements contained in the proposed rule that would merely duplicate paperwork requirements imposed by other agencies, either Federal or State. If an operator has to give certain information to a State agency, the burden of also supplying that exact same information to BLM is relatively small. (Indeed, many of the same commenters noted that much of the proposed rule duplicated existing State requirements.)

Because of this possible misunderstanding, we are re-examining the information collection burden that would be imposed by the proposed rule. In the near future, we will release a revised paperwork burden estimate for public comment.

Other

The proposals described in this notice fall within the scope of the analyses prepared for the proposed rule. Please refer to the discussion of how BLM is meeting its procedural obligations contained in the proposed rule for further information (Feb. 9, 1999, 64 FR 6422, 6449).

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: October 19, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, BLM proposes to amend its proposed rule published on February 9, 1999 (64 FR 6422) as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for part 3800 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. In § 3809.552 as proposed at 64 FR 6463, revise paragraph (a) by adding a sentence at the end and add paragraph (d) to read as follows:

§ 3809.552 What must my individual financial guarantee cover?

(a) * * * The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party contracts are developed and executed.

* * * * *

(d) When BLM identifies a need for it, you must establish that portion of the financial guarantee used to conduct site stabilization and infrastructure maintenance in a funding mechanism that would be immediately redeemable by BLM. BLM would use the funds to maintain the area of operations in a safe and stable condition that complies with applicable environmental requirements during the period needed for bond forfeiture and reclamation contracting procedures.

[FR Doc. 99–27765 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 5b

RIN 0991–AA99

Privacy Act; Exempt Record System

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would exempt the new system of records, the Healthcare Integrity and Protection Data Bank (HIPDB), from certain provisions of the Privacy Act (5 U.S.C. 552a). The establishment of the HIPDB is required by section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 1128E of the Act directed the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. The new HIPDB system of records is being established by separate **Federal Register** notice. The proposed exemption being set forth in this rule would apply to investigative materials compiled for law enforcement purposes in anticipation of civil or criminal proceedings. This rule specifically seeks public comments on the proposed exemption.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 26, 1999.

ADDRESSES: Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, 330 Independence Avenue, SW, Room 5246, Attention: OIG–60–P, Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–60–P.

FOR FURTHER INFORMATION CONTACT: Rick Burguieres, Investigative Policy and Information Management Staff, Office of Investigations, (202) 205–5200.

SUPPLEMENTARY INFORMATION: The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, requires the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (see section 1128C of the Act, as enacted by section 201(a) of HIPAA). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners (see section 1128C(a)(1)(E) of the Act). The establishment of the data bank is required by section 1128E of the Act (added by section 221(a) of HIPAA), which directs the Secretary to maintain a data base of such final adverse actions. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulations. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, is to be reported to the data bank. Final adverse actions are to be reported, regardless of whether such actions are being appealed by the subject of the report (see section 1128E(b)(2)(C) of the Act).

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information. One of the primary purposes of these data will be use of this information by a Federal or State government agency charged with the responsibility of investigating or prosecuting a case where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature. The information in this system may also be used in the preparation for a trial or hearing for such violation.

Specifically, this proposed rule would exempt this new records system from certain provisions of the Privacy Act.[1] This exemption is intended to protect, from release to the record subject, information on law enforcement queries to the data bank. It would also exempt the data bank from Privacy Act access and amendment procedures in order to establish access and amendment procedures in the HIPDB regulations.

While subjects will have access to information on all other queries to the data bank, disclosure of law enforcement queries could compromise ongoing investigation activities. The premature disclosure of the existence of a law enforcement activity to an outside party (who may also be the subject of the investigation) could lead to, among other things, the destruction or alteration of evidence and the tampering with witnesses.

Record subjects are guaranteed access to, and correction rights for, substantive information reported to the HIPDB. The procedures, set out in 45 CFR part 61, use the Privacy Act access and correction procedures as a basic framework while, at the same time, providing significant additional rights (such as automatic notification to the record subject of any report filed with the data bank). Data bank subjects also have broader rights on HIPDB correction procedures, including the right to file a statement of disagreement as soon as a report is filed with the data bank.

Regulatory Impact Statement

The Office of Management and Budget has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive and equity effects. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this proposed exemption in accordance with the provisions of the SBEA, and certifies that this proposed exemption will not have a significant impact on a substantial number of small entities. Specifically, as indicated above, while the reports of adverse actions to the HIPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records. As a result, we believe that disclosure of this information could compromise ongoing law enforcement activities.

Public Inspection of Comments and Response to Comments

Comments will be available for public inspection November 9, 1999, in Room 5518, Office of Counsel to the Inspector General, at 330 Independence Avenue, SW, Washington, DC on Monday through Friday of each week (Federal holidays excepted) between the hours of 9 a.m. and 4 p.m., (202) 619–0089.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

List of Subjects in 5 CFR Part 5b

Privacy.

Accordingly, the Department's Privacy Act regulations at 45 CFR part 5b would be amended follows:

PART 5b—[AMENDED]

Part 5b would be amended as follows:

1. The authority citation for part 5b would continue to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 would be amended by adding a new paragraph (b)(2)(ii)(F) to read as follows:

§ 5b. 11 Exempt systems.

* * * * *

(b) *Specific systems of records exempt.* * * *

(2) * * *

(ii) * * *

(F) The Healthcare Integrity and Protection Data Bank (HIPDB) of the Office of Inspector General. (See § 61.15 of this title for access and correction rights under the HIPDB by subjects of the Data Bank.)

* * * * *

Dated: June 3, 1999.

June Gibbs Brown,

Inspector General.

Approved: July 2, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27587 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–15–P

[1] Subsections (c)(3), (d)(1)–(4), and (e)(4)(G) and (H) of the Privacy Act, in accordance with 5 U.S.C. 522a(k)(2) and 45 CFR 5b.11(b)(ii)(F).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Columbian Sharp-tailed Grouse as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Service announces a 90-day finding for a petition to list the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific and commercial information indicating that listing the Columbian sharp-tailed grouse may be warranted.

DATES: The finding announced in this document was made on October 14, 1999. Send comments and information to us on or before December 27, 1999, concerning this petition finding. We may not consider comments received after the above date in making a decision for the 12-month finding.

ADDRESSES: You may submit data, information, comments, or questions concerning this petition to the Field Supervisor, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206. The

petition, administrative finding, supporting information, and comments received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Christopher D. Warren, at the above address or call 509–891–6839.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species as threatened or endangered presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this administrative petition finding conforms with our current listing priority guidance (LPG) which was published, after opportunity for public comment, on May 8, 1998 (63 FR 25502). Because of budgetary constraints and the lasting effects of a congressionally imposed listing moratorium from April 1995 to April 1996, we processed petitions and other listing actions according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarified the order in which we processed listing actions during fiscal year 1997. The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

A petition, dated March 14, 1995, was submitted by the Biodiversity Legal Foundation, Boulder, Colorado, and was received by us on March 16, 1995. The petitioner requested that the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) be listed as a threatened species throughout its historic range in the contiguous United States, and requested that critical habitat be designated for the species as soon as its biological needs are sufficiently well known. The petitioner also recommended a review of the species' status in British Columbia, Canada.

Based on our review of the petition and the scientific and commercial information it presents, and other information available to us at this time, we have made a 90-day finding that the petition to list the Columbian sharp-tailed grouse presents substantial scientific and commercial information indicating that listing of the species may be warranted.

The Columbian sharp-tailed grouse was identified as a category 2 species in notices of review published in the **Federal Register** on January 6, 1989 (54 FR 560). At that time, a category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Designation of category 2 status was discontinued in the February 28, 1996, notice of review (61 FR 7956). The Columbian sharp-tailed grouse is not currently a candidate species. A candidate species is defined as a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

The Columbian sharp-tailed grouse is one of six recognized subspecies of sharp-tailed grouse that occur in North America (Miller and Graul 1980). Historically, the Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central British Columbia.

Columbian sharp-tailed grouse were once more abundant throughout their range where suitable habitats occurred (Hart *et al.*1950; Buss and Dziedzic 1955; Gruell circa 1960; Washington Division of Fish and Wildlife (WDFW) 1995). Excessive hunting in the mid- to late-19th century is thought to be a major contributing factor to the early extirpation of local populations and the initial reduction of the subspecies' range (Hart *et al.* 1950). Since the turn of the century, the conversion of native habitats to crop production and their degradation as a result of livestock grazing are thought to be the primary factors in further population declines and range reduction (Hart *et al.* 1950; Buss and Dziedzic 1955; Miller and Graul 1980; Marks and Marks 1987; Braun *et al.* 1994; WDFW 1995; McDonald and Reese 1998). Columbian sharp-tailed grouse were extirpated from California in the 1920s, Nevada in the 1950s, and Oregon in the 1960s (Miller and Graul 1980). On April 4, 1998, the Washington Fish and Wildlife Commission listed the Columbian sharp-tailed grouse as a threatened species in the State of Washington.

Sharp-tailed grouse males employ elaborate courtship displays in the spring to attract females to central ''dancing grounds,'' called leks. Established leks may be used for many years, although their exact locations may shift over time and smaller satellite leks often form in the vicinity of historic leks. Interacting clusters of leks in a local area are defined as lek complexes (Schroeder *et al.* in press). Females typically nest and rear their broods within 1.6 kilometer (km) (1.0 mile (mi)) of an active lek (Saab and Marks 1992; Giesen and Connelly 1993). Spring-to-fall home range sizes of Columbian sharp-tailed grouse are relatively small, generally less than 2.0 square km (0.8 square mi), and the areas used are usually within a few kilometers of a lek. Seasonal movements to wintering areas from breeding grounds are typically less than 5 km (3.1 mi) (Giesen and Connelly 1993).

The area within 2.5 km (1.6 mi) of a lek is believed to be critical to the management of Columbian sharp-tailed grouse and this area should contain, or provide access to, suitable wintering habitats (Saab and Marks 1992; Giesen and Connelly 1993). Because of their importance, leks (including their surrounding area) may be viewed as the principal units affecting the demographics of Columbian sharp-tailed grouse. Assemblages of the subspecies range from local populations (single leks to lek complexes), to metapopulations (a larger population made up of smaller, local breeding populations that have some genetic and ecological interactions among them).

Based on a questionnaire distributed to recognized experts in 1979, respondents reported that Columbian sharp-tailed grouse occupied less than 10 percent of their former range in Idaho, Montana, Utah, and Wyoming; 10–50 percent in Colorado and Washington; and 80 percent or more in

British Columbia. The range-wide population estimate for the subspecies in 1979 was approximately 60,000–170,000 individuals, with roughly 60–80 percent occurring in British Columbia (Miller and Graul 1980). A current estimate is approximately 34,000–70,000 individuals, with roughly 50–70 percent occurring in Idaho. Current estimates are based on information provided by recognized experts throughout the range of the subspecies (Chutter, British Columbia Ministry of Environment, Wildlife Branch, pers. comm. 1995; Hoffman, Colorado Division of Wildlife, pers. comm. 1995; Mathews, Oregon Department of Fish and Wildlife, pers. comm. 1998; Meints, Idaho Department of Fish and Game, pers. comm. 1995; Mitchell, Utah Department of Natural Resources, pers. comm. 1995; Sands, U.S. Bureau of Land Management, pers. comm. 1998; Schroeder, Washington Department of Fish and Wildlife, pers. comm. 1998; Thier, Montana Department of Fish, Wildlife, and Parks, pers. comm. 1998).

Three metapopulations of Columbian sharp-tailed grouse currently likely exist—one in northwestern Colorado/south-central Wyoming totaling approximately 6,000–8,000 birds, one in southeastern Idaho/northern Utah totaling approximately 20,000–50,000 birds, and one in central British Columbia totaling 4,500–10,000 birds. To varying degrees, other population centers are comprised of both interacting and isolated local populations. These populations include approximately 600 birds in south-central Idaho/northeastern Nevada, a small population of about 50 birds in northeastern Oregon, approximately 700 birds occur in scattered small populations in north-central Washington, and two small populations with about 50 birds each in Montana.

Conversion of native habitats important to Columbian sharp-tailed grouse to crop production continues and are at risk from other activities including rural and suburban development, dam construction, mineral exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980; Wood 1991; Giesen and Connelly 1993). In addition, grazing practices within portions of the Columbian sharp-tailed grouse range have degraded, or continue to degrade, native habitats (Hart *et al.* 1950; Miller and Graul 1980; Wood 1992; Giesen and Connelly 1993).

Most of the areas that are currently or may potentially be used by Columbian sharp-tailed grouse occur on privately owned lands. Some large portions of these privately owned lands have withdrawn from crop production and planted native and non-native cover under the Federal Natural Resources Conservation Service Conservation Reserve Program (CRP), established in 1985 (USDA 1998). CRP lands have become important to Columbian sharp-tailed grouse in Colorado, Idaho, Oregon, Utah, and Washington (Hoffman, pers. comm. 1998; Mathews, pers. comm. 1998; Meints, pers. comm. 1995; Mitchell, pers. comm. 1995; Schroeder, pers. comm. 1995). A number of CRP contracts have expired since 1995, and more are scheduled to expire from now through 2002. While new contracts for CRP lands continue to be accepted and some expired contracts have been renewed, it is unclear what effects these changes have had, or will have, on Columbian sharp-tailed grouse populations. If CRP lands important to Columbian sharp-tailed grouse are put back into crop production, adverse impacts to the subspecies' populations will likely occur.

Columbian sharp-tailed grouse are currently hunted in Colorado (Hoffman, pers. comm. 1998), Idaho (Meints, pers. comm. 1995), and British Columbia (Chutter, pers. comm. 1995). Considering the most recent estimates, annual harvest rates in Idaho range from approximately 10–30 percent (approximately 6,500 birds) of the total population during the hunting season in Idaho (Meints, pers. comm. 1995). Reliable estimates of harvest rates in Colorado are not available but are likely less than 10 percent of the total estimated population (Hoffman, pers. comm. 1998). Harvest rates in British Columbia may approach 50 percent in some years (Chutter, pers. comm 1995; Ritcey 1995). There may be localized negative impacts to small populations occupying relatively small sites. Also, both incidental and illegal take of the subspecies may occur, especially in areas hunted extensively for other upland game species (Hart *et al.* 1950; Miller and Graul 1980). However, for relatively large, stable populations of upland birds under managed conditions, hunting is not likely to have an additive effect over natural mortality (Braun *et al.* 1994). In 1994, the State of Wyoming banned hunting of Columbian sharp-tailed grouse based on estimates indicating that populations of this subspecies were declining.

Reintroduction efforts for Columbian sharp-tailed grouse occurred in Washington (Schroeder, pers. comm. 1998), Montana (Their, pers. comm. 1998), Oregon (Mathews, pers. comm. 1998), and Idaho (Meints, pers. comm. 1995). Additional reintroduction efforts are planned for California, Oregon, and Washington (Meints, pers. comm. 1995; Sands, pers. comm. 1995; Schroeder, pers. comm. 1998). Past reintroduction efforts have failed to produce self-sustaining populations or increase the size or distribution of augmented populations (Toepfer *et al.* 1990). However, recent efforts indicate greater potential for success as reintroduction techniques have improved (Toepfer *et al.* 1990; Meints, pers. comm. 1998).

The fragmented and isolated nature of many populations of Columbian sharp-tailed grouse are a concern for the subspecies throughout portions of its range. Naturally occurring impacts and human influences may pose additional threats to these isolated populations. Such events may include drought, fire, inclement weather, accidents, cultivation practices, and recreation activities (Hart *et al.* 1950; Rogers 1969; WDFW 1995; Mitchell, pers. comm. 1995).

The lack of sufficient data with respect to the genetic integrity of the subspecies' populations is also a concern (Saab and Marks 1992). The deleterious effects of inbreeding and the changes in gene frequencies may pose long-term threats to small, isolated populations, and a reduction in fitness in the hybrid progeny, or later descendants, of crosses between members of different populations may be a concern for reintroduction efforts.

The larger populations of Columbian sharp-tailed grouse made up of smaller, local breeding populations that have the same genetic and ecological interactions among them are at relatively low risk to single or even multiple altering events. This is because other population segments within the affected area may provide specimens to recolonize impacted sites, or alternate areas of suitable habitat may exist to allow emigration of affected populations to adjust to the events. However, isolated, local and regional populations could be at risk from naturally occurring random events or human-influenced events. Conservation or reestablishment of these populations may require intensive management efforts (Toepfer *et al.* 1990).

We have reviewed the petition, literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with the Columbian sharp-tailed grouse. Based on the best scientific and commercial information available, we find that the petition presents substantial information to indicate that listing the Columbian sharp-tailed grouse throughout its

historic range in the contiguous United States may be warranted.

In making this finding, we recognize that there have been declines in Columbian sharp-tailed grouse populations because of habitat loss and degradation. The loss and degradation of habitat is due to any one or a combination of factors including crop production, livestock grazing, rural and suburban development, dam construction, herbicide spraying, fire, recreation, and other factors. The petition presented evidence that isolated local and regional populations of this subspecies are at risk. We also recognize that many states in which Columbian sharp-tailed grouse occur are attempting to restore the birds by relocating birds to unoccupied habitats and/or actively managing for them to improve their overall population status.

When making a positive 90-day finding on a petition, we are required to promptly commence a review of the status of the species. In the case of the Columbian sharp-tailed grouse, we are requesting information on the status of the species throughout its range in the contiguous United States and Canada. We solicit information regarding occurrence and distribution of the species; threats to its continued existence; and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Columbian sharp-tailed grouse. Of particular interest is information regarding: (1) Population status and trends; (2) Extent of fragmentation and isolation of population segments; (3) Significance of discrete population segments; and, (4) Ongoing management measures that may be important with regard to the conservation of Columbia sharp-tailed grouse.

In regard to the petitioner's request that critical habitat be designated for the Columbian sharp-tailed grouse, the designation of critical habitat is not a petitionable action under the Act. If our 12-month finding indicates that the petitioned action to list the Columbian sharp-tailed grouse is warranted, then any subsequent proposed rule will address any designation of critical habitat.

After consideration of additional information submitted during the indicated time period (see DATES section), we will prepare a 12-month finding as to whether listing of the species is warranted.

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Author: The primary author of this notice is Christopher D. Warren, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) .

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Dated: October 14, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–27851 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 101499D]

RIN 0648–AK05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Resubmission of a Disapproved Measure in Amendment 9

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

ACTION: Notice of availability of a resubmitted measure in an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has resubmitted a previously disapproved measure contained in Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 9). The resubmitted measure would establish a 1,000–lb (454–kg) commercial trip limit for greater amberjack. Written comments are requested from the public.

DATES: Written comments must be received on or before December 27, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 9, which contains the proposed greater amberjack trip limit, a final supplemental environmental impact

statement, an initial regulatory flexibility analysis, a regulatory impact review, and a social impact/fishery impact statement, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520. Requests for NMFS' economic analysis should be sent to Peter J. Eldridge.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit a fishery management plan (FMP) or FMP amendment to the Secretary of Commerce for review, approval, and implementation. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a document in the **Federal Register** stating that the FMP or FMP amendment is available for public review and comment.

Under Amendment 9, the Council proposed management measures to ensure that greater amberjack did not approach an overfished condition. One proposed measure was the establishment of a 1,000–lb (454–kg) daily commercial trip limit for greater amberjack. On December 9, 1998, after conducting Secretarial review of Amendment 9, NMFS disapproved the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack because the scientific information and analysis of socioeconomic impacts at that time indicated that the trip limit would not provide benefits that would exceed costs.

NMFS' economic analysis based on more recent information indicates that the trip limit may result in net benefits exceeding costs, especially if a ''derby'' fishery is prevented. Accordingly, the Council has resubmitted the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack, as contained in Amendment 9, to NMFS for review, approval, and implementation.

NMFS has also received a proposed rule to implement the trip limit from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

NMFS will consider comments received by December 27, 1999, whether specifically directed to the resubmitted measure in Amendment 9 or the proposed rule, in its decision to approve, disapprove, or partially approve the resubmitted measure in Amendment 9. NMFS will not consider comments received after that date in this decision. NMFS will address all comments received during the comment periods on the resubmitted measure in Amendment 9 or on the proposed rule in the preamble of the final rule.

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

Dated: October 20, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–27963 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 206

Tuesday, October 26, 1999

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–003–2]

Agritope, Inc.; Availability of Environmental Assessment for Determination of Nonregulated Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed determination that certain cantaloupe lines developed by Agritope, Inc., which have been genetically engineered for altered fruit ripening, would no longer be considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive by November 26, 1999.

ADDRESSES: Please send an original and three copies of your comments to: Docket No. 99–003–2, Regulatory Analysis and Development, PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–003–2.

You may read the petition for a determination of nonregulated status submitted by Agritope, Inc., the environmental assessment, and any comments we receive on this notice of availability at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Suite 4B03, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1998, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 98–350–01p) from Agritope, Inc. (Agritope), of Portland, OR, seeking a determination that cantaloupe (*Cucumis melo* L.) lines designated as A and B, which have been genetically engineered for delayed fruit ripening, do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On March 16, 1999, APHIS published a notice in the **Federal Register** (64 FR 12926–12927, Docket No. 99–003–1) announcing that the Agritope petition had been received and was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject cantaloupe lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether cantaloupe lines A and B posed a plant pest risk. The comments were to have been received by APHIS on or before May 17, 1999. APHIS received no comments on the subject petition during the designated 60-day comment period.

Cantaloupe lines A and B have been genetically engineered to contain a modified SAMase (*sam-k*) gene derived from *Escherichia* coli bacteriophage T3. The *sam-k* gene encodes an S-adenosylmethionine hydrolase enzyme capable of degrading and thus reducing S-adenosylmethionine (SAM). Reduction of SAM results in lowered ethylene production during fruit ripening in cantaloupe lines A and B and a corresponding increase in the uniformity of ripening in the field. The subject cantaloupe lines also contain and express the neomycin phosphotransferase II (*nptII*) gene derived from *E. coli.* The *nptII* gene was used as a selectable marker during the plant transformation process. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens,* and the *A. tumefaciens* method was used to transfer the added genes into the parental inbred cantaloupe lines.

Cantaloupe lines A and B are considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from a plant pathogen. Field tests of the subject cantaloupe lines have been conducted under APHIS permits and notifications since 1997 under confined conditions. If Agritope's petition for a determination of nonregulated status were approved, Agritope's cantaloupe lines A and B would no longer be considered regulated articles under APHIS' regulations in 7 CFR part 340 and the requirements pertaining to regulated articles under those regulations would no longer apply to the subject cantaloupe lines or their progeny.

To provide the public with documentation of APHIS' review and analysis of the environmental impacts and plant pest risk associated with a determination of nonregulated status for Agritope's cantaloupe lines A and B, an environmental assessment (EA) has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 20th day of October, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–27920 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on

November 4, 1999, at the Double Tree Hotel, Columbia River, 1401 H. Hayden Island Drive, Portland, Oregon, 97217. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to; Habitat Conservation Planning from the County perspective; a report on the Interagency Steering Committee meeting; and progress reports on ongoing implementation issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Curt Loop, Acting Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, PO Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: October 29, 1999.

Curtis A. Loop,

Acting Designated Federal Official.

[FR Doc. 99–27858 Filed 10–25–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–99]

Foreign-Trade Zone 93—Durham, North Carolina; Withdrawal of Application for Subzone Status for Philips Monitor Raleigh Computer Monitors and Related Peripheral Products Plant

Notice is hereby given of the withdrawal of the application submitted by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the manufacturing facilities (computer monitors and related peripheral products) of Philips Monitor Raleigh, located at sites in the Durham, North Carolina, area. The application was filed on May 6, 1999 (64 FR 26933, 5/18/99).

The withdrawal was requested because of changed circumstances, and the case has been closed without prejudice.

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27959 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–99]

Foreign-Trade Zone 137—Washington Dulles International Airport, Virginia Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Washington Dulles Foreign Trade Zone, Inc., grantee of FTZ 137 (Fairfax/Loudoun Counties, Virginia), requesting authority to expand its zone to include a site in Gainesville (Prince William County), Virginia, within the Washington, DC, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 14, 1999.

FTZ 137 was approved on April 17, 1987 (Board Order 350, 52 FR 13489, 4/23/87). The zone project currently consists of sites (392 acres) at and adjacent to the Washington Dulles International Airport complex, Fairfax and Loudoun Counties: Site 1—within the airport complex; Site 2—warehouse facility, 110 Terminal Drive, Sterling; and, Site 3—near the intersection of Routes 606 and 621, Loudoun County. Two applications are currently pending with the Board for two additional sites in Virginia's Eastern Shore region (Doc. 44–98) and three additional sites in the Winchester-Frederick County area (Doc. 46–99).

This application is requesting authority to expand the general-purpose zone to include an additional site (171 acres) in Gainesville, Virginia (Proposed Site 9): Proposed Site 9 (171 acres)—within the 435-acre Virginia Gateway Development, southwest quadrant of the I–66/Rt. 29 interchange, Gainesville. The site is owned by Virginia Gateway Associates L.P., an affiliate of The Peterson companies. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 10, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Washington Dulles Foreign Trade Zone, Inc., 44701 Propeller Court, Dulles, VA 20166

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27957 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–99]

Foreign-Trade Zone 207—Richmond International Airport, Virginia; Application for Foreign-Trade Subzone Status, Ericsson, Inc. (Cellular Telephones, Wireless Communications Equipment, and Private Radio Equipment), Lynchburg, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital Region Airport Commission, grantee of FTZ 207, requesting special-purpose subzone status for the manufacturing facilities (cellular telephones, wireless communications equipment, and private radio equipment) of Ericsson, Inc. (Ericsson), located at sites in Lynchburg, Virginia. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 15, 1999.

The Ericsson facilities (153 acres, 1 million sq. ft.) are located at three sites in Lynchburg: manufacturing facility at 1 Mountain View Road; finished goods facility at 314 Jefferson Parkway; and parts inventory facility at 37 Millrace Drive. These facilities (3,000+ employees) are currently used for the manufacture of cellular telephones,

wireless communications equipment, and private radio equipment. Some of the components used in manufacturing these products are purchased from abroad (comprising 50 to 60 % of parts value), including keypads, pin connectors, amplifiers, coaxial cable, storage batteries, transformers, switches, electric motors, clasps, loud speakers, screws, rubber parts, filter paper, and storage battery parts (duty rates on these items range from 1.8% to 6.6%).

Zone procedures would exempt Ericsson from Customs duty payments on foreign components used in export production. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rates that apply to the finished products (ranging from duty free to 3.4%) instead of the rates otherwise applicable to the foreign input materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (scrap rate estimated at 1% of parts). FTZ procedures will help Ericsson to implement a more cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230

U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026

Dated: October 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27958 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–99]

Foreign-Trade Zone 207—Richmond International Airport, Virginia; Application for Foreign-Trade Subzone Status; Alfa Laval Thermal, Inc. (Heat Exchangers); Richmond, VA, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital Region Airport Commission, grantee of FTZ 207, requesting special-purpose subzone status for the manufacturing facilities (heat exchangers and parts) of the Alfa Laval Thermal, Inc. (Alfa Laval), located at sites in the Richmond, Virginia, area. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 14, 1999.

The Alfa Laval facilities are located at three sites in the Richmond, Virginia, area (23 acres, 115,000 sq. ft. total): *Site 1* (1 building/80,000 square feet on 17 acres)—headquarters and main manufacturing facilities, located at 5400 International Trade Drive, Richmond; *Site 2* (portion of 1 building/23,000 sq. ft.)—space used for repairs, light manufacturing, and warehousing, at 520 East Park Court, Woodland Center, Richmond; and *Site 3* (1 building/ 10,500 sq. ft. on 2.2 acres)—stocking and repair facility, located at 11100 Air Park Road, Hanover Industrial Park, Ashland.

The facilities (200 employees) are used for the engineering, manufacture, service, and distribution of Alfa Laval's heat exhanger products, which include plate heat exchangers, brazed heat exchangers, spiral heat exchangers, scraped surface heat exchangers, and new or reconditioned heat exchanger parts. Some of the components used in the manufacturing process are purchased from abroad (an estimated 38% of finished product value), including: nuts; screws; gaskets; washers; adhesives; stainless steel angles, shapes, and section; needle roller bearings; and titanium sheet (duty rates on the imported items range from 0.4% to 15.0%). The company will also use several foreign-sourced items that are duty free. The company indicates that it will admit the aforementioned stainless steel products to the proposed subzone in privileged-foreign status.

Zone procedures would exempt Alfa Laval from Customs duty payments on foreign components used in export production. FTZ procedures will help Alfa Laval to implement a more efficient and cost-effective system for handling Customs requirements (including reduced Customs merchandise processing fees). On its domestic sales, Alfa Laval would be able to choose the lower duty rate that applies to the finished products (0.8%) for the foreign components noted above, with the above-noted exception of stainless steel products. The company also would benefit from duty savings on scrap and waste resulting from the production process (Alfa Laval estimates its scrap rate as one percent of all components and materials). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness, and would enable the company to shift additional production from overseas to the Richmond-area facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce Export Assistance Center, 400 North 8th Street, Suite 540, Richmond, VA 23240–0026

Dated: October 14, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–27956 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Bars and Wedges and Hammers and Sledges From the People's Republic of China: Extension of Time Limit for Preliminary Results of Five-Year Reviews

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

ACTION: Notice of extension of time limit for preliminary results of five-year (''sunset'') reviews.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the reviews initiated on the antidumping duty orders on bars and wedges and hammers and sledges from the People's Republic of China (''PRC''). Based on adequate responses from domestic interested parties and adequate responses from respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. As a result of these extension, the Department intends to issue its preliminary results not later than January 18, 2000.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560 respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a sunset review as extraordinary complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The Department has determined that the sunset reviews of antidumping duty orders on bars and wedges and on hammers and sledges from the PRC are extraordinary complicated. Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than January 18,2000, in accordance with section 751(a)(5)(B) of the Act.

Dated: October 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–27833 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1997 through July 31, 1998. The preliminary results of this review were published in the **Federal Register** on August 16, 1999 (64 FR 44483).

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson at (202) 482–0182 or (202) 482–3818, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Extension of Final Results

The final results of this review are currently due on December 14, 1999. The Department has determined that it is not practicable to issue its final results within the original time limit. *See* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert S. LaRussa, Assistant Secretary for Import Administration, October 18, 1999. The Department is extending the time limit for completion of the final results by 60 days (*i.e.*, 180 days after the date on which the notice of the preliminary results was published in the **Federal Register**) until February 14, 2000, in accordance with Section 751(a)(3)(A) of the Act.

Dated: October 18, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–27955 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–805]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Industrial Nitrocellulose From Korea

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

SUMMARY: The Department of Commerce (''the Department'') has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on industrial nitrocellulose (''INC'') from Korea. Based on this information, we preliminarily determine that Korea CNC Ltd., (''KCNC''), is the successor-in-interest to Daesang Corporation (''Daesang'') for purposes of determining antidumping liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28267) the antidumping order on INC from Korea. On August 25, 1999, KCNC submitted a letter stating that KCNC is the successor-in-interest to Daesang, and, as such, KCNC is entitled to the receive the same antidumping treatment as is accorded Daesang.

Scope of Review

Imports covered by this review are shipments of INC from Korea. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (''HTS'') subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Initiation and Preliminary Results of Review

In a letter dated August 25, 1999, KCNC advised the Department that on April 1, 1999, China Nitrocellulose Co. (''CNC'') purchased Daesang's INC business, including Daesang's only manufacturing and research and development (''R&D'') facility for subject merchandise, located at Chonju Industrial Complex No. 3, 821 Yongam-Lee, Bongdong-Eub, Wanju-Gun, Chollabuk-Do, Korea (the ''Chonju factory''). CNC transferred Daesang's INC business to KCNC, which CNC had newly established for that purpose. KCNC operates the Chonju factory without change. Production continues with the same equipment, the same workers, the same raw materials purchased from the same suppliers, and the same production process. KCNC continues to sell the same products to the same customers to which Daesang previously sold. The organizational and management structure of Daesang's INC business has essentially remained intact, except that KCNC has appointed a new president. All management and employees at the plant manager level and below are the same as when the factory was managed by Daesang, while the managing director was formerly employed by Daesang in another capacity.

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether KCNC is the successor-in-interest to Daesang for purposes of determining antidumping duty liability. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) (''*Canadian Brass*''). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that KCNC is the successor-in-interest to Daesang. KCNC's management is virtually identical to Daesang. KCNC's business operation, with respect to the subject merchandise, is identical to the INC operations of Daesang. Production facilities are unchanged as are customer and supplier lists. Thus, KCNC should receive the same antidumping duty treatment as the former Daesang, *i.e.*, a 2.10 percent antidumping duty cash deposit rate. This cash deposit requirement will apply to all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next administrative review.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 30 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.309. The Department will publish the final results of the changed circumstances review including the results of any such comments.

This initiation of review, preliminary results of review and notice are in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: October 18, 1999.

Robert A. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 99–27834 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Notice of Extension of Time Limit for Countervailing Duty Administrative Review of Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

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

EFFECTIVE DATE: October 26, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the countervailing duty administrative review of the countervailing order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom, covering the period January 1, 1998 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Jonathan Lyons, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3208 or (202) 482–0374, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, ''Extension of Time for Preliminary Results.'' Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the

preliminary results to no later than March 30, 2000.

Dated: October 18, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 99–27835 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599J]

Availability of an Environmental Impact Statement and Receipt of an Application for Incidental Take Permits for the Simpson Timber Company, Northwest Operations, Habitat Conservation Plan, Thurston, Mason, and Grays Harbor Counties, Washington

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that Simpson Timber Company, Northwest Timber and Wood Products (STC), has submitted an application to the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (together, the Services) for incidental take permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10(a)(2)(B) of the ESA, the applicant has also prepared a Habitat Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is related to forest management and timber harvest on approximately 261,575 acres of Simpson's fee-owned timberlands in Thurston, Mason, and Grays Harbor Counties, Washington. The proposed Permits would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities: marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), Puget Sound chinook salmon (*Oncorhynchus tshawytscha*), and Hood Canal summer run chum salmon (*Oncorhynchus keta*). STC is also seeking coverage for 48 currently unlisted species (including anadromous and resident fish) under specific provisions of the Permits, should these species be listed in the future. One of these, the coastal-Puget Sound population of the bull trout (*Salvelinus confluentus*), is currently in the final stages of the listing process. A determination will soon be made as to whether the bull trout will be listed as threatened. The duration of the proposed Permits and Plan is 50 years.

The Permit application includes: (1) the proposed Plan; and, (2) a proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (EIS) for the Permit application.

This notice is provided pursuant to section 10(a) of the ESA, and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the Permit application, EIS, Plan, and Implementing Agreement must be received from interested parties no later than December 27, 1999.

ADDRESSES: Comments and requests for information should be directed to Linda Saunders, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–5826; facsimile: 360/534–9331), and Mike Parton, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–4650; facsimile: 360/753–9517). Comments and materials received will also be available for public inspection, by appointment, at the above offices during normal business hours by calling (360)534–9330.

Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hardbound copies are also available for viewing, or partial or complete duplication, at the following libraries: Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595; William G. Reed Library, Reference Desk, 710 West Alder Street, Shelton, WA, (360)426–1362; Hoodsport Timberland Library, 40 North Schoolhouse Hill Road, Hoodsport, WA, (360)877–9339; Elma Timberland Library, Information Desk, 118 North 1st Street, Elma, WA, (360)482–3737; W.H. Abel Public Library, Information Desk, 125 Main Street South, Montesano, WA, (360)249–4211; and, Aberdeen Timberland Library, Reference Desk, 121 East Market Street, Aberdeen, WA, (360)533–2360. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

FOR FURTHER INFORMATION CONTACT: Linda Saunders, FWS, 360/753–5826; or Mike Parton, NMFS, 360/753–4650.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm has been defined by FWS to include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.'' NMFS' proposed definition of harm includes ''significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering.''

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Simpson Timber Company owns and manages approximately 261,575 acres of commercial timberland in Thurston, Mason and Grays Harbor counties, Washington. These properties are located from just south of Highway 8, north into the southern foothills of the Olympic Mountains, and west across the Wynoochee River valley to the City of Aberdeen's Wishkah watershed. Management activities on the tree farm include forest management and timber harvest.

Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA. Section 10 of the ESA contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will

not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Simpson Timber Company has developed a Plan with technical assistance from the Services, to obtain Permits for their activities on the subject lands. Activities proposed for Permit coverage include the following: all aspects of mechanized timber harvest, log transportation, road construction, road maintenance and abandonment, site preparation, tree planting, fertilization, silvicultural thinning, experimental silviculture, controlled burns, wild fire suppression, stream restoration, and the management, harvest, and sale of minor forest products. The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area. The duration of the proposed Permits and Plan is 50 years.

The Services formally initiated an environmental review of the project through a Notice of Intent to prepare an EIS in the Federal Register on February 9, 1999 (64 FR 6325). This notice also announced a 30-day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. Following this scoping period a draft EIS was prepared which considers the No Action alternative, the Proposed Action, and three additional action alternatives.

Under the No Action Alternative, Permits would not be issued and Simpson would continue a forest management program which avoids take of federally listed species. Under the Proposed Action, the Services would issue Permits and Simpson would implement their proposed Plan on 261,575 acres of Simpson's Washington timberlands. Under a Modified Northwest Forest Plan Alternative, the Services would issue Permits, and Simpson would implement a Plan with riparian conservation measures approximately mid-way between the Northwest Forest Plan (NFP) and the Proposed Action. Current (1999) Washington Forest Practices would be applied where NFP guidelines are not available.

Alternatives considered during scoping but which were not analyzed in detail include an alternative based on the Washington State Forestry Module (new proposed revisions to the Washington State Forest Practices Act), and a NFP Alternative. The Forestry Module Alternative, would have involved issuing Permits for an undetermined number of species and developing and implementing a Plan based on the Forestry Module guidelines for riparian, wetlands, unstable slopes, and road management. This alternative was not analyzed because it would result in similar riparian conservation to the Proposed Action. The NFP Alternative would have involved issuing a Permit for all threatened and endangered species that occur on the property and developing a Plan with mitigation measures similar to those found in the NFP. This alternative was not analyzed because it would restrict harvestable acres to approximately 68 percent of current levels, thereby resulting in excessive direct and indirect costs to the Applicant.

The No Action, Proposed Action, and Modified NFP alternatives are analyzed in detail in the draft EIS. The Forestry Module Alternative and NFP Alternative were dismissed from detailed analysis.

This notice is provided pursuant to section 10(a) of the ESA, and NEPA regulations.

Dated: October 18, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: October 18, 1999.

Don Weathers,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 99–27695 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F, BILLING CODE 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599H]

Availability of an Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the Crown Pacific, Ltd., Hamilton Tree Farm Habitat Conservation Plan, Whatcom and Skagit Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that Crown Pacific, Ltd., has submitted an application to FWS and NMFS (together, the Services) for an Incidental Take Permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). As required by section 10(a)(2)(B) of the ESA, Crown Pacific has also prepared a Habitat Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is related to forest management and timber harvest, recreational activities, installation and operation of communication towers, and military training operations, on approximately 84,689 acres of Crown Pacific lands located in Whatcom and Skagit counties, Washington. The proposed Permits would authorize the take of the following endangered or threatened species incidental to otherwise lawful activities: northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), and chinook salmon (*Oncorhynchus tshawytscha*). Crown Pacific is also seeking coverage for 22 currently unlisted species of concern (including anadromous and resident fish) under specific provisions of the Permits, should these species be listed in the future. One of these, the coastal-Puget Sound population of the bull trout (*Salvelinus confluentus*), is currently in the final stages of the listing process. A determination will soon be made as to whether the bull trout will be listed as threatened. The duration of the proposed Permits and Plan is 100 years.

The Permit application includes: (1) the proposed Plan; and, (2) the proposed Implementing Agreement. The Services also announce the availability of a draft Environmental Impact Statement (EIS) for the Permit application.

This notice is provided pursuant to section 10(a) of the ESA, and National Environmental Policy Act (NEPA) regulations. The Services are furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the permit application, EIS, Plan, and

Implementing Agreement must be received from interested parties no later than December 27, 1999.

ADDRESSES: Comments and requests for information should be directed to Brian Bogaczyk, Project Biologist, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, Washington, 98503–1273, (telephone: (360)753–5824; facsimile: (360)534–9331), and Matt Longenbaugh, Project Biologist, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, Washington, 98503–1273 (telephone: (360)753–7761; facsimile: (360)753–9517). Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (360)534–9330.

Requests for documents on CD ROM should be made by calling FWS at (360)534–9330. Hard bound copies are also available for viewing, or partial or complete duplication, at the following libraries: Sedro-Woolley Public Library, 802 Ball Street, Sedro Woolley, WA, (360)855–1166; Bellingham Public Library, Reference Desk, 210 Central Avenue, Bellingham, WA, (360)676–6860; Seattle Public Library, Government Publications Desk, 1000 4th Avenue, Seattle, WA, (260)386–4636; and, Olympia Timberland Library, Reference Desk, 313 8th Avenue SE, Olympia, WA, (360)352–0595. The documents are also available electronically on the World Wide Web at http://www.r1.fws.gov/.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm has been defined by FWS to include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.'' NMFS' proposed definition of harm includes ''significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering.''

The Services may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. FWS regulations governing permits for endangered species are promulgated in 50 CFR 17.22; and, regulations governing permits for threatened species are promulgated in 50 CFR 17.32. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Crown Pacific, Ltd., owns and manages the Hamilton Tree Farm, located in Whatcom and Skagit Counties, Washington. The Tree Farm is composed of several parcels, totaling 84,689 acres, and is located north and south of State Highway 20, roughly between Sedro-Woolley and Marblemount, Washington. Management activities on the tree farm include forest management and timber harvest. A portion of the proposed Plan area, Arlecho Creek, a 2,246–acre basin, is in the process of being transferred to the Nature Conservancy and the Lummi Indian Nation, with the understanding that the property will be managed as a natural/cultural area. The transfer is expected to be completed in late 1999.

Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA. Section 10 of the ESA contains provisions for the issuance of Incidental Take Permits (Permits) to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the Services for approval, a Habitat Conservation Plan (Plan) containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

Crown Pacific has developed a Plan with technical assistance from the Services, to obtain Permits for their activities on the Hamilton Tree Farm. Activities proposed for Permit coverage include the following: harvest of trees; silvicultural treatments; site preparation; tree planting; timberland inventory and monitoring; construction, maintenance, and use of logging roads and landings; quarrying stone and gravel; communication sites; recreation activities; fire prevention and suppression; habitat restoration; use of low-flying aircraft; tribal access; and, military training operations. The Permits and Plan would also cover certain monitoring activities and related scientific experiments in the Plan area. The duration of the proposed Permits and Plan is 100 years.

The Services formally initiated an environmental review of the project through a **Federal Register** notice on August 20, 1998 (63 FR 44634), which announced a 30-day public scoping period. A second **Federal Register** notice was published following the scoping period on February 5, 1999 (64 FR 5775), announcing the decision to prepare an EIS. Following this announcement a draft EIS was prepared.

Under Alternative A, the No Action Alternative, no Permit would be issued and take would be avoided for any and all threatened and endangered species on the property. Alternative B, the Proposed Action Alternative, involves issuing Permits for seven threatened and endangered species on the property (bald eagle, marbled murrelet, northern spotted owl, grizzly bear, gray wolf, and Puget Sound chinook salmon), with provisions for 22 unlisted species. The Plan details minimization and mitigation measures for the same six threatened and endangered species and 22 unlisted species. Alternative C, the Late-Successional Dependent Species and Anadromous Fish Alternative, involves issuing Permits for northern spotted owl, marbled murrelet, and chinook salmon, with provisions for 7 unlisted fish species. The Plan would have minimization and mitigation measures for northern spotted owl, marbled murrelet, and chinook salmon, and 7 unlisted fish species.

Alternatives considered during scoping but which were not analyzed in detail included a Candidate Conservation Agreement (CCA) Alternative, and a Northwest Forest Plan (NFP) Alternative. The CCA Alternative, would have involved developing and implementing a CCA with minimization and mitigation measures for a discreet list of species that are candidates for listing as threatened or endangered, or are expected to be candidates in the near future (specifically anadromous salmonids and bull trout), and take avoidance for any and all threatened and endangered species on the property. This alternative was not analyzed in detail because Crown Pacific included listed species in their proposal, as well as other unlisted species for which listing is not anticipated in the near future. This eliminates the implementation of a CCA as a management tool, because, by definition, the targets of CCAs are proposed and candidate species of fish, wildlife, and plants; and species likely to become candidate species in the near future (64 FR 32706, June 17, 1999). The NFP Alternative, would have involved issuing a Permit for all threatened and endangered species that occur on the property and developing a Plan with

mitigation measures similar to those found in the NFP. This alternative was not analyzed in detail because it would result in excessive direct and indirect costs to Crown Pacific. These excessive costs do not meet the purpose in this Federal action, which is to provide protection and conservation to listed and proposed species and their habitats to the extent intended under 10(a)(1)(B) of the ESA, while allowing Crown Pacific to fulfill its forest management and timber harvest mission in a practical manner.

The No Action, Proposed Action, Late-Successional Dependent Species and Anadromous Fish alternatives are analyzed in detail in the draft EIS. The CCA Alternative and NFP Alternative were dismissed from detailed analysis.

This notice is provided pursuant to section 10(a) of the ESA, and NEPA regulations. The Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA and NEPA. If it is determined that the requirements are met, Permits will be issued for the incidental take of listed species. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: October 8, 1999.

Donald Weathers,

Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: October 19, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–27696 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 101599I]

Cancellation of Notice of Intent to Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the Louisiana-Pacific Corporation.

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Cancellation Notice.

SUMMARY: FWS and NMFS hereby cancel their Notice of Intent to prepare an Environmental Impact Statement (EIS) for approval of a Habitat Conservation Plan, and issuance of an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, as published August 28, 1997 (62 FR 45676). The Notice is canceled because the timberland to be addressed in the EIS has been sold by the Louisiana-Pacific Corporation to new landowners.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, 125 16th Street, Arcata, California, 95521.

Dated: October 8, 1999.

Donald Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, Portland, Oregon.

Dated: October 19, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–27705 Filed 10–25–99; 8:45 am]

Billing Codes: 3510–22–F, 4310–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102199A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting; cancellation.

SUMMARY: The New England Fishery Management Council (Council) has canceled a public meeting of its Habitat Committee scheduled for November, 1999. This was to be a joint meeting with the Council's Habitat Advisory Panel.

DATES: The meeting was to be held on Tuesday, November 9, 1999, at 9:30 a.m.

ADDRESSES: The meeting was to be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923, telephone (978) 777–2500.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION: In the October 20, 1999, issue of the **Federal Register** the announcement of the New England Fishery Management Council's notice of public meetings was published (64 FR 56487). The Habitat Committee meeting scheduled for November 9, 1999, has been canceled.

Dated: October 21, 1999.

Richard W. Surdi,

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

[FR Doc. 99–27962 Filed 10–25–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information to any unauthorized persons.

FOR FURTHER INFORMATION CONTACT: Mr. W. Kipling At Lee, Jr., Deputy General Counsel (Military Affairs), Office of the Secretary of the Air Force, Washington DC 20330; telephone (703) 695–5663.

SUPPLEMENTARY INFORMATION: 42 U.S.C. Section 6961 makes each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste subject to all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. 42 U.S.C. Section 6961 also states that the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a

requirement if he determines it to be in the paramount interest of the United States to do so and that any exemption shall be for a period not in excess of one year.

On September 20, 1999, the President exempted the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person.

Therefore, the text of the Memorandum from the President to the Secretary of the Air Force is set forth below.

Janet A. Long,

Air Force Federal Register Liaison Officer.

Presidential Determination No. 99–37
September 20, 1999

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

Subject: Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, (the subject of litigation in Kasza V. Browner (D. Nev. CV–S–94–795–PMP) and Frost v. Perry (D. Nev. CV–S–94–714–PMP)), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the *Federal Register*.

William J. Clinton

Editorial Note: The Office of the **Federal Register** did not receive the original of Presidential Determination No. 99–37.

[FR Doc. 99–27866 Filed 10–25–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

[Docket No. EA–166–A]

Application To Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Duke Energy Trading and Marketing, L.L.C. (DETM) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 26, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On March 8, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized DETM to transmit electric energy from the United States to Mexico as a power marketer (Order No. EA–166) using the international electric transmission facilities owned and operated by San Diego Gas & Electric, El Paso Electric Company, Central Power & Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That authorization will expire on March 9, 2000. On October 6, 1999, DETM filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DETM request to export should be clearly marked with Docket EA–166–A. Additional copies are to be filed with Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042; Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180; *and* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–166. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–166 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'' from the ''Regulatory Info'' menu, then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on October 20, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–27895 Filed 10–25–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada; Meeting

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, November 3, 1999: 6 p.m.–9 p.m.

ADDRESS: Donald C. Moyer Student Union building, Grand Ballroom, University of Nevada, Las Vegas, 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

1. Panel discussion on groundwater issues with representatives from Clark County, the State of Nevada, and the Department of Energy.

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. This notice is being published less than 15 days in advance of the meeting due to issues related to the resolution of the agenda.

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 October 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–27896 Filed 10–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

October 20, 1999.

Take notice that on October 13, 1999, Midwestern Gas Transmission Corporation (Midwestern), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP00–5–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities for service to Scepter, Inc. (Scepter), an industrial end-user, in Knox County, Indiana, under Midwestern's blanket certificate issued in Docket No. CP82–414–000, pursuant to Section 7 of the NGA, 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/htm (call 202–208–2222 for assistance).

Midwestern requests authorization to construct and operate facilities consisting of a two-inch hot tap, check valve, and electronic gas measurement facilities on its system in Knox County to serve Scepter's industrial plant. It is stated that Midwestern will use the facilities to transport up to 862 dekatherms per day on an interruptible basis pursuant to the terms of Midwestern's IT rate schedule for delivery to Scepter. Midwestern estimates the cost of the facilities at $32,300, for which it will be reimbursed by Scepter. It is explained that Scepter will install, own, operate and maintain approximately 200 feet of 2-inch interconnecting pipe and that Scepter will also install, own and maintain measurement facilities. It is asserted that deliveries to Scepter will be within its certified entitlement at this location. It is further asserted that Midwestern has sufficient capacity to render the proposed service without disadvantage to its other existing customers and that Midwestern's tariff does not prohibit the addition of delivery point facilities. Midwestern states that the proposal will not have a significant impact on its peak day or annual deliveries because the proposed service is interruptible.

Any questions regarding the application may be directed to Thomas G. Joyce, Certificates Manager, at (713) 420–2459.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–27852 Filed 10–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–12–000, *et al.*]

Portland General Electric Company, et al., Electric Rate and Corporate Regulation Filings

October 18, 1999.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. EC00–12–000]

Take notice that on October 12, 1999, Portland General Electric Company (PGE), tendered for filing an application pursuant to Section 203 of the Federal Power Act for authority to sell certain jurisdictional transmission facilities, as more fully set forth in the application, to Avista Corporation.

A copy of this application has been served upon the Oregon Public Utility Commission.

Comment date: November 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. United American Energy Corporation

[Docket No. ER96–3092–014]

Take notice that on October 6, 1999, United American Energy Corporation tendered for filing a summary of activity for the quarter ending September 30, 1999, with the Commission in above-referenced proceeding.

3. Southern California Edison Co., California Independent System Operator Corp., El Segundo Power, LLC; Pacific Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC; San Diego Gas & Electric Co.; Southern California Edison, Pacific Gas & Electric Co., San Diego Gas & Electric Co., Duke Energy Moss Landing, LLC, Duke Energy Oakland, LLC

[Docket Nos. ER98–441–012, ER98–2550–000, ER98–495–000, ER98–1614–000, ER98–2145–000, ER98–2668–000, ER98–2669–000, ER98–4296–000, ER98–4300–000, ER98–496–000, ER98–2160–000, ER98–441–001, ER98–495–001, ER98–496–001, ER98–4300–001, ER98–2668–001, ER98–2669–001, ER98–4296–001, ER98–1127–000, and ER98–1128–000]

Take notice that on October 12, 1999 Pacific Gas and Electric Company tendered for filing a refund report in compliance with the Offer of Settlement filed in the above-captioned dockets on April 2, 1999 and approved by the Federal Energy Regulatory Commission (Commission) by letter order on May 28, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Supply Company and West Penn Power Company

[Docket No. ER99–4087–000]

Take notice that on October 12, 1999, Allegheny Power Supply Company (AE Supply), and West Penn Power Company (West Penn), tendered for filing an amended Form of Purchase and Sale Agreement for Ancillary Services pursuant to which AE Supply proposes to sell certain ancillary services to West Penn at cost-based rates, and to sell Energy Imbalance Service to West Penn at rates subject to an index-based cap, all as more fully described in the amended application.

Copies of this filing have been served upon the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER99–4415–000]

Take notice that on October 12, 1999, Illinois Power Company (Illinois Power), tendered for filing certain corrections to revised sheets of its Open Access Transmission Tariff (OATT) filed in the above docket.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER99–4472–000]

Take notice that on October 12, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APCo), tendered for filing an erratum to its September 20, 1999, filing in the above docket. This docket pertains to an amendment to the Amended and Restated Agreement for Partial Requirements and Complimentary Services between APCo and the Alabama Municipal Electric Authority (APCo. No. 168) (the PR Agreement). In the original filing in this proceeding, the revised contract pages did not reflect an earlier amendment to the PR Agreement that was made in Docket No. ER98–3046–000. The purpose of the erratum filing is to correct that oversight.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER99–4530–000]

Take notice that on October 12, 1999, Illinois Power Company (Illinois Power), tendered for filing certain corrections to revised sheets of its Open Access Transmission Tariff (OATT) filed in the above docket.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER00–83–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Corn Belt Energy Corporation. (CBEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CBEC as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to CBEC and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER00–84–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Oneok Power Marketing Company. (ONEOK), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds ONEOK as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to ONEOK and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER00–85–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with Energy New England, LLC. (Energy New England) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Energy New England as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to Energy New England and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–86–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered filed a Service Agreement dated September 23, 1999 with Commonwealth Energy Corporation, a California Corporation Doing Business as Advantage Energy, Inc. (CEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CEC as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to CEC and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER00–87–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO),

tendered for filing a Service Agreement dated September 23, 1999 with Soyland Power Cooperative, Inc. (SOYLAND) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SOYLAND as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to SOYLAND and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER00–96–000]

Take notice that on October 12, 1999, Commonwealth Edison Company (ComEd), tendered for filing an unexecuted service agreement establishing Edison Mission Marketing & Trading, Inc. (EMMT), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of September 13, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on EMMT.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–95–000]

Take notice that on October 12, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an assignment letter indicating that Illinois Power (IP) is assigning to Illinova Power Marketing, Inc. (IPMI), and IPMI will assume rights and responsibilities under, the Non-Firm Point-to-Point Transmission Service Agreement dated January 21, 1997, under Virginia Power's Open Access Transmission Tariff to Eligible Purchasers.

Virginia Power requests an effective date of the assignment of September 30, 1999.

Copies of this filing were served upon IPMI, IP, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER00–88–000]

Take notice that on October 12, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with NYSEG Solutions Inc. (NSI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NSI as a customer under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to NSI and to the Pennsylvania Public Utility Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER00–94–000]

Take notice that on October 12, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service, dated September 30, 1999 (the Service Agreement) between Louisville Gas & Electric Company/Kentucky Utilities Company (LG&E/KU) and OVEC. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff. The Service Agreement provides for firm transmission service by OVEC to LG&E/KU.

OVEC proposes an effective date of September 30, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon LG&E/KU, the Kentucky Public Service Commission, the Tennessee Regulatory Authority and the Virginia State Corporation Commission.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southwest Power Pool, Inc.

[Docket No. ER00–93–000]

Take notice that on October 13, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for loss compensation firm service, and long-term firm, short-term and non-firm point-to-point transmission service under the SPP Tariff with Oklahoma Municipal Power Authority (OMPA).

A copy of this filing was served upon OMPA.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Minergy Neenah, L.L.C.

[Docket No. ER00–89–000]

Take notice that on October 12, 1999, Minergy Neenah, L.L.C., tendered for filing a long-term power sale agreement with Alliant Energy—Wisconsin Power and Light Company. Service under the agreement commenced on September 15, 1999. The Commission's order in Docket No. ER99–3125–000 requires Minergy Neenah to file long-term service agreements within thirty days of commencement of service.

Minergy Neenah requests an effective date of September 15, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER00–92–000]

Take notice that on October 12, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Short-term Firm Point-To-Point Transmission Service Agreement with British Columbia Power Exchange Corporation (Powerex) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER00–91–000]

Take notice that on October 12, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Citizens Power Sales (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of October 9, 1999.

Copies of this filing were served upon Customer.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27856 Filed 10–25–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6463–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; ENERGY STAR Labeling Program Evaluation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Collection of Information for the ENERGY STAR Labeling Program Evaluation, EPA ICR No.1861.02. The ICR describes the nature of the information collection and its expected burden and cost and includes the actual data collection instruments.

DATES: Comments must be submitted on or before November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1861.02.

SUPPLEMENTARY INFORMATION:

Title: Collection of Information for the ENERGY STAR Labeling Program Evaluation, EPA ICR No.1861.02. This is a new collection.

Abstract: This information collection is designed to evaluate the efficacy of the Energy Star Labeling Program as a nonregulatory strategy for preventing air pollution, per section 103 of the Clean Air Act. The Energy Star Labeling Program was designed to create self-sustaining markets for energy efficient products and services via a common labeling strategy and awareness campaign and through strategic education for key market segments.

EPA plans to evaluate the program using ten voluntary data collection instruments targeted to key market segments. Nine of the data collection instruments will consist of telephone interviews that last between 12 to 15 minutes. One survey of household consumers will be mailed to respondents. In general all data collection instruments are designed to ascertain the respondents familiarity with the Energy Star label and to assess the degree to which long-term market effects or behavioral changes have occurred. The agency will use the information collected to evaluate program strategies, assess the overall efficacy of the labeling strategy and awareness campaign, and inform future program direction.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/22/98; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.24 hours (14.4 minutes) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: consumers, information system managers, office managers, heating and cooling equipment professionals, computer/office equipment vendors.

Estimated Number of Respondents: 2,016.

Frequency of Response: one time data collection.

Estimated Total Annual Hour Burden: 475 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: none.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1861.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 20, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–27934 Filed 10–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2162]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in New York City, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fourth meeting of the Public Safety National Coordination Committee.

DATES: November 19, 1999 at 1:30 p.m.–5:00 p.m.

ADDRESSES: One Police Plaza—First Floor Auditorium, New York, New York (Lower Manhattan) 10038.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail

mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fourth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in New York City, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: November 19, 1999.

Meeting Time: General Membership Meeting–1:30 p.m.–5:00 p.m.

Address: One Police Plaza—First Floor Auditorium.

New York, New York (Lower Manhattan) 10038

The NCC Subcommittees will meet from 8:00 a.m. to 12:00 noon, continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 1:30 p.m. and continue until 5:00 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Other Business
8. Upcoming Meeting Dates and Locations
9. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191 (1998).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fourth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and email address. This RSVP is for the purpose of determining the number of people who will attend this fourth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

D'wana R. Terry,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–27875 Filed 10–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

October 21, 1999.

Deletion of Agenda Item From October 21st Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the October 21, 1999, Open Meeting and previously listed in the Commission's Notice of October 14, 1999.

Item No.	Bureau	Subject
3	Mass Media and Office of Engineering and Technology	Title: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service. Summary: The Commission will consider a Notice of Proposed Rulemaking concerning the introduction of digital audio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28030 Filed 10–22–99; 12:00 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–19]

William J. Brewer v. Saeid B. Maralan (aka Sam Bustani) and World Line Shipping, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by William J. Brewer (''Complainant'') against Saeid B. Maralan (aka Sam Bustani) and World Line Shipping, Inc. (''Respondents'') was served October 19, 1999. Complainant alleges that Respondents violated sections 8 and 10 of the Shipping Act of 1984, 46 U.S.C. app. sections 1707 and 1709, by quoting charges for the shipment of Complainant's household and business property from Michigan to Egypt; after picking up the shipment, invoicing Complainant at a non-tariffed rate higher than that quoted; falsifying a bill of lading; after payment of invoiced charges, failing to make delivery of the shipment; and providing Complainant no information to help locate the shipment.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the prescribing officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 19, 2000, and the final decision of the Commission shall be issued by February 16, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–27869 Filed 10–25–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 1, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28098 Filed 10–22–99; 3:53 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4396]

Draft Guidance for Industry on Financial Disclosure by Clinical Investigators; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Financial Disclosure by Clinical Investigators.'' This draft guidance provides clarification, and responds to questions, concerning implementation of the final rule issued by FDA requiring anyone who submits a marketing application for any drug, biologic, or device to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies covered by the final rule.

DATES: Submit written comments concerning this draft guidance by December 27, 1999.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Financial Disclosure by Clinical Investigators'' to Mary C. Gross, Office of International and Constituency Relations (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20856. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 10–61, Rockville, MD 20852. See the **Supplementary Information** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of International and Constituency Relations (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20856, 301–827–3450, FAX 301–827–1335.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Financial Disclosure by Clinical Investigators.'' This draft guidance is intended to provide clarification concerning implementation of the final rule issued by FDA requiring anyone who submits a marketing application for any drug, biologic, or device to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies covered by the final rule. The requirements of the final rule took effect on February 2, 1999.

The agency's regulations on financial disclosure by clinical investigators require that financial interests and arrangements of clinical investigators that could affect the reliability of data submitted to FDA are identified and disclosed by the applicant. This requirement applies to any clinical study submitted in a marketing application that the applicant or FDA relies on to establish that the product is effective and any study in which a single investigator makes a significant contribution to the demonstration of safety. Applicants are required to certify to the absence of certain financial interests of clinical investigators or to disclose those financial interests. If the applicant does not include a certification and/or disclosure or does not certify that it was not possible to obtain the information, the agency may refuse to file the application.

The agency has received many questions concerning implementation of this final rule and has issued this draft guidance in the form of questions and answers in an effort to respond to these questions. FDA wishes to emphasize its commitment to work with sponsors as they begin their efforts to comply with the provisions of the rule.

II. Electronic Access

Copies of this guidance are available on the Internet. The guidance is located at www.fda.gov/oc/guidance/financialdis.html.

III. Comments

This draft document 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. Written comments may be submitted at any time, however, comments should be submitted by December 27, 1999, to ensure adequate consideration in preparation of the final

document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27840 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1999:

Name: National Advisory Council on Migrant Health.

Date & Time: November 18, 1999—9:00 a.m.–5:30 p.m.; November 19, 1999—9:30 a.m.–10:30 a.m.; November 20, 1999—8:00 a.m.–11 a.m.

Place: Omni Colonnade Hotel, 180 Aragon Avenue, Coral Gables, Florida 33134, Phone: (305) 441–2600; Fax: (305) 445–3929.

The meeting is open to the public.

Agenda

This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the State Children's Health Insurance Program, Public Charge, the H–2 Guestworker Program, and including migrant workers in the Year 2000 Census. In addition, the Council will be holding its annual Farmworker Public Hearing. The Hearing is scheduled for Saturday, November 20, from 8 a.m. to 11 a.m. at the Omni Colonnade. The Council meeting is being held in conjunction with the 12th Annual East Coast Migrant Stream Forum, November 19–21, 1999. The Stream Forum also will take place at the Omni Colonnade, Coral Gables, Florida.

Anyone requiring information regarding the subject Council should contact Judy Rodgers, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone 301/594–4304.

Agenda items are subject to change as priorities indicate.

Dated: October 20, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–27841 Filed 10–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families—Phase III—(New)

The national evaluation of SAMHSA's Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system implementation and development. Data will be collected on 21 service systems (20 funded systems of care and one comparison site), and on approximately 5766 children and families. Data collection for this evaluation will be conducted over a five-year period. The core of the service system data will be collected every 18 months throughout the five-year evaluation period, with a provider survey conducted in selected years.

Service delivery and system variables of interest include the following: system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Child and family outcomes will be collected at intake and during subsequent follow-up sessions at six-month intervals. The outcome measures include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. In addition, a treatment effectiveness study will examine the relative impact of an evidence-based treatment within one system of care. Internet-based technology will be used for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the average number of respondents in each respondent category, the average number of responses per respondent each year, the average length of time it will take for each response, and the total average annual burden for each category of respondent, and for all categories of respondents combined.

Respondent	Number of respondents	Responses/ respondent	Average burden/response (hrs.)	Total average annual burden
Caregiver	5,766	1.11	2.25	14,400.59
Youth	3,460	1.06	0.92	3,374.19
Provider/Administrator	420	0.52	1.32	288.29
Total	9,646	.....	.....	18,063.07

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–27859 Filed 10–25–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–24]

Notice of Proposed Information Collection: Comment Request; Contractor's and/or Mortgagor's Cost Breakdown, HUD–2328; Contractor's Certificate of Actual Cost, HUD–92330–A

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wille Spearmon, Office of Business Products, Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contractor's and/or Mortgagor's Cost Breakdown, HUD–2328; Contractor's Certificate of Actual Cost, HUD–92330–A.

OMB Control Number, if applicable: 2502–0044.

Description of the need for the information and proposed use: Form HUD–2328 serves to facilitate the advances of mortgage proceeds and their monitoring. This form is used by the contractor to establish a schedule of values of construction items on which the monthly advances of mortgage proceeds are based. Form HUD–92330–A will be used by the contractor to convey its actual construction costs in a standardized format for cost certification. It uses the Uniform System of Cost Accounting to classify construction trade items, and its accounting classifications are identical to those in the Contractor's and/or Mortgagor's cost Breakdown, HUD–2328.

Agency form numbers, if applicable: HUD–2328, HUD–92330–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 850, frequency of responses is 1, and the hours of response is estimated to be 8 hours per response for the HUD–2328 and 16 for the HUD–92330–A, totaling 9,600 hours.

Status of the proposed information collection: Reinstatement without change.

Authority: the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 12, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–27838 Filed 10–25–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–08]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a Computer Matching Program between HUD and the Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Small Business Administration (SBA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with SBA's debtor files. In addition to HUD's data, the CAIVRS data base includes delinquent debt information from the Departments of Agriculture, Education Veterans Affairs, and judgment lien data from the Department of Justice. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or SBA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision on any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATE: *Effective Date:* Computer matching is expected to begin at least 40 days from the date this computer matching notice is published, providing no comments are received which would result in a contrary determination. It will be accomplished 18 months from the beginning date.

Comments Due Date: November 26, 1999.

ADDRESSEES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P8202, Washington, DC 20410, Telephone Number (202) 708–2374. [This is not a toll-free number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Ben Saars, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Telephone Number (202) 401–1469. [This is not a toll-free number.]

REPORTING: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this Notice and a report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the United States Senate, and the Office of Management and Budget.

AUTHORITY: The matching program will be conducted pursuant to Public Law 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and the Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM: The matching program will allow SBA access to a system which permits prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA's debtor data for prescreening purposes.

RECORDS TO BE MATCHED: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/ Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File (SBA 075). HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT–2 system of records. SBA's data contain information on individuals who have defaulted on their direct loans. The SBA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

NOTICE PROCEDURES: HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the SBA have published notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

PERIOD OF THE MATCH: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Dated: October 19, 1999.

Gloria R. Parker,

Chief Information Officer.

[FR Doc. 99–27837 Filed 10–25–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–07]

Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended. The proposed new system of records is entitled Departmental Tracking System (DTS), V02A, HUD/EC–02. This system of records contains information on program participants who are direct or indirect recipients of HUD funds and who are subject to enforcement action due to fraud, waste, abuse and mismanagement of HUD funds. Information from this system will be used to determine whether these individuals are eligible to receive or to continue to receive federal financial and

non-financial assistance and benefits under federal programs and activities.

DATES: *Effective Date:* This action shall be effective without further notice in 30 calendar days unless comments are received during or before this period that would result in a contrary determination.

Comments Due Date: November 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of 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. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records identified as HUD/EC–02, Departmental Tracking System (DTS), VO2A.

Title 5 U.S. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: October 19, 1999.

Gloria R. Parker,

Chief Information Officer.

HUD/EC–02

SYSTEM NAME:

Departmental Tracking System (DTS), V02A.

SYSTEM LOCATION:

HUD Headquarters and HUD Computer Center, Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered consist of any program participant who is a direct or indirect recipient of HUD funds and who is subject to enforcement action due to fraud, waste, abuse and mismanagement of HUD funds. Individuals would include: Mortgagors, mortgagees, partners, partnerships, associations, trustees, boards, board members, managers, developers, sponsors, builders, administrators, executives, tenants, employees, health care providers, vendors, consultants, bidders, brokers, appraisers, borrowers, sellers, contractors, corporations (include non-profits), attorneys, underwriters, inspectors, grant recipients, accountants, real estate and closing agents, companies, and units of government (however organized).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records include pertinent information obtained from other automated systems such as: Name, address, title, job classification; identifying numbers such as social security number, tax identification number, project, and program identification numbers, and violations; sanctions including debarments, suspensions, Limited Denial of Participation (LDP), indictments, judgments, convictions, civil money penalties, reprimands, fines, settlement agreements, foreclosures, removal of program participants, takeovers, receiverships, 2530 denials, revocation of designation, grant and subsidy sanctions; and all enforcement actions taken by or on behalf of the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3533 and 3535

PURPOSE(S):

The DTS is being developed to serve the following purposes: (1) To establish an agency-wide database that will allow personnel to access and track information to generate reports on all of the Department's efforts to eliminate fraud, waste, abuse and mismanagement in all HUD programs, and (2) to provide a mechanism to cross reference and match data on individuals against which an enforcement action has been taken or is in the process of being taken. This information may be used to determine whether those individuals are eligible to receive or to continue to receive federal financial and non-financial assistance and benefits under federal programs and activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES ARE:

See General Statement of Routine Use paragraphs in prefatory statement, which are disclosures generally permitted under 5 U.S.C. 552 a(b) of the Privacy Act. In addition to those disclosures generally permitted under the Privacy Act, these records or information contained therein, may specifically be disclosed outside of the agency as routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

a. Internal Revenue Service (IRS)—for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed to the U.S. Government by the debtor;

b. Department of Justice (DOJ)—for investigation and litigation and representation of HUD before the courts and performance of all legal work incident thereto;

c. General Accounting Office (GAO)—for further collection action on any delinquent account when circumstances warrant;

d. Outside collection agencies and credit bureaus—for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection for further collection action;

e. Congress and the General Accounting Office (GAO) to provide reports on the Department's efforts to restore public trust.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records will be stored in the DTS (V02A System). Printouts will be stored manually in locked and lockable metal file cabinets and desk drawers.

RETRIEVABILITY:

Electronic records may be retrieved by individual or company name, case name, HUD/FHA program case number, social security number, tax/employee Identification number. Printouts may be retrieved manually from metal cabinets and drawers in the manner in which they are filed.

SAFEGUARDS:

Automated records will be saved in the DTS (V02A System) and accessed by authorized personnel who must use secured passwords to enter the system. Printouts are maintained in file cabinets

and drawers within a limited access area.

RETENTION AND DISPOSAL:

Automated records will be retained in the DTS (V02 System) and updated. Printouts will be disposed of in accordance with HUD Handbook 2225.6.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Departmental Enforcement Center, Portals Building, Suite 200, 1250 Maryland Avenue, SW, Washington, D.C. 20024.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with procedures in 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individuals concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location (a list of all locations is given in Appendix A) and (ii) in relation to appeals of initial denials, the Department of Housing and Urban Development Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The Departmental Tracking System will interface with other HUD information systems to extract pertinent data for tracking and reporting.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix B—Departmental Enforcement Center Headquarters and Satellite Office Locations

U. S. Department of Housing and Urban Development, Departmental Enforcement Center, Portals Building 1250 Maryland Avenue, SW, Suite 200, Washington, DC 20024

HUD Illinois Enforcement Center, Ralph H. Metcalfe Federal building 77 West Jackson Boulevard, Room 2207, Chicago, IL 60604–3507

HUD Georgia Enforcement Center, Richard B. Russell Federal Building 75 Spring Street, SW, Room 1070, Atlanta, GA 30303–3388

HUD Ft. Worth Enforcement Center, Federal Building 819 Taylor Street, Room 13A47, Ft. Worth, TX 76113

HUD Los Angeles Enforcement Center, 611 West 6th Street, Suite 3800, Los Angeles, CA 90017–3127

HUD New York Enforcement Center, 26 Federal Plaza, Room 3237, New York, NY 10278–0068

[FR Doc. 99–27836 Filed 10–25–99; 8:45 am]

BILLING CODE 4201–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AF66

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Carrying Out the Inclusion of all Species of the Order Acipenseriformes (Sturgeon and Paddlefish) in the Appendices to CITES

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy.

SUMMARY: We propose to no longer issue or accept for import any ''pre-Convention'' certificates for caviar. A pre-Convention certificate for caviar documents that the caviar pre-dates April 1, 1998, the effective date of the listing of all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

DATES: We will consider comments and information received by November 10, 1999 in developing a final policy.

ADDRESSES: U.S. Fish and Wildlife Service, Office of Management Authority, Mail Stop 700 ARLSQ, 1849 C Street NW, Washington, DC 20240. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to r9oma__cites@fws.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include Attn: [RIN number, 1018–AF66] and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the telephone number listed below. Finally, you may hand-deliver comments to the above address.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2093, fax (703) 358–2280.

SUPPLEMENTARY INFORMATION: To make sure that commercial demand does not threaten the survival of wild sturgeon, the Tenth Meeting of the Conference of Parties to CITES (COP10) adopted a proposal on June 20, 1997, to include all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in Appendix II of CITES, effective April 1, 1998. Therefore, all international shipments of sturgeon and paddlefish specimens or their parts and products, including caviar, made on or after April 1, 1998, must include a valid CITES export permit, re-export certificate, or pre-Convention certificate, which shows that the CITES treaty is being followed.

We have issued pre-Convention certificates for the re-export of caviar only when we were satisfied that it was imported before April 1, 1998. We have learned from the sturgeon products industry and others that the normal shelf life for caviar is 12 months. By the time this proposed policy is finalized, the normal shelf life of any caviar imported before April 1, 1998, will have been exceeded by several months. In addition, it has become evident since April 1, 1998, that the false declaration of caviar as having been acquired before April 1, 1998, is a means of circumventing the CITES treaty. So, we propose to no longer issue pre-Convention certificates for caviar.

On March 12, 1999, the CITES Secretariat issued Notification to the Parties No. 1999/23, which recommends that no permits or certificates declaring pre-Convention caviar should be accepted after April 1, 1999. Consistent with that recommendation, we propose to no longer accept ''pre-Convention'' certificates for the importation of Appendix II sturgeon caviar into the United States.

For imports, this proposed policy does not affect aquaculture-produced caviar or caviar harvested from the wild after April 1, 1998, which will continue to be allowed with a valid CITES export permit from the country of origin or a valid CITES re-export certificate from the country of re-export. For exports or re-exports from the United States, this proposed policy does not affect aquaculture-produced caviar or caviar

acquired from the wild after April 1, 1998, provided a valid CITES permit or re-export certificate is issued and accompanies the shipment.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be limited circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. But, we will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed policy would restrict the sturgeon industry within the United States from engaging in foreign commerce with ''pre-Convention'' caviar that is, according to industry representatives, perhaps no longer available, and if available, only in very limited quantities at greatly reduced value. We estimate that there would likely be less than 100 businesses with remaining stocks of ''pre-Convention'' caviar. Any such caviar has exceeded its normal shelf life and has decreased in value dramatically. Therefore, this proposed policy is restricting the sturgeon industry within the United States from engaging in commerce, under an exemption to CITES, with a commodity that may no longer even be available, and if available, only in very limited quantities at greatly reduced value. Therefore, it does not appear likely that this proposed policy will have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. It should be noted that this proposed policy will not restrict members of the sturgeon products industry from conducting business with caviar that has been obtained after April 1, 1998. Only the availability of the ''pre-Convention'' exemption would be terminated if this proposed policy were made final.

Similarly, this proposed policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This proposed policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this proposed policy does not have significant takings implications for the same reason as described above under the Regulatory Flexibility Act.

Under Executive Order 12612, this proposed policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment because it is not anticipated that a state tagging program, similar to the one currently employed in the management of CITES listed furbearer species for export, will be administered in the management of exports of sturgeon products from U.S. wild-caught stock.

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This proposed policy does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with CITES permits is covered by an existing OMB approval, and is assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of January 31, 2001. Detailed information for the CITES documentation appears at 50 CFR 23.15(g). The Service 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.

This proposed policy does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The proposed policy is categorically excluded from further National Environmental Policy Act requirements, under Part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed policy easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed policy clearly stated?; (2) Does the proposed policy contain technical language that interferes with its clarity? What else could we do to make this proposed policy easier to understand?

Our normal practice is to publish proposed policies with a 60-day comment period. But in this case, we are using a 15-day comment period since we feel that a 60-day comment period is unnecessary because: 1) we have learned in discussions we have had with the sturgeon products industry and others, that the normal shelf life for caviar is 12 months so, there no longer is any pre-Convention caviar available; 2) as a member of CITES, it is our responsibility to carry out promptly our obligations under the treaty.

Dated: September 21, 1999.

Donald J. Barry,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 99–27953 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Digital Earth Interagency Working Group

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of rescheduled meeting—digital earth alpha version.

SUMMARY: THE DIGITAL EARTH MEETING ORIGINALLY ANNOUNCED IN THE OCTOBER 14, 1999, Federal Register has been rescheduled from October 25, 1999, to November 10, 1999, to provide additional preparation time for interested participants. The Digital Earth Interagency Working Group, chaired by NASA with representatives from other Federal departments and agencies, will hold an open meeting at the USGS facility in Reston, Virginia, to discuss options for a near-term demonstration of the Digital Earth vision by public and private sector technology providers (for details, visit *www.digitalearth.gov*.

Throughout Federal, State, and local government, the private sector, and other public sector interests, there exist data, infrastructure, partnerships, and capability to support the exploitation of

geospatial information to answer questions of students, researchers, community leaders, and others. The goal of this meeting will be to identify existing and emerging data, infrastructure, and tools, that can be brought together to provide an ''alpha version'' demonstration of the Digital Earth vision in a limited number of use contexts (*e.g.,* a student asking a question about the effects of pollution on the community). The results of this discussion may lead to subsequent Commerce Business Daily requests for proposals regarding cooperative technology demonstrations.

The morning session will be focused on providing the Federal Digital Earth vision, program, progress, and organization. The afternoon session will be devoted to discussion on a Digital Earth alpha version for FY 2000. Time will be allocated for attendees to provide their perspectives on Digital Earth. Attendees must indicate their intent to present their views, and statements should be limited to 10 minutes.

DATES: The meeting will be held in the USGS main Auditorium on November 10, 1999, commencing at 9 a.m. and adjourning at 3 p.m. The meeting may be extended to 5 p.m. based on the number of attendees indicating interest in presenting their views on Digital Earth.

FOR FURTHER INFORMATION CONTACT: To reserve a space for the meeting, please contact Mr. Mark Reichardt at (703) 748–5742, or via e-mail at *mreichardt@usgs.gov* with your name, address, telephone, and e-mail address, and indicate whether or not you want to make a statement on Digital Earth. Although the meeting is open to all interested parties, space is limited and will be allocated on a first come basis. Please limit requests to one member of your organization.

Dated: October 20, 1999.

Hedy J. Rossmeissl,

Acting, Chief, National Mapping Division.

[FR Doc. 99–27964 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1620–MA]

Motor Vehicle Travel; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure order for motor vehicle travel.

SUMMARY: Notice is hereby given that effective October 15, 1999 certain public lands in Fremont County are closed to all types of motor vehicle travel. The purpose of this closure is to prevent the development of unauthorized user-created trails and to prevent resource damage to soils and vegetation. Future interdisciplinary planning will determine the appropriate travel routes for these areas.

EFFECTIVE DATES: These closures are effective October 15, 1999 and shall remain in effect until revised, revoked or amended.

ADDRESSES: Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Field Office Manager or Diana Kossnar, Outdoor Recreation Planner.

SUPPLEMENTARY INFORMATION: The public lands affected by this temporary closure are identified as follows:

Fremont County, Colorado, Sixth Principal Meridian

Current Creek Area, located approximately 22 miles northwest of Canon City, Colorado, south and west of State Highway 9.

T.16S., R.72W.—All the part of Sections 6 and 7 lying south and west of the right-of-way of state highway 9.

T.16S., R.73W.—All that part of the following described public lands lying south and west of the right-of-way of state highway 9:

Section 1 Lots 2, 6, 7, 8, 9, 10, 11, SW¼, SE¼
Section 2 Lots 9, 10, 11, 12, S½
Section 3 Lots 9, 10, E½SE¼, NW¼SE¼
Section 10 E½SE¼, SW¼SE¼
Section 11 N½
Section 12 N½, N½SW¼

Cooper Mountain Area, located approximately 12 miles north of Canon City, Colorado, west of County Road 67.

T.16S., R.69W.
Section 29 SW¼
T.17S., R.69W.
Section 5 Lots 2, 3, 4, S½N½, S½
Section 6 SE¼SE¼
Section 7 NE¼, SE¼NW¼, E½SW¼, NE¼SE¼
Section 8 N½, N½S½
Section 9 Lots 1, 2, S½NE¼, W½NW¼, SE¼NW¼, N½SW¼, NW¼SE¼

Ecology Park Area, located approximately 1 mile southwest of Canon City, Colorado, ½ mile northwest of County Road 3.

T.19S., R.70W.—The Bureau of Land Management public lands located in Section 6 and 7.

This closure does not apply to emergency, law of enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine of up to $5,000 and/or imprisonment for up to one year as defined in 18 U.S.C. 3571. Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Levi D. Deike,

Royal Gorge Field Office Manager.

[FR Doc. 99–27853 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–084–6333–00; GP–0–0006)]

Notice of Temporary Motor Vehicle Closure on Public Lands; Linn County, OR

AGENCY: Bureau of Land Management, Salem District Office, Cascades Resource Area, Oregon.

ACTION: A temporary closure to motorized vehicle use on public lands administered by the Bureau of Land Management (BLM), Cascade Resource Area, Salem District, Oregon.

SUMMARY: The BLM is temporarily closing certain public lands in Linn County to the use of motorized vehicles.

DATES: The closure will take effect upon the published date of this notice. The closure will continue until August 31, 2001 to allow time for a restoration plan to be completed and implemented.

FOR FURTHER INFORMATION CONTACT: Laura Graves, Salem District Office, 1717 Fabry Road SE, Salem, OR 97306, telephone (503) 375–5908.

Discussion of the Rules

The public lands affected by this closure are all lands administered by the BLM in Sections 15, 16, 17, 21 and 23 of Township 11 South, Range 1 East, Willamette Meridian, Oregon. Closure signs will be posted at main entry points to these locations. Maps of the closure area and information on the restoration plans may be obtained from the Salem District Office.

The lands affected by this closure have special status fish and wildlife species and are currently receiving high levels of off-road use by motorized vehicles. This use is causing soil erosion into streams, loss of vegetation and disturbance to wildlife. In addition, vehicles are being used for illegal dumping of household and commercial trash.

The restoration plan will address improving resource conditions and managing motorized access in the long term.

Prohibited Act

Motorized vehicles are not allowed in the closed area.

Exemptions

Persons who are exempt from these rules include BLM employees, Federal, State, or local officers, and members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Richard C. Prather,

Area Manager, Cascades Resource Area.

[FR Doc. 99–27703 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Record of Decision

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) approving the Colorado Sodium Products Development Project (Project), located in Rio Blanco County and Garfield County, Colorado. American Soda L.L.P. will be required to obtain the necessary federal, state, and local permits and approvals prior to commencing the project.

DATES: A thirty day appear period will begin October 26, 1999.

SUPPLEMENTARY INFORMATION: American Soda, L.L.P. (American Soda) intends to construct and operate a commercial hancolite solution mining operation in the northcentral portion of the Piceance Creek Basin in Rio Blanco, County, Colorado. Nahcolite is naturally occurring sodium bicarbonate that is found in association with oil shale deposits. After the hancolite is removed from the ground, it will be processed into a sodium carbonate solution and transported by a 44-mile pipeline south to a processing operation located at an existing industrial site in the Parachute Valley in Garfield County, Colorado. There it will be further processed to commercial grade sodium carbonate, sodium bicarbonate, and other sodium products which would then be shipped from the processing facility via a 4-mile long dedicated rail spur to an interstate rail connection near the town of Parachute.

This Decision selects the Agency Preferred Alternative as described in the Final Environmental Statement (FEIS) which incorporates five monitoring plans as well as project modifications resulting from public comments, plus any additional changes the have occurred since the publication of the FEIS.

FOR FURTHER INFORMATION CONTACT: Larry Shults, White River Field Office, 73544 Highway 64, Meeker, Colorado 81641, Telephone (970) 878–3601.

Jim Cagney,

Acting Field Officer Area Manager, White River Field Office.

[FR Doc. 99–27867 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–00–1310–EJ]

Jonah Field Environmental Assessment, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Assessment and to conduct public scoping for a modified proposal for development of the Jonah Field Natural Gas Project.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare an Environmental Assessment (EA) and to conduct public scoping to address a proposed modification of the Record of Decision (ROD) issued April 27, 1998, for the Jonah Field II Natural Gas Project Environmental Impact Statement (April 1998). In that decision, BLM approved development of the Jonah Field at one gas well per 80 acres. Project proponents, McMurry Oil Company and Amoco Production Company, have requested BLM approval of development of the field at one well per 40 acres.

Should the scoping process or the EA identify the potential for significant impacts, BLM would deem the EA to be a draft supplemental Environmental Impact Statement (EIS). Further scoping would not be conducted. However, the public will be notified through newspaper articles and a subsequent **Federal Register** notice if significant impacts are identified in the EA. BLM will also conduct a conformance review of the Pinedale Resource Management Plan (RMP) as part of the EA. Any needed changes in existing management or any new management actions to be prescribed for the area will be identified and, if necessary, the Pinedale RMP would be amended.

DATES: Public comments concerning this proposed modification will be accepted for 30 days following the date this notice is published in the **Federal Register**. A Public Notice will be distributed by mail to local media and known interested parties on or about the date of this notice.

BLM will hold an open house at the Sublette County Library (155 S. Tyler Street, Pinedale, Wyoming) on November 2, 1999, from 10 a.m. to 4 p.m. and again from 7 p.m. to 9 p.m. to answer questions concerning the proposed project modification and to explain the National Environmental Policy Act process chosen for this action.

ADDRESSES: Send written comments to: Bureau of Land Management, Rock Springs Field Office, ATTN: Arlan Hiner, Project Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Project Manager, Bureau of Land Management, Rock Springs Field Office, Telephone 307–352–0206. Information and a copy of the Public Notice for the Jonah Field EA can be obtained from the following BLM offices: Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; Pinedale Field Office, 432 East Mill Street, PO Box 768, Pinedale, Wyoming 82941; and Wyoming State Office, 5353 Yellowstone Road, PO Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: The Jonah Field Natural Gas Project is located approximately 32 miles south of Pinedale, Wyoming and 28 miles north of Farson, Wyoming, within Townships 28 and 29 North, Ranges 107, 108, and 109 West, Sublette County. The 30,320 acre project area includes 28,400 acres Federal surface, 640 acres private surface, and 1,280 acres State surface. The mineral estate includes 29,040 acres Federal minerals and 1,280 acres State minerals. Currently, 170 active gas wells out of 497 wells approved in the Jonah II EIS ROD have been drilled in the project area.

The project proponents would like to proceed with drilling gas wells within the area at a 40 acre spacing (16 wells per section) beginning in the summer of

2000. They expect that drilling 497 wells will allow them to adequately extract the natural gas. There are 170 wells located within the Jonah Field, which are served by three transportation pipelines. This field development project will not require any additional transportation pipelines. The potential development would include a separator, dehydrator, production tanks, and tinhorns (for holding produced water) at each surface well location; an access road and a 3 to 4 inch gas gathering pipeline to each surface well location; water supply wells; and produced water disposal systems (either injection wells or surface pits).

The companies will be allowed to continue to drill wells at 80 acre spacing as approved by the ROD for the Jonah II EIS while the EA is being prepared.

Dated: October 19, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–27868 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–00; WYW–146697]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands located near Pinedale, Wyoming, have been examined and found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County intends to use the land as a shooting sports complex.

Sixth Principal Meridian

T. 34 N., R. 109 W.,
Sec. 25, SE¼NW¼, E½NE¼SW¼,
E½W½NE¼SW¼,
NW¼NW¼NE¼SW¼,
SW¼SW¼NE¼SW¼, N½SE¼SW¼.

The land described above contains 95 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Bill Wadsworth at (307) 367–5341.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States. 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, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing 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 conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

The analysis may identify that an amendment to the Pinedale RMP is needed. If a plan amendment is needed, other notices, mailings, or media releases will announce a 30-day protest period on the proposed amendment.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a shooting sports complex. Comments on the classification should only address whether the land is physically suited for a shooting sports complex (as appropriate), 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 uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for a shooting sports complex. 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: October 18, 1999.

Douglas Powell,

Acting Field Manager.

[FR Doc. 99–27862 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–01; WYW–82504]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands located near the rural community of Pinedale in Sublette County, Wyoming, have been examined and found suitable for classification for lease and conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) for a public recreation site.

Sixth Principal Meridian

T. 34 N., R. 110 W.,
Sec. 24, NE¼NE¼.

The land described above contains 40 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Tracy Hoover at (307) 367–5432.

SUPPLEMENTARY INFORMATION: The lease/conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/conveyances, when completed, will be subject to the following terms, conditions and reservations:.

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States. 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, except for conveyance under the Recreation and Pubic Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments regrading the proposed lease/conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of any objections, this proposed realty action will become final.

Dated: October 18, 1999.

Douglas Powell,

Acting Field Manager.

[FR Doc. 99–27863 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET, CACA 40671]

Notice of Proposed Partial Revocation of Executive Order Dated February 26, 1852 and Public Land Order Number 4883, Proposed Withdrawal, Proposed Transfer of Jurisdiction, and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Navy has filed a notice of its intent to relinquish its withdrawal on 18.72 acres of public land, more or less, located in San Diego County, withdrawn by an Executive Order dated February 26, 1852, or Public Land Order number 4883, for military purposes. The National Park Service has filed an application to withdraw those 18.72 acres of public lands, more or less, to include them in the Cabrillo National Monument. The National Park Service has also requested that the administrative jurisdiction of those 18.72 acres, more or less, plus the 6.88 acres, more or less, previously withdrawn by Public Land Order number 5234, be permanently transferred to it. This notice closes the 18.72 acres of public lands, more or less, for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, and the operations of the mineral leasing laws and the Materials Act of 1947.

DATES: Comments and request for a public meeting must be received by January 25, 2000.

ADDRESSES: Comments and meeting requests should be sent to Sondra S. Humphries, Chief, Pacific Land Resources Program Center, Pacific West Region, National Park Service, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372.

FOR FURTHER INFORMATION CONTACT: Gary Chulla, Realty Specialist, National Park Service, San Francisco office, 415–427–1410, or Terry M. DiMattio, Superintendent, Cabrillo National Monument, 619–557–5450.

SUPPLEMENTARY INFORMATION:

1. On October 5, 1999, a petition was approved allowing the National Park Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, and to the operations of the mineral leasing laws and the Materials Act of 1947, subject to valid existing rights:

San Bernardino Meridian

(a). Bayside Trail (Also Known as Sylvester Road)

Commencing at a point on the easterly prolongation of the north line of the Cabrillo National Monument as shown on NAVFAC Drawing No. 6117948 on file in the Department of the Navy that bears thence South 89°56′36″ East 378.53 feet from the northeast corner of said monument: thence South 12°06′18″ East 105.96 feet to the True Point of Beginning of the herein described centerline, said point being on the arc of a 1,235.00-foot-radius curve concave northerly the center of which bears North 14°34′38″ West from said True Point of Beginning; thence continuing South 12°06′18″ East 46.84 feet to the beginning of a tangent 91.35-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 31°25′40″ a distance of 50.11 feet to the beginning of a tangent 59.49-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 53°19′25″ a distance of 55.37 feet to the beginning of a tangent 130.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 55°08′06″ a distance of 125.10 feet to a point of compound curvature with a 265.00-foot-radius curve; thence southwesterly along the arc of said curve through a central angle of 15°42′44″ a distance of 72.67 feet to the beginning of a tangent 100.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 42°28′35″ a distance of 74.14 feet to the beginning of a tangent 527.44-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 17°56′20″ a distance of 165.14 feet; thence tangent to said curve South 12°18′32″ West 107.03 feet to the beginning of a tangent 500.00-foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 18°03′54″ a distance of 157.65 feet to a point of compound curvature with a 90.00 foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 40°10′08″ a distance of 63.10 feet to the beginning of a tangent 650.00-foot-radius curve concave southeasterly; thence southwesterly along the arc of said curve through a central angle of 10°38′46″ a distance of 120.78 feet to the beginning of a tangent 103.00-foot-radius curve concave northerly; thence westerly along the arc of said curve through a central angle of 55°43′47″ a distance of 100.18 feet to the beginning of a tangent 35.00-foot-radius curve concave southeasterly; thence westerly, southwesterly and southerly along the arc of said curve through a central angle of 150°30′03″ a distance of 91.94 feet to a point of compound curvature with a 100.00-foot-radius curve concave northeasterly; thence southeasterly along the arc of said curve through a central angle of 32°52′30″ a distance of 57.38 feet; thence tangent to said curve South 67°44′58″ East 116.12 feet to the beginning of a tangent 100.00-foot-radius curve concave southwesterly; thence southeasterly and southerly along the arc of said curve through a central angle of 65°07′30″ a distance of 113.66 feet; thence tangent to said curve South 02°37′28″ East 86.76 feet to the beginning of a tangent 310.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 18°37′46″ a distance of 100.80 feet to the beginning of a tangent 45.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 47°16′43″ a distance of 37.13 feet to a point on the south line of the herein above described property that bears North 89°59′37″ East 198.59 feet from the southwesterly corner thereof; commencing at the southeasterly corner of Cabrillo National Monument as described in Proclamation

No. 3273 of February 2, 1959; thence, North 89°59′37″ East, 198.59 feet from said southeasterly Corner to the True Point of Beginning; thence South 31°16′30″ East 12.15 feet to the beginning of a tangent 55.00-foot-radius curve concave southwesterly; thence southerly along the arc of said curve through a central angle of 28°36′30″ a distance of 27.46 feet to a point of compound curvature with a 330.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 20°23′45″ a distance of 117.47 feet to a point of compound curvature with a 75.00-foot-radius curve concave northwesterly; thence southwesterly and westerly along the arc of said curve through a central angle of 69°08′46″ a distance of 90.51 feet; thence tangent to said curve South 86°52′31″ West 108.37 feet to the beginning of a tangent 95.00-foot-radius curve concave northerly; thence westerly along the arc of said curve through a central angle of 32°17′15″ a distance of 53.53 feet to a point of reverse curvature with a 60.00-foot-radius curve concave southerly; thence westerly along the arc of said curve through a central angle of 70°16′58″ a distance of 73.60 feet to a point of compound curvature with a 25.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 61°22′48″ a distance of 26.78 feet to point of compound curvature with a 175.00-foot-radius curve concave northeasterly; thence southeasterly along the arc of said curve through a central angle of 54°07′46″ a distance of 165.33 feet; thence tangent to said curve South 66°37′46″ East 88.66 feet to the beginning of a tangent 60.00-foot-radius curve concave southwesterly; thence southeasterly along the arc of said curve through a central angle of 49°28′15″ a distance of 51.98 feet to a point of compound curvature with a 90.00-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 45°28′13″ a distance of 71.42 feet; thence tangent to said curve South 28°28′42″ West 110.68 feet to the beginning of a tangent 400.00-foot-radius curve concave southeasterly; thence southwesterly along the arc of said curve through a central angle of 08°05′11″ a distance of 56.45 feet to a point of compound curvature with a 60.00-foot-radius curve concave easterly; thence southerly along the arc of said curve through a central angle of 31°49′13″ a distance of 33.32 feet to a point of reverse curvature with a 125.00 foot-radius curve concave northwesterly; thence southwesterly along the arc of said curve through a central angle of 60°35′53″ a distance of 132.20 feet.

The area described contains 2.72 acres, more or less, in San Diego County.

(b). Point Loma Tidepool Area

Beginning at a point in the Southerly boundary of the Cabrillo National Monument as described in Presidential Proclamation No. 3273 dated February 2, 1959, which said point is shown as Monument ''E'' and Point No. 49 on NAVFAC Drawing No. 6117948, Naval Ocean Systems Center Real Estate Summary Map, Sheet 6 of 6; thence South 89°56′07″ East, 345.05 feet to Point No. 50 on the arc of a 1,030-foot-radius curve concave westerly; thence southerly along the arc of said curve through a central angle of 07°33′27″, a distance of 135.86 feet to Point No. 51; thence tangent to said curve, South 04°05′38″ East, 1,049.96 feet to Point No. 52, the beginning of a tangent 330.20-foot-radius curve, concave westerly; thence southerly along the arc of said curve, through a central angle of 22°58′46″, a distance of 132.43 feet to Point No. 53; thence South 18°07′08″ West, 100.12 feet to Point No. 54, the beginning of a tangent 235.23-foot-radius curve, concave easterly; thence southerly along the arc of said curve, through a central angle of 37°45′00″, a distance of 154.98 feet to Point No. 55; thence North 19°37′52″ West, 260.00 feet to the beginning of a tangent 150.00-foot-radius curve concave southwesterly; thence northwesterly and westerly along the arc of said curve, through a central angle of 90°00′00″, a distance of 235.62 feet; thence South 70°22′08″ West to the MLLW of the Pacific Ocean (a distance of 200 feet more or less); thence northerly along the shoreline MLLW to a point on a line which bears North 89°56′07″ West from Monument ''E''; thence South 89°56′07″ East to the POINT OF BEGINNING Monument ''E''.

The area described contains 16 acres, more or less, in San Diego County.

2. Pursuant to a notice of intent to relinquish filed by the United States Navy, the Executive Order of February 26, 1852, and Public Land Order number 4883 will be revoked insofar as they affect the lands described above in paragraphs 1(a) and 1(b).

3. The National Park Service has requested that administrative jurisdiction of those lands described above in paragraphs 1(a) and 1(b), and that land withdrawn by Public Land Order number 5234 be permanently transferred to the National Park Service, so that the lands can be managed as part of the Cabrillo National Monument and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights. The 6.88 acres of land, more or less, withdrawn by Public Land Order number 5234 is known as the Point Loma Maintenance Area.

4. The purpose of the proposed withdrawal of the 18.72 acres of lands, more or less, is to: (a) Include those lands in the Cabrillo National Monument to facilitate the proper care and management of the Cabrillo National Monument and the historical landmarks and historical objects therein, (b) provide public access to the intertidal area, and (c) to preserve and protect sensitive coastal sage scrub habitat. The purpose of the proposed permanent transfer of jurisdiction is to include the 18.72 acres of lands, more or less, and the 6.88 acres of land, more or less, withdrawn by Public Land Order number 5234, in the Cabrillo National Monument, so that the lands can be managed as part of the Cabrillo National Monument and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

5. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Pacific Land Resources Program Center, National Park Service, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

6. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

7. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the 18.72 acres of lands, more or less, will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by the Bureau of Land Management and the National Park Service.

Dated: October 20, 1999.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 99–27936 Filed 10–25–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Supplemental Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 U.S.C. 50.7, and pursuant to Section 122(d)(2) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''), this supplemental notice is hereby given pertaining to a proposed consent decree in *United States* v. *Akzo Nobel A.B.*, Civ No. 1:99–CV–731, relating to the Bofors-Nobel Superfund Site in Muskegon, Michigan. The proposed consent decree was lodged with the United States District Court for the Western District of Michigan on September 22, 1999. This supplemental notice is issued because the original notice, published on October 14, 1999, 64 FR 55747, inadvertently failed to state that the Department of Justice will receive comments from the public on the proposed consent decree for a period of 30 days following publication of this notice.

Comments should be transmitted by mail to the attention of Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530 and should include the reference DJ# 90–11–3–191A.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27960 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of consent Decree Pursuant to the Clean Air Act and the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on October 6, 1999, a proposed consent decree in *United States* v. *Almond Investment Co. and Almond Products, Inc.* Civil Action No. 1:99 CV 783, was lodged with the United States District Court for the Western District of Michigan.

In this action, the United States sought injunctive relief and civil penalties under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for violations of the federally approved Michigan State Implementation Plan (''SIP'') and Title V of the Clean Air Act at one of Almond Investment Co.'s Muskegon, Michigan, facilities. Specifically, the Complaint alleges the Almond Investment Co. violated various permitting and volative organic compound emission requirements in Mich. Admin. Code §§ 336.1201(1), 336.1220, 336.1621(1), 336.1621(5) of the Michigan State Implementation Plan, Title V of the Clean Air Act, 42 U.S.C. 7661—7661f, and Mich. Admin. Code § 336.1210 at its Muskegon, Michigan, facility located at 6435 Schamber Drive.

In addition, the United States sought injunctive relief and civil penalties under Section 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b), (d), for violations of Section 307(d) of the Clean Water Act, 33 U.S.C. 1317(d), and certain pretreatment standards in 40 CFR 413.44(c), (g), 413.54(c), (g), with respect to wastewater discharges at Almond Investment Co.'s Muskegon, Michigan, facility located at 1239 E. Broadway.

Almond Products, Inc., purchased the two Muskegon facilities from Almond Investment Co. in May 1999. Almond Products, Inc., is named as a defendant pursuant to Fed. R. Civ. P. 19 as a party that is necessary for complete relief.

The proposed decree provides for injunctive relief pursuant to which Almond Products, Inc., has permanently disconnected one of the coating lines at the Schamber facility and will install a thermal oxidizer at one of the remaining coating lines. At the Broadway facility, Almond Products, Inc., will prepare a baseline monitoring report reflecting current operations and will develop and implement an operation and maintenance plan to ensure compliance with applicable pretreatment limits. Almond investment Co. will pay a civil penalty of $50,000, based on an ability-to-pay analysis, to resolve claims under the Clean Air Act, the Michigan SIP, and the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Almond Investment Co. and Almond Products, Inc.*, DOJ Ref. # 90–5–2–1–06732.

The proposed consent decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave., NW, Ste. 501 Grand Rapids, Michigan 49503, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27902 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on October 5, 1999, a proposed Consent Decree in *United States* v. *ASARCO, Inc., et al.*, Civil Action No. 99–1399, was lodged with the United States District Court for the District of Kansas.

This Consent Decree settles claims against ASARCO, Incorporated, Cyprus Amax Minerals Company, Gold Fields Mining Corporation, Blue Tee Corp., NL Industries, Inc., The Doe Run Resources Corporation and Sun Company, Inc. In this action, brought pursuant to sections 106 and 107 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9696 and 9607 and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, on behalf of the United States Environmental Protection Agency (''EPA''), the United States sought the performance of response work by the defendants at the Baxter Springs and Treece Subsites (''the Subsites'') of the Cherokee County Superfund Site in Cherokee County, Kansas pursuant to the Record of Decision, dated August 20, 1997 (''ROD''). Additionally, the United States sought reimbursement of past response costs as well as future oversight costs. Under the Consent Decree, defendants will perform response work in accordance with the ROD, will provide a cash payment for

EPA to perform institutional controls, and will reimburse the United States for one half of future EPA oversight costs. In exchange, defendants will receive a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, and section 7003 of RCRA relating to the Subsites, subject to all standard reservations and reopeners. In addition, defendants will receive contribution protection under Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and will receive forgiveness of EPA's past costs at the Subsites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ASARCO, Inc. et al.*, D.J. ref. 90–11–2–06017.

The Consent Decree may be examined at U.S. EPA—Region VII 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044. In requesting a complete copy with all Attachments, please enclose a check in the amount of $87.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of the Consent Decree without Attachments, please enclose a check in the amount of $24.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27900 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Bay Chemical Company, et al.*, Civil Action No. C–995521RJB was lodged on October 5, 1999 with the United States District Court for the Western District of Washington.

The complaint in this action seeks to recover, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607 response costs incurred and to be incurred by the U.S. Environmental Protection Agency (''EPA'') in the Hylebos Waterway Problem Areas in Operable Unit 1 (''OU1'') of the Commencement Bay Nearshore/Tideflats Superfund Site (hereinafter ''the Site'') located in Tacoma, Washington. The defendants include owners and operators of properties within two problem areas of one of the nine operable units at the Site.

The proposed Consent Decree embodies an agreement with seventeen potentially responsible parties (''PRPs'') pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, to pays approximately $762,880 in past and future response costs associated with the Hylebos Waterway Problem Areas of OU1 of the Site. The above-described payments include a premium to be paid by each settling party to offset the risks that actual future response costs will exceed current estimates.

The Consent Decree provides the settling defendants with releases for civil liability for response costs under Sections 106 and 107 of CERCLA relating to the Hylebos Waterway Problem Areas of OU1 of the Site. The Consent Decree explicitly reserves the United States' claims for response costs associated with other operable units and problem areas of the Site, natural resource damages, and other potential United States' claims.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States*. v. *Bay Chemical Company, et al*, DOJ Ref. No. 90–11–2–06010.

The proposed consent decree may be examined at the Office of the United States Attorney, 3600 Seafirst Plaza, 800 5th Avenue, room 3601, Seattle, WA 98104, and the Region X Office of the Environmental Protection Agency, Region X Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree may be obtained by mail from the Consent Library at the following address: U.S. Department of Justice, Environmental Enforcement Section, Post Office Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $175.00 (25 cents per page reproduction costs), payment to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27903 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *General Battery Corporation, et al.*, Civil Action No. 85–1372 (E.D. Pa.) was lodged with the court on September 14, 1999.

The proposed decree resolves claims of the United States against two parties to the action, M. Glosser & Sons, Inc. and Barbara Brown DiMenichi, under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs and actions at the Brown's Battery Breaking Superfund site in Tilden Township, Pennsylvania. The decree also resolves claims brought against the same parties by General Battery Corporation. The decree requires M. Glosser & Sons to pay, in reimbursement of response costs, $130,000 to the United States and $360,000 to General Battery Corporation. The decree requires Barbara Brown DiMenichi to reimburse $30,000 in response costs to the United States and to assign certain insurance policies to General Battery Corporation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Battery Corporation, et al.*, Civil Action No. 85–1372, DOJ Ref. # 90–11–3–76.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; or at the Region III Office of the Environmental Protection Agency, c/o Michael Hendershott, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611,

Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27901 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on October 7, 1999, a proposed consent decree in *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree resolves certain claims against General Electric Company (''GE'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607; section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973; and section 309 of the Clean Water Act, 33 U.S.C. 1319, regarding the disposal, release and/or threat of release of hazardous substances and/or wastes from the GE facility in Pittsfield, Massachusetts and related areas. Pursuant to the proposed settlement, GE shall reimburse the United States for certain past and future response costs; implement certain clean up measures at the GE facility, surrounding areas, and in the Housatonic River; and compensate the United States for natural resource damages. The total value of the settlement is estimated to exceed $250 million.

The proposed settlement also provides that the United States Environmental Protection Agency (''EPA'') will issue a draft permit to GE pursuant to the corrective action provisions of RCRA. Consistent with 40 CFR 124.10, notice is hereby given of the draft RCRA permit issued to GE pursuant to the corrective action provisions of RCRA. A copy of the Fact Sheet describing the draft RCRA permit and the process for the public to comment upon the draft permit may be obtained by contacting Angela Bonarrigo, Community Relations Coordinator, EPA-New England Region at (617) 918–1034.

The Department of Justice will receive for a period of sixty (60) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, Civil Action No. 99–30225–MAP, D.J. Ref. 90–11–3–1479, and 90–11–3–1479z. Consistent with section 7003(d) of RCRA, 42 U.S.C. 6973(d), the Department of Justice will provide an opportunity for a public meeting to comment upon the proposed settlement.

The proposed consent decree may be examined at either of the following locations: (1) The Springfield Office of the United States Attorney, District of Massachusetts 1550 Main Street, Suite 310, Springfield, Massachusetts 01103; or (2) Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203. A copy of the consent decree can be obtained my mail (without attachments) from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy of the consent decree (without attachments), please enclose a check in the amount of $102.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27905 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Rivers and Harbors Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 8, 1999, a proposed amendment consent decree in *United States* v. *City of Seattle*, Civil No. C90–395WD, was lodged with the United States District Court for the Western District of Washington. The amended consent decree allows reallocation of settlement proceeds under the existing consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amended consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Seattle* DOJ Ref. #90–11–2–527.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104 and at the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044, A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50. Make the check payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–27899 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on October 14, 1999, a consent decree was lodged in *United States* v. *Southdown, Inc.*, Civil Action No. 99–1674, with the United States District Court for the Western District of Pennsylvania.

This consent decree resolves alleged violations of Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), at Southdown, Inc's cement manufacturing facility in Wampum, Pennsylvania. The claims settled include alleged violations of limitations on visible and fugitive emissions imposed by the Pennsylvania State Implementation Plan (SIP). The consent decree provides for a civil penalty of $475,000, a Supplemental Environment Project (SEP) that requires Southdown to spend at least $75,000 to pave at least 11,810 square feet of dirt roads, and comprehensive injunctive relief, including the installation of new emissions control equipment and the identification and elimination of fugitive emissions to the full extent required by law.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Southdown, Inc.*, DOJ Ref. No. 90–5–2–1–2231. The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania. Copies of the consent decree may also be examined at the offices of the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $14.00 (twenty-five cents per page reproduction costs), payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc 99–27904 Filed 10–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316) by November 26, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Distribution of Characteristics of the Insured Unemployment.

OMB Number: 1205–0009.

Frequency: Monthly.

Affected Public: Federal Government; State, Local, or Tribal Govt.

Number of Respondents: 53.

Activity	Affected public	Respondents	Frequency	Average time per response	Total hours
Startup	States	53	Once	100 hrs	5,300
Reporting	States	53	Monthly	20 minutes	212

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This report is the only source of current demographic information (age, race/ethic, sex, occupation, industry) on the UI claimant population. These characteristics identify claimant cohorts for legislative, economic and social planning purposes and evaluation of the UI program on the Federal and State levels.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–27918 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 396–7316), by November 26, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0NEW.

Frequency: As needed.

Affected Public: State, Local or Tribal Government.

Number of Respondent: 53.

Estimated Time Per respondent: 40 minutes (average).

Total Burden Hours: 15,762 hours.

Total Annualized capital/startup cots: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Bureau of Labor Statistics (BLS) awards to State Agencies in order to assist them in operating one or more of seven Labor Market Information and/or Occupational Safety and Health Statistics Federal/State cooperative statical programs. To ensure a timely flow of data and to be able to evaluate and improve the programs it is necessary to conduct ongoing communication between BLS and its State partners dealing with, for example, deliverables, program enhancements, and administrative issues.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–27919 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,160 AND NAFTA–3127]

Polaroid Corporation Film Manufacturing Division (Integral), R1, R2, and R3 Plants Waltham Massachusetts; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 18, 1999, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices were signed June 21, 1999, and published in the **Federal Register** on July 20, 1999; the TAA at (64 FR 38920) and the NAFTA–TAA at (64 FR 38922).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of TAA for workers engaged in activities related to the production of integral film at Polaroid Corporation, Film Manufacturing Division (Integral), R1, R2 and R3 Plants Waltham, Massachusetts, was based on the finding that the ''contributed importantly'' criterion of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. The subject firm did not import products similar to that which was produced at the plants during the relevant time period.

The Department's denial of NAFTA–TAA for the same worker group was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. There was no shift in production of integral film from the subject firm to Mexico or Canada, nor were there company imports of like or directly competitive products from Mexico or Canada.

The petitioner asserts that machinery was shifted from the R2 plant production floor in Waltham to Mexico, and adds that the company has ordered semi-automatic assembly machines to be shipped to Mexico. The petitioner acknowledges that the machinery shipped to Mexico will be used to produce a new form of instant film called ''Deli Strip.'' The initial investigation revealed that Deli Strip was being developed in the Waltham plant by temporary workers, not employees of Polaroid Corporation. The decision to produce Deli Strip in Mexico as opposed to Waltham was a corporate decision, and therefore, did not adversely affect workers of the subject firm producing integral film.

The petitioner's second point focuses on their contention that the Department was incorrect in the statement contained in the decision document that there is no competition for the integral film format produced at the subject firm plants. The petitioner asserts that over the years 35mm film has become competitive with integral film. The petitioner states that this being true, a great deal of 35mm film sold in the U.S. is being manufactured overseas by competitors, and that Polaroid is searching for a new plant in China. There was no evidence that the subject firm is importing products like or directly competitive with integral film produced at the Film manufacturing Division (Integral), R1, R2, and R3 plants in Waltham, Massachusetts.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 8th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27917 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,040A and TA–W–35,040B]

The Clarks Companies, N.A.; Manufacturing Shoe Plant, Franklin, West Virginia, Hanover, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on October 29, 1998, applicable to workers of The Clarks Companies, N.A., Manufacturing Shoe Plant, Franklin, West Virginia. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations will occur in early 2000 at the Hanover, Pennsylvania location of The Clarks Companies. The Hanover, Pennsylvania location provides administrative support services for the subject firms' production facility in Franklin, West Virginia which is closing in early 2000. The workers are engaged in the production of men's dress and casual shoes.

The intent of the Department's certification is to include all workers of The Clarks Companies who were adversely affected by increased imports. Accordingly, the Department is

amending the certification to cover the workers of The Clarks Companies, Hanover, Pennsylvania.

The amended notice applicable to TA–W–35,040A is hereby issued as follows:

All workers of The Clarks Companies, Manufacturing Shoe Plant, Franklin, West Virginia (TA–W–35,040A) and Hanover, Pennsylvania (TA–W–35,040B) who became totally or partially separated from employment on or after September 25, 1997 through October 29, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27915 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 5, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 5, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC this 30th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix—Petitions Instituted on 09/30/1999

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
36,885	General Electric Co. (IUE)	Bucyrus, OH	09/13/1999	Fluorescent Lamps.
36,886	Carmet Company (Co.)	Bad Axe, MI	09/15/1999	Tungsten Carbide Parts.
36,887	Unitog (UNITEO	Warsaw, MO	09/09/1999	Uniforms.
36,888	Donaldson Company (Co.)	Oelwein, IA	07/06/1999	Engine Air Cleaners.
36,889	Ball Foster Glass (Co.)	Los Angeles, CA	09/17/1999	Glass Containers.
36,890	Crown Products (Wkrs)	Indiana, IN	09/23/1999	Wire and Sheet Metal Fabricating.
36,891	JPS Textile Group, Inc. (Co.)	Kingsport, TN	09/22/1999	Cotton Fabric.
36,892	NEC Technologies (Wkrs)	McDonough, GA	08/25/1999	Computer Monitors.
36,893	Calabrian Chemical Corp (Wkrs)	Port Neches, TX	09/20/1999	Chemicals.
36,894	Tara Textiles Int'l (Wkrs)	New York, NY	09/13/1999	Solid and Printed Textile Fabric.
36,895	AZ Is Coal Co. (UMWA)	Beckley, WV	09/12/1999	Coal.
36,896	General Electric Co (IUE)	Tell City, IN	09/22/1999	Fraction Motors and Parts.
36,897	Fargo Manufacturing Co. (Co.)	Poughkeepsie, NY	09/20/1999	Connectors.
36,898	Procon Products—Standex (Co.)	Mufreesboro, TN	09/20/1999	Positive Displacement Pumps.
36,899	GKN Sinter Metals (UAW)	Van Wert, OH	09/14/1999	Automotive Powdered Metal Parts.
36,900	Chadbourn Curtain Co. (Co.)	Chadbourn, NC	09/20/1999	Curtains.
36,901	Lear Corporation (Wkrs)	El Paso, TX	09/09/1999	Wiere Harness Sets.
36,902	Scovill Fasteners, Inc (Wkrs)	El Paso, TX	09/17/1999	Warehouse—Sales Office.
36,903	Unifi—Spanco Yarns (Wkrs)	Raeford, NC	09/10/1999	Yarn.
36,904	Bass Engery, Inc (Co.)	Breckenridge, TX	09/15/1999	Exploration & Production Drilling.
36,905	Kellwood Co. (Wkrs)	Rutherford, TN	09/10/1999	Men, Women & Children's Outerwear.
36,906	Prewash and Pressing Serv (Co.)	El Paso, TX	09/21/1999	Jeans.
36,907	Electric Cord Sets, Inc (Co.)	Angola, IN	09/16/1999	Power Supply Cords.
36,908	Remington Products (Wkrs)	Miford, CT	08/30/1999	Electric Shavers.
36,909	Topcraft Precision Molder (Wkrs)	Warminster, PA	09/16/1999	Staplers—Office Products.
36,910	Business Products & Serv. (Co.)	San Francisco, CA	09/14/1999	Support Services to Chevron.
36,911	Texaco U.S. Production (Wkrs)	Midland, TX	09/17/1999	Oi, Liquid—Hydro-Carbons, Gasoline.
36,912	Ultramar Diamond Shamrock (Wkrs)	Alma, MI	08/30/1999	Petroleum Products.
36,913	Ratholes, Inc (Co.)	Snyder, TX	09/23/1999	Drilling Services.
36,914	Forsheim Shoe Co. (Wrks)	Cape Girardeau, MO	09/09/1999	Dress Shoes and Work Shoes.

[FR Doc. 99–27910 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 084]

Grant Geophysical Corporation, Houston, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Grant Geophysical Corporation, Houston, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36, 084; Grant Geophysical Corporation
Houston, Texas (October 7, 1999)

Signed at Washington, DC this 8th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27914 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,588]

Hot Property, Inc. D.B.A Lorraine Wardy Enterprises, ''OPAL'', El Paso, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 28, 1999, applicable to workers of Lorraine Wardy Enterprises, El Paso, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read ''Hot Property, Inc., d/b/a Lorraine Wardy Enterprises, 'Opal' ''.

The amended notice applicable to TA–W–36,588 is hereby issued as follows:

All workers of Hot Property, Inc., d/b/a Lorraine Wardy Enterprises, ''Opal'', El Paso, Texas who became totally or partially separated from employment on or after June 30, 1998 through July 28, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27916 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,157 and TA–W–36,157A]

Paramount Pictures Hollywood, California and Walt Disney Pictures and Television Burbank, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Paramount Pictures, Hollywood, California and Walt Disney Pictures and Television, Burbank, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,157; Paramount Pictures
Hollywood, California (October 6, 1999)
and
TA–W–36,157A; Walt Disney Pictures and Television
Burbank, California (October 6, 1999)

Signed at Washington, DC this 8th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27913 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,713]

Ranger Oil Company, Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 16, 1999 in response to a worker petition which was filed on July 29, 1999 on behalf of workers at Ranger Oil Company, Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation had been terminated.

Signed in Washington, DC this 6th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27909 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,864 and TA–W–35,864A]

The Timkin Company Canton, Ohio and The Timkin Company Wooster, Ohio; Notice of Revised Determination on Reconsideration

On August 17, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration, applicable to workers of the subject firm locations in Canton and Wooster, Ohio. The notice was published in the **Federal Register** on August 31, 1999 (64 FR 47525).

The Department initially denied TAA to workers producing specialty alloy steel and tapered roller bearings and components of The Timkin Company in Wooster and Canton, Ohio, because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey of the major declining customers of The Timkin Company regarding their purchases of specialty carbon and alloy steel and tapered roller bearings and components. The survey revealed that customers accounting for a meaningful share of the subject firm's sales decline during the relevant time period, increased import purchases of articles like or directly competitive with those produced by

workers at the Canton and Wooster plants.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with specialty steel and tapered roller bearings and components, contributed importantly to the declines in sales or production and to the total or partial separation of workers of The Timkin Company, Canton, Ohio and Wooster, Ohio. In accordance with the provisions of the Act, I make the following certification:

All workers of The Timkin Company, Canton, Ohio and Wooster, Ohio, engaged in employment related to the production of specialty steel or tapered roller bearings and components, who became totally or partially separated from employment on or after March 2, 1998 through two years from the date of the issuance of this determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 13th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27908 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03420]

Millennium Textiles, Buchanan, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 7, 1999 in response to a petition filed on behalf of workers at Millennium Textiles, Buchanan, Georgia.

In a letter dated October 4, 1999, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of October 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27912 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03279, 03279A, 03279B, 03279C]

Thomaston Mills, Inc., Thomaston, GA, Zebulon, GA, New York, NY, Los Angeles, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Thomaston Mills, Inc., Thomaston, Georgia, Zebulon, Georgia, New York, New York and Los Angeles, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

NAFTA—03279; Thomaston Mills, Inc., Thomaston, Georgia
NAFTA—03279A Zebulon, Georgia
NAFTA—03279B New York, New York
NAFTA—03279C Los Angeles, California
(October 12, 1999)

Signed at Washington, DC this 13th day of October, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–27911 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–30–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 (Secretary) 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 where required a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term ''FR Notice'' appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for 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: October 18, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–99–005–C.
FR Notice: 64 FR 12183.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal is to use an alternative method of arranging its sprinkler system using a single overhead pipe sprinkler system. This is considered an acceptable alternative method for the Dugout Canyon Mine, with conditions. MSHA grants the petition for modification for the Dugout Canyon Mine with conditions.

Docket No.: M–99–008–C.
FR Notice: 64 FR 16760.
Petitioner: Consol of Kentucky, Inc.
Regulation Affected: 30 CFR 75.1101–8.

Summary of Findings: Petitioner's proposal is to use an alternative method of arranging its sprinkler system using a single overhead pipe sprinkler system. This is considered an acceptable

alternative method for the Big Springs El Mine, with conditions. MSHA grants the petition for modification for the Big Springs El Mine with conditions.

Docket No.: M–99–009–C.
FR Notice: 64 FR 16760.
Petitioner: KenAmerican Resources, Inc.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics instead of padlocks to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The spring-loaded device configuration in lieu of a padlock configuration does not apply to the use of padlocks in controlling accessibility in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Paradise No. 9 Mine, with conditions. MSHA grants the petition for modification for the Paradise No. 9 Mine with conditions.

Docket No.: M–99–013–C.
FR Notice: 64 FR 16761.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use high-voltage (4,160 volt) cables to supply power to its longwall mining system inby the last open crosscut. This is considered an acceptable alternative method for the Rend Lake Mine, with conditions. MSHA grants the petition for modification for the Rend Lake Mine with conditions.

Docket No.: M–99–016–C.
FR Notice: 64 FR 23873.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. This is considered an acceptable alternative method for the Rend Lake Mine, with conditions. MSHA grants the petition for modification for the Rend Lake Mine with conditions.

Docket No.: M–99–019–C.
FR Notice: 64 FR 23874.
Petitioner: K and B Coal, Inc.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices on its mobile battery-powered machines instead of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The spring-loaded device configuration in lieu of a padlock configuration does not apply to the use of padlocks in controlling accessibility in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Mine No. 1, with conditions. MSHA grants the petition for modification for the Mine No. 1 with conditions.

Docket No.: M–99–025–C.
FR Notice: 64 FR 25518.
Petitioner: Eighty-Four Mining Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to increase the maximum lengths of the trailing cables to 900 feet for the mining machine, loading machine, shuttle car, roof bolter, and section ventilation fan. The petitioner also states that the trailing cable would not be smaller than #4 A.W.G. for the section ventilation fan, roof bolting machine, and shuttle cars, smaller than #2 A.W.G. for the loading machine, or smaller than #2/0 A.W.G. for the continuous mining machine. This proposal, as amended by MSHA recommendations, is considered an acceptable alternative method for the Mine 84, with conditions. MSHA grants the petition for modification for the Mine 84 with conditions.

Docket No.: M–98–019–C.
FR Notice: 63 FR 18232.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: The Petitioner is operating under a previously granted modification, docket number M–94–166–C, granting the use of belt air in a two entry mining system, as amended. Petitioner requests that the term and condition I.(v) prohibiting the installation of hydraulic fluid pumping stations in the two entry longwall panel be changed. Petitioner had earlier petitioned to use non-Part 36 approved diesel equipment. Petitioner's request regarding the installation of hydraulic fluid pumping stations in the two entry longwall panel has previously been granted. Now, the petition is amended to use non-Part 36 approved diesel equipment. This is considered an acceptable alternative method for the Trail Mountain Mine, with conditions. MSHA grants the petition for modification for the Trail Mountain Mine with conditions.

Docket No.: M–98–020–C.
FR Notice: 63 FR 18232.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.352.
Summary of Findings: The Petitioner is operating under a previously granted modification, docket number M–94–167–C to use a belt conveyor in a return aircourse during development of two entry mining systems at the Trail Mountain Mine. Petitioner requests that the term and condition I.(v) prohibiting the installation of hydraulic fluid pumping stations in the two entry longwall panel be changed. Petitioner had earlier petitioned to use non-Part 36 approved diesel equipment. Petitioner's request regarding the installation of hydraulic fluid pumping stations in the two entry longwall panel has previously been granted. Now, the petition is amended to use non-Part 36 approved diesel equipment. This is considered an acceptable alternative method for the Trail Mountain Mine, with conditions. MSHA grants the petition for modification for the Trail Mountain Mine with conditions.

Docket No.: M–98–069–C.
FR Notice: 63 FR 45865.
Petitioner: Arclar Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use a locking screw threaded through a steel bracket or a spring-loaded device configuration instead of padlocks to lock battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The allowance of a locking screw or spring-loaded configuration in lieu of a padlock configuration does not apply to padlocks in the lockout and tagout requirements of 30 CFR 75.511. This limited application is considered an acceptable alternative method for the Big Ridge Mine Portal No. 2, with conditions. MSHA grants the petition for modification for the Big Ridge Mine Portal No. 2 with conditions.

Docket No.: M–98–096–C.
FR Notice: 63 FR 64104.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to permit provision of two portable fire extinguishers at each temporary electrical installation. Petitioner also proposes to store at each temporary electrical installation two multipurpose, dry chemical, portable fire extinguishers, each having at least a minimum capacity of 10 pounds of dry powder. This is considered an acceptable alternative method for the Mettiki Mine, with conditions. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M–98–104–C.
FR Notice: 64 FR 2521.
Petitioner: U.S. Steel Mining Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 4,160 volt cables to supply power to permissible longwall equipment. This is considered an acceptable alternative method for the Gary No. 50 Mine, with conditions. MSHA grants the petition for modification for the Gary No. 50 Mine with conditions.

Docket No.: M–98–105–C.
FR Notice: 64 FR 2521.
Petitioner: Windsor Coal Company.
Regulation Affected: 30 CFR 75.364(b)(1).
Summary of Findings: Petitioner's proposal is to establish evaluation points to monitor the air and gas measurements in the affected area; to maintain the evaluation points in safe conditions; to have a certified person test for methane and the quality and quantity of air at both evaluation points; and to have the person making the examinations and test place their initials, date, and time at the evaluation points and in a book on the surface made available for interested persons. This is considered an acceptable alternative method for the Windsor Mine, with conditions. MSHA grants the petition for modification for the Windsor Mine with conditions.

Docket No.: M–98–113–C.
FR Notice: 64 FR 2519.
Petitioner: White County Coal Corporation.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use a spring-loaded device with specific fastening characteristics in lieu of a padlock with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. This is considered an acceptable alternative method for the Pattiki Mine, with conditions. MSHA grants the petition for modification for the Pattiki Mine with conditions.

Docket No.: M–97–147–C.
FR Notice: 63 FR 5971.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.364(b)(2).
Summary of Findings: Petitioner's proposal is to establish evaluation points inby and outby the deteriorating return of the mine, and to have a certified person examine the evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the No. 3 Mine, with conditions. MSHA grants the petition for modification for the No. 3 Mine with conditions.

Docket No.: M–91–003–M.
FR Notice: 56 FR 23941.
Petitioner: Tg Soda Ash, Inc.
Regulation Affected: 30 CFR 57.22305.
Summary of Findings: Petitioner's proposal is to use a nonpermissible battery-powered drill for drilling holes for surveying spads in the panel face area inby the last open crosscut. This is considered an acceptable alternative method for the Wyoming Soda Ash Mine, with conditions. MSHA grants the petition for modification for the Wyoming Soda Ash Mine with conditions.

Docket No.: M–86–020–M.
FR Notice: 52 FR 5217.
Petitioner: Kenneth Utah Copper Corporation.
Regulation Affected: 30 CFR 56.9300(d).
Summary of Findings: The Petitioner is operating under a previously granted modification, 30 CFR 56.9022. Petitioner requested that a pipeline would be located on the inside edge (e.g., driver's side) of the impoundment roadway, when there is a drop off sufficient for equipment to overturn, to serve as a guide for equipment operators. Petition is amended to install delineators along the perimeter of those areas of the elevated roadway where no pipeline was laid and there was a drop-off sufficient for equipment to overturn. At least three delineators along each elevated shoulder would always be visible to the drivers of vehicles. This is considered an acceptable alternative method for the UC Concentrator Plant, with conditions. MSHA grants the petition for modification for the UC Concentrator Plant with conditions.

[FR Doc. 99–27854 Filed 10–25–99; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clark Elkhorn Coal Company

[Docket No. M–1999–084–c]

Clark Elkhorn Coal Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Ratliff Underground Mine (I.D. No. 15–16763) located in Pike County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into the machine mounted battery receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

2. Matrix Coal Company

[Docket No. M–1999–085–C]

Matrix Coal Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mohawk Underground Mine (I.D. No. 15–18085) located in Pike County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into the machine mounted battery receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

3. Remington Coal Company, Inc.

[Docket No. M–1999–086–C]

Remington Coal Company, 430 Harper Park Drive, Suite A, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stockburg No. 1 Mine (I.D. No. 46–08634) located in Kanawha County, West Virginia. The petitioner proposes to use a spring loaded locking device to secure battery plugs into machine mounted receptacle on mobile battery powered equipment instead of using padlocks. The petitioner asserts that application of the mandatory standard will result in a diminution of safety to the miners.

4. Goodin Creek Contracting, Inc.

[Docket No. M–1999–087–C]

Goodin Creek Contracting, Inc., Rt. 1, Box 419–A1, Gray, Kentucky 40734 has

filed a petition to modify the application of 30 CFR 75.380(f)(4) (escapeways; bituminous and lignite mines) to its Goodin Creek Mine (I.D. No. 15–17980) located in Knox County, Kentucky. The petitioner proposes to install two ten pound portable chemical fire extinguishers in the operators' deck of each Mescher tractor. The fire extinguisher will be readily accessible to the operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily prior to entering the escapeway, maintain records of the inspections, and maintain a sufficient number of spare fire extinguishers at the mine in case a fire extinguisher becomes defective. The petitioner asserts that because of the low 24-inch heights of the coal being mined, available fire suppression systems will not fit on the equipment being used. The petitioner further asserts that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

5. Canfield Energy, Inc.

[Docket No. M–1999–088–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its # 5 Mine (I.D. No. 15–18176) located in Knox County, Kentucky. The petitioner proposes to install two ten pound portable chemical fire extinguishers in the operators' deck of each Mescher tractor. The fire extinguisher will be readily accessible to the operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily prior to entering the escapeway, maintain records of the inspections, and maintain a sufficient number of spare fire extinguishers at the mine in case a fire extinguisher becomes defective. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

6. Canfield Energy, Inc.

[Docket No. M–1999–089–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its #5 Mine (I.D. No. 15–18176) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen detector instead of machine-mounted methane monitors on three-wheel tractors. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

7. Canterbury Coal Company

[Docket No. M–1999–090–C]

Canterbury Coal Company, R.D. #1, Box 119A, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its DiAnne Mine (I.D. No. 36–05708) located in Armstrong County, Pennsylvania. The petitioner proposes to use belt air to ventilate a working section(s). The petitioner proposes to install a carbon monoxide monitoring system as a fire detection system in all belt entries where air coursed through the belt entry is used to ventilate active working places. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

8. Mallie Coal Company

[Docket No. M–1999–091–C]

Mallie Coal Company, Rt. 1, Box 173, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 4 (I.D. No. 15–17603) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen detector instead of machine-mounted methane monitors on three-wheel tractors. The petitioner asserts that application of the existing standard will diminish the safety of the miners and the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

9. Marfork Coal Company, Inc.

[Docket No. M–1999–092–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Brushy Eagle Mine (I.D. No. 46–08315) located in Raleigh County, West Virginia. The petitioner proposes to use 4,160 volt longwall face equipment utilizing the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

10. RAG Empire Corporation

[Docket No. M–1999–093–C]

RAG Empire Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests a modification of the mandatory standard to permit the use of a 480-volt non-permissible pump in boreholes in sealed areas of the Eagle No. 5 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

11. RAG Empire Corporation

[Docket No. M–1999–094–C]

RAG Empire Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests a modification of the mandatory standard to permit the use of 480-volt non-permissible submersible pumps in boreholes into sealed areas at the 1 North areas of the Eagle No. 5 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

12. Wabash Mine Holding Company

[Docket No. M–1999–095–C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.332(a)(2) (working sections and working places) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the mandatory standard to permit the use of two continuous miners within the same split air. The petitioner proposes to have one continuous miner cleanup the working face previously mined, while the other continuous miner on the super section starts to cut and load coal from another working face on the same working section, on the same split of air. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

13. Canyon Fuel Company, LLC

[Docket No. M–1999–096–C]

Company Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to permissible longwall mining equipment. The petitioner states that application of the mandatory standard will prevent a diminution of safety to the miners resulting from the application of the existing standard. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

14. Drummond Company, Inc.

[Docket No. M–1999–097–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202–0246 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a variance from the mandatory standard to permit the use of its diesel grader without individual service brakes on all grader wheels. The petitioner proposes to (i) equip the grader with service brakes on each drive wheel and stationary emergency brakes; (ii) limit the tramming speed of the grader to 10 miles per hour; and (iii) train grader operators to check the function of the brakes during pre-operational checks and if required, train the operators to lower the grader blade to the ground as an additional braking mechanism and while the machine is parked. The petitioner states that all grader operators will be trained during refresher training and on all provisions of its proposed alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

15. Canyon Fuel Company, LLC

[Docket No. M–1999–098–C]

Canyon Fuel Company, LLC, HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.500 (permissible electric equipment) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the mandatory standard to permit the use of a nonpermissible hand-held battery powered drill in areas inby the last open crosscut. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

16. J & A Coal Corporation

[Docket No. M–1999–099–C]

J & A Coal Corporation, P.O. Box 848, Prestonburg, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 15–15776) located in Knott County, Kentucky. The petitioner proposes to use a spring loaded locking device to secure battery plugs into machine mounted receptacle on mobile battery powered equipment instead of using padlocks. The petitioner states that application of the mandatory standard will result in a diminution of safety to the miners affected.

17. Bowie Resources Limited

[Docket No. M–1999–100–C]

Bowie Resources Limited, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Bowie No. 2 Mine (I.D. No.05–04591) located in Delta County, Colorado. The petitioner proposes to install brakes on the front wheels of six wheeled road graders in its Bowie No. 2 Mine. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

18. RAG Emerald Resources Corporation

[Docket No. M–1999–101–C]

RAG Emerald Resources Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests that certain provisions be eliminated from its previously granted high-voltage longwall petition, docket number M–95–37–C. The petitioner proposes to use 4,160 high-voltage longwall equipment. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

19. Nehemiah Coal Company, Inc.

[Docket No. M–1999–102–C]

Nehemiah Coal Company, Inc., 644 Callahan Avenue, P.O. Box 466, Appalachia, Virginia 24216 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; diesel-powered and electric face equipment) to its Mine #1 (I.D. No. 44–06871) located in Wise County, Virginia. The petitioner proposes to operate face equipment without canopies. The petitioner asserts that using canopies in the low mining height present at the mine will result in a diminution of safety to the miners affected by the existing standard.

20. CONSOL of Kentucky, Inc.

[Docket No. M–1999–103–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Mousie H4 Mine (I.D. No. 15–18166) located in Knott County, Kentucky. The petitioner proposes to obtain a low- and medium voltage, three-phase, alternating current for use underground from a portable diesel-driven generator and to connect the neutral of the generator's transformer secondary through a suitable resistor to the frame of the diesel generator. The petitioner states that the frame of the diesel generator will not have solid connection to a borehole casing, a metal waterline, or a grounding conductor with a low resistance to earth. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

21. Wayne Processing, Inc.

[Docket No. M–1999–104–C]

Wayne Processing, Inc., Rt. 3, Box 144, Philippi, West Virginia 26416 has filed a petition to modify the application of 30 CFR 75.380(d)(3) (Escapeways; bituminous and lignite mines) to its Sentinel Mine (I.D. No. 46–014168) located in Barbour County, West Virginia. The petitioner proposes to use a mechnical device to travel across the #2 Miner Section belt undercast, where the escapeway height is less that that required by the standard. The undercast is used as a secondary escapeway. The petitioner proposes to post signs on both sides of the undercast indicating low clearance area. The petitioner states that the mechanical device will enable miners including disabled miners to escape quickly in an emergency, and allow a

worker to sit down or be provided with a stretcher and pulled across the undercast to either the inby or outby ends. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

22. Alex Energy, Inc.

[Docket No. M–1999–105–C]

Alex Energy, Inc., P.O. Box 857, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Jerry Fork Eagle Mine (I.D. No. 46–08787) located in Nicholas County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells and to notify the District Manager or designee prior to mining within 300 feet of the well. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 26, 1999. Copies of these petitions are available for inspection at that address.

Dated: October 18, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–27855 Filed 10–25–99; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 2, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

6952A Aviation Accident Report: Controlled flight into Terrain, Korean Air Flight 801, Boeing 747–300, HL7468, Nimitz Hill, Guam, on August 6, 1997

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, October 29, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: October 22, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–28097 Filed 10–22–99; 3:51 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Generic Letter 91–02, ''Reporting Mishaps Involving LLW Forms Prepared for Disposal.''

3. The form number, if applicable: N/A.

4. How often the collection is required: Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Generic Letter.

5. Who will be required or asked to report: Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

6. An estimate of the number of responses: 34.

7. The estimated number of annual respondents: 34.

8. An estimate of the number of hours needed annually to complete the requirement or request: 272 hours (an average of 8 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Generic Letter 91–02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether follow-up action is necessary to assure protection of public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by November 26, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0156), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–27951 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML; ASLBP No. 95–706–01–ML]

Hydro Resources, Inc.; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.721 and 2.1207, the Presiding Officer in the captioned 10 CFR part 2, Subpart L proceeding is hereby replaced by appointing Administrative Judge Thomas S. Moore as Presiding Officer in place of Administrative Judge Peter B. Bloch.

All correspondence, documents, and other material shall be filed with the Presiding Officer in accordance with 10 CFR 2.1203. The address of the new Presiding Officer is: Administrative Judge Thomas S. Moore, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Issued at Rockville, Maryland, this 20th day of October 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–27949 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments involve movement of loads in excess of the design-basis seismic capability of the auxiliary building load handling equipment and structures. The proposed amendment requests approval to move the steam generator sections through the auxiliary building and to disengage crane travel interlocks, and also requests relief from performance of Technical Specification Surveillance Requirement 4.9.7.1.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No. NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants,'' generically evaluates the probabilities for a heavy load handling event that could result in consequences that exceed 25% of 10 CFR 100 limits. The NRC determined, assuming heavy load handling in accordance with NUREG–0612 guidelines, that the associated risks are acceptable based on the very low likelihood of a load drop. The proposed activity will be performed in accordance with NUREG–0612 as approved for Donald C. Cook Nuclear Plant (CNP) and will be similar to the heavy loads program reviewed, approved, and demonstrated effective during the Unit 2 SGRP (Steam Generator Repair Project). The cranes feature single-failure-proof hoisting and braking systems in accordance with NUREG–0554, ''Single-Failure-Proof Cranes for Nuclear Power Plants,'' and are evaluated to safely retain the load in the unlikely event of the safe shutdown earthquake (SSE). As such, this change does not introduce any new accident precursors or initiators and there is not a significant increase in the probability of previously evaluated accidents.

Administrative controls substitute for crane travel interlocks during the lifts to prevent loads from being carried over spent fuel assemblies. In addition, a load path evaluation has determined that, in the unlikely event of a load drop, requirements for safe shutdown of the operating unit, decay heat removal, and spent fuel pool cooling continue to be satisfied. As a result, there is no significant increase in the consequences of a load drop. Based on the above, the probability of occurrence and the consequences of accidents previously evaluated are not increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The potential accident involved in the proposed change is a design basis seismic event during load handling. The NUREG–0554 guideline for crane seismic capability is safe retention of the load during an SSE. A current engineering study demonstrates that the SG [steam generator] sections are safely retained by the cranes during load handling even in the unlikely event of an SSE. Although the crane travel interlocks are disengaged during the lifts, administrative controls prevent loads from being carried over the spent fuel pool. Furthermore, the load path, methods, and types of loads are similar to those previously reviewed and approved for the Unit 2 SGRP. That review also found that the possibility of a new or different kind of accident was not created. The current reviews and analyses for the Unit 1 SGRP have not identified a credible new kind of accident or one that is different from the evaluated load drop scenario. Based on the above, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. Handling of heavy loads during the proposed activity will be in accordance with the guidelines of NUREG–0612 (including appropriate codes and standards) as approved for CNP and will be similar to the heavy loads program previously approved for the Unit 2 SGRP. Administrative controls substitute for crane travel interlocks during the lifts to ensure that no loads are carried over spent fuel assemblies. The loads will be lifted by cranes with the single-failure proof features specified by NUREG–0554. For these loads, the design basis seismic capability of the load handling equipment and structures is exceeded. However, the likelihood of a seismic event coincident with the limited lift times for these loads is very remote. Furthermore, an evaluation of these lifts that considers the conservatism inherent in the design basis calculations concludes that the loads are safely retained even in the event of an SSE. Based on the above, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville

Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 26, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 23, 1999, as supplemented October 11, 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 Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

John F. Stang, Sr.

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–27952 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, V.C. Summer Nuclear Station, Unit 1; Exemption

I

South Carolina Electric & Gas Company (the licensee) is the holder of Facility Operating License No. NPF–12, that authorizes operation of the V.C. Summer Nuclear Station. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located on the V.C. Summer Nuclear Station site in Jenkinsville, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G states that ''[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G limits.

Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundary (RCPB) from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief of the RCPB during low temperature overpressurization events. The licensee is required by the V.C. Summer Nuclear Station Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the TS.

Therefore, in order to address the provisions of amendments to the TS P–T limits and LTOP curves, the licensee requested in its submittal dated August 19, 1999, that the staff exempt V.C. Summer Nuclear Station from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, and substitute use of ASME Code Case N–640 as an alternate reference fracture toughness for reactor vessel materials for use in determining the P–T limits.

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated August 19, 1999, and is needed to support the TS amendment that is contained in the same submittal and is being processed separately. The proposed amendment would impact the P–T limits of TS 3/4.4 for V.C. Summer Nuclear Station related to the heatup, cooldown, and inservice test limitations for the Reactor Coolant System to a maximum of 32 Effective Full Power Years (EFPY). It will result in a revision to TS 3/4.4.9, Pressure/Temperature Limits, to reflect the revised P–T limits of the reactor vessel.

Code Case N–640

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR Part 50, Appendix G, to determine that the P–T limits meet the underlying intent of the NRC regulations.

The proposed amendment to revise the P–T limits for V.C. Summer Nuclear Station relies in part on the requested exemption. The ASME Code Case N–640 approach for calculating the allowable limit curves for various heatup and cooldown rates specifies that the total stress intensity factor, K_I, for the combined thermal and pressure stresses at any time during heatup or cooldown cannot be greater than the reference stress intensity factor, K_{IC}, for the metal temperature at that time. K_{IC} is obtained from the reference fracture toughness curve, defined in Appendix G to Section Xl of the 1996 ASME Code. The K_{IC} curve is based on the lower bound of static critical K_I values measured as a function of temperature on specimens of SA–533 Grade B Class 1, SA–508–2, and SA–508–3 steels.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of a P–T operating limits curve is more technically correct than the K_{Ia} curve. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heat-up and cooldown process of a reactor vessel. The licensee has determined that the use of the initial conservatism of the K_{Ia} curve when the curve was codified in 1974 was justified. This initial conservatism was necessary due to the limited knowledge of reactor pressure vessel materials. Since 1974, additional knowledge has been gained about reactor pressure vessel materials, which demonstrates that the lower bound on fracture toughness provided by the KI_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential reactor pressure vessel failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The two primary safety benefits in opening the low temperature operating window are a reduction in the challenges to RCS power-operated relief valves and elimination of RCP impeller cavitation wear.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of Summer with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P–T operating window. This restriction requires, under certain low temperature conditions, that only one reactor coolant pump in a reactor coolant loop be operated. The licensee has found from experience that the effect of this restriction is undesirable degradation of reactor coolant pump impellers that results from cavitation sustained when either one pump or one pump in each loop is operating. Implementation of the proposed P–T curves as allowed by ASME Code Case N–640 does not significantly reduce the margin of safety. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor pressure vessel materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the Code case would also meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and RG 1.99, Revision 2, the staff concluded that application of

the Code case as described would provide an adequate margin of safety against brittle failure of the RPVs. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the LTOP setpoints and P–T limits for the Summer reactor coolant system.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants South Carolina Electric & Gas Company an exemption from the requirements of 10 CFR Part 50, Section 50.60(a) and 10 CFR Part 50, Appendix G, for the V.C. Summer Nuclear Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 56359).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of October 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–27950 Filed 10–25–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company (''fund'') that may redeem its securities in kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 106 funds file the Form annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 106 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 18, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27880 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42042; File No. 10–127]

International Securities Exchange LLC; Notice of Filing of Amendment No. 1 to the Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

October 20, 1999.

The International Securities Exchange LLC (''ISE'') has submitted an amendment to its Form 1 application [1] under the Securities Exchange Act of 1934 (''Exchange Act''). The ISE is seeking registration as a national securities exchange under Section 6 of the Exchange Act.[2] A copy of the ISE's Amendment No. 1 to the Form 1, including all exhibits, is available in the Commission's Public Reference Room, File No. 10–127, and on the Commission's website at http://www.sec.gov/rules/othrindx.htm. The Commission received approximately 21 comment letters in response to the original notice publication of the ISE's Form 1,[3] several of which raised substantive issues. The ISE has responded to these comments by amending its Form 1 application and the exhibits thereto, as well as providing a detailed explanation of its governance provisions and trading rules.

The Commission is publishing notice of Amendment No. 1 to the ISE's filing to afford interested person an opportunity to submit additional written comments. The Commission will take these comments into consideration in making its determination about whether to grant ISE's request to be registered as an exchange. The Commission shall grant such registration if it finds that the requirement of the Exchange Act and the rules and regulations thereunder are satisfied.[4]

Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[1] *See* Letter to Johathan Katz, Secretary, Commission, from David Krell, President and CEO, ISE, dated September 24, 1999 (''Amendment No. 1'').

[2] *See* Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from David Krell, President and CEO, ISE, dated February 1, 1999 (''ISE Form 1'').

[3] *See* Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999). Copies of the comment letters are available in the Public Reference Room at the Commission and are contained in File No. 10–127.

[4] Section 19(a)(1) of the Exchange Act, 15 U.S.C. 78s(a)(1).

Washington, D.C. 20549–0609. Comments must be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments must be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comments must be received on or before November 16, 1999. All comment letters should refer to File No. 10–127; this file number should be included on the subject line if comments are submitted using e-mail. All submissions will be available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (http://www.sec.gov).

For questions regarding this release, contact: Sheila Slevin, Assistant Director, at (202) 942–0796, Christine Richardson, Attorney, at (202) 942–0748, or Joseph Morra, Attorney, at (202) 942–0781; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27894 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Noble International, Ltd., Common Stock, No Par Value per Share) File No. 1–13581

October 20, 1999.

Noble International, Ltd. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d–2(d) promulgated thereunder, to withdraw the security specified above (''Old Common Stock'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On January 26, 1999, the Company's Board of Directors approved a resolution to withdraw the Old Common Stock from listing and registration on the Amex in conjunction with a planned reincorporation of the Company in Delaware and the commencement thereafter of trading of the new Delaware Company's Common Stock, $.001 par value (''New Common Stock''), on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). Such reincorporation became effective at the close of business on July 6, 1999, and trading in the New Common Stock commenced on the Nasdaq at the opening of business on July 7, 1999.

At the time of its initial public offering in November 1997, the Company chose to list the Old Common Stock on the Amex only because the Company did not at that time meet the Nasdaq's quantitative listing criteria. As of December 31, 1998, however, the Company achieved the revenue and asset goals necessary to meet these listing criteria and shortly thereafter adopted the resolution described above.

In making the determination to have its New Common Stock quoted on the Nasdaq, the Company has considered the differing trading structures of the Nasdaq and the Exchange and has stated that it believes that the variety of market participants available through the Nasdaq will provide better shareholder value than the auction market of the Exchange has done.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by its Board of Directors authorizing the withdrawal of the Old Common Stock from listing on the Amex and by setting forth in detail to the Exchange the reasons and supporting facts for such proposed withdrawal. The Amex has in turn informed the Company that it would not interpose any objection to the Company's application to withdraw its Old Common Stock from listing and registration on the Exchange.

The Company's application relates solely to withdrawal of the Old Common Stock from listing and registration on the Exchange and shall not affect the New Common Stock's designation for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before November 10, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27883 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24105; 812–11510]

Puget Sound Alternative Investment Series Trust, et al.; Notice of Application

October 20, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF APPLICATION: The order would permit applicants to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

APPLICANTS: Puget Sound Alternative Investment Series Trust (the ''Trust'') and Puget Sound Asset Management Co., LLC (the ''Manager'').

FILING DATES: The application was filed on February 11, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, One Yesler Building, Suite 200, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment

Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently consists of one series (the ''Portfolio''). [1]

2. The Manager, registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser for the Portfolio under an investment advisory agreement (''Advisory Agreement''). Under the Advisory Agreement, the Manager is responsible for managing the investment and reinvestment of the Portfolio's assets (''Portfolio Management Services''), subject to the supervision and control of the Trust's board of trustees (the ''Board''). The Advisory Agreement also provides that the Manager may delegate its Portfolio Management Services to one or more subadvisers (''Subadvisers''). In the event of such delegation, the Manager will oversee and monitor the performance of each Subadviser and recommend the selection or termination of Subadvisers to the Board. In selecting Subadvisers, the Manager conducts extensive research and due diligence, using a combination of qualitative and quantitative criteria. The Portfolio pays the Manager a fee for its service based on the Portfolio's average daily net assets.

3. The Manager has entered into a subadvisory agreement (the ''Subadvisory Agreement'') with a single Subadviser to provide day-to-day Portfolio Management Services for the Portfolio. The Subadviser is, and any future Subadviser will be, registered under the Advisers Act. The Subadviser is not an ''affiliated person,'' as defined in section 2(a)(3) of the Act (''Affiliated Person''), of the Manager. The Manager pays the Subadviser a fee out of the fees the Manager receives from the Portfolio.

4. Applicants request relief to permit the Manager to enter into and amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an Affiliated Person of the Manager or the Trust, other than by reason of serving as a Subadviser to a Fund (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting shares. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that investment companies such as the Trust that use an adviser/subadviser structure divide responsibility for general management and investment advice between the Manager and one or more Subadvisers. Applicants also state that, under this type of management structure, the Manager selects and monitors the Subadvisers and the Subadvisers, in turn, select the specific portfolio investments. Applicants contend that, by choosing to invest in Funds that use the adviser/subadviser structure, investors are choosing to have the Manager manage the Subadvisers because the investors do not wish to select and monitor Subadvisers. Applicants submit that the requested relief will permit them to use the adviser/subadviser structure more efficiently by reducing expenses and by permitting the prompt implementation of subadvisory changes that are in the best interests of the shareholders. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of the Act and rules under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Manager will not enter into a Subadvisory Agreement with an Affiliated Subadviser without the agreement, including the compensation to be paid under the agreement, being approved by the shareholders of the applicable Fund.

2. At all times, a majority of the Board will be persons each of whom is not an ''interested person'' of the Trust (as defined in section 2(a)(19) of the Act) (the ''independent Trustees''), and the nomination of new or additional Independent Trustees will be committed to the discretion of then existing Independent Trustees.

3. When a Subadviser change is proposed for a Fund having an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

4. Before the currently existing Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act. Before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering is made of the shares of the Future Fund, provided that shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 7 below.

5. Within 90 days after the hiring of any new Subadviser, the Trust will furnish shareholders with all information about a new Subadviser that would be included in a proxy statement. The information will include any change in the disclosure caused by the addition of a new Subadviser. A Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

6. No trustee or officer of the Trust or managing member or officer of the Manager will own, directly or indirectly

[1] Applicants also request relief for any series of the Trust organized in the future (''Future Funds'' and collectively with the Portfolio, the ''Funds''), and any registered open-end management investment company, or series of the company, advised in the future by the Manager, or a person controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with the Manager that uses the adviser/subadviser structure described in the application and complies with the terms and conditions of the application (''Future Trusts''). Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant.

(other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser except for: (a) ownership of interests in the Manager or any entity that controls the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

7. The Trust will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the adviser/subadviser approach described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee Subadvisers and recommend their hiring, termination and replacement.

8. The Manager will provide general management and administrative services to the Trust, including overall supervisory responsibility for the general management and investment of the Trust's securities portfolios, and, subject to review and approval by the Board, will (i) set the Funds' overall investment strategies; (ii) select Subadvisers; (iii) monitor and evaluate the performance of the Subadvisers; (iv) allocate, and when appropriate, reallocate a Fund's assets among its Subadvisers in those cases where a Fund has more than one Subadviser; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the Trust's investment objectives, policies and restrictions.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27882 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24091; File No. 812–11694]

Sentry Life Insurance Company, et al.

October 20, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for approval pursuant to Section 26(b) the Investment Company Act of 1940 (the ''1940 Act'') approving the proposed substitutions of securities.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities issued by certain registered management investment companies for securities issued by certain other registered management investment companies currently held by separate accounts of Sentry Life Insurance Company and Sentry Life Insurance Company of New York to support variable annuity contracts and variable life insurance policies.

APPLICANTS: Sentry Life Insurance Company (''Sentry Life''), Sentry Life Insurance Company of New York (''Sentry Life of New York'' and, together with Sentry Life, the ''Companies''), and their respective separate accounts, Sentry Variable Account II (''Variable Account II''), Sentry Variable Life Account I (''Variable Life Account I''), and Sentry Variable Account I (''Variable Account I'' and together with Variable Account II and Variable Life Account I, the ''Accounts'').

FILING DATES: The application was filed on July 9, 1999, and amended and restated on September 29, 1999. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 15, 1999, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road, East, Westport, CT 06880, Attention: Lynn K. Stone, Esq.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Sentry Life of New York, a New York corporation, is a wholly-owned subsidiary of Sentry Life, a Wisconsin corporation. Sentry Life is a wholly-owned subsidiary of Sentry Insurance a Mutual Company, also a Wisconsin corporation.

2. Sentry Variable Account I is a separate account of Sentry Life of New York. Sentry Variable Account II and Sentry Variable Life Account I are separate accounts of Sentry Life. Each of the Accounts is registered under the 1940 Act as a unit investment trust. The assets of each Account support variable annuity contracts and, with respect to Variable Life Account I, variable life insurance policies (the ''Contracts''). Interests in each of the Accounts offered through the Contracts are registered under the Securities Act of 1933 on Form N–4 or Form S–6.

3. The variable annuity contracts permit Contract owners to make four transfers in any year before the income date and one transfer in any year after the income date. The variable life contracts permit owners to make four transfers in any Contract year. All the Contracts reserve the right to effect substitutions in compliance with applicable law or undertake to provide notice to the extent required by the 1940 Act.

4. Each of the Accounts is divided into four subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding series (each, a ''Portfolio'') of Neuberger Berman Advisers Management Trust, a series-type investment company which is registered under the 1940 Act as a diversified open-end management investment company.

5. Neuberger Berman Advisers Management Trust is currently comprised of nine Portfolios, the following four of which are involved in the proposed substitution: AMT Liquid Asset Portfolio; AMT Limited Maturity Bond Portfolio; AMT Balanced Portfolio; and AMT Growth Portfolio. Neuberger Berman Management is the investment manager, administrator and distributor for all four of the Portfolios. It engages Neuberger Berman, LLC as sub-adviser for each of the four Portfolios and to provide management and related services.

6. Applicants propose that the Companies carry out the following substitution of shares held by corresponding subaccounts of the Accounts: (a) shares of the Prime Reserve Portfolio of T. Rowe Price Fixed Income Series, Inc. for shares of the Liquid Asset Portfolio of Neuberger Berman Advisers Management Trust; (b) shares of the Limited-Term Bond Portfolio of T. Rowe Price Fixed Income Series, Inc. for shares of the Limited Maturity Bond Portfolio of Neuberger Berman Advisers Management Trust; (c) shares of the Personal Strategy Balanced Portfolio of T. Rowe Price Equity Series, Inc. for shares of the Balanced Portfolio of Neuberger Berman Advisers Management Trust; and (d) shares of the Aggressive Growth Portfolio of Janus Aspen Series for shares of the Growth Portfolio of Neuberger Berman Advisers Management Trust.

7. T. Rowe Price Fixed Income Series, T. Rowe Price Equity Series and Janus Aspen Series are each series type investment companies that are registered under the 1940 Act as open-end management investment companies. T. Rowe Price Fixed Income Series consists of two series, both of which are involved in the substitution. Each series is managed by an Investment Advisory Committee that develops and executes its investment program. T. Rowe Price Personal Strategy Balanced Portfolio is one of four series of the T. Rowe Price Equity Series, which are managed by two committees. The Asset Allocation Committee determines the asset allocation among stock, bonds and money market securities. The Investment Advisory Committee has day-to-day responsibility for management of investments. The Aggressive Growth Portfolio is one of eleven series of the Janus Aspen Series. The portfolio is advised by the Janus Capital Corporation.

8. The substitute portfolios have investment objectives that are similar to or comparable to those of the replaced portfolios. The Prime Reserve Portfolio, like the AMT Liquid Asset Portfolio, is a money market fund, which invests in high quality money market securities and maintains a stable $1.00 per share price. The Limited Term Bond Portfolio, like the AMT Limited Maturity Bond Portfolio, invests mainly in investment grade bonds and other securities from US Government and corporate issuers. The Personal Strategy Balanced Portfolio, like the AMT Balanced Portfolio, invests approximately 60 percent of its assets in growth stocks and the balance in senor fixed income securities. The Janus Aspen Series Aggressive Growth Portfolio, like the AMT Growth Portfolio, invests principally in the stocks of medium-sized companies that are selected for their growth potential.

9. The following table shows that the fees and expenses of the substituted funds are consistently lower than the replaced funds:

Neuberger Berman
AMT Liquid Asset Portfolio
Management Fee: .65%
Expenses: .49%
AMT Limited Maturity Bond Portfolio
Management Fee: .65%
Expenses: .11%

AMT Balanced Portfolio
Management Fee: .85%
Expenses: .18%

AMT Growth Portfolio
Management Fee: .83%
Expenses: .09%

T. Rowe Price Fixed Income Series, Inc.
Prime Reserve Portfolio
Management Fee: .55%
Expenses: *
Limited-Term Bond Portfolio
Management Fee: .70%
Expenses: *
T. Rowe Price Equity Series, Inc.
Personal Strategy Balanced Portfolio
Management Fee: .90%
Expenses: *
Janus Aspen Series
Aggressive Growth Portfolio
Management Fee: .72%
Expenses: .03%

* T. Rowe Price structures its management fee to include all expenses related to the portfolio.

10. The following table shows that, with one exception, the average annual returns of the substituted funds are higher than the replaced funds:

Neuberger Berman
AMT Liquid Assets
1996 3.3%
1997 3.5%
1998 3.4%
AMT Limited Maturity Bond
1996 3.1%
1997 5.5%
1998 3.1%

AMT Balanced
1996 5.6%
1997 18.0%
1998 10.9%

AMT Growth
1996 7.8%
1997 27.5%
1998 14.2%

T. Rowe Price Fixed Income, Inc.
Prime Reserve
1996 N/A
1997 5.33%
1998 5.29%
Limited-Term Bond
1996 3.26%
1997 6.74%
1998 7.28%
T. Rowe Price Equity Series, Inc.
Personal Strategy Balanced
1996 14.20%
1997 18.04%
1998 14.32%
Janus Aspen Fund
Aggressive Growth
1996 8.0%
1997 12.7%
1998 34.3%

11. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in the Accounts. The substitutions will be effected by redeeming shares of the replaced portfolios on the date of substitution at net asset value and using the proceeds to purchase shares of the substitute portfolios at net asset value on the same date. At all times all

Contract values will remain unchanged and fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, brokerage, accounting and other fees and expenses, will be paid by the Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

12. By supplements to the prospectuses for the Contracts and Accounts, all owners of Contracts have been notified of the Companies' intention to take the necessary actions, including seeking the order requested by the Application, to carry out the proposed substitutions. The supplements inform Contract owners that following the substitution, for a period of 30 days, the Life Companies will permit transfers from any subaccounts to any other subaccount without any limitation or charge being imposed and without the transfer counting against the number of transfers permitted each Contract year.

13. Additionally, within 5 days after the proposed substitutions are completed, all Contract owners will be sent a written notice informing them that the substitutions were completed and reiterating their right to make transfers to any other subaccount for a period of 30 days from the date of the notice without any limitation or charge being imposed and without the transfer counting against the number of transfers permitted each year. The Companies will include in such mailing the supplements to the prospectuses of the Accounts which describe the substitutions.

14. The Companies will provide Contract owners with copies of the substitute portfolios' prospectuses prior to the substitution or with the confirmation of the substitution.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the proposed substitutions. Section 26(b) provides, in pertinent part, that ''it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the commission shall have approved such substitution.'' Section 26(b) also provides that the Commission will approve the substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants asset that the purposes, terms and conditions of the proposed substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that the section is designed to prevent. Applicants further assert that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against.

3. Applicants maintain that each of the substitute portfolios is a suitable and appropriate investment vehicle for Contract owners. Each of the substitute portfolios has a similar or comparable investment objective as the portfolio it is replacing.

4. The average annual returns of the substitute portfolios for the past three years, with one exception, have exceeded the average annual returns of the replaced portfolios. The investment management and administrative fees and related expenses charged to the Accounts by the substitute portfolios are less than those fees and expenses charged to the Accounts by the replaced portfolios. Applicants, therefore, assert that the substitute portfolios will provide Contract owners with more favorable investment results than would be the case if the proposed substitutions do not take place.

5. Applicants assert that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past in that: (a) the investment objectives of the substitute portfolios are similar to or comparable to those of the replaced portfolios; (b) the substitutions, in all cases, will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder, without imposition of any transfer or similar charge; (c) the Companies have undertaken to assume the expenses and transaction costs, including among others, legal, brokerage and accounting fees and any other expenses, relating to the substitutions; (d) the substitutions will in no way alter the insurance benefits to Contract owners or the contractual obligations of the Life Companies; (e) the substitutions will in no way alter tax benefits to Contract owners; and (f) Contract owners may choose to simply withdraw amounts credited to them following the substitutions under the conditions that currently exist without incurring any charges (other then applicable withdrawal charges).

16. Applicants assert that the transactions are consistent with the policies of the portfolios as recited in the current registration statements and reports filed under the 1940 Act; and that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27885 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unistar Financial Service Corp., Common Stock, $.01 Par Value per Share) File No. 1–14975

October 20, 1999.

Unistar Financial Service Corp., a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

In its application to the Commission, the Company has stated that it does not believe it meets the requirements for continued listing on the Exchange. On August 24, 1999, representatives of the Amex advised the Company that, in reviewing the Company's eligibility for continued listing, the Amex was considering delisting the Security. The Exchange cited the following concerns to the Company:

(a) Whether the transactions through which the Company acquired U.S. Fidelity Holding Corp. involved related parties and, if so, whether those relationships were adequately disclosed;

(b) Whether the Company had appropriately valued a ''customer List''

which was its principal asset and which it carried at a value of approximately $86 million;

(c) Whether disclosure related to other transactions the Company has entered into, including disclosure and valuation of a reinsurance license, was complete and accurate; and

(d) Whether ownership interests and transactions in the common stock of the Company have been accurately disclosed.

In light of these concerns raised by the Amex, the Company has stated in its application to the Commission that it has determined it does not meet the requirements for continued listing on the Exchange. The Company has further stated in its application that it believes that these matters should be resolved by withdrawal of the Company's Security from listing on the Exchange.

Section 1011 of the American Stock Exchange Company Guide states:

> In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may, with the consent of the Exchange, file a delisting application, provided that it states in its application that it is no longer eligible for continued dealings on the Exchange.

The Exchange, by letter dated October 5, 1999, has advised the Company that, based on the provisions of Section 1011 quoted above, it has determined not to interpose an objection to the Company's filing of its application with the Commission to withdraw the Security from listing and registration on the Exchange.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolution approved by its Board of Directors, effective September 21, 1999, authorizing the withdrawal of the security from listing on the Amex.

Any interested person may, on or before November 10, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

secretary.

[FR Doc. 99–27884 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42029]

Order Directing Options Exchanges To Submit an Inter-Market Linkage Plan Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

October 19, 1999.

Notice is hereby given that pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the ''Act'').[1] the Securities and Exchange Commission (''SEC'' or ''Commission'') orders the American Stock Exchange LLC (''AMEX''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX''), as well as requests the International Securities Exchange (''ISE'')[2] (collectively, the ''Options Exchanges''), to act jointly in discussing, developing, and submitting for Commission approval an inter-market linkage plan for multiply-traded options (''Linkage Plan''). The Commission further directs the Options Exchanges to submit for Commission approval a Linkage Plan no later than 90 days after the issuance of this Order.

I. Background

In 1975, Congress directed the Commission to oversee the development of a national market system.[3] At the time, the trading of standardized options was relatively new.[4] As a result, the Commission deferred applying to the options markets many of the national market system initiatives that applied to the equity markets to give options trading an opportunity to develop. Nevertheless, since the establishment of the options exchanges, the Commission has repeatedly called for market integration facilities for the options markets.[5] In 1980, the Commission ended a voluntary moratorium on expansion of the standardized options markets. The Commission deferred the general expansion of multiple trading to afford the options exchanges ''an opportunity to consider whether, and to what extent, the development of market integration facilities would minimie concerns regarding market fragmentation and maximize competitive opportunities in the options markets.''[6]

In 1989, the Commission adopted Exchange Act Rule 19c–5, which generally prohibits any exchange from adopting rules limiting its ability to list any stock option class because that option class is listed on another exchange.[7] In proposing Rule 19c–5, the Commission acknowledged that market

[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive, to facilitate the establishment of a national market system, by rule or order, ''to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.''

[2] The ISE has filed an application with the Commission to register as a national securities exchange. *See* Securities Exchange Act Release No. 41439 (May 24, 1999) 64 FR 29367 (June 1, 1999).

[3] Pub. L. 49–29 Stat. 97 (1975).

[4] The trading of standardized options on securities exchanges began in 1973, with the organization of CBOE as a national securities exchange. *See* Securities Exchange Act Release No. 9985 (February 1, 1973) 1 S.E.C. Doc. 11 (February 13, 1973). Subsequently, the Commission approved options pilot programs at AMEX, PHLX, PCX, and the Midwest Stock Exchange (''MSE''). The New York Stock Exchange (''NYSE'') began trading options in 1985. *See* Securities Exchange Act Release No. 11144 (December 19, 1974) 40 FR 3258 (January 20, 1975); Securities Exchange Act Release No. 11423 (May 15, 1975) 6 S.E.C. Doc. 894 (May 28, 1975); Securities Exchange Act Release No. 12283 (March 30, 1976) 41 FR 14454 (April 5, 1976); Securities Exchange Act Release No. 13045 (December 8, 1976) 41 FR 54783 (December 15, 1976); and Securities Exchange Act Release No. 21759 (February 14, 1985) 50 FR 7250 (February 21, 1985). The MSE's options program was merged into the CBOE's program in 1979. The NYSE sold its options business to CBOE in 1997. Currently, AMEX, CBOE, PCX, and PHLX are the only national exchanges that trade standardized options.

[5] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978) (examining the major issues of market structure in standardized options markets, including multiple trading); Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980) (deferring expansion of multiple trading to afford the options exchanges an opportunity to consider the development of market integration facilities); Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310 (May 15, 1985) (urging options market participants to consider the development of market integration facilities); Directorate of Economic and Policy Analysis, ''The Effects of Multiple Trading on the Market for OTC Options'' (November 1986); Office of the Chief Economist, ''Potential Competition and Actual Competition in the Options Market'' (November 1986); Securities Exchange Act Release No. 26871 (May 26, 1989) 54 FR 24058 (June 5, 1989) (requesting comment on three measures, including an inter-market linkage).

[6] *See* Securities Exchange Act Release No. 16701 (March 26, 1980) 45 FR 21426 (April 1, 1980). In 1997, the Commission had requested that the options exchanges refrain from listing any options classes beyond those already listed as of July 15, 1997, because of concerns over the rapid growth in listed options trading and possible trading and sales practice abuses.

[7] *See* Securities Exchange Act Release No. 26870 (May 26, 1989) 54 FR 23963 (June 5, 1989).

integration facilities were unlikely to be built voluntarily if they were a prerequisite to multiple trading.[8] In 1990, then Chairman Breeden requested that the options exchanges develop an inter-market linkage plan.[9] The exchanges submitted proposals for the development of a linkage. However, unlike the equity markets,[10] the options exchanges never adopted an inter-market linkage plan.[11]

Recent increases in the multiple listing of options previously listed on a single exchange have heightened the need for an inter-market linkage. The registered options exchanges have been given ample opportunity to create a linkage but have not done so in the absence of a Commission directive. Ultimately, the Commission has concluded that the options markets have developed sufficiently to make market integration not only possible but also critical to promoting vigorous competition among the option exchanges. Therefore, the Commission is now directing the Options Exchanges to develop an acceptable Linkage Plan to be submitted to the Commission for its consideration.

II. Discussion

Section 11A(a)(2) of the Act [12] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. In exercising its authority to facilitate the establishment of a national market system, the Commission must protect the public interest in maintaining fair and orderly markets in the face of new technology and other significant market developments.[13] As part of this authority, Congress gave the Commission the ability to authorize or require by order the self-regulatory organizations ''to act jointly * * * in planning * * * operating, or regulating a national market system.'' [14] This authority is intended, among other things, to enable the Commission to require joint activity that otherwise might be asserted to have a negative impact on competition, where the activity serves the public interest and the interests of investors.

The Commission believes that establishing a linkage among options markets will benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders. The Commission considers ensuring competition among options market and the best execution of customer options orders to be in the public interest and for the benefit of investors. The Commission further believes that an inter-market linkage is essential to achieving these goals. In the absence of a linkage, which includes a prohibition against trade-throughs, the likelihood of inter-market trade-throughs increases. As a result, there is a risk that investors will not receive the best price available. This concern is heightened given the recent increase in multiple listing of the most active options.

The Commission finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Options Exchanges to work jointly in discussing, developing, and implementing a Linkage Plan. Accordingly, the Commission has determined to order the Options Exchanges to cooperate with each other and to conduct joint discussions and to take such joint action as is necessary to develop and implement a single Linkage Plan to permit the efficient transmission of orders among the various Options Exchanges on a nondiscriminatory basis. The Commission believes that a linkage of all the Options Exchanges that permits orders to be transmitted between Options Exchanges on a nondiscriminatory basis is necessary to increase the opportunities for brokers to secure the best execution of their customers' orders, to ensure effective competition among the Options Exchanges, and to further facilitate the establishment of a national market system as directed by Congress in Section 11A of the Act.[15]

The Commission further believes that it is in the best interest of the Options Exchanges to develop and implement a Linkage Plan, which can be integrated with the Options Exchanges' existing technology at the lowest possible cost, that is acceptable to all of the Options Exchanges. As a result, the Commission is not mandating the details of a linkage at this time. At the same time, however, the Commission believes that to operate effectively any Linkage Plan submitted by the Options Exchanges for approval by the Commission must contain the following elements:

- *Uniform Trade-Through Rules*

Uniform trade-through rules are a necessary part of a national market system. Trade-through rules should generally prohibit a trade from being executed on one options market in a multiply-listed option at a price inferior to the price quoted on another options market. The absence of clear trade-through rules removes one incentive that firms would otherwise have to seek out better prices at away markets. In addition, as part of the implementation of uniform trade-through rules, the Options Exchanges should submit to the Commission proposed rule changes repealing existing trade-or-fade rules that become unnecessary with the adoption of trade-through rules.[16]

- *Expansion of Public Customer Definition*

The Commission believes that the firm quote requirement of the four currently-registered options exchanges [17] should be expanded to include agency orders presented by competing exchanges.[18] Therefore, an agency order received by one exchange that is routed to another exchange displaying the best bid or offer would receive the same protection as customer orders that originate on the exchange showing the best bid or offer.

Although the Commission is not mandating that the Options Exchanges include a uniform firm quote rule requirement as part of the Linkage Plan, the Commission anticipates that the Options Exchanges will address this issue in the proposal they submit to the Commission for approval. The Commission also anticipates that the options Exchanges will address the issue of fees charged by exchanges that receive orders through the proposed linkage.

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act,[19] that the AMEX, CBOE, PCX, and PHLX act jointly with ISE in discussing,

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[8] *See* Securities Exchange Act Release No. 24613 (June 18, 1987) 52 FR 23849 (June 25, 1987).

[9] *See* Letter from Chairman Breeden to the Registered Options Exchanges dated January 9, 1990.

[10] *See* Securities Exchange Act Release No. 14661 (April 14, 1978) (issuing a provisional order authorizing ITS).

[11] *See* Securities Exchange Act Release No. 30187 (January 14, 1992) 57 FR 2612 (January 22, 1992) (soliciting comments on an inter-market linkage plan submitted by four out of five options exchanges). The exchanges never came to an agreement on an acceptable proposal and the Commission never approved it.

[12] 15 U.S.C. 78K–1(a)(2).

[13] *See generally*, Section 11A(a)(1)(B) of the Act, 15 U.S.C. 78k–1(a)(1)(B), and Section 11A(a)(1)(C) of the Act, 15 U.S.C. 78k–1(a)(1)(C).

[14] Section 11A(a)(3)(B) of the Act, U.S.C. 78k–1(a)(3)(B).

[15] 15 U.S.C. 78k–1.

[16] *See* AMEX Rule 958A, Commentary .01; CBOE Rule 8.51(b); PCX Rule 6.37(d); PHLX Rule 1015(b); and proposed ISE Rule 804(d)(2).

[17] *See* AMEX Rule 958A; CBOE Rule 8.51(a); PCX Rule 6.86(a); and PHLX Rule 1015(a). This change should be reflected in ISE's rules when approved by the Commission.

[18] Accordingly, the Options Exchanges should submit to the Commission proposed rule changes to expand the public customer definition together with any Linkage Plan.

[19] 15 U.S.C. 78k–1(a)(3)(B).

developing, and submitting for Commission approval a Linkage Plan no later than 90 days after the issuance of this Order.[20]

This Order will be effective until such time as the options exchanges submit a Linkage Plan to the Commission for approval.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27881 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42034; File No. SR–BSE–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Amending its Revenue Sharing Program

October 19, 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 September 30, 1999, the Boston Stock Exchange, Inc. (''BSE'' 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 BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the BSE 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 BSE 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

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue that the BSE must generate before it shares excess revenue with eligible member firms is $1,300,000.[3] The BSE proposes to revise this amount to $1,400,000 to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the BSE and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–99–14 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–27891 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

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[20] Although Commission staff may be consulted in discussing the proposed Linkage Plan, staff presence at joint discussions is not required by this Order. In issuing this Order, the Commission does not address: (a) any joint or other conduct that occurred prior to the issuance of this Order, and (b) any joint or other conduct occurring after the date of this Order which is not ordered or requested by this Order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Eligible member firms receive excess revenue in the form of a credit that is applied toward each firm's total monthly transaction fees. *See* Securities Exchange Act Release No. 40591 (Oct. 22, 1998), 63 FR 58078 (Oct. 29, 1998). A member firm that generates at least $50,000 in BSE automated transaction fees is eligible to share in excess revenue. *See* Securities Exchange Act Release No. 41809 (Aug. 30, 1999), 64 FR 48887 (Sept. 8, 1999).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, Exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42032; File No. SR–NASD–99–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Establishing Execution Fees for the Nasdaq Application of the OptiMark System

October 19, 1999.

Purusant 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 October 6, 1999, the National Association of Securities Dealers, Inc., (''NASD'' or ''Association'') through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish fees for NASD members that obtain executions through, or sponsor customers that use, the Nasdaq Application of the OptiMark System (''Nasdaq Application''). The text of the proposed rule change is available at the NASD and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The SEC recently approved a proposed rule change filed by the NASD to implement the Nasdaq Application.[3] The Nasdaq Application permits NASD members and their customers to enter orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. (''OptiMark Match'') and has been integrated into Nasdaq's facilities in Trumbull, CT.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the quotes in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that profiles have matched, it creates execution reports for such matched interests. When an execution occurs, Nasdaq will charge a fee for such execution.

Nasdaq will charge NASD members that obtain executions through this new service the following fees. First, as a standard fee for all executions of profiles, Nasdaq shall charge a fee of $0.01 per share executed to the NASD member in whose name the profile was entered. Second, for executions that occur when a profile is entered by an NASD member for its own account as principal, the NASD member will be charged a discounted execution charge of $0.005 per share. However, if a profile that would otherwise qualify for a discounted fee receives an execution that results in price improvement of more than the minimum price increment, the execution will be charged the standard rate of $0.01.[4]

[3] Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999).

[4] With respect to the price improvement element of the fee structure, as an incentive to provide liquidity to the system, Nasdaq will temporarily waive the imposition of the price improvement aspect of the fee structure. Thus, even if an execution of a profile obtains price improvement as a result of a match, for the next six months, Nasdaq will not impose the higher execution fee if the NASD member's principal execution otherwise qualifies for the discounted execution rate.

Finally, Nasdaq has determined not to charge an execution fee with respect to executions that occur against any market maker or ECN quotations as a result of the Nasdaq Application including such quotations as part of the optiMark Match process.[5]

With respect to customers that are sponsored by NASD members and that directly enter profiles into the Nasdaq Application after signing all necessary agreements with Nasdaq, OptiMark, the sponsoring NASD member, and the Designated Clearing Broker, Nasdaq notes that fees for executions of such profiles shall be charged to the NASD member that is the sponsor of such customer. Therefore, Nasdaq will submit an invoice to the NASD member designated as the clearing broker, who will be responsible for paying the fee to Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[6] in that the proposed fees provide for the equitable allocation of reasonable fees among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder in that it constitutes a fee for executions charged to NASD members. At any time within 60 days of the filing of the proposed rule change, the

[5] As is currently the case for executions through other Nasdaq facilities, an ECN whose quotation is matched with an Optimark profile may continue to charge a fee to the contra party. Telephone conversation between Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on October 13, 1999.

[6] 15 U.S.C. 78o–(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–56 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27887 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42036; File No. SR–NASD–99–35]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Definition of ''Person Associated With a Member''

October 19, 1999.

I. Introduction

On August 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of ''person associated with a member'' in the By-Laws of the NASD, NASD Regulation, Inc. (''NASD Regulation''), and The Nasdaq Stock Market, Inc. (''Nasdaq''). Notice of the proposed rule change was published in the **Federal Register** on September 10, 1999.[3] The commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change comprises two amendments to the definition of ''person associated with a member'' in Article I of the NASD By-Laws and conforming amendments to the NASD Regulation and Nasdaq By-Laws.[4] It also includes a minor textual change to the definition to clarify an ambiguity.

The first amendment expands the definition to apply to certain owners of NASD members (''members'') not currently included in its scope, specifically for purposes of NASD Rule 8210, entitled ''Provision of Information and Testimony and Inspection and Copying of Books.''[5] Currently, the definition of ''person associated with a member'' includes only owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect ''control'' relationship with the member.[6] The amendment expands the definition to give the staff authority to require the provision of information and testimony under NASD Rule 8210 from any person—including a natural person or corporate or other entity—who holds a five percent or greater interest in a member firm, regardless of whether they ''control'' the member firm or are actively engaged in its securities or investment banking business. Such persons are listed in Schedule A of Form BD of a member.

The second proposed provision resolves an anomaly between the current By-Law definition of the term ''person associated with a member'' and Form U–4, which is the application form for registration that must be signed by prospective registrants. Form U–4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition of ''associated person'' in the By-Laws does not address applicants for registration. The proposed rule change makes the By-Laws consistent with Form U–4 in this respect by including in the definition a person who has applied for registration.

Finally, the word ''other'' is inserted into subsection 2 of the definition of ''person associated with a member'' to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act, and, in particular, the requirements of section 15A[7] of the Act applicable to a registered securities association.[8] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[9] 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. The Commission finds that the proposed rule change will promote the objectives of Section 15A(b)(6) of the Act by helping the NASD obtain necessary information to conduct its regulatory

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41820 (September 1, 1999), 64 FR 49261.

[4] The By-Laws of the NASD, NASD Regulation, and Nasdaq are herein collectively referred to as ''By-Laws.''

[5] NASD Rule 8210 authorizes the staff of the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

[6] The By-Laws do not define the term ''control.'' Form BD defines ''control'' as the ''power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that * * * directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or * * * in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company.''

[7] 15 U.S.C. 78*o*–3.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6)

[9] In reviewing the proposed rule change, the commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

investigations and proceedings and clarifying its jurisdiction over applicants for registration.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2)[10] of the Act, that the proposed rule change (SR–NASD–99–35) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27889 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42033; File No. SR–NYSE–99–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's Branch Office Application

October 19, 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 June 8, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposal was amended on September 9, 1999,[3] so as to be filed as a ''non-controversial'' rule change under Rule 19b–4(f)(6).[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The NYSE proposes to revise its Branch Office Application form to require more detailed information relating to the establishment of new branch offices by Exchange members and member organizations and to adopt a new Office Space Sharing form. The test of the proposed rule change is available at the Office of the Secretary, the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 NYSE 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 this proposed rule change is to submit to the Commission the following two forms: the revised Branch Office Application and the new Office Space Sharing form. The Branch Office Application is employed by Exchange members and member organizations seeking Exchange approval of a new branch office in accordance with Exchange Rule 342 (''Offices—Approval, Supervision and Control''). Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established, other than a main office. Exchange Rule 343 (''Offices—Sole Tenancy, Hours, Disply of Membership Certificates'') contains criteria under which members or member organizations may share office space with the securities-related individuals and organizations. The NYSE proposes to adopt an Office Space Sharing form, which will be used by members and member organizations seeking to share office space pursuant to NYSE Rule 343.

The Exchange determined to revise its Branch Office Application so that the form will provide more meaningful and detailed information concerning the personnel and activities of a member's or member organization's proposal branch office. Such additional information on the Application will enable the Exchange to make a better-informed decision concerning approval of the location.

Specifically, additional information required by the revised Application includes:

(i) A description of the types of activities to be conducted and the products to be offered at the branch office;

(ii) The estimated number of accounts to be serviced by the office;

(iii) Whether any persons assigned to the office are subject to Statutory Disqualification or have reportable adverse disciplinary histories;

(iv) Whether the office will have independent contractors assigned to it;

(v) Whether the office has been acquired from another broker-dealer or financial institution;

(vi) Where records pertaining to the office are maintained;

(vii) whether any person other than the member organization have a financial interest in the office;

(viii) Whether the broker-dealer and the office's registered representatives have required state registrations; and

(ix) Submission of the social security number and Central Registration Depository (''CRD'') number of each registered person to be assigned to the office.

If the office will be shared with another person or organization, an Office Space Sharing form, which addresses compliance with the Exchange's space sharing rule, NYSE Rule 343, will be completed as part of the Branch Office Application.

Generally, NYSE Rule 343 prohibits Exchange members and member organizations from sharing office space with other broker-dealers, investment advisors or any other persons who conduct a securities or commodities business with the public, without prior approval of the Exchange. However, the rule sets forth certain conditions under which Exchange members or member organizations may share office space with securities-related individuals or organizations. If each of the appropriate rule provision's enumerated conditions is met, the Exchange may permit a space-sharing arrangement. The new Office Space Sharing form will serve as an attestation by the member or member organization that the conditions required by NYSE Rule 343 have been met. Exchange approval of the branch office location will encompass, where applicable, approval of the space

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated September 8, 1999 (''Amendment No. 1''). The NYSE originally filed the proposed rule change under Section 19(b)(3)(A)(iii) of the Act. 15 U.S.C. 78s(b)(3)(A)(iii). Amendment No. 1 also includes a rearranged version of the revised Branch Office Application Form. Additionally, in Amendment No. 1, the NYSE further clarifies the intent of the proposal and describes the implementation plan for the electronic filing program.

[4] 17 CFR 240.19b–4(f)(6).

sharing arrangement; there will not be a separate approval of the space sharing arrangement.

The Exchange intends that, commencing in or about the second calendar quarter of 2000, the filing and processing of all Branch Office Applications will be performed electronically by all member firms that have Internet access via a software package that the Exchange will provide free of charge to all member organizations.[5] The NYSE has represented that, during December 1999, it will issue an Information Memorandum informing all members and member organizations that, as of February 1, 2000, all new branch office applications must be submitted on the revised form.[6] Electronic filings will be made by firms who have had the appropriate software installed; all others will manually file the revised form. By June 30, 2000, all members and member organizations with Internet access will have the software installed to enable electronic filing.

As a security measure, member organizations will be required to identify to the Exchange those persons who will become registered users and who will have access to the program and the ability to transmit information to the Exchange. Once submitted to the Exchange, the application and its current status may be viewed at any time by the authorized member organization personnel through the software program. The Exchange has been testing this electronic program since April 1999. This application is Internet-based and will be the sole method for submission of Branch Office Applications to the Exchange, although member organizations that do not have Internet access may submit the applications in hard copy.

The Exchange believes that revisions to the Branch Office Application will enhance the utility of the form in connection with the Exchange's regulatory oversight responsibilities by providing more detailed reporting and substantive disclosures. The revised form will also aid in monitoring for compliance with NYSE Rule 342 which mandates that each office, department and business activity of the member organization be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility.

2. Statutory Basis

The Exchange believes the proposed rule change in consistent with Section 6(b)(5) of the Act[7] which requires that the rules of the Exchange 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, in that it will enhance the process of Exchange review and approval of new branch offices established by Exchange members and member organizations. Further, the revised Branch Office Application and new Office Space Sharing forms will provide the Exchange with a centralized and efficient means of maintaining information concerning member organizations, their branch offices, and associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[8] and Rule 19b–4(f)(6) thereunder,[9] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) the NYSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–23 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27890 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

[5] In Amendment No. 1, the Exchange explains that implementation will be gradual instead of immediate implementation by all member organizations because the Exchange Technology staff and all applicable member organization staff will be focusing efforts and resources on overall Y2K compliance during the last quarter of 1999. Installation of the software will be prioritized by firms who are the most active in submitting new branch office applications. *See* Amendment No. 1, *supra* note 3.

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)f.

[10] Although originally filed under Section 19(b)(3)(A)(iii) on June 8, 1999, the Exchange refiled the proposed rule change under Rule 19b–4(f)(6) on September 9, 1999, at the suggestion of the Commission. *See* Amendment No. 1, *supra* note 3. Because the Commission had the proposed rule filing for more than five business days, because Amendment No. 1 did not substantively alter the proposed rule change already before the Commission, and because the Commission instructed the Exchange to refile the proposed rule change under Rule 19b–4(f)(6), the Commission waives the five-day written notice requirement for a proposed rule change under Rule 19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42040; File No. SR–NYSE–99–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change Amending Cancellation Procedures for MOC/LOC Orders

October 20, 1999.

I. Introduction

On June 14, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4,[2] a proposed rule change to amend market-on-close (''MOC'') and limit-on-close (''LOC'') order cancellation procedures.

The proposed rule change was published for comment in the **Federal Register** on August 18, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange utilizes special order cancellation procedures for MOC/LOC orders. Current procedures prohibit the cancellation of MOC/LOC orders after 3:40 p.m., except: (1) To correct a legitimate error, (2) to comply with the provisions of Exchange Rule 80A [4] or, (3) when a regulatory trading halt is in effect at or after 3:40 p.m. [5]

The proposed rule change would prohibit the cancellation or reduction in size of MOC/LOC orders after 3:50 p.m. for *any* reason. If Rule 80A goes into effect *before* 3:50 p.m., then members and member organizations must cancel MOC index arbitrage orders that are related to a derivative index product that is not expiring and that do not meet the tick restrictions no later than 3:50 p.m.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange proposes to amend its MOC/LOC order cancellation procedures by prohibiting any cancellations after 3:50 p.m. The Commission finds that prohibiting cancellations after 3:50 p.m. may increase the effectiveness of the MOC/LOC publication procedures thereby reducing volatility at the close. Currently, a market participant is permitted to cancel a MOC/LOC order until the market closes if Rule 80A has been triggered or if a legitimate error has been made or when a regulatory trading halt is in effect after 3:40 p.m. Under this current procedure, a specialist with a large order imbalance who may have been attempting to find contra side interest may have an imbalance change dramatically with very little time to arrange an orderly close. Under the proposed rule change, no MOC/LOC orders could be cancelled after 3:50 p.m. under any circumstances. As a result, specialists should be able to rely on their 3:50 p.m. imbalance figure because after that time, cancellations will no longer be permitted to alter the existing order imbalance. This proposal should allow specialists to effectively close a stock in an orderly fashion because they will no longer have to process cancellations after 3:50 p.m.

The Commission further finds that market participants should have sufficient time to cancel any MOC/LOC orders that may have been entered as the result of a legitimate error by 3:50 p.m. In addition, in the event that Rule 80A has been triggered, market participants should have sufficient time to cancel orders that do not meet the Rule's tick restrictions by 3:50 p.m. In both of these instances, market participants have the responsibility to make sure that the orders they have entered are accurate by this time.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–99–26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27893 Filed 10–25–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42035; File SR–PCX–99–13]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Options Trading Rules for Market Makers and Lead Market Makers

October 19, 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 Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed with the Commission on June 15, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41726 (August 11, 1999), 64 FR 44985.

[4] NYSE Rule 80A requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the DOW Jones Industrial Average (''DJIA'') advances or declines from its closing value on the previous trading day by 2% of the DJIA average closing value for the last month of the previous calendar quarter. Current procedures require that, when Rule 80A goes into effect, a MOC index arbitrage order without the appropriate tick restriction must be cancelled unless it is related to an expiring derivative index product.

[5] *See* Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999), If a regulatory trading halt is in effect at or after 3:40 p.m., MOC/LOC orders can be cancelled until 3:50 p.m. or the time the stock reopens, whichever is first.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5)

[8] 15 U.s.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Michael A. Walinskas, Associate Director, Division of Market Regulation (''Division''), SEC from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, dated June 8, 1999. In Amendment No. 1, the PCX expanded the ''proposal'' section of the filing and made several technical corrections to the text of the proposed rule change. The additions are incorporated into this notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its rules pertaining to Market Makers and Lead Market Makers on the trading floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures and otherwise updating its current Market Maker and Lead Market Maker rules. The text of the proposed rule change is available at the Office of the PCX, the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following changes to the text of PCX Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts'') with regard to Market Makers and Lead Market Makers (''LMMS''):

The PCX proposes to change the registration procedures for Market Makers under PCX Rule 6.33. Under the rule change, the application of Market Makers for registration will be approved when the applicant passes a Market Maker examination. The Exchange proposes to remove the review process whereby the Options Floor Trading Committee (''OFTC'') must review and approve applications.[4] The Exchange believes that the OFTC review and approval of each Market Maker is unnecessary because each Market Maker's name is routinely posted and if there are any problems with a particular Market Maker, they can be brought to the attention of the Exchange before the Market Maker's application for membership is approved. In addition, the rule change will provide that an applicant Market Maker's name be posted on the bulletin board of the Floor of the Exchange for ten calendar days (rather than three business days, as currently stated).[5] The Exchange proposes these changes to expedite the registration process and to make the rules reflect current practices on the PCX.

The PCX also proposes to change PCX Rules 6.35 and 6.38(a) regarding the procedures for selection of Market Maker Primary Appointment Zones, which is akin to a post, so that in all cases, Market Makers will be required to select a primary zone before the expiration of a 60-day grace period.[6] The proposed change will allow Market Makers to select a Primary Appointment Zone during their first 60 days of trading to allow them to participate in the Exchange's Automatic Execution System (''Auto-Ex'').[7] The proposed change will also delete PCX Rule 6.35, Commentary .02, which provides that the PCX Board of Governors may act to make all initial Primary Appointments. The Exchange proposes this change to simplify the process for Primary Appointment Zone selection and approval. Finally, the Exchange proposes to make PCX Rule 6.38 consistent with the changes to PCX Rule 6.35 by providing that certain Members ''must obtain'' a Primary Appointment Zone instead of ''shall be given'' a Primary Appointment Zone as currently provided.

To clarify PCX Rule 6.36 on the requirements pertaining to letters of guarantee and letters of authorization, the PCX proposes to add a provision (d) on FLEX Options, prohibiting Market Makers from transacting in FLEX options unless one or more letters of guarantee have been issued on behalf of the Market Maker. The Exchange also proposes to incorporate OFPA B–4, Subject: Market Maker Trading on the PSE Equity Floors into PCX Rule 6.36, Commentary .02. The Exchange proposes to remove the specific requirements from the provision pertaining to the form of a letter of guarantee and replace the requirements with a general statement whereby a letter of guarantee must be ''in a form approved by the Exchange.'' The Exchange proposes to make this change to simplify and ease the PCX requirements on letters of guarantee.

To simplify PCX Rule 6.37, the PCX proposes the following changes. The PCX proposes to incorporate PCX Rule 6.37, Commentary .05, regarding a Market Maker's obligation to trade at least one contract at the quoted price, into PCX Rule 6.37(f). To clarify this obligation, the Exchange proposes to require that a Market Maker who makes a one-sided market will be obligated to trade at least one contract at the ''implied'' price, (*e.g.*, if a Market Maker provides a bid but not an offer, the Market Maker's offering price will be implied by that bid price plus the maximum bid/ask spread differential specified in PCX Rule 6.37(b)(1)). The Exchange also proposes to add a provision to proposed new Rule 6.37(f) stating that if a Market Maker at a trading post fails to provide a bid or offer after having a reasonable opportunity to do so, the Market Maker will be obligated to trade one contact at the best price quoted in the crowd, or if there are no prices quoted, at that Market Maker's disseminated price. Finally, the PCX proposes to eliminate the provision in PCX Rule 6.37(c)(1) that states that Market Makers should not ''congregate in a particular class of option contract.'' [8]

The PCX also proposes to amend PCX Ruled 6.37, Commentary .08 (new Rule 6.37, Commentary .05), to specify the circumstances under which Market Makers, while on a leave of absence, may make opening transactions in Exchange-listed options for their Market Maker accounts. Specifically, the only circumstances permitted will be those specified under current PCX Rule 6.32, Commentary .03, which states in part

[4] Currently, PCX Rule 6.33 requires the OFTC to review applications and consider an applicant's ability, as demonstrated by his passing a Market Maker examination, financial resources and such other factors as the OFTC deems appropriate.

[5] In the future, the Exchange will propose similar rule changes to the procedure for registration of floor brokers under PCX Rule 6.44.

[6] Currently, PCX Rule 6.35 requires the Options Appointment Committee to assign Market Makers to a Primary Appointment Zone, however, it does not expressly require that Market Makers apply for such appointments. PCX Rule 6.35 states that a Market Maker's refusal to accept a Primary Appointment Zone may be deemed a sufficient cause for termination or suspension of a Market Maker's registration.

[7] Under Rule 6.87, Market Makers without a primary zone are not permitted to log on to the Auto-Ex system. Additionally, in the future, the Exchange proposes to modify its Minor Rule Plan and Recommended Fine Schedule to provide that Market Makers who fail to select a Primary Appointment Zone prior to the expiration of their 60-day grace periods, or thereafter, during any one-month period, will be subject to fines of $500, $1,000 and $1,500 for first-, second-, and third-time violations, respectively. *See* PCX Rules 10.13(h) and (i). The Exchange believes such sanctions to be more appropriate than termination or suspension of a Market Maker's registration, as currently provided.

[8] PCX contends that this provision, which was intended to promote trading in thinly traded securities, is not longer needed because there is sufficient liquidity across the trading floor and PCX rules on primary appointment zones (PCX Rule 6.35) and LMMs (PCX Rule 6.82) serve to assure that there is adequate coverage by Market Makers in all areas of the trading floor.

that ''limit orders to buy and sell in the same series, discretionary orders, and market not-held orders may not be handled on a GTC basis without being treated as orders entered from off the floor.'' Accordingly, the Exchange proposes to change the current reference in PCX Rule 6.37, Commentary, .08, Subsection (3) from PCX Rule 6.032, Commentary .01 to PCX Rule 6.32, Commentary .03.

The PCX proposes to change its rule on LMMs (PCX Rule 6.83) by replacing references to ''alternate LMMs'' and ''substitute LMMs'' with references to ''interim LMMs'' and ''back-up LMMs,'' respectively.

The Exchange also proposes to make various housekeeping, editorial and structural changes to the current rules on Market Makers and LMMs. The Exchange proposes to create Commentary .01 to PCX Rule 6.34 from the text of OFPA A–5, Subject: Prohibitions Against Use of the Book by Floor Brokers in Closing Out Errors, which states that ''[s]ince bids, offers and transactions make to close out a position carried for a Floor Broker as a result of a brokerage error are clearly for the proprietary account of a member, they should not receive the priority treatment accorded to public customer orders held in the Book. Accordingly, the placing of such orders in the Book is deemed a violation of PCX Rule 6.52(a).'' The Exchange proposes to delete the portion of text from OFPA A–5 which forbids any member, while on the Floor, from initiating a transaction in which the member has an interest, unless the member is acting as a Market Maker, or unless the member is liquidating a position taken into his own account as a result of an error made while attempting to execute an order for a customer because the Exchange believes this language is similar to the text of PCX Rule 6.34. The Exchange also proposes to incorporate PCX Rule 6.37, Commentary .07 into Rule 6.37(e) as ''In Person Trading Requirements,'' and OFPA G–11, Subject: Marking, into Rule 6.37, Commentary .07. The Exchange proposes to make these changes to centralize rules applicable to Market Makers.

The Exchange also proposes to make the following minor changes to PCX Rule 6 pertaining to Market Makers. In PCX Rule 6.32, Commentary .04, the Exchange proposes to qualify commentary .04 by adding the following language: ''[w]ith regard to orders of Market Makers entered from off the floor that are not entitled to special margin treatment pursuant to Commentaries .02 or .03.'' The Exchange proposes this language to clarify the commentary with respect to identification of orders.

In PCX Rule 6.35(f) the Exchange proposes to change the reference that currently reads ''Rule 6.35. Com. .03'' to ''Commentary .03'' to simplify and clarify that the Exchange is proposing to move commentary .03 or PCX rule 6.35 into the text of PCX rule 6.35.

The Exchange proposes to require, pursuant to PCX Rule 6.38(d), that a member who wishes to act as a Market Maker and Floor Broker apply for and receive approval ''from the Exchange'' and not ''through the Option Appointment Committee.'' [9] The Exchange proposes this rule change to reflect the current practice for a Member applying for and receiving approval to act as Market Maker and Floor Broker.

Finally, in PCX Rule 6.84 (d) and (g), the Exchange proposes to change the reference from ''Member Services Department'' to ''Exchange'' to accurately reflect the practice of applying for joint accounts pursuant to PCX Rule 6.84(d), in which each participant in a joint account must file with the Exchange and thereafter keep current a completed application on a form prescribed by the Exchange. The Exchange also proposes to clarify, under PCX Rule 6.84(h) that a Market Maker trading for a joint account must have a primary appointment, but the joint account itself is not required to have a primary appointment.[10] The Exchange proposes this rule change to clarify the responsibilities of Market Makers with respect to joint accounts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act [11] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange also believes the proposal is consistent with Section 6(b)(6) of the Act [12] because it is designed to provide that the PCX members will be cross-only disciplined for violations of the PCX Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no 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 not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All

[9] ''From the Exchange'' means from the Exchange's Membership Department. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Heather Trigger, Attorney, Division, SEC, on August 25, 1999.

[10] PCX Rule 6.84(g) currently provides that joint accounts shall not be permitted to enter: (1) opening transactions from off the Floor for option contracts listed on the Exchange; (2) any transactions for option contracts not listed on the Exchange; and (3) transactions for any other security. This prohibition shall not apply to transactions entered for securities underlying Exchange option contracts in the joint account.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(6).

submissions should refer to File No. SR–PCX–99–13 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27886 Filed 10–25–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34–42041; File No. SR–PCX–99–31]

Self-Regulatory Organization; Noticed of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Cross-Only Contingency Orders

October 20, 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 August 25, 1999, the Pacific Exchange, Inc. (''PCX'') or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to permit Floor Brokers to represent orders with a ''cross-only'' contingency. The text of the proposed rule change is set forth below. Addition are italicized.

* * * * *

PACIFIC EXCHANGE, INC. RULES TRADING PRACTICES AND PROCEDURES

¶4987 ''Crossing'' Orders

Rule 6.47

(a)–(c)—No change.

Cross-Only Contingency Orders

(d) A Floor Broker who holds cross-only orders a defined in rule 6.62(c)(3) may cross those orders by proceeding in the following manner: Prior to representing the orders in the trading crowd, the floor Broker must make the crowd award of the total number of contracts the Floor Brokers wishes to cross, the order are to executed on a cross-only basis, the price at which the Floor Broker wishes to cross the orders, and the name of the clearing member or members through whom the transaction will clear. The price must be or within the bid or offer.

* * * * *

¶5061 Certain Types of Orders Defined

Rule 6.62

(a)–(b)–No change.

(c) Contingency Orders.—No change.

(12)–(2)—No change.

(3) *Cross-Only Orders. A cross-only order is a contingency order that is to be executed in whole in equity options only, the amount determined by the Member Organization Placing the order, in a cross transaction with an order for another customer or the Member Organization itself. If the trading crowd does not allow the cross to take place, the Member Organization placing the order may withdraw it from consideration by the trading crowd.*

* * * * *

¶5127 Manner of Bidding and Offering

Rule 6.73

No change.

Commentary:

.01 Notwithstanding the above provision that all bids and offers must be general ones, a Floor Broker may represent orders with a cross-only contingency as defined in Rule 6.62.

* * * * *

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 PCX 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 PCX proposes to amend certain Exchange Rules to permit a Member Organization to enter and a Floor Broker to represent orders with a cross-only contingency. The purpose of the proposed rule change is to allow a Floor Broker to disclose to the trading crowd, prior to execution, that the Floor Broker wishes to cross two orders for a certain number of contracts, at a certain price within or at the quoted bid or offer. The Floor Broker must also disclose, prior to execution, the name of the clearing member or members through whom the transaction will clear. If the crowd does not permit the Floor Broker to do this, then the cross-only contingency provides that the Member Organization placing the orders may withdraw the orders, as if they never existed in the trading crowd. The two orders the Floor Broker holds to cross under this contingency may be two customer orders or orders between a customer and the firm itself. There are no restrictions on who the customer may be, *e.g.,* a customer could be a Market Maker, broker-dealer, or a public customer. The cross would be effected at or between the bid and offer. A cross-only order is defined to include only equity options orders that are to be executed in whole.

The Exchange believes that by allowing for the cross-only contingency, the Exchange will help to develop customer business and will expedite crosses yielding a similar result to what occurs on the floor currently, although currently it is done in a much more circuitous route. With the current competition in the marketplace, the Exchange believes that by providing the cross-only contingency more firms will want to bring business to the PCX, since the firm will have the ability to take the order elsewhere if the crowd does not allow the cross.

Although Exchange Rules currently allow a similar result as the cross-only contingency, it is much more cumbersome. The proposed rule change provides that the Floor Broker may make the crowd aware in advance of the number of contracts the Floor Broker wishes to cross; the price at which the cross would take place, at or between the quoted prices; the customer ''give up'' information;[3] and if the crowd bars the cross from taking place, the Member Organization may withdraw the orders. As the rules stand currently, a Floor Broker does not disclose in advance that he or she is holding two orders to cross; the Floor Broker must bid above the highest bid or offer below the lowest offer in the open market; if the bid or offer is not taken by the crowd, then the Floor Broker may cross at the higher bid or lower offer.[4] The difference in result between the proposed Rule and the current Rule is not substantial; however it is a much quicker result since the Floor Broker will know immediately

[13] 17 CFR 200.30-3(A)(12).

[1] 15 U.S.C. 78s(b)(2)

[2] 17 CFR 240.19b–4.

[3] *See* PCX Rule 6.66(a).

[4] *See* PCX Rule 6.47(a).

whether the trading crowd will allow the cross to take place, and the Member Organization placing the order may withdraw it if the cross is not allowed by the crowd.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and further the objectives of Section 6(b)(5),[7] in particular, in that they are designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[5] The Exchange notes that a substantially similar proposal of the Chicago Board Options Exchange (''CBOE'') has been noticed for public comment in the **Federal Register**. *See* Securities Exchange Act Release No. 41610 (July 8, 1999), 64 FR 38495 (July 16, 1999). The PCX proposal differs from the CBOE proposal in two procedural respects: First, unlike the CBOE proposal, the PCX rule change will require that the floor broker disclose, prior to the transaction, the name of the clearing member or members through whom the transaction will clear. This is the same information that floor brokers must currently ''give up'' pursuant to PCX Rule 6.66(a). *See* proposed PCX Rule 6.47(d). Second, the PCX proposal covers orders that are to be executed in whole, while the CBOE proposal covers orders that are to be executed in whole or in part. *See* proposed PCX Rule 6.62(c)(3).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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. In particular, the Commission seeks comment on whether the proposed rule change will result in fair executions for the various orders and parties represented in the crossing transaction. Also, commenters are requested to provide their views on this rule revision in light of the proposed rule change contained in SR–PCX–99–18, relating to facilitation crosses.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–PCX–99–31 and should be submitted by November 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27892 Filed 10–25–99; 8:45 am]

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[8] *See* Securities Exchange Act Release No. 41867 (September 13, 1999), 64 FR 51171 (September 21, 1999).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42028; File No. SR–Phlx–99–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Require Exchange Members and Member Organizations to Provide Reports and Other Information Relating to Year 2000

October 18, 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 August 25, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On October 1, 1999, the Phlx filed Amendment No. 1 to the proposal with the Commission.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 650, Mandatory Participation in Year 2000 Testing, to require members and member organizations to submit all reports, documents or other information relating to Year 2000 readiness or to the century date change as the Exchange may request. Currently, the rule mandates that members and member organizations are to participate in Year 2000 related testing and are to provide to the Exchange reports related to such testing.

The new clause in Phlx Rule 650 would also require members and member organizations to provide all reports and other documents relating to the Year 2000 century date change as requested by the Exchange. It would thus permit the Exchange to sanction, where appropriate, members and member organizations who do not respond reasonably promptly to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Richard S. Rudolph, Counsel, Phlx, to Heidi E. Pilpel, Special Counsel, Division of Market Regulation, Commission, dated October 1, 1999 (Amendment No. 1). The substance of Amendments No. 1 is incorporated into the notice and order.

requests for reports, such as, for example, Year 2000 Readiness Disclosures, updates on the member or member organization's efforts to become Year 2000 ready, and any other related information requested by the Exchange. Violations of Phlx Rule 650 would be referred to the Exchange's Business Conduct Committee. Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

Mandatory Participation in Year 2000 Testing

Rule 650. Each member and member organization shall participate in testing of computer and computer related systems designed to prepare for the Year 2000 century date change in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing, *and any such reports, documents, or other information relating to Year 2000 readiness or to Year 2000 century date change as the Exchange may require,* in a reasonably prompt fashion as requested by the Exchange. Any member or member organization which is subject to this rule and determined by the Exchange to be in violation of this rule may be subject to disciplinary action pursuant to the Exchange's rules.

Commentary

01. The Exchange may exempt a member or member firm from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test or if the member does not employ computers in its business or for other good reasons determined by the Exchange.

* * * * *

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 Phlx 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 Phlx 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 Exchange proposes to add a clause to Exchange Rule 650 which would require Exchange members and member firms to submit reports, documents or other information relating to the Year 2000 readiness or to the Year 2000 century date change as the Exchange may request.

Currently, Exchange Rule 650 mandates that members and member firms participate in testing related to Year 2000 issues, and to submit reports relating to such testing to the Exchange as requested.[4] The new clause in Phlx Rule 650 would broaden the rule to require Exchange members and member organizations to submit all Year 2000 related reports, documents or other information relating to Year 2000 readiness or to the Year 2000 century date change requested by the Exchange, rather than those relating to testing only. The proposed rule is intended to require members and member organizations to provide to the Exchange, upon request, reports, documents, contingency plans, and other information and representations regarding Year 2000 readiness, including, but not limited to, information similar to that required by Commission temporary-rules 15b7–3T and 17a–9T under the Act, which were recently adopted by the Commission.[5]

The proposal is not intended to require the Exchange to request certain reports and information relating to Year 2000 readiness from members and member organizations. Rather, it is intended as a measure through which the Exchange may require the submission of certain reports and information, and as an enforcement mechanism in the event that members and member organizations fail to comply with such a request.

The proposed rule change would allow the Exchange to ascertain the readiness of its members and member organizations for the Year 2000 century date change, and to determine what measures and contingency plans, policies and procedures have been put in place by those members and member organizations. Such members and member organizations who fail to respond to Exchange requests for Year 2000 reports and documents would be subject to disciplinary action by the Exchange.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5)[7] of the Act in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, and to reduce the risks of the Year 2000 century date change posed to investors and the securities markets, by requiring members and member firms to report to the Exchange their Year 2000 readiness, contingency plans, policies and procedures, and other related reports and documents requested by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1)[8] and 6(b)(5)[9] of the Act. Section 6(b)(1) of the Act requires that an exchange be organized and have capacity to enforce compliance by its members with the provisions of Title 15 U.S.C., the rules and regulations thereunder, and the rules of the Exchange.[10] Section 6(b)(5) of the Act requires, among other things,

[4] *See* Securities Exchange Act Release No. 40870 (December 31, 1998), 64 FR 1263 (January 8, 1999), File SR–Phlx–99–53 (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1).

[5] *See* Securities Exchange Act Release No. 41661 (July 27, 1999), 64 FR 42012 (August 3, 1999), File S7–8–99.

[6] Phlx Rule 650 specifically states that any member or member organization determined by the Exchange to be in violation of the rule may be subject to disciplinary action pursuant to the Exchange's rules. While disciplinary action is implied as a consequence of any Exchange rule violation, the rule includes this clause in order to remain consistent with similar rules promulgated by other exchanges, on which Exchange Rule 650 is based.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1).

that the rules of the exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

Securities market participants will soon face a critical test of their automated systems with the upcoming Year 2000; and the Commission believes that the support of the self-regulatory organizations is necessary to minimize the risks resulting from the century date change. Currently, the Phlx is entitled to receive, upon request, only the Year 2000 testing reports of its members and member organizations. Under the Exchange's proposal, the Phlx has authority to require members and member organizations to submit additional information regarding their Year 2000 readiness. The Commission believes that this information will assist the Phlx in evaluating its members' Year 2000 readiness. With more complete information, the Commission believes that the Phlx will be better able to monitor its members and member organizations to ensure their compliance with federal securities laws and the Exchange's rules. Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act.

The Commission also believes that the Phlx's proposed rule change should help reduce the risks posed to investors and the securities markets by broker-dealers that have not adequately prepared their computer systems for the century date change. The Commission finds that the Phlx's proposed rule change should facilitate transactions in securities and protect investors and the public interest and is therefore consistent with Section 6(b)(5) of the Act.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval will permit the Exchange to obtain reports, documents, and other information related to the Year 2000 immediately, allowing the maximum amount of time possible to identify, assess, and remediate Year 2000 problems. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, to grant accelerated approval to the proposal.[12]

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–31 and should be submitted by [insert date 21 days from date of publication].

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–99–31) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27888 Filed 10–25–99; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Senior Executive Service: Performance Review Board; Membership

AGENCY: Social Security Administration.

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, Section 4314(c) (4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Andria Childs
Eli N. Donkar
Glennalee K. Donnelly
Keith J. Fontenot
Philip A. Gambino
Diane B. Garro
Richard J. Gonzalez
Charlotte A. Hardnett
W. Burnell Hurt
Carmen M. Keller
Carolyn J. Shearin-Jones
Miguel A. Torrado
Judy Ziolkowski

Dated: September 23, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–27844 Filed 10–25–99; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99-4 (11)]

Bloodsworth v. Heckler; Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Revised Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of a revision to Social Security Acquiescence Ruling 92-4(11) by issuing Social Security Acquiescence Ruling 99-4 (11).

EFFECTIVE DATE: October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5044.

SUPPLEMENTARY INFORMATION: We are rescinding Social Security Acquiescence Ruling 92-4(11) and publishing this revised Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

On April 8, 1992, we published Acquiescence Ruling 92-4(11) in the **Federal Register** (57 FR 11961) to reflect the holding in *Bloodsworth* v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983). The Acquiescence Ruling applied to Appeals Council dismissals of requests for review of Administrative Law Judge (ALJ) decisions. The Court of Appeals for the Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a ''final decision of the Secretary made after a hearing'' within the meaning of section 205(g) of the Social Security Act and, therefore, subject to judicial review.

The Ruling's section entitled ''Statement As To How *Bloodsworth* Differs From Social Security Policy'' included a parenthetical statement that an ''Appeals Council grant of request or denial of request for review of an ALJ decision is judicially reviewable.'' That statement is incorrect and is inconsistent with the regulations that it purports to explain, 20 CFR 404.955, 416.1455 and 422.210. The parenthetical statement also is inconsistent with the regulations at 20 CFR 404.981 and 416.1481. Moreover, it was not the issue addressed by the Acquiescence Ruling and was not the subject of the Eleventh Circuit's decision.

For purposes of clarity and consistency with our regulations, we are rescinding AR 92-4 (11) and revising the Acquiescence Ruling by deleting this parenthetical statement. We also have made several minor editorial and technical changes to update and clarify the Ruling. These revisions are technical corrections only and do not involve any substantive changes to the *Bloodsworth* Acquiescence Ruling. Some minor language changes are also being made for improved readability.

We will apply the holding of the Court of Appeals' decision as explained in this revised Social Security Acquiescence Ruling to Appeals Council dismissals of requests for review of ALJ decisions for claimants who reside within the states in the Eleventh Circuit at the time of the Appeals Council's dismissal of the request for review. This revised Social Security Acquiescence Ruling will apply to all Appeals Council dismissals of ALJ decisions made on or after October 26, 1999, except if relief and/or review has been granted pursuant to the previously issued Acquiescence Ruling 92-4 (11) which was published on April 8, 1992. If we made a determination or decision on your application for benefits between April 25, 1983, the date of the Court of Appeals' decision, and October 26, 1999, the effective date of this revised Social Security Acquiescence Ruling, you may request application of this Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Acquiescence Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e), or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved. We will also explain why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivor's Insurance; 96.003 - Special Benefits for Persons Aged 72 and Over; 96.006 - Supplemental Security Income.)

Dated: September 2, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-4 (11)

Bloodsworth v. *Heckler,* 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision—Titles II and XVI of the Social Security Act.

Issue: Whether a dismissal by the Appeals Council of a request for review of an ALJ decision is a ''final decision'' which is judicially reviewable.

Statute/Regulation/Ruling Citation: Sections 205(g) and (h) and 1631(c)(3) of the Social Security Act (42 U.S.C. sections 405(g) and (h) and 1383(c)(3)); 20 CFR 404.955, 404.967, 404.968, 404.971, 404.972, 404.981, 404.982, 416.1455, 416.1467, 416.1468, 416.1471, 416.1472, 416.1481, 416.1482 and 422.210.

Circuit: Eleventh (Alabama, Florida, Georgia).

Bloodsworth v. *Heckler,* 703 F.2d 1233 (11th Cir. 1983)

Applicability of Ruling: This Ruling applies only to the Appeals Council dismissals of requests for review of ALJ decisions.

Description of Case: In 1979, Mr. Jack Bloodsworth, the claimant in this case, filed applications for a period of disability, disability insurance benefits, and supplemental security income payments. The applications were denied initially, on reconsideration, and by an ALJ after a hearing. The claimant missed the 60-day time limit for filing his request for review of the ALJ's decision to the Appeals Council because it was filed approximately two weeks after the deadline. Therefore, the Appeals Council dismissed the request for review on the basis of untimeliness without good cause.

The claimant then filed a complaint in Federal district court, alleging that denial of the extension of time to file was not supported by substantial evidence. The district court rejected the Social Security Administration's (SSA) argument that it lacked jurisdiction, reviewed the Appeals Council's denial of an extension of time, and remanded the case for consideration of the merits of the claim. [1] On remand, the Appeals Council restated its position that the claimant's request for review was untimely filed, but considered the claim on the merits as ordered, and denied the claimant's request for review. The district court affirmed the decision and the claimant appealed. On appeal, SSA again argued that the district court lacked jurisdiction.[2]

Holding: The Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a ''final decision of the Secretary made after a hearing'' within the meaning of section 205(g) of the Social Security Act[3] and, therefore, subject to judicial review.

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[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub.L.No. 103-296, effective March 31, 1995, Social Security Administration (SSA) became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] The Government argued that the district court lacked subject matter jurisdiction under sections 205(g) and (h) of the Social Security Act (42 U.S.C. section 405(g) and (h)) because the plaintiff failed to meet the ''final decision'' and ''made after a hearing'' requirements of these sections. The Government contended that: (1) Dismissal of a request for review on the basis of untimeliness without ''good cause'' is not a ''final decision'' for it does not constitute a determination on the merits; and (2) it is not ''made after a hearing'' because no hearing is granted solely and specifically on the request for review itself.

[3] Section 205(g) of the Social Security Act (42 U.S.C. section 405(g)) currently provides in pertinent part that ''[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party,* * * may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.'' At the time of the decision in *Bloodsworth*, however, the statute referred to a ''final decision of the Secretary.''

Regarding the right to judicial review, the Eleventh Circuit stated that neither the statute nor the regulations make any distinction between Appeals Council dismissals and ''determinations on the merits.'' The court found that both actions are equally final and that both trigger a right to review by the district court. The court interpreted 20 CFR 404.972 and 404.981[4] to provide that ''an Appeals Council review determination, on whatever grounds, is perceived as the appropriately 'final decision' from which to take an appeal to the district court under section 405(g).''

Statement as to How Bloodsworth Differs From SSA's Interpretation of the Regulations

The Eleventh Circuit held that an Appeals Council dismissal of a request for review of an ALJ decision is a ''final decision of the Secretary made after a hearing'' (now a ''final decision of the Commissioner of Social Security'') within the meaning of section 205(g) of the Social Security Act and, therefore, subject to judicial review.[5]

Contrary to the holding of the court in *Bloodsworth*, SSA policy is that the regulations make a clear distinction in regard to rights of judicial review between dismissals and determinations on the merits by the Appeals Council. The Appeals Council may take three types of action following an ALJ decision:

(1) It may grant a request for review;

(2) it may deny a request for review; or

(3) it may dismiss a request for review. The dismissal of a request for review of an ALJ decision is binding and not subject to further review. 20 CFR 404.972, 416.1472. *See also* 20 CFR 404.955, 416.1455, 422.210. The Appeals Council will dismiss a request for review if it is untimely filed and the time for filing has not been extended.[6] The Appeals Council may also dismiss a request for review for other prescribed reasons. 20 CFR 404.971, 416.1471.

SSA's position, based on the above-cited regulations, is that an Appeals Council dismissal is not a ''final decision of the Commissioner of Social Security made after a hearing.'' Therefore, such a dismissal is not judicially reviewable under section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

Explanation of How SSA Will Apply The Bloodsworth Decision Within the Circuit

This Ruling applies only to cases involving claimants who reside in Alabama, Florida, or Georgia at the time of the Appeals Council dismissal of the request for review.

Notices sent by the Appeals Council which dismiss requests for review of ALJ decisions will advise claimants in these states of their right to request judicial review.

[FR Doc. 99–27843 Filed 10–25–99; 8:45 am]

BILLING CODE 4191–02–F

[4] 20 CFR 404.981 and 416.1481 state, in pertinent part, that ''[t]he Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court, or the decision is revised.''

[5] As the Supreme Court has noted, the term ''final decision'' is not defined in the Social Security Act, but the Act gives authority to the agency to prescribe its meaning by regulation. *Weinberger* v. *Salfi*, 422 U.S. 749, 766 (1975).

[6] The Appeals Council, upon good cause shown, may extend the time for filing a request for review of an ALJ decision. 20 CFR 404.968(b), 416.1468(b).

DEPARTMENT OF STATE

[Public Notice 3140]

Culturally Significant Objects Imported for Exhibition Determinations: ''Body Art: Marks of Identity''

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibit, ''Body Art: Marks of Identity,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, New York, from on or about November 16, 1999 to on or about May 29, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: October 20, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, United States Department of State.

[FR Doc. 99–27954 Filed 10–25–99; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–165]

WTO Dispute Settlement Proceeding Regarding Import Measures on Certain Products From the European Communities

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO''), by the European Communities, to examine the U.S. announcement of 3 March 1999 that liquidation would be withheld on imports from the EC of a list of products together valued at $520 million. In this dispute, the European Communities alleges that this action was inconsistent with obligations of the United States under the Dispute Settlement Understanding and the General Agreement on Tariffs and Trade 1994. The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by November 15, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Dispute on Import Measures on Certain Products from the European Communities, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Bruce R. Hirsh, Associate General Counsel, at (202) 395–3582, or William L. Busis, Associate General Counsel, at 395–3150

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) 19 U.S.C. 3537(b)(1)), the USTR is providing

notice that on May 12, 1999, the European Communities submitted a request for the establishment of a WTO dispute settlement panel to examine actions allegedly taken on March 3, 1999 to withhold liquidation on imports from the EC of a list of products valued at $520 million. The WTO Dispute Settlement Body (''DSB'') established a panel for this purpose on June 16, 1999. Panelists were selected on October 8, 1999.

Major Issues Raised and Legal Basis of the Complaint

The European Communities' panel request describes the purported U.S. measure it is challenging as ''the U.S. decision, effective as of March 3, 1999, to withhold liquidation on imports from the EC of a list of products, together valued at $520 million on an annual basis, and to impose a contingent liability for 100% duties on each individual importation of affected products as of this date. . . . This measure includes administrative provisions that foresee, among other things, the posting of a bond to cover the full potential liability.'' According to the European Communities, by requiring the deposit of a bond, U.S. Customs ''effectively already imposed 100% duties on each individual importation as of 3 March 1999, the return of which was uncertain, depending on future U.S. decisions.'' The EC assets that the U.S. thereby violated Articles 3, 21, 22 and 23 of the Dispute Settlement Understanding and Articles I, II, VIII and IX of GATT 1994. The EC also asserts that the purported U.S. measure ''impedes important objectives of GATT 1994 and of the WTO.''

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–165, Import Measures on Certain Products from the European Communities) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–27842 Filed 10–25–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 15, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 Sections U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6369
Date Filed: October 14, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–JK 0048 dated 1 October 1999 Europe-Japan/Korea Resolutions r1–r46 Minutes—PTC23 EUR–JK 0049 dated 8 October 1999 Tables—PTC23 EUR–JK Fares 0017 dated 8 October 1999 Intended effective date: 1 April 2000

Docket Number: OST–99–6376
Date Filed: October 15, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0075 (Re-issued) dated 12 October 1999 Expedited Middle East-TC3 Resolutions r1–r15 Intended effective date: 15 November 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–27872 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 15, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6345.
Date Filed: October 12, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 9, 1999.

Description

Joint Application of United Parcel Service Co. and Challenge Air Cargo, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart Q, applies for approval of the transfer from Challenge to UPS of certain certificate and exemption authority and frequency allocations now held by Challenge which authorize Challenge to provide scheduled all-cargo foreign air transportation between the United States and various points in the Caribbean and Central and South

America. UPS further requests route integration authority enabling it to integrate its service on the transferred routes with its service on other routes operated by UPS.

Docket Number: OST–99–6367.
Date Filed: October 13, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 10, 1999.

Description

Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, Part 201 and Subpart Q, applies for renewal of its authority to provide foreign air transportation of persons, property and mail between the United States and certain foreign points named on segments 1, 2, 3, 4, 5, 6 and 12 of its Certificate of Public Convenience and Necessity for Route 616.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–27871 Filed 10–25–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[ALJ 99–OOO5–CIV]

In the Matter of D–O–R Production Management, LLC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to participate.

SUMMARY: The Coast Guard gives notice of and provides an opportunity to participate or file comments on the proposed assessment of a Class II administrative penalty against D–O–R Production Management, LLC, (D–O–R), for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involve three oil spills that occurred at D–O–R's offshore XPLOR Energy Production facility and wells at Main Pass Block Thirty-five and occurred over the period starting on or about June 10, 1999 and continued through and including June 12, 1999. Interested persons may participate or file comments in this proceeding.

DATES: Comments must reach the Coast Guard no later than November 26, 1999.

ADDRESSES: You may mail comments to the Hearing Docket Clerk, Administrative Law Judge Docketing Center, United States Coast Guard, 40 South Gay Street, Room 412, Baltimore, Maryland 21202–4022. Comments may also be personally delivered to Room 412 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (410) 962–7434. You may also fax your comments to (410) 962–1742.

The Administrative Law Judge Docketing Center maintains the public docket for this matter. Comments will become part of this docket and will be available for inspection or copying in Room 412 at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2940.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their name, address, identify this document (ALJ 99–0005–CIV), and state the reason for each specific comment. Please submit all comments and attachments in an unbound format on white paper no longer than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment or receipt of comments should enclose self-addressed, stamped postcards or envelopes.

Discussion

This is a Class II civil penalty proceeding brought under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)(FWPCA), as amended by the Oil Pollution Act of 1990 (33 U.S.C. 1321). The FWPCA requires the Coast Guard to publish notice of the proposed issuance of an order assessing a Class II civil penalty in the **Federal Register**.

If you wish to be an interested person, you must file written comments on the proceeding or written notice of intent to present evidence at any hearing held in this Class II civil penalty proceeding with the Hearing Docket Clerk.

The following table explains how interested persons may participate in a Class II civil penalty proceeding.

If—	Then—
a hearing is scheduled.	You will be given • Notice of any hearing; • A reasonable opportunity to be heard and to present evidence during any hearing; and • Notice and a copy of the decision 33 CFR 20.404
the proceeding is concluded without a hearing.	You may petition the Commandant of the Coast Guard to set aside the order and to provide a hearing. You must file the petition within 30 days after issuance of the administrative law judge's order. 33 CFR 20.1102

You can find the regulations concerning Class II civil penalty proceedings in 33 CFR part 20.

This proceeding (ALJ 99–0005-CIV) results from three separate oil spill incidents that occurred at the XPLOR Energy Production facility and wells operated by D–O–R located at Main Pass Block Thirty-five, over the period starting on or about June 10, 1999 and continuing through and including June 12, 1999. The Coast Guard alleges the offshore production facility located at Main Pass Block Thirty-five overflowed two oil storage tanks and spilled or discharged five gallons of oil into the contiguous waters of the United States on or about 1600, June 10,1999.

The Coast Guard further alleges that a ruptured flow line located near the well head on well number seventy-two at Main Pass Block Thirty-five spilled or discharged an unknown quantity of oil into the contiguous waters of the United States beginning on or about 1500, June 11, 1999 and continuing to and including June 12, 1999.

The Coast Guard further alleges that a ruptured hydraulic oil line located on a crane at the offshore facility at Main Pass Block Thirty-five spilled or discharged five gallons of oil into the contiguous waters of the United States on or about 1600, June 11, 1999.

The Coast Guard further alleges that unapproved chemical agents were used to clean up the hydraulic oil spilled from the ruptured hydraulic line on the

crane at the offshore facility and that the Respondent improperly disposed of the recovered oil and oil contaminated materials.

The Coast Guard further alleges that D–O–R failed to immediately notify the National Response Center for the three oil spills that occurred over the period starting on or about 10 June, 1999 and continued to and including June 12,1999.

The Coast Guard filed the complaint on October 4, 1999 at New Orleans, LA.

The Respondent is D–O–R Production Management, LLC. 106 Oil Center Drive, Suite 214, Post Office Drawer 53829, Lafayette, LA 70505.

The Coast Guard seeks a civil penalty of $88,000.

Dated: October 20, 1999.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, United States Coast Guard.

[FR Doc. 99–27935 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*), this notice announces that the information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describe the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, pages 29404–29405].

DATES: Comments must be submitted on or before November 26, 1999 A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Medical Examiner Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0604.

Form(s): FAA Form 8520–2.

Affected: Estimated 450 Physicians.

Abstract: The collection of information is currently accomplished by use of the FAA form 8520–2, Aviation Medical Examiner Designation Application. The collection is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications to be an aviation medical examiner.

Estimated Annual Burden Hours: 225 burden hours annually.

ADDRESSE: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 19, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–27827 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) hosted forum on the capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS).

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and Date: 9:00 a.m.–5:00 p.m., November 15–16, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by October 29, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, DC on September 13, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–27929 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the BART-Oakland Airport Connector in Oakland, California

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the San Francisco Bay Area Rapid Transit District (BART) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for a proposed BART-Oakland Airport Connector (OAC). The transportation improvements are being defined in conjunction with a Major Investment Study (MIS), which will include the NEPA/CEQA scoping process and the selection of alternatives to be addressed in the joint environmental document. The EIS/EIR will evaluate a no build alternative, a quality bus alternative,

and various automated guideway transit technologies, as well as other options that surface during the scoping process. Based on the presentation of the proposed action, project alternatives, and breadth of the environmental analysis described below, please let us know of your agency's views regarding the scope and content of the EIS/EIR. Your thoughts can be offered at the scoping meeting or sent in written form to the contact person identified below.

DATES: *Comment Due Date:* Written comments regarding the scope of alternatives and impacts to be considered should be sent to BART by December 6, 1999. *Scoping Meeting:* A public scoping meeting is scheduled for Thursday, November 4, 1999 at 7:00 p.m. at the East Oakland Multipurpose Senior Center. See **ADDRESSES** below.

ADDRESSES: *Written comments* on project scope should be sent to Mr. Jerry Goldberg, San Francisco Bay Area Rapid Transit District, PO Box 12688, Oakland, CA 94604–2688, Mail Stop 1KB6. The *scoping meeting* will be held at: East Oakland Multipurpose Senior Center, 9255 Edes Avenue, Oakland, CA, (Located at the corner of Edes & Jones Avenue). BART Coliseum Station to AC Transit Bus Route 45.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Turchie, Federal Transit Administration, Region 9, (415) 744–3115.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and BART invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the EIS/EIR and identifying any significant environmental issues related to the alternatives. The meeting is also being advertised in The Oakland Tribune and the San Francisco Chronicle, East Bay Edition. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be made available at the scoping meeting. Others may request the scoping materials by contacting Mr. Jerry Goldberg at BART at (510) 464–6427. People with special needs should call BART at (510) 464–6300. The building used for the scoping meeting is accessible to persons with disabilities.

During scoping, comments should focus on identifying specific environmental impacts to be evaluated and suggesting alternatives that are less environmentally damaging, which achieve similar objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Draft EIS/EIR. If you wish to be placed on the mailing list to receive further information as the project continues, contact Mr. Jerry Goldberg at BART as previously described.

II. Description of Study Area and Project Need

Since the early 1970s, the concept of an improved transit linkage between the Metropolitan Oakland International Airport and BART has been explored, and various feasibility, engineering, and environmental studies have been undertaken. The major expansion program currently underway at the Metropolitan Oakland International Airport signals a substantial increase in travel by air passengers arriving and leaving the airport, as well as growth in the commute pattern of employees at the airport. As one of the three primary airports serving the San Francisco Bay Area, air traffic at the Metropolitan Oakland International Airport is projected to increase to serve more of the region's air passengers and air cargo. While the major improvement and construction program at the Metropolitan Oakland International Airport bears witness to the ever-growing demand to move passengers, goods, and service through this gateway, the ability to get to the airport via the automobile, airport shuttles, taxis, and vans has become ever more challenging and likely to encounter delays. Programmed improvements to enhance the regional freeways do not appear to be sufficient to accommodate expected growth and eliminate congestion.

Air passengers and employees who take transit to the airport either ride BART to the Oakland Coliseum station and transfer to the AirBART bus shuttle, or they ride AC Transit (local Route 58). However, even with programmed improvements to remedy local congestion and increase capacity on the local roadways, the growth at the airport is expected to create periods of congestion and delay. As a result, the minimum running time of 12 to 15 minutes on AirBART between the Oakland Coliseum Station and the airport often exceeds 20 minutes and is projected to lengthen and, more significantly for air passengers, is likely to become more unpredictable.

Because of foreseeable growth in airport use, local roadway congestion and delay, the demand for transit alternatives is expected to rise. To maintain the capacity, convenience, and reliability of transit services, the Proposed Action would be intended to improve access to the airport using direct, coordinated connections from the existing BART system. By reducing projected vehicle trips, the action would help alleviate regional roadway congestion and benefit local and regional air quality. The action would also be intended to improve the convenience and reliability of taking BART to the Metropolitan Oakland International Airport.

In light of the purpose of the project and the regional and local need for an improved transit connection, the following preliminary objectives are identified for the OAC:

- Provide reliable, scheduled service between the BART system and the Metropolitan Oakland International Airport.
- Offer operational flexibility to reduce headways during periods of increased travel demand between the BART system and the Metropolitan Oakland International Airport.
- Offer a competitive alternative travel mode to those who drive to the Metropolitan Oakland International Airport by providing predictable connections and travel time savings.
- Provide a convenient, safe, and comfortable connection between the BART system and the Metropolitan Oakland International Airport.
- Increase BART's systemwide ridership.
- Design a cost-efficient system, recognizing BART's budget constraints and available funding.

A ''seamless'' transit connection between the airport and the BART regional rail transit system would enable both air passengers and employees to access the airport without relying on an increasingly congested regional and local road network. To meet the above objectives, BART is currently examining the desirability of linking the 95-mile, four-County rapid rail network with the airport via an automated transit system that would operate on its own fixed guideway, and to which intermediate stops could be added in the future.

The OAC would travel a length of approximately 3 miles, with termini at the BART Oakland Coliseum Station and the new main terminal at the Metropolitan Oakland International Airport. Transit vehicles would operate along a guideway that would be separated from street traffic—a separation that would allow reliable service and a travel time of less than 6 minutes from one terminus to the other. In the year of opening (currently

proposed to be 2004), the OAC would be projected to carry about 1 million passengers. By the year 2010, annual passengers could grow to about 3 million.

III. Alternatives

Specific alternatives to the Proposed Action are expected to evolve during the environmental review process and in response to the public scoping process. At this juncture, project alternatives expected to be evaluated in the EIS/EIR include:

- A No Build, or No Project, Alternative that considers the consequences of not improving transit services between BART and the Metropolitan Oakland International Airport. This alternative would involve continuation of the existing AirBART shuttle between the BART Oakland Coliseum Station and the Metropolitan Oakland International Airport.
- A ''Quality Bus'' Alternative that considers technical and operational transit improvements using buses. The system is called a ''quality bus'' alternative, in part, because it seeks to emulate the service levels provided by a fixed guideway rail system. Amenities would be provided at stations, and portions of the route could be constructed with exclusive transit lanes or other transit preferential treatments in order to bypass areas of localized traffic congestion.
- An Automated Guideway Transit Alternative (AGT) that would operate on its own exclusive guideway. The system would be fully automated, with a transfer station providing direct connection to the BART system at one end and a station at the Metropolitan Oakland International Airport at the other end. A specific technology has not been selected for evaluation in this EIS/EIR. A specific technology would be selected for implementation only if the proposed AGT project is approved after completion of the environmental evaluation. The term ''Automated Guideway Transit'' encompasses a group of technologies that provide medium capacity transit service on an exclusive guideway. Examples of Automated Guideway Transit systems include people movers, shuttle transit, and advanced light rail transit.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the social, economic, and environmental consequences of building and operating the OAC in advance of any decisions to make substantial financial or other commitments to its implementation. The EIS/EIR will explore the extent to which the project alternatives result in potentially significant social, economic, and environmental effects and identify appropriate actions to reduce or eliminate these impacts. Issues that will be investigated in the EIS/EIR include transportation, traffic, and circulation effects; land use compatibility and consistency with locally adopted plans; potential effects on local businesses and employment; disturbance to sensitive visual and cultural resources; geologic and hydrology effects; potential disturbance to sensitive wildlife and vegetation species and habitats; air and noise emissions from project-related construction and operation; public health and safety concerns related to exposure to hazardous materials; community service and utility demand; direct or indirect effects to public parklands, significant historic resources, or wildlife refuges; and environmental justice concerns from any disproportionate impacts of the project alternatives on low-income or ethnic minority neighborhoods.

V. FTA Procedures

The Draft EIS/EIR for the BART-Oakland Airport Connector will be prepared in conjunction with a Major Investment Study. After its publication, in accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS/EIR will be available for review and comment by interested public members and local, state, and federal agencies, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, BART will identify a locally preferred alternative for further assessment in the Final EIS/EIR. FTA and BART must approve the Final EIS/EIR prior to making any decisions regarding the project.

Issued on: October 19, 1999.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 99–27832 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6157; Notice 2]

Pipeline Safety: OPS Response Plan Review and Exercise Programs

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Council on Environmental Quality regulations and Department of Transportation policy, the Research and Special Programs Administration (RSPA) has made a finding that the Office of Pipeline Safety's (OPS) Response Plan Review and Exercise Program will have no significant impacts on the environment.

EFFECTIVE DATE: This finding of no significant impact is effective October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Taylor, OPS, (202) 366–8860, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTARY INFORMATION: In 1990, the United States Congress passed the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), to improve the nation's ability to respond to and limit the economic and environmental impact from, marine spills of oil and other pollutants. Section 4202 of the OPA modifies the planning and response system created under the authority of Section 311(j) of the Federal Water Pollution Control Act (also known as the Clean Water Act). OPA required response plans for vessels and facilities that produce, store, transport, refine, and market oil.

Just as oil tankers are required to submit oil spill response plans to the Coast Guard and refineries are required to submit such plans to the Environmental Protection Agency (EPA), oil pipelines are required to submit their facility response plans to OPS for review and approval. To date, more than 1300 facility response plans have been submitted to OPS. They represent some 200 oil pipeline operators, and lines that vary in size from 3-inch gathering systems to 36-inch product lines to the 48-inch Trans-Alaska Pipeline System. OPS conducts a thorough review of the plans, with particular emphasis on the adequacy of the pipeline operator's response resources, incident command system, and ability to protect environmentally sensitive areas from harm. OPS also makes sure that the plans are consistent with both the National Contingency Plan and the local Area Contingency Plan, which are developed by Coast Guard and EPA.

In addition to reviewing operators' plans, OPS conducts exercises to test pipeline operators' ability to implement their facility response plans. To date, OPS has conducted sixty-nine Tabletop Exercises, scenario-driven discussions in which operators explain how they would implement their plans to respond to a worst-case spill. OPS has also

conducted nine full-scale Area Exercises with pipeline operators in which they deploy people and equipment to the field in response to a simulated spill. In both Tabletop and Area Exercises, OPS makes every effort to have other Federal, State, and local environmental and emergency response agencies participate. Their participation makes exercises more realistic, and builds relationships between industry and public sector responders that make the response to real spills go more smoothly.

OPS prepared an Environmental Assessment (EA) to examine the environmental impacts of the Response Plan Review and Exercise Program (64 FR 47228). The EA concisely described OPS's recent review of the program's effectiveness, its proposed action to continue implementing the current program, the alternative programmatic approaches considered, the environment affected by this action, the consequences to the environment of the alternatives considered, and a list of the agencies and organizations consulted. In the EA, OPS preliminarily concluded that continuing the current program would not have significant environmental impacts. This conclusion was based on the fact that the program is now mature, and the proposed action to continue the current program will not have any significant environmental impact.

OPS received one public comment on the EA, which came from an environmental organization in Alaska. The commenter claimed that, (1) the EA inadequately addressed the threats to the environment from the Trans-Alaska Pipeline System (TAPS) and should not be considered a sufficient environmental analysis for the TAPS lease renewal, (2) the EA failed to mention specific pipelines and unique problems associated with specific pipelines, and (3) OPS did not consider an alternative that would be more protective of the environment, and should prepare an environmental impact statement (EIS) which more fully considers environmental effects of its program. These points will be addressed in order.

(1) The TAPS lease agreement is between Alyeska Pipeline Service Company (the seven company consortium that owns and operates the TAPS), the State of Alaska, and the Bureau of Land Management in the Department of the Interior. Working through the Joint Pipeline Office, OPS expects to participate in the TAPS lease renewal EIS process as a cooperating agency. However, OPS is not a party to the lease agreement and does not have authority to approve or disapprove the lease renewal. That decision rests solely with the State of Alaska and the Department of the Interior.

(2) The EA was a programmatic document, and as such was not intended to address issues associated with the TAPS or any other specific pipeline. Rather, the EA was meant to assess the impact of our program, which involves over 200 oil pipeline operators nationwide.

(3) The EA described the statutory basis for the program, its requirements, and its benefits in improved response capability on the part of oil pipeline operators nationwide. OPS believes that the EA provides sufficient information to allow a comprehensive evaluation of our Response Plan Review and Exercise Program. The EA was intended to address the overall program and not the issues associated with a specific pipeline. As for question of whether another alternative more protective of the environment was considered, OPS may consider, on a case by case basis, more stringent spill response requirements for a particular operator on the basis of the operator's spill history or other risk factors. Such individual cases are, however, outside the scope of this programmatic EA.

Based on the analysis and conclusions reached in the EA, OPS has found that there are no significant impacts on the environment associated with this action. The EA and the documents are incorporated by reference into this FONSI. To summarize, the reason that the program will not have a significant effect on the human environment is that the program is designed to improve pipeline operators' ability to respond effectively to oil spills, and the national trends in accident data support that conclusion. While there was a marked improvement in spill response preparedness and environmental protection shortly after implementing the Response Plan Review and Exercise Program in 1993, the program is now mature. Hence, the proposed action to continue the current program will not have any significant environmental impact. This rationale is further discussed in the EA referenced above.

Issued in Washington, DC on October 20, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–27825 Filed 10–25–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33803]

Utah Railway Company—Acquisition of Control Exemption—Salt Lake City Southern Railroad Company, Inc.

Utah Railway Company (UTAH), a Class III rail carrier, has filed a verified notice of exemption to acquire the capital stock of Salt Lake City Southern Railroad Company, Inc. (SLCS).[1] UTAH operates 275 miles of trackage and trackage rights in Utah and Colorado and also operates trackage between Provo and Ogden, UT, as agent of The Burlington Northern and Santa Fe Railway Company (BNSF). SLCS operates 24.95 miles of rail line from milepost 798.74 at Ninth South Street in Salt Lake City to milepost 775.19 at the Salt Lake County/Utah County boundary line near Mount (including the 1.4-mile Lovendahl Spur connecting with the main line at milepost 790.52), in Salt Lake County, UT.[2]

Under the terms of an agreement with SLCS's corporate parent, RailTex, Inc., UTAH was to purchase all of the issued and outstanding capital stock of SLCS on September 30, 1999 and place the shares into a voting trust. The transaction was scheduled to be consummated on October 13, 1999 (7 days after the exemption was filed), when UTAH was to acquire the stock held in the voting trust.

UTAH indicates that SLCS's trackage runs parallel to some of the trackage operated by UTAH, as BNSF's agent. UTAH maintains, however, that, as BNSF's agent, it does not have common carrier rights or obligations on BNSF trackage.

UTAH indicates that: (i) the railroads do not connect with each other; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

[1] UTAH had filed a notice of exemption to acquire and operate SLCS's line in *Utah Railway Company—Acquisition and Operation Exemption—Lines of Utah Transit Authority in Salt Lake City, UT,* STB Finance Docket No. 33785 (STB served Aug. 30, 1999) (64 FR 47229). UTAH states that it does not intend to exercise authority under the notice of exemption in STB Finance Docket No. 33785.

[2] SLCS operates the line under a permanent easement granted by the Utah Transit Authority. *See Salt Lake City Southern Railroad Company, Inc—Acquisition and Operation Exemption—Line Between Mount and Salt Lake City, UT,* Finance Docket No. 32276 (ICC served Apr. 23, 1993).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33803, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Theodore A. McConnell, Kirkpatrick & Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 18, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27776 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33808]

Salt Lake City Southern Railroad Company, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

The Union Pacific Railroad Company (UP) has agreed to grant local trackage rights to the Salt Lake City Southern Railroad Company, Inc., (SLCS), a Class III rail carrier, over 2.1 miles of rail line between milepost 735.8 and milepost 737.9, on UP's Provo Subdivision, near Provo, UT. The trackage rights include the Midvale siding and crossover track.

The purpose of the trackage rights is to enable SLCS to provide improved rail service to certain shippers it is currently unable to serve and to improve its financial viability.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

The transaction was scheduled to be consummated on or after October 15, 1999.

This notice is filed under 49 CFR 1180.2(d)(7).[1] If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33808, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Theodore A. McConnell, Kirkpatrick and Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 18, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27777 Filed 10–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 575X)]

CSX Transportation, Inc.—Abandonment Exemption—in Lee County, VA

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost OCV–242.00 and milepost OCV–243.6, near Hagans, in Lee County, VA, a distance of approximately 1.6 miles (line). The line traverses United States Postal Service Zip Code 24263.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 5, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 15, 1999, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Esq., CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The

[1] The notice invokes the class exemption from 49 U.S.C. 11323 at 49 CFR 1180.2(d)(7). While the notice cites 49 U.S.C. 10902 rather than 49 U.S.C. 11323, in a telephone conversation with Board staff, SLCS acknowledged that 49 U.S.C. 11323 is the applicable statutory provision.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 1, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 26, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 14, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–27383 Filed 10–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

DATES: Written comments should be received on or before December 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

OMB Number: 1545–0430.

Form Number: 4810.

Abstract: Fiduciaries representing a dissolving corporation or a decedent's estate may request a prompt assessment of tax under Internal Revenue Code section 6501(d). Form 4810 is used to help locate the return and expedite the processing of the taxpayer's request.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and the Federal government.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–27847 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday November 19, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday November 19, 1999, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Headquarters Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 6:00 p.m. to 6:30 p.m. on Friday November 19, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues and reports of the sub-committees.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 19, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–27849 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A public meeting of the Brooklyn District Citizen Advocacy Panel will be held in Hauppauge, New York.

DATES: The meeting will be held Wednesday November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday November 17, 1999, 6:30 p.m. to 9:00 p.m. at the Wyndham Wind Watch Hotel located at 1717 Vanderbilt Motor Parkway, Hauppauge, NY 11788. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 9:00 p.m. on Wednesday November 19, 1999.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 19, 1999.

MaryClare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 99–27850 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Marlene Gross, Deputy Chief Counsel (Operations);

2. Kenneth Schmalzbach, Acting Deputy General Counsel;

3. Michael Danilack, III, Associate Chief Counsel (International);

4. Nancy J. Marks, Deputy Associate Chief Counsel (Employee Benefits and Exempt Organizations);

5. Gary D. Gray, Assistant Chief Counsel (General Litigation);

6. William F. Hammack, Midstates Regional Counsel; and

7. H. Stephen Kesselman, Pennsylvania District Counsel.

In addition, I hereby appoint the following persons to serve on the Performance Review Board for the Deputy Chief Counsel:

8. Robert E. Wenzel, Deputy Commissioner Operations; and

9. John M. Dalrymple, Chief Operations Officer.

This publication is required by 5 U.S.C. 4314(c)(4).

Dated; October 18, 1999.

Stuart L. Brown,

Chief Counsel, Internal Revenue Service.

[FR Doc. 99–27848 Filed 10–25–99; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Tuesday
October 26, 1999

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is authorizing the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD). Based on its review of evidence submitted with comments to the proposed rule, as well as evidence described in the proposed rule, the agency has concluded that soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD by lowering blood cholesterol levels.

DATES: This regulation is effective October 26, 1999, except for § 101.82(c)(2)(ii)(B), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). Upon approval, the FDA will publish a document in the **Federal Register** announcing the effective date of those requirements.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION:

I. Background Information

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One notable aspect of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act (hereinafter referred to as the 1993 health claims final rule). In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out rules for the authorization and use of health claims by regulation. Additionally, § 101.70 (21 CFR 101.70) establishes a process for petitioning the agency to authorize by regulation the use of health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

In response to the 1990 amendments, FDA also conducted an extensive review of the evidence on 10 substance-disease relationships. As a result of its review, FDA has authorized claims for 8 of these 10 relationships, one of which focused on the relationship between dietary saturated fat and cholesterol and reduced risk of CHD. CHD is the most common, most frequently reported, and most serious form of cardiovascular disease (CVD) (58 FR 2739, January 6, 1993). Further, although the agency denied the use on food labeling of health claims relating dietary fiber to reduced risk of CVD (58 FR 2552), it authorized a health claim relating diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) to a reduced risk of CHD.

In the proposed rule entitled ''Health Claims and Label Statements; Lipids and Cardiovascular Disease'' (56 FR 60727, November 27, 1991) (hereinafter referred to as the saturated fat/cholesterol proposed rule), FDA set out criteria for evaluating evidence on diet and CVD relationships. The agency focused on those aspects of the dietary lipid and CVD relationship for which the strongest scientific evidence andagreement existed. FDA noted that, because of the public health importance of CHD, identification of ''modifiable'' risk factors for CHD had been the subject of considerable research and public policy attention. The agency also noted that there is general agreement that elevated blood cholesterol levels are one of the major ''modifiable'' risk factors in the development of CHD. FDA cited Federal Government and other reviews that concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total and low density lipoprotein (LDL)-cholesterol are a cause of atherosclerosis and represent major contributors to CHD. Further, factors that decrease total blood cholesterol and LDL-cholesterol will also decrease the risk of CHD. FDA concluded that it is generally accepted that blood total and LDL-cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. High intakes of dietary saturated fat and, to a lesser degree, of dietary cholesterol are consistently associated with elevated blood cholesterol levels. FDA tentatively concluded that the publicly available data supported an association between diets low in saturated fat and cholesterol and reduced risk of CHD (56 FR 60727 at 60737), and it confirmed that conclusion in the saturated fat/cholesterol final rule (58 FR 2739 at 2751).

Based on its review using the stated criteria, and on its consideration of comments received in response to the proposed rule entitled ''Health Claims; Dietary Fiber and Cardiovascular Disease'' (56 FR 60582), FDA concluded that the publicly available scientific information supported an association between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products (*i.e.*, foods that are low in saturated fat and cholesterol and that are good sources of dietary fiber) and reduced risk of heart disease (58 FR 2552 at 2572). In the 1993 dietary fiber and CVD final rule, in response to a comment regarding the apparent hypocholesterolemic properties of specific food fibers, FDA again articulated its criteria for evaluating diet and CHD relationships (58 FR 2552 at 2567). FDA agreed that the effectiveness of naturally occurring fibers in foods in reducing the risk of CHD may be documented for specific food products. Further, the agency indicated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in a particular food has a beneficial effect on blood lipids predictive of CHD risk, they should petition for a health claim for that particular product. In response to two petitions that documented such evidence, FDA has authorized health claims for soluble fiber from certain foods and reduced risk of CHD in § 101.81 (21 CFR 101.81) (62 FR 3600, January 23, 1997, and amended at 62 FR 15344, March 31, 1997, and 62 FR 8119, February 18, 1998).

In the **Federal Register** of November 10, 1998 (63 FR 62977), and in response to a petition from Protein Technologies International, Inc. (Ref. 1 and Ref. 2), the agency proposed § 101.82 to provide for health claims on the relationship of soy protein and reduced risk of CHD (hereinafter referred to as the soy protein proposed rule). In the soy protein proposed rule, FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on soy protein and CHD. The agency summarized this evidence in the soy protein proposed rule and presented the rationale for a health claim on this food-disease relationship as provided for under the significant scientific

agreement standard in section 403(r)(3)(B)(i) of the act and § 101.14(c) of FDA's regulations.

Proposed § 101.82(c)(2)(ii)(A) identified the substance that is the subject of the proposed claim as soy protein from the legume seed *Glycine max*. The soy protein proposed rule included qualifying criteria for the purpose of identifying soy protein-containing foods eligible to bear the proposed health claim. The proposal also specified mandatory content for health claim statements; identified additional, optional information for such statements; and provided model health claims.

In its evaluation of the scientific evidence for a relationship between consumption of soy protein and blood total and LDL-cholesterol levels, the agency found the data suggestive but not sufficient to establish a dose-response for this relationship. However, the agency did find consistent, clinically significant reductions of total and LDL-cholesterol levels in controlled trials that used at least 25 grams (g) of soy protein per day. Thus, the agency proposed to base the qualifying level of soy protein on a total daily intake of 25 g, as suggested by the petitioner. Therefore, in § 101.82(c)(2)(iii)(A), FDA proposed the qualifying criterion for a food to bear the claim as 6.25 g of soy protein per reference amount customarily consumed (RACC) (*i.e.*, 25 g divided by 4 eating occasions per day).

In the soy protein proposed rule, FDA had tentatively indicated its intention to use a specific analytical method to measure soy protein for assessing compliance with the qualifying criterion. Comments persuaded the agency that the method would be inadequate for many products. Therefore, in the **Federal Register** of August 23, 1999 (64 FR 45932), FDA issued a proposed rule to provide for an alternative procedure for assessing compliance (hereinafter referred to as the soy protein reproposal). In the soy protein reproposal, in § 101.82(c)(2)(ii)(B) FDA proposed that it would rely on measurement of total protein and require manufacturers, when soy is not the sole source of protein in foods, to maintain records that document the amount of soy protein in products and to make these records available to appropriate regulatory officials for inspection and copying upon request.

II. Summary of Comments and the Agency's Responses

In response to the soy protein proposed rule, the agency received approximately 130 submissions, each containing one or more comments, from consumers, consumer organizations, professional organizations, government agencies, industry, trade associations, health care professionals, and research scientists.

About half of these submissions supported the proposed rule without providing grounds for this support other than those provided by FDA in the preamble to the soy protein proposed rule. The majority of the remaining comments were generally supportive, but requested modification of one or more provisions of the proposed rule. Some comments provided additional data on the relationship between soy protein and CHD, including one submission, originally submitted as a health claim petition and converted to a comment on the soy protein proposed rule (Ref. 3), that included a comprehensive review of available scientific evidence about the relationship. Some of the comments that disagreed with the soy protein proposed rule provided specific support for their positions. Some of the comments were received after the date for submitting comments had passed. Although the agency is not obligated to respond to late comments, in the interest of assessing the totality of the available data, it has considered each of these comments to the extent that it provided complete information for review or references accessible to the agency and addressed issues not raised in earlier comments. The agency has summarized and addressed the relevant issues raised in the comments in the sections of this document that follow.

In response to the soy protein reproposal, the Agency received approximately 10 submissions, each containing one or more comments. The agency has summarized and addressed these comments in section II.C.2 of this document.

A. Eligibility of Soy Protein as the Subject of a Health Claim

In the soy protein proposed rule, the agency assessed whether soy protein satisfied the preliminary requirement that a substance that is the subject of a health claim is associated with a disease for which the U.S. population is at risk (63 FR 62977 at 62978). Based on analyses presented in earlier rulemakings and its review of data on the mortality, morbidity, and costs of CHD and prevalence of ''high risk'' and ''borderline high'' total and LDL-cholesterol levels in the United States (Refs. 4 through 8), the agency tentatively concluded that, as required in § 101.14(b)(1), CHD is a disease for which the U.S. population is at risk. One comment reviewed additional sources of information and reached the same conclusion.

In the soy protein proposed rule, FDA also tentatively concluded that soy protein from *Glycine max* satisfied the preliminary requirement of § 101.14(b)(3)(i) that the substance be a food that contributes taste, aroma, or nutritive value (63 FR 62977 at 62978). Sources of soy protein identified in the soy protein proposed rule included foods composed of or derived from whole soybeans and foods that contain processed soy protein ingredients: Isolated soy protein (ISP), soy protein concentrate (SPC), soy flour (SF), texturized soy protein, or texturized vegetable protein (TVP). In addition to protein, these foods and ingredients contain other naturally occurring soy constituents, such as isoflavones, fiber, and saponins. The specific processing steps employed determine the extent of retention of such naturally occurring constituents in the final product.

In assessing whether the petitioner had demonstrated that soy protein is safe and lawful at the level necessary to justify the claim, FDA noted that the petitioner stated that soy protein ingredients were in common use in food before January 1, 1958, and that they are generally recognized as safe (GRAS) by self-determination (63 FR 62977 at 62978). Because the fractionation procedures used to convert vegetable flours to vegetable protein isolates and concentrates were commonplace prior to 1958, the petitioner also asserted that ISP and SPC can be defined as soy flour ''subject only to conventional processing as practiced prior to January 1, 1958.'' In addition, FDA reviewed information submitted by the petitioner about potential risks of consuming soy products: allergenicity (Refs. 9 and 10), exposure to trypsin inhibitors (Refs. 11 through 16), reduced bioavailability of minerals (Refs. 13, 17, 18, 19, and 20), and hormonal disturbances due to soy isoflavones (Refs. 21 through 26). Based on the totality of the evidence and, in particular, its common use in food, the agency did not take issue with the petitioner's view that the use of soy protein is safe and lawful as required in § 101.14(b)(3)(ii). Thus, FDA tentatively concluded that the petitioner provided evidence that satisfied the requirement in § 101.14(b)(3)(ii) that use of soy protein at the levels necessary to justify a claim is safe and lawful under the applicable food safety provisions of the act (63 FR 62977 at 62979).

Several comments agreed with the agency's conclusion and some provided the rationale for their support. A number of comments disputed the

petitioner's assertion of GRAS status for soy protein and raised questions about the safety of soy protein-containing foods. The specific aspects of disagreement are summarized and discussed in the following sections of this document.

1. Concerns About the Safety of Soy Protein-Based Infant Formulas

(Comment 1). Many of the comments that raised concerns about the safety of consuming soy protein-containing foods addressed the safety of soy protein-based infant formulas. The observed or hypothesized detrimental effects of such formulas discussed in these comments included: hormonal disturbances due to estrogenic effects of soy isoflavones; thyroid abnormalities; altered mineral balance, especially for zinc; and diabetogenic effects in infants.

FDA is aware of concerns raised about the safety of soy infant formulas, but notes that these are speculative at this time, pending the results of definitive research. FDA also notes that the American Academy of Pediatrics (Ref. 73) and the New Zealand Ministry of Health (Ref. 74) have recently issued guidelines for the safe and suitable use of soy-based infant formulas. Some issues regarding effects of infant formula are unique because infants may be entirely dependent on formula as a sole source of nutrition and the relevance of such issues for soy protein consumed as part of a mixed diet by the general U.S. population is not clear.

In any case, concerns about effects of soy protein specific to infant formulas are beyond the scope of the current rule, which authorizes a health claim about the relationship of soy protein and CHD for foods intended for use by the general population. Health claims are not permitted on foods represented or purported for use by infants and toddlers less than 2 years of age unless specifically provided for in the authorizing regulation (21 CFR 101.14(e)(5)). Diets restricted in fat, saturated fat, and cholesterol are not recommended for infants and young children, and the current rule (§ 101.82) contains no provisions for use of the health claim about the relationship between soy protein and CHD on foods for infants and toddlers.

2. Comments on Petitioner's Self-Determination of GRAS Status for Soy Protein

(Comment 2). One comment specifically agreed with the petitioner's assertion that soy protein-containing food ingredients are generally recognized as safe (GRAS) by self-determination and based on common use in food before January 1, 1958, in conformance with § 201(s) of the act. The comment also noted that, although soy protein is not listed as GRAS or prior sanctioned in Title 21 of the CFR, FDA has noted that these lists ''do not include all substances generally recognized as safe for their intended use'' and, as stated at 21 CFR 182.1, ''[i]t is impracticable [for FDA] to list all substances that are GRAS for their intended use.'' This comment also agreed with the petitioner's conclusion that fractionation procedures used to convert vegetable flours to vegetable protein concentrates and isolates were commonplace in various sectors of the grain industry, such as corn processing, well before 1958. Therefore, SPC and ISP can be defined as soy flour ''subject only to conventional processing as practiced prior to January 1, 1958.'' The comment concluded that SF (including steam-treated SF), SPC, and ISP all fall within the category of ingredients that are GRAS through experience based on their common use. Several comments objected to the petitioner's self-determination of GRAS status, citing a variety of reasons. As stated previously, FDA does not take issue with the petitioner's self-determination of GRAS status, and the comments, discussed below, have not convinced the agency to change that conclusion.

(Comment 3). Some comments raised objections on the basis that FDA has not approved the GRAS status of soy protein.

Although FDA has not ruled formally on the GRAS status of soy protein ingredients, it has not challenged determinations that soy's use as dietary protein is GRAS. Food ingredients whose use is generally recognized as safe by qualified experts are not required by law to receive FDA approval. Under the health claim petition process, FDA evaluates whether the substance is ''safe and lawful'' under the applicable food safety provisions of the act (§ 101.14(b)(3)(ii)). As discussed in greater detail below, FDA did not receive sufficient evidence from comments to challenge the petitioner's assertion that soy protein ingredients are GRAS by self-determination. The petitioner met the showing required by § 101.14(b)(3)(ii) that the substance be ''safe and lawful.''

(Comment 4). One comment claimed that the Center for Food Safety and Applied Nutrition recently returned a petition requesting GRAS recognition for soy protein.

The document referred to by the comment was a notification by Archer Daniels Midland Company (GRN 000001), rather than a petition for FDA action, and the subject of the notification was soy isoflavone extract, rather than soy protein. At the company's request, FDA ceased evaluation of the GRAS Notification pending the company's updating of the file (Ref. 75). Thus, this comment was incorrect.

(Comment 5). A comment asserted that petitioner's basis for GRAS self-determination of the use of soy protein as a dietary protein ingredient (*i.e.*, common use in food before January 1, 1958) was incorrect. Because the 1979 Select Committee on GRAS Substances (SCOGS) report (Ref. 76) determined that, at the time of the report, likely average dietary exposure to soy protein isolate was only about 150 milligrams (mg) from food items, the comment asserted that soy protein isolates could not have been in common use before 1958.

FDA finds that this comment is groundless and inaccurately characterizes the findings of the SCOGS. The 1979 SCOGS report includes the background statement ''Edible soy protein isolates for food uses appeared about 1957 as a major article of commerce.'' The 1979 SCOGS Report also cited a 1972 National Research Council survey of GRAS ingredients that listed 14 food categories in which soy protein isolates were used and calculated an average daily intake of several grams. Soy protein isolates represent only one of several possible sources of soy protein in foods. In addition, for purposes of determining if a substance is GRAS, common use is not restricted to common use in the United States.

(Comment 6). A comment supporting the petitioner's self-determination of GRAS status noted that use of soy as a food dates to about the 11th century BC in the eastern half of north China. From about the first century AD to the 15th-16th century, soybeans were introduced in Korea, Japan, Indonesia, the Philippines, Vietnam, Thailand, Malaysia, Burma, Nepal, and northern India. Soybeans first grew in the United States in 1765 and were used then to manufacture soy sauce and vermicelli (soybean paste) (Ref. 77). A comment that disputed the petitioner's self-determination of GRAS status speculated that the species of soybean grown early in its history in Asia may have differed significantly in its content of nutrients and other active components from the modern species that is cultivated in this country.

FDA does not find this comment compelling. Although the composition of soybeans has likely changed over time, modern soybean species and

cultivars are, in any case, encompassed within the period of common use of soy and soy protein in food.

(Comment 7). One comment questioned whether the Asian experience could provide assurance that soy is safe. Drawing parallels with herbal medicine in terms of attitudes, monitoring deficiencies, and the general difficulty in detecting toxicities with long latency, this comment concluded that the long history of apparent safe use of soy products cannot assure they are without risk (Ref. 78).

The comment did not provide evidence to document that soy products, consumed at levels necessary to justify the claim, are not generally recognized as safe. Moreover, considerable research is underway at this time because of the hypothesized benefits of the historical use of soy products by certain population groups. FDA supports the ongoing research to clarify the effects, both potentially beneficial and potentially adverse, of soy and agrees that any effects due to changes in the conditions of use should be monitored. However, the information currently available does not lead FDA to object to the petitioner's self-determination of GRAS status of soy protein.

(Comment 8). Several other comments asserted that the proposal did not adequately establish the GRAS status of soy protein food ingredients in that the proposal did not include a thorough evaluation of the safety of potentially harmful components, *e.g.*, lysinoalanine, nitrites and nitrosamines, trypsin inhibitors, phytate, and isoflavones.

FDA notes that the 1979 SCOGS report (Ref. 76) discussed several of these components extensively and recommended that it would be prudent to develop food grade specifications for soy protein isolates that would set acceptable limits on the levels of lysinoalanine, nitrites, and nitrosamines. But, the possible presence of these components in soy protein isolates did not lead the SCOGS panel to recommend against GRAS status of soy protein isolates.

As noted above, the agency finds the petitioner met the showing required by § 101.14(b)(3)(ii) that soy protein is ''safe and lawful.'' The agency lacks documented evidence of adverse effects in humans and has received no information about actual levels of potentially harmful components or about threshold levels for adverse effects in humans. Accordingly, the agency has no basis to conclude that soy protein is not safe and lawful. The specific comments about potentially harmful components of soy are discussed below.

3. Lysinoalanine: Potential Toxic Effects

(Comment 9). A few comments noted concerns about the presence of lysinoalanine in soy protein isolates and cited the SCOGS report (Ref. 76), which indicated that lysinoalanine was implicated as a renal toxic factor in rats.

FDA finds that the comments inaccurately reflected the findings of the SCOGS report. The SCOGS report noted that the relatively severe alkali treatment used to modify viscosity and adhesive properties of soy protein isolates used as sizing and coating adhesives in the production of paper and paperboard products can cause formation of lysinoalanine. The report evaluated the risk of lysinoalanine exposure from soy protein adhesives and binders used in paper and paperboard food packaging. The 1979 SCOGS report noted that, ''For edible isolated protein production, extraction is usually carried out at a pH below 9 to avoid hydrolytic or rheological changes'' and concluded that, while relatively low levels of lysinoalanine had been reported in some samples of food grade soy protein isolate, available information indicated that the levels of lysinoalanine in food grade soy protein isolates pose no hazard to the consumer (Ref. 76).

FDA notes that the comments that expressed concern about lysinoalanine in soy protein ingredients did not provide any information about lysinoalanine levels in food grade soy protein ingredients nor about use of alkali-processed soy protein as a food ingredient. FDA finds that the potential presence of lysinoalanine in soy protein isolates used for sizing and coating adhesives in paper and paperboard products is not relevant to the safe and lawful use of soy protein in food. FDA also notes that the production of small amounts of lysinoalanine during alkali processing has also been documented with casein and lactalbumin, so it is not unique to soy. Good manufacturing practices are and should be employed to minimize the production of lysinoalanine because of its deleterious effects on protein quality.

4. Nitrites and Nitrosamines: Potential Carcinogenic Effects

(Comment 10). Some comments expressed concerns about the potential presence of nitrites in soy protein and the potential their presence poses for the in vivo formation of nitrosamines, which have been shown to be carcinogenic in experimental animals.

FDA notes that many natural and processed foods contribute to the total human intake of nitrite. In an appendix titled ''Health Aspects of Nitrites in Soy Protein Isolates,'' the SCOGS report (Ref. 76) presented an estimate of the consumer exposure to nitrite contributed by soy protein in perspective to nitrite from other dietary sources and that formed in the gastrointestinal tract by reduction of salivary and dietary nitrate. The SCOGS report estimated the maximum daily nitrite consumption for a vegetarian eating meat alternatives prepared from soy protein to be 0.04 mg/kilogram (kg) body weight (or 2.8 mg for a 70-kg person). The report estimated daily per capita intake of nitrite from other foods of plant origin and cured meats to be about 2.4 mg and daily exposure to nitrite from saliva to be 15 mg. The report estimated that nitrite formed in the intestine from reduction of ammonia or organic nitrogen compounds contributed about 90 mg/day. Given the relatively minor potential contribution of soy protein to total nitrite exposure, and the fact that no data were submitted to document the current levels of nitrites or nitrosamines in soy protein isolates, FDA is not persuaded of the necessity for establishing specifications for acceptable levels of these compounds.

5. Trypsin Inhibitors: Potential Effects on Pancreatic Function

(Comment 11). A number of comments presented evidence that modern heat treatment and other processing do not entirely eliminate the activity of trypsin inhibitors in soy protein-containing products. Additional references provided in comments (Refs. 79, 80, 81, and 82) suggested that the mechanism of feedback regulation of pancreatic enzyme secretion may be responsible for deleterious effects on the pancreas—hyperplasia and formation of nodules—seen in animal studies. Further, Leiner (Ref. 80) demonstrated that infusion of high levels of isolated trypsin inhibitor in humans can evoke this mechanism but noted that further research was needed to assess whether frequent exposures to low levels of trypsin inhibitors consumed in the diet could have the same effect. Other comments cited evidence for potential anticarcinogenic effects of these and other protease inhibitors (Ref. 83). Leiner (Ref. 82) hypothesized that any anticarcinogenic effect of protease inhibitors would likely be manifested at levels too low to evoke their adverse effects on the pancreas.

FDA notes that the observed adverse effects have been limited to animal

studies. To date, deleterious effects of consumption of low levels of soybean trypsin inhibitors have not been documented in humans. For example, Mills *et al.* (Ref. 84) conducted a prospective study of fatal pancreas cancer among 34,000 California Seventh-day Adventists, a group with high soy consumption. Compared to all U.S. whites, Adventists experienced decreased risk from pancreas cancer death, which was not statistically significant. Although there was a suggestive relationship between increasing meat, egg, and coffee consumption and increased pancreatic cancer risk, these variables were not significantly related to risk after controlling for cigarette smoking. However, increasing consumption of vegetarian protein products, beans, lentils, and peas as well as dried fruit was associated with highly significant protective relationships to pancreas cancer risk.

Therefore, FDA finds that the information presented in these comments has not documented deleterious effects of dietary intake of trypsin inhibitors from soy in humans and, thus, does not lead the agency to take issue with the petitioner's conclusion that the use of soy protein is safe and lawful as required by § 101.14(b)(3)(iii).

6. Phytate: Effects on Mineral Balance

Comments raised concerns about the potential deleterious effect of soy protein and its phytate content on mineral status. Phytate, the salt of phytic acid or inositol hexaphosphate, is a natural plant constituent containing six negatively charged phosphate groups that can form strong complexes with divalent cations such as calcium, magnesium, iron, zinc, and copper. Concerns relative to soy have concentrated mainly on iron and zinc, based primarily on studies of the absorption and bioavailability of these minerals.

(Comment 12). One comment cited a study in which a soy protein-based purified diet induced iron deficiency in monkeys (Ref. 85). The same comment also noted two studies in humans—one that found inhibition of the absorption of nonheme iron from both semisynthetic meals and meals comprising conventional foods by various soy protein-containing ingredients (Ref. 86), and one that found increasing inhibition of nonheme iron absorption with increasing amounts of phytate in liquid formula meals that contained soy protein isolates (Ref. 87). In a study cited in another comment, the substitution of some meat in a mixed meal by soy protein caused a decrease in the absorption of nonheme iron and an increase in the absorption of heme iron (Ref. 88), so that overall iron absorption was not compromised. Another comment reported that human feeding studies with soy protein that have examined measures of iron status have not shown detrimental effects (Ref. 89).

A comment raised concerns about the effect of soy protein on zinc status based on studies of absorption of zinc from soy infant formula (Ref. 90) and a study that showed decreased serum thymulin in subjects fed a low-zinc, soy protein-based experimental diet designed to produce mild zinc deficiency (Ref. 91). As noted earlier, issues specific to infant formula are outside the scope of this rulemaking and the experimental diet in the latter study (Ref. 91) is of limited relevance to the likely conditions of consumption of soy protein in the population that is the target of the health claim. Another comment cited two studies (Refs. 92 and 93) showing no adverse effects of soy protein on absorption of zinc from meals in subjects with adequate zinc status.

One comment provided additional information on the mechanism of phytate interference with zinc homeostasis (Ref. 94) and characterized the problem as more than a matter of decreased bioavailability of the zinc consumed in a meal. The comment noted that phytate can remove from the duodenum zinc that is mainly derived from pancreatic secretions, that is, zinc that may have been consumed 1–2 weeks earlier. Although these data are derived from animal studies, the comment indicated that the physiology of zinc homeostasis is not qualitatively different across species.

This comment expressed concern that high consumption of soy protein might exacerbate marginal zinc deficiency, which is difficult to diagnose, and suggested that labeling should include the content of both zinc and phytate so consumers can be educated that a molar ratio of phytate:zinc of less than 10 is needed to avoid detrimental effects on zinc status, as suggested by research in animals (including Ref. 95). The comment acknowledged that education would be needed for the public to utilize such labeling. The agency recognizes that adequacy of iron and zinc status in largely plant-based diets is a legitimate concern.

FDA finds that the evidence of potential adverse effects of soy protein on iron and zinc status is equivocal. Interpretation of the evidence is difficult because findings in human studies are often inconsistent with results of animal studies. Moreover, many factors affect the absorption of these minerals, including the amount consumed in a meal, the enhancing and inhibiting effects of other components of the meal, and the nutritional status of the subject. Animal studies suggest that zinc status is a strong determinant of effects of phytate/soy on zinc absorption: zinc absorption is more impaired with zinc deficiency, in contrast to the effect of low iron status, which enhances iron absorption. However, given the lack of documented evidence for impaired iron and zinc status in humans consuming soy protein as part of a mixed diet, FDA is not persuaded of the necessity for the suggested labeling with respect to the phytate: zinc molar ratio. Nor is it persuaded that many consumers would find the suggested information, which is highly technical, useful at this time.

7. Soy Isoflavones: Estrogenic Effects

Many comments addressed concerns about the possible deleterious consequences of phytoestrogen effects of the soy isoflavones, genistein and daidzein. Most of these addressed proliferative (and potentially carcinogenic) effects on estrogen-sensitive tissues, effects on circulating hormone levels and potential deleterious effects on fertility, and potentially adverse effects on sexual development.

a. *Proliferative effects.* (Comment 13). Several comments cited a number of studies of in vitro effects of individual isoflavones on proliferation of estrogen-sensitive cells. For example, Dees et al. (Ref. 96) found that genistein increased a number of indices for proliferative activity in MCF–7 human breast cancer cells. As the authors noted, these findings are consistent with the conclusion that dietary estrogens at low concentrations do not act as antiestrogens, but act like estradiol to stimulate human breast cancer cells to enter the cell cycle. However, many other studies (reviewed in Refs. 97 and 98) have found that the phytoestrogens present in soybeans inhibit breast cancer cell proliferation in vitro (at lower concentrations, closer to physiological levels) and inhibit mammary cancer development in various animal models. FDA concludes that studies in transformed cells cannot predict with certainty whether effects will be beneficial or detrimental in humans consuming soy protein.

(Comment 14). Comments argued that two reports showed effects of dietary intake of soy isoflavones on breast tissue in women. Petrakis *et al.* (Ref. 99) studied 24 normal pre- and postmenopausal white women, ages 30

to 58 years, who underwent monthly nipple aspiration of breast fluid and gave blood and 24-hour urine samples for biochemical studies. The women consumed no soy in months 1–3 and 10–12. During months 4–9 the women ingested daily 38 grams (g) of soy protein isolate containing 38 mg of genistein (daidzein content was not reported). This study's findings indicated that prolonged consumption of soy protein isolate had a stimulatory effect on the breast of premenopausal women, characterized by increased secretion of breast fluid and elevated levels of plasma estradiol. The study also detected evidence of epithelial proliferation (hyperplasia) in 7 of the 24 subjects during consumption of soy. McMichael-Phillips *et al.* (Ref. 100) examined the effects of dietary soy supplementation on the proliferation rate of premenopausal, histologically normal breast epithelium and the expression of progesterone receptor. Women (n = 48) with benign or malignant breast disease were randomly assigned to receive their normal diet either alone or with a 60-g soy supplement (containing 45 mg isoflavones) taken daily for 14 days. Serum concentrations of the isoflavones genistein and daidzein increased in the soy group at 14 days. The proliferation rate of breast lobular epithelium significantly increased after soy supplementation when both the day of menstrual cycle and the age of patient were accounted for. Progesterone receptor expression increased significantly in the soy group. The authors concluded that further studies are required to determine whether the short-term stimulation of breast proliferation is due to estrogen agonist activity and to examine the long-term effects of soy on both the pituitary gland and breast.

FDA finds that the detection of proliferative effects in these two studies suggests the need for additional research. The findings do not, however, establish that the observed effects are detrimental and are not supported by the findings of epidemiologic studies of soy intake and risk of premenopausal breast cancer (Ref. 101).

b. *Fertility and Hormone Levels.* (Comment 15). Some comments referenced a number of studies that reported reduced fertility in animals exposed to phytoestrogens (including Refs. 102, 103, and 104). Some of these studies involved phytoestrogens other than those found in soy or consumption of soy under extreme or unusual conditions. FDA is not convinced of the relevance of these studies to human consumption of soy protein.

(Comment 16). Comments cited the study of Cassidy *et al.* 1994 (Ref. 105) as suggesting the potential for deleterious effects on human fertility. These investigators examined the influence of a diet containing soy protein on the hormonal status and regulation of the menstrual cycle in six premenopausal women. Soy protein (60 g containing 45 mg isoflavones) given daily for 1 month significantly ($p<0.01$) increased follicular phase length and/or delayed menstruation. Midcycle surges of luteinizing hormone (LH) and follicle-stimulating hormone (FSH) were significantly suppressed during dietary intervention with soy protein. Plasma estradiol concentrations increased in the follicular phase and cholesterol concentrations decreased 9.6 percent. The authors concluded that responses to soy protein are potentially beneficial with respect to risk factors for breast cancer and may in part explain the low incidence of breast cancer and its correlation with a high soy intake in Japanese and Chinese women. One of the comments that cited this study acknowledged that it is unclear whether these soy effects are beneficial or adverse. FDA notes that the study found that soy did not interfere with ovulation and the study did not assess effects on fertility.

In a similar study with a longer duration, Duncan *et al.* (Ref. 106) studied effects of isoflavone consumption in 14 premenopausal women. The women consumed isoflavones in soy protein powders (control diet, 10; low isoflavone diet, 64; high isoflavone diet, 128 mg/day) for three menstrual cycles plus 9 days in a randomized cross-over design. The low isoflavone diet decreased LH and FSH levels during the periovulatory phase. The high isoflavone diet decreased free T3 and dehydroepiandrosterone sulfate levels during the early follicular phase and estrone levels during the midfollicular phase. No other significant changes were observed in hormone concentrations or in the length of the menstrual cycle, follicular phase, or luteal phase. Endometrial biopsies performed in the luteal phase of cycle 3 of each diet period revealed no effect of isoflavone consumption on histological dating. FDA notes that although this study's findings varied somewhat from those of Cassidy *et al.* (Ref. 105), it also did not directly address the effect of soy on human fertility. FDA finds that these two studies do not provide sufficient evidence to address the effect of soy protein on human fertility.

c. *Developmental Effects.* (Comment 17). One comment cited the study of Faber and Hughes, 1993 (Ref. 107) as showing alterations in LH regulation following developmental treatment with genistein, suggesting that during pregnancy in humans, isoflavones could be a risk factor for abnormal brain and reproductive tract development. This study involved injection of 0, 1, 10, 100, 200, 400, 500, or 1,000 micrograms of genistein into neonatal rats on days 1–10. Because of the differences in developmental stages between rodents and humans, this type of experiment is used as a model for prenatal (third trimester) effects of diethylstilbestrol (DES). Increased exposure to genistein led to decreased LH secretion; the volume of the sexually dimorphic nucleus of the preoptic area increased compared to controls only in animals that received the two highest doses of genistein. An earlier paper by Faber and Hughes 1991 (Ref. 108) showed that effects elicited by neonatal injections of 1000 micrograms of genistein were similar to those of 0.1 micrograms of DES. The comment also cited studies using a similar experimental model by Medlock *et al.* (Refs. 109 and 110) as demonstrating that equol (a metabolite of daidzein in some individuals) acts as an endocrine disruptor during development. FDA finds that the relevance of these studies to an assessment of potential prenatal effects of dietary soy protein during pregnancy is uncertain.

(Comment 18). One comment cited the study of Harrison *et al.* (Ref. 111) that showed pregnant Rhesus monkeys fed genistein had serum estradiol levels 50 to 100 percent higher than the controls in three different areas of the maternal circulation. The comment also noted the finding that the fetuses of genistein fed monkeys had a 70 percent higher serum estradiol level than did the controls. In this study, five monkeys were fed genistein (amount not specified) during pregnancy and compared to five controls. No differences were reported in maternal weight gain, fetal weights at delivery, or placental weights. Significant differences in estradiol levels (but not progesterone) were noted at delivery in maternal peripheral blood, uterine veins, ovarian veins, and the fetus, and in maternal blood during pregnancy, but values were not reported. FDA received only an abstract describing this study. Without more complete documentation, the merits or weaknesses of this study cannot be evaluated. Therefore, FDA has not used this study to evaluate the concerns raised in this comment.

FDA notes that, in another study that examined dietary effects, Fritz *et al.* (Ref. 112) fed female rats genistein from

conception to day 21 postpartum in the diet at concentrations of 0, 25 and 250 mg genistein/kg diet. They found that genistein in the diet at ''physiological levels'' (equivalent to those in Asians consuming a traditional high soy diet) enhances cell differentiation, resulting in programming of mammary gland cells for reduced susceptibility to chemically induced mammary cancer, with no observed toxicity to the fertility of dams or the reproductive tract of female offspring. FDA finds that these dietary studies in animals do not provide evidence for detrimental developmental effects in humans.

(Comment 19). Another comment raised the possibility that soy phytoestrogens could be responsible for inducing premature puberty and cited the case-control study of estrogenic exposures by Freni-Titulaer *et al.* (Ref. 113) of patients with premature thelarche seen in Puerto Rico between 1978 and 1981. In subjects 2 years of age or older at the onset of thelarche, the study found no statistically significant associations. In subjects with onset before 2 years of age, statistically significant positive associations were found with a maternal history of ovarian cysts, consumption of soy-based formula, and consumption of various meat products. A statistically significant negative association was found with consumption of corn products. The authors concluded that these statistical associations were not sufficient to explain the reported increase in premature thelarche because in over 50 percent of the case subjects there was no exposure to any of the risk factors for which statistical associations were found.

Thus, FDA concludes that this study provides no convincing evidence that soy was responsible for premature thelarche. Moreover, FDA notes that the study documents no deleterious effects of consuming soy protein at the levels necessary to justify the health claim in population groups that are the target of the claim.

d. *Other.* (Comment 20). One comment cited a study associating intake of tofu in mid-life by Japanese-American men in Hawaii with vascular dementia and brain atrophy in old age (Ref. 114). This comment hypothesized that isoflavone inhibition of aromatase, which catalyzes the conversion of testosterone to estradiol, may provide a mechanistic explanation for this finding. The report cited (Ref. 116) is an abstract that indicates the researchers found an association of high tofu intake with low cognitive test scores and with Alzheimer's disease, rather than vascular dementia.

FDA finds that this abstract does not provide a sufficient basis to evaluate the merits and weaknesses of this study. As such, it is not useful in evaluating the safety concerns at issue. Moreover, the report does not provide information on total soy intake or what variables were controlled in the analysis. If tofu or soy were implicated in Alzheimer's disease, its prevalence would be expected to be higher in Japan than in Hawaii, but White *et al.* (Ref. 115) found the prevalence of Alzheimer's disease was higher in Hawaii than in Japan. Therefore, FDA is not persuaded by the comment raising concerns about potential adverse effects of soy protein in dementia and brain atrophy in older persons.

(Comment 21). One comment addressed the general issue of threshold effects for estrogenic compounds, citing a study (Ref. 116) that showed no threshold dose for estradiol-induced sex reversal of turtle embryos. It also cited a study (Ref. 117), available in abstract form, that reviewed 31 dose-response curves for hormone-mimicking chemicals that also failed to show a threshold. The report of this study did not include mention of soy isoflavones and did not specify the estrogenic effects examined. FDA does not find this evidence particularly useful. The relevance of the turtle model to humans is uncertain and the other cited evidence was available only in abstract form.

e. *Conclusion.* Soy isoflavones and other dietary phytoestrogens are known to exert hormonal effects—both estrogenic and antiestrogenic—depending on the amount and type consumed and endogenous hormonal status of the organism studied; they are much less potent than endogenous estrogen or synthetic estrogens such as DES. There is considerable variability from person to person in the absorption, metabolism, and disposition of the soy isoflavones, genistein and daidzein (Ref. 118), and researchers have found that their metabolism and excretion depend on the duration of ingestion and the subject's sex (Ref. 119).

Overall, the evidence for proliferative effects, effects on fertility and hormone levels, and developmental and other effects in humans due to the estrogenic effects of soy isoflavones is very limited. Both possible beneficial effects and possible detrimental effects are still hypothetical. FDA finds that the information presented in the comments has not adequately documented deleterious effects of dietary intake of soy isoflavones in humans.

8. Soy Isoflavones: Goitrogenic Effects

(Comment 22). Comments noted that isoflavones are inhibitors of the enzyme thyroid peroxidase (TPO), which produces the thyroid hormones T3 and T4, and indicated that its inhibition can be expected to generate thyroid abnormalities. Other comments, however, noted the lack of evidence for consequential effects of TPO inhibition (*i.e.*, high prevalence of goiter) in populations with high soy consumption.

One comment noted that there exists a body of animal data that demonstrates goitrogenic and even carcinogenic effects of soy products and cited the study by Kimura *et al.* (Ref. 120). These researchers developed malignant goiter in rats by feeding diets containing 40 percent defatted soybean and no iodine. No deleterious effects were seen in controls fed the same diet with iodine added.

Comments noted the existence of a number of case reports in the older literature of soy inducing goiter in infants (Refs. 121 through 125). Van Wyk *et al.* (Ref. 121) studied one infant who developed goiter on a soybean formula and tested the same product in 12 adults. In adults, the product did not interfere with iodine absorption, impair iodine uptake, interfere with oxidation of iodine in the thyroid, or (in most subjects) interfere with the release of protein-bound iodine into the blood. Hydovitz (Ref. 12) provided a single case report; Shepard *et al.* (Ref. 123) described three cases and presented evidence that soybean goiter was caused by iodine deficiency. Pinchera *et al.* (Ref. 124) reported on a case of a congenitally hypothyroid infant and found high fecal losses of thyroxine. Addition of adequate iodine to soy-based infant formulas in the 1960's generally resolved or prevented goiter. However, Chorazy *et al.* (Ref. 125) more recently reported on a hypothyroid infant who was semi-refractory to thyroid hormone therapy while consuming soy formula.

Several comments cited the study of Ishizuki *et al.* (Ref. 126) as evidence for goitrogenic effects of soy in adults. This study is published in Japanese and the available English abstract is poorly translated. As described in that abstract, the design and findings are unclear: goiters were said to occur in half the subjects eating 30 g soybeans daily for 3 months, though ''various parameters of serum thyroid hormones remained unchanged by taking soybeans.'' The soybean preparation used (reported in some comments to be roasted, pickled soybeans), iodine intake, and other dietary changes were not reported.

In one comment, researchers indicated that they had identified genistein and daidzein as the goitrogenic isoflavonoid components of soy and defined the mechanisms for inhibition of TPO-catalyzed thyroid hormone synthesis using in vitro studies of the pure isoflavones (Refs. 127 and 128). The comment noted that the observed irreversible inactivation of TPO by isoflavones, through covalent binding to TPO, raises the possibility of neoantigen formation. The comment also noted that anti-TPO is the principal autoantibody present in autoimmune thyroid disease and proposed that this hypothetical mechanism is consistent with the reports of Fort *et al.* (Refs. 129 and 130) of a doubling of risk for autoimmune thyroiditis in children who had received soy formulas as infants compared to infants receiving other forms of milk. However, the studies of Fort *et al.* were retrospective case-control analyses of early feeding practices in children with diabetes (Ref. 129) or autoimmune thyroid disease (Ref. 130). The studies did not establish a cause-and-effect relationship or assess medical indications for use of soy formula in these children.

FDA notes that no data or other information presented in the comments documents deleterious effects on thyroid function of consuming soy protein at the levels necessary to justify the health claim in population groups that are the target of the claim.

9. Allergenicity of Soy Protein

(Comment 23). One comment disputed the statement in the soy protein proposed rule that soy allergies are often outgrown. FDA finds that the comment cited data that did not directly address this issue but documented the following with respect to soy: a case report of an anaphylactic reaction to soy in an adult (131); severe reactions to soy in several Swedish children and adolescents, who had known severe reactions to peanuts and asthma but had not reacted previously to soy (Refs. 132 and 133); cross reactivity of some soy and peanut allergens (Ref. 134); and an outbreak of gastrointestinal illness associated with consumption of an improperly processed soy protein tuna salad extender in which only a few individuals exhibited signs of true hypersensitivity reactions (Ref. 135).

(Comment 24). One comment noted that use of soy protein health claims will highlight the presence of soy protein in foods. Another comment noted that any food protein can stimulate a food allergy and that such allergies are commonly due to milk, egg, and nut proteins. This comment noted that infants who develop cow's milk allergies or intolerance are frequently prescribed soy substitutes and a small subset of these high-risk children also develop soy protein allergy.

FDA finds that the comments that noted concerns about the allergenicity of soy protein cited these concerns as evidence that consumption of soy is unsafe, but did not propose that any particular action be taken by the agency as a consequence to protect consumers with soy allergies. FDA does not believe that, because some persons may have allergic reactions to a food, it is unsafe. FDA has previously stated that the declaration of an allergenic substance in the ingredient statement on the food label provides adequate information for consumers regarding the presence of the allergenic ingredient in the product (63 FR 8103 at 8113), and sees no reason to change this view with respect to soy. FDA notes, in agreement with one of the comments received, that authorization of a health claim for soy protein and CHD will highlight the presence of soy protein in those food products that bear the claim. The agency, therefore, anticipates that persons with known soy allergies will be able more easily to avoid soy protein based products.

B. Updated Review of Scientific Evidence and Issues Related to the Evidence

In the soy protein proposed rule, FDA conducted a comprehensive review of the human studies submitted in the petition (Refs. 27 through 66) (63 FR 62977 at 62980). Of these, the agency gave particular weight to 14 clinical trials (Refs. 27, 28, 30 (1 trial), 31, 36, 37 (1 trial), 40 (2 trials), 44, 49, 51, 54, 58, and 59). These 14 trials met the criteria for selection set out by the agency (63 FR 62977 at 62980): they included subjects representative of the general U.S. population; were well controlled; reported information on intakes of saturated fat and cholesterol; and avoided problems associated with small sample size, lack of a placebo, and other design problems. The agency summarized these studies in Table 1 of the soy protein proposed rule (63 FR 62977 at 62998). The agency also summarized seven clinical trials in adults (Refs. 33, 35, 46, 55, 56, 60, and 64) and three trials in children (Refs. 34, 42/45, and 63) with type II or familial hypercholesterolemia in Table 2 of the soy protein proposed rule (63 FR 62977 at 63011). In addition, FDA reviewed the results of one epidemiological study (Ref. 65 and 63 FR 62977 at 62986) and a meta-analysis (Ref. 66 and 63 FR 62977 at 62987) that included a number of the soy protein studies submitted in the petition.

Based on these studies, FDA concluded there was scientific evidence for a consistent, clinically significant effect of soy protein on blood total and LDL-cholesterol levels (63 FR 62977 at 62989). The hypocholesterolemic effect of soy protein was seen in addition to the effects of a low saturated fat and low cholesterol diet. The degree of lowering of blood total and LDL-cholesterol was consistently and highly dependent on initial levels, within and across studies of subjects with normal, moderately elevated, and severely elevated blood lipid levels, with persons having higher blood lipid levels showing greater effects. Soy protein consistently caused only statistically nonsignificant effects or slight elevations in high density lipoprotein (HDL)-cholesterol levels. The intervention studies indicated that a minimum level of approximately 25 g of soy protein was needed to have a clinically significant effect on total and LDL-cholesterol levels.

1. Additional Data Submitted With Comments and New Studies

(Comment 25). Several comments included submissions of additional studies of the effects of soy protein on total and LDL-cholesterol or directed FDA to studies published since it issued the soy protein proposed rule. FDA reviewed these studies and found that two (Refs. 136 and 137) meet its criteria for consideration.

One comment included an unpublished paper by Teixeira *et al.*, 1999 (Ref. 136) that examined the effects of feeding four graded levels of soy protein in moderately hypercholesterolemic men. After a three-week lead-in on a National Cholesterol Education Program (NCEP) Step 1 diet, subjects were randomly assigned to one of five experimental groups. Each group received 50 g protein daily, provided in a variety of baked goods and ready-to-mix beverages, from ISP or casein in different proportions for 6 weeks. The proportions of protein were 50, 40, 30, 20, and 0 g (for control) as ISP and 0, 10, 20, 30, and 50 g as casein, respectively. At 3 weeks, statistically significant ($p<0.05$) reductions in total and non-HDL-cholesterol were seen only in the groups consuming 40 and 50 g of soy protein. At 6 weeks, statistically significant reductions ($p<0.05$) from baseline were found for non-HDL cholesterol levels in all soy protein-consuming groups and, in all except the 40 g soy protein group, for total cholesterol level. Although a reduction in total cholesterol was noted in this

latter group, it was non-significant (p=0.07). The authors noted that neither non-compliance with the diet nor alterations in blood isoflavone content could account for this result. The study also showed that levels of HDL-cholesterol were not affected by dietary treatment at any soy consumption level investigated.

FDA also noted the recently published study by Wong *et al.*, 1998 (Ref. 137), who conducted a well designed and controlled trial using NCEP Step 1 diets with most protein provided by soy (50 g/day of soy protein) or animal protein. Subjects were 13 normocholesterolemic and 13 hypercholesterolemic men aged 20–50 years and the trial was a randomized, 2-part, crossover study. Subjects were fed either an NCEP Step I soy protein-containing diet or an NCEP Step I animal protein diet for 5 weeks. After a washout period of 10–15 weeks, the subjects were fed the alternate diet for 5 weeks. The study found the hypocholesterolemic effect of soy protein to be independent of age, body weight, pretreatment plasma lipid concentrations, and sequence of dietary treatment. Regardless of plasma lipid status, the soy protein diet was associated with a statistically significant decrease in the plasma concentrations of LDL cholesterol (p=0.029). FDA finds these two studies supportive of the relationship of soy protein to reduced risk of CHD.

(Comment 26). One comment cited two metabolic ward studies by Fumagalli *et al.* 1982 (Ref. 138), designed to examine fecal steroid excretion in adults with familial type II hypercholesterolemia, that had not been reviewed by FDA in the soy protein proposed rule, as supportive of the ability of soy protein to lower total cholesterol levels. However, FDA finds these studies had a very small number of subjects, short duration of treatment, and reported insufficient information to determine the amounts of soy protein in the diets consumed. These studies failed to meet FDA's selection criteria for review and, so, FDA has not considered them further.

(Comment 27). Comments included information on two studies by Jenkins et al. 1999 (Refs. 139 and 140) that assessed the effects of inclusion of soy protein and soluble dietary fiber in an NCEP Step II diet in hypercholesterolemic subjects in a randomized crossover design. Dietary saturated fat (less than 7 percent of energy) and cholesterol (less that 80 mg/day) did not differ in the test and control metabolic diets (Ref. 139). Compared with the control diet, the test diet (which provided 33 grams of soy protein from a variety of commercially available foods) resulted in a 6 percent decrease in total cholesterol and a 7 percent decrease in LDL-cholesterol levels. The second study (Ref. 140) used a similar design but was only available as an abstract that contained too little detail for the agency to evaluate it.

FDA finds that neither of these studies can provide support for a hypocholesterolemic effect of soy protein per se because both soy protein and soluble fiber were varied concurrently. However, these studies do suggest that inclusion of these specific components can further enhance the lipid-lowering effect of a low saturated fat, low cholesterol diet.

(Comment 28). A comment also submitted the recent study by Washburn *et al.*, 1999 (Ref. 141) for consideration. In this randomized, double-blind crossover trial, 51 normocholesterolemic, perimenopausal women consumed supplements for 6-week periods of 20 g of complex carbohydrate, 20 g of soy protein containing 34 mg of phytoestrogens given in a single dose, and 20 g of soy protein containing 34 mg of phytoestrogens split into two doses. Significant declines in total cholesterol level (6 percent lower) and LDL-cholesterol level (7 percent lower) were observed with both soy treatments compared to the carbohydrate placebo control. However, no dietary assessments were performed; thus, FDA cannot determine whether the women may have modified their usual dietary intake in response to the supplements and whether and how intake of dietary constituents may have differed among the treatment groups.

FDA identified two additional recently published studies for consideration. Nilausen and Meinertz, 1998 (Ref. 142) employed liquid formula diets containing a very high level of protein (150 g/day) with soy or casein as the sole protein source to examine individual variability in lipemic response in a small metabolic study of normocholesterolemic men. In most subjects effects of soy protein on both LDL- and HDL-cholesterol levels were favorable, but considerable variability in response was observed. Duane, 1999 (Ref. 143) also conducted a small metabolic ward study in normocholesterolemic men that compared effects of (1) a control diet with ''standard'' amounts of dietary cholesterol, (2) a diet with essentially no dietary cholesterol and all animal sources of protein substituted by TVP, and (3) a diet similar to the second one with eggs isocalorically substituted for protein and fat to bring dietary cholesterol levels to the moderate range. Diets containing soy protein decreased LDL-cholesterol but the effect was of borderline statistical significance. FDA notes that the small number of subjects and the unusual dietary conditions employed in these two studies limit their usefulness in adding to the body of evidence about the effects of soy protein on circulating lipid levels.

In summary, although most of the new studies considered had flawed or unusual designs that compromised their evaluation, the two better designed and controlled studies (Ref. 136 and Ref. 137) provide additional support for the cholesterol lowering effects of inclusion of reasonable amounts of soy protein in diets low in saturated fat and cholesterol.

2. Interpretation of the Clinical Trial Data for Soy Protein

(Comment 29). One comment raised concerns about the apparent inconsistency in FDA's application of its review selection criteria, especially with respect to giving the greatest weight in evaluation of the health claim to those studies that reported information about the dietary intake of constituents known to have the greatest influence on total and LDL-cholesterol levels. The comment noted that values for dietary saturated fat and cholesterol were not reported for some studies and that an outmoded description of polyunsaturated fatty acid to saturated fatty acid ratio was reported for some studies.

FDA agrees that values for these dietary constituents were not reported explicitly in all of the studies selected for review. In such cases, FDA relied upon other documentation contained in the study publications regarding the contents of the test and control diets, such as sample menus and reported manipulations of sources of saturated fat and cholesterol, for assurance that dietary saturated fat and cholesterol did not differ significantly in the test conditions.

(Comment 30). One comment questioned the appropriateness of including studies in which only total cholesterol levels were measured.

As noted above, in earlier rulemakings on diet and CHD relationships, FDA concluded that it is generally accepted that blood total and LDL-cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. FDA notes that a few of the older studies that it considered and reviewed in the soy protein proposed rule, and in previous

rulemakings, measured only total cholesterol levels. FDA concluded that inclusion of these studies for review was desirable in order to assess the totality of the publicly available scientific evidence on the relationship of soy protein and risk of CHD, even though LDL-cholesterol levels are now considered to be a more powerful risk factor than total cholesterol levels.

(Comment 31). A few comments disagreed with FDA's tentative decision to authorize a health claim for the relationship between soy protein and CHD because not all of the studies reviewed in the soy protein proposed rule showed significant reductions of total and plasma cholesterol levels.

A recent review and meta-analysis of the effectiveness of NCEP Step 1 and Step 2 dietary interventions in free-living subjects by Yu-Poth *et al.* (Ref. 144) noted an appreciable range of response to the dietary interventions with the maximal effect being more than twice the average response reported in controlled feeding studies with Step 1 diets. The interventions reviewed were designed to achieve reduction of dietary saturated fat and cholesterol and weight reduction, factors known to have a major impact on circulating cholesterol levels. (The hypocholesterolemic effects of soy protein, like those of soluble fiber from whole oats and psyllium seed, are of a lesser magnitude than those of reduced dietary saturated fat and cholesterol.) Denke (Ref. 145), in an editorial comment on the study by Yu-Poth *et al.*, notes that cholesterol-lowering dietary therapy is subject to profound individual variation in response. In metabolic ward studies of subjects with unselected cholesterol levels, 5 percent of individuals had no cholesterol-lowering response to dietary modification and the percentage of nonresponders increased to 10–25 percent in outpatient studies (Denke, 1995, Ref. 146). Such nonresponse can result in a significant underestimation of the effectiveness of dietary intervention when only the mean response is considered. The small metabolic ward study of Nilausen and Meinertz (Ref. 142), described above, documented evidence for considerable inter-individual variability in the response of cholesterol levels to diets containing soy protein.

Based on the studies reviewed in the soy protein proposed rule and the new studies reviewed in this document, FDA concludes that the totality of the available scientific evidence supports a consistent, if not universal, hypocholesterolemic effect of soy protein included in a low saturated fat and low cholesterol diet. The degree of consistency is notable in light of the different experimental designs and diets studied, the different forms and amounts of soy protein tested, and the variability in initial cholesterol levels of the subjects. The modest lowering of total and LDL-cholesterol levels generally observed in these studies can effect a significant reduction in CHD risk.

(Comment 32). Other comments reviewed various possible mechanisms for the cholesterol-lowering effects of soy protein and some argued that until the mechanism of action of soy protein is clearly established, no health claim should be authorized. FDA notes, however, that such knowledge is not necessarily required for authorization of a health claim.

3. Role of Soy Isoflavones in and Effect of Processing on the Hypocholesterolemic Effect of Soy Protein

In the soy protein proposed rule, FDA examined the limited evidence that addressed whether the hypocholesterolemic effects of soy protein intake were dependent, as suggested by the petitioner, on concomitant intake of a specified level of naturally occurring soy isoflavones, *i.e.*, 2 mg isoflavones per g of soy protein (Refs. 22, 28, 31, 70, and 71). FDA also took note of a letter to the editor from Sirtori *et al.* (Ref. 72), who conducted a number of trials in which soy protein exhibited hypocholesterolemic effects and asserted that the products used in those trials were essentially devoid of isoflavones. Given the limited number of studies and the contradictory outcomes, FDA was not persuaded that the isoflavone component of soy protein was a relevant factor to the diet-disease relationship. Rather, FDA tentatively concluded that the evidence from a wide range of studies using differently processed soy protein was supportive of a relationship between soy protein per se and reduced risk of CHD.

(Comment 33). Several comments reviewed and discussed the animal and human studies that examined effects of isoflavones directly or that compared the effects of ISP processed with and without alcohol extraction that can remove essentially all isoflavones. Some of these studies examined effects on parameters in addition to cholesterol levels, such as measures of lipid-related gene expression, atherosclerosis, and vascular reactivity. Because the health claim for soy protein and CHD is based on the hypocholesterolemic effect of soy protein, only that aspect of the studies is summarized below.

In one study, Balmir *et al.* (Ref. 147) fed male rats diets containing protein from ethanol-acetone extracted ISP, nonextracted ISP, casein, or casein to which the ethanol-acetone extract was added. Rats fed either ISP diet had lower serum total cholesterol concentrations compared with those fed either casein diet. Lower serum LDL-cholesterol concentrations were found in rats fed either ISP diet and in rats fed casein plus extract compared with those fed casein. Sugano and Koba (Ref. 148) found that a methanol-extracted soy fraction was not as effective as the unextracted fraction in maintaining low plasma cholesterol levels in rats. Kirk *et al.* (Ref. 149) showed that a soy protein-based isoflavone-containing diet resulted in a reduction in cholesterol levels in C57BL/6 mice compared to a diet containing alcohol-washed soy protein, although it had no effect on cholesterol levels in transgenic mice that lacked the LDL receptor. In another study, Balmir *et al.* (Ref. 147) fed male Golden Syrian hamsters diets containing protein from ISP, ISP with added ethanol-acetone extract, casein, or casein with added extract. Lower serum total cholesterol and LDL cholesterol concentrations were observed in hamsters fed ISP, ISP with extract, or casein with extract compared with those fed casein. Addition of the extract to casein at higher levels did not lower serum lipids relative to casein. Tovar-Palacio *et al.* (Ref. 150) fed gerbils one of five experimental diets containing either casein or alcohol-washed ISP provided alone, or ISP supplemented with one of three different levels of an alcohol extract of isolated soy protein contributing either 2.1, 3.6 or 6.2 mg isoflavones/g protein. Gerbils fed all of the soy-based diets had significantly lower total and LDL + very low density lipoprotein (VLDL)-cholesterol levels than those fed casein. The additions of the alcohol extract to ISP did not reduce serum cholesterol levels any further. This study suggests that, in gerbils, consumption of an isoflavone-containing extract does not contribute to the hypocholesterolemic effect of alcohol-extracted soy protein. These reports did not characterize the nature of the extracts used in the studies. Overall, FDA finds that studies in these animal models do not clarify the role of isoflavones in the hypocholesterolemic effect of soy protein.

Comments noted a series of studies conducted in monkeys that examined the effect of removal of isoflavones and other alcohol-extractable compounds from soy protein on its cholesterol-lowering activity. Anthony *et al.* (Ref.

22) fed peripubertal male and female rhesus monkeys moderately atherogenic diets in which the source of dietary protein was a soy protein isolate, either containing isoflavones or with the isoflavones removed by alcohol extraction, in a crossover design with each period lasting for 6 months. The intact soy protein (compared with the extracted soy protein) significantly reduced LDL+VLDL-cholesterol levels in both males and females and significantly increased HDL-cholesterol levels for females. Honoré *et al.* (Ref. 23) fed young adult rhesus monkeys with pre-existing diet-induced atherosclerosis one of two soy-based diets, which were identical in composition except that the isoflavones were extracted from one and intact in the other, for 6 months. Total and LDL-cholesterol levels were significantly lower in females fed the intact soy protein than in those fed the extracted soy protein. The same trend was seen in males, but the difference was not statistically significant for total cholesterol. Anthony *et al.* (Ref. 70) studied young male cynomolgus macaques fed one of three moderately atherogenic diets for 14 months. The groups differed only in the source of dietary protein, which was either casein/lactalbumin, soy protein with the isoflavones intact, or soy protein with the isoflavones mostly extracted. Animals fed intact soy protein had significantly lower total and LDL+VLDL-cholesterol levels compared with the other two groups. The animals fed intact soy protein had the highest HDL-cholesterol level, the casein group had the lowest level, and the group fed the extracted soy protein was intermediate. Anthony *et al.* (Ref. 151) randomized male and female macaques to groups fed a casein-containing diet or diets with soy protein with the isoflavones intact or extracted. Fat and cholesterol were identical in all diets. The LDL+VLDL-cholesterol levels were highest in the casein group, slightly lower in the group fed extracted soy protein, and significantly lower in the group fed intact soy protein. The HDL-cholesterol levels were significantly higher in both soy protein groups than in the casein group. FDA notes that the alcohol extraction procedure used by these researchers, which was not characterized in the study reports, appeared to diminish the hypocholesterolemic effect of ISP.

Comments submitted three human studies of isolated isoflavones that examined their role in cholesterol lowering. In a study published only as an abstract, Colquhoun et *al.* (Ref. 152) administered daidzein and genistein to 23 male and female subjects with an average cholesterol level of 243 mg/deciliter (dL) in a blinded crossover design. Nestel *et al.* (Ref. 52) studied 21 women in a randomized cross-over design with two active treatment periods (80 mg of isolated soy isoflavones) and one 5-week placebo period, while they consumed a soy-free diet. Hodgson *et al.* (Ref. 153) conducted a randomized, blinded, placebo-controlled trial of 8 weeks duration and a two-way parallel design that tested the administration of 55 mg of soy isoflavones to 46 men and 13 postmenopausal women. Plasma lipid levels were not affected by soy isoflavones in any of these studies. FDA notes that these studies do not support a role for isolated isoflavones in cholesterol lowering.

Three studies submitted in comments examined the effects of variation of isoflavone content in soy protein-containing diets in human subjects. Cassidy *et al.* (Ref. 154) conducted metabolic ward studies of the effects of various soy products with and without isoflavones in small numbers of healthy, nonvegetarian, premenopausal women. During one (control) menstrual cycle, the women ate a constant diet containing no soy products. Then, over a second complete cycle six subjects consumed a similar diet into which 60 g TVP/day, containing 45 mg conjugated isoflavones, was incorporated. Three participants had 50 g miso, containing 25 mg unconjugated isoflavones, added daily to their diet over a menstrual cycle, and six others consumed 28 g TVP/day, containing 23 mg conjugated isoflavones. Five participants completed a third diet period in which they were randomly assigned to consume either the control diet over a cycle, or a similar diet incorporating 60 g of a ISP from which the isoflavones had been chemically extracted. A significant reduction in total cholesterol was found with 45 mg conjugated isoflavones, but not with 23 mg conjugated isoflavones or isoflavone-free ISP.

As previously reviewed in the soy protein proposed rule (63 FR 62977 at 62988), the study of Baum *et al.* (Ref. 28) investigated the impact of soy protein as ISP containing different levels of isoflavones in hypercholesterolemic, postmenopausal women. Adjusted mean differences in the change from baseline for total serum cholesterol level did not differ in the two soy groups and the control group. However, there was a statistically significant reduction of 8–9 percent in non-HDL (LDL+VLDL)-cholesterol in both of the ISP treatment groups ($p<0.05$) compared to the control group. HDL-cholesterol was also significantly increased ($p<0.05$) in both soy groups compared to the control. The level of isoflavones did not affect any of the blood lipid levels measured.

FDA also previously reviewed the unpublished study by Crouse et al., which was subsequently accepted and published (Ref. 31), in the soy protein proposed rule (63 FR 62977 at 62987). This study examined the effect of soy protein containing different levels of isoflavones in hypercholesterolemic men and women. Subjects with qualifying serum lipid levels (LDL-cholesterol greater than 140 mg/dL) after one month and who were compliant with the study regimen were randomized into one of five treatment groups. The treatment groups received 25 g protein from ISP prepared from soy with different levels of isoflavones (either 1.0, 1.6, or 2.5 mg total aglycone isoflavones/g protein), or 25 g protein from alcohol-washed ISP that contained essentially no isoflavones (0.2 mg total aglycone isoflavones/g protein) or 25 g protein from casein (no isoflavones) in beverages for 9 weeks. Results indicated that compared to casein the ISP containing the highest level of isoflavones significantly lowered total ($p<0.05$) and LDL-cholesterol ($p<0.05$), by 4 percent and 6 percent, respectively, while HDL-cholesterol was not altered. In subjects with LDL-cholesterol in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by the ISP with the highest isoflavone content, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively by the ISP with the second highest isoflavone content, while HDL-cholesterol concentrations were maintained. The authors reported a dose-response effect of increasing amounts of isoflavones on total and LDL cholesterol level. One comment included a reanalysis of the dose-response data that did not include data for the casein diet, in order to control for an independent effect from soy protein itself, and found no significant effect based on isoflavone content. A comment from the petitioner disagreed with this analysis. It also indicated that the study did not eliminate the possibility that isolated soy protein per se has cholesterol-lowering properties, but rather suggested that soy protein with higher levels of isoflavones might have even greater effects. FDA finds that the disparity in these comments does not clarify the equivocal nature of the available evidence. FDA finds that these studies do not provide sufficiently consistent results to cause the agency to

change the conclusion reached in the soy protein proposed rule.

(Comment 34). One comment objected to FDA's consideration of the letter to the editor by Sirtori et al. (Ref. 72) because the reference substantiating the technique for processing the soy protein product was missing from the letter, the products were not tested for isoflavone content at the time of the studies, different soy products (isolate and flour) were used to manufacture the textured soy protein used in the studies, and the references for studies cited in the letter did not match the ones cited by FDA in the soy protein proposed rule. FDA agrees that the reference for the patented procedure for the production of the TVP, described as making use of rapid heating under high pressure, was omitted in the letter by Sirtori et al. (Ref. 72) and that the isoflavone content of the products reported (Cholsoy and Croksoy) was not measured at the time the studies in which they were used were conducted.

The letter by Sirtori et al. (Ref. 72) cites two older studies—Sirtori et al., 1979 (Ref. 55) and Sirtori et al., 1979 (Ref. 155)—as well more recent studies—Sirtori et al., 1995 (Ref. 156)—conducted by their group. The five studies of Sirtori's group that FDA reviewed and cited in the soy protein proposed rule as using products that contained essentially no isoflavones (Refs. 33, 34, 35, 46, and 56) are included in the reference list of Sirtori et al., 1995 (Ref. 156), which is a review article. The agency did not review Sirtori et al., 1979 (Ref. 155) in the soy protein proposed rule, and it did not cite Sirtori et al., 1977 (Ref. 55) because it specifically indicated use of a soy protein product different from those tested for isoflavone content. FDA gives some credence to the knowledge of the investigator about the products used in his studies, but agrees that the letter to the editor does not provide sufficient documentation to permit an unequivocal conclusion that the products found to be devoid of isoflavones were identical to those used in the clinical studies.

(Comment 35). One comment asserted that most of the studies reported by Sirtori's group were performed using a textured soy protein based on steam-treated soy flour; this treatment would be expected to remove isoflavones. The comment also included a letter from Sirtori (Ref. 157) stating that essentially all of his group's studies beginning in 1980 were with products without isoflavones. However, the patent referenced in this letter was not included with this submission. Thus, FDA cannot verify that the process used to produce the products used in Sirtori's studies over time was the same used to produce the products analyzed recently for isoflavone content.

(Comment 36). The interpretation of the data available on the role of soy isoflavones in and the effects of processing on the hypocholesterolemic effect of soy protein varied widely in the comments. Several comments agreed with FDA's conclusion that the evidence did not support a significant role for soy isoflavones in cholesterol-lowering effects of soy protein. One comment supported the petitioner's original conclusion that a level of 2 mg aglycone isoflavones per g soy protein was necessary for cholesterol lowering. In a comment, the petitioner agreed with FDA ''that a relationship exists between soy protein per se and reduced risk of CHD.''

The additional evidence about the role of isoflavones is contradictory and inconclusive and has not persuaded FDA to alter its original conclusion about the inability to identify a specific contribution of soy isoflavones to the cholesterol-lowering effects of soy protein. At the same time, the evidence shows a clear relationship between soy protein and reduced risk of CHD despite lack of a clearly defined mechanism for its effect.

(Comment 37). Several comments interpreted the evidence as showing that alcohol extraction used in the processing of certain soy protein ingredients (to the extent that they are rendered essentially devoid of isoflavones) impairs or eliminates the hypocholesterolemic effects of soy protein and recommended that the health claim not be allowed for alcohol-washed products. Comments also raised some questions about the extent to which extensively alcohol-washed products, such as those used in the animal studies, are available commercially. One comment asserted that some of ISP products used in the primate studies were subjected to additional alcohol extraction by the investigators, but the agency could not independently verify this assertion. This comment also stated that all commercial sources of soy protein contain some isoflavones.

FDA examined the recently compiled USDA-Iowa State University Isoflavone Database (Ref. 158), which documents the following ranges of total isoflavone content for various soy protein-containing ingredients, and found that most, but not all, contained levels of isoflavones higher than those that would result from harsh alcohol extraction procedures:

TABLE 1

Product	Aglycone isoflavones (mg/100 g edivle portion
Soy flour, textured	4.40–295.55
Soy flour, defatted	73.72–168.09
Soy flour, full-fat, raw	59.80–264.84
Soy flour, full-fat, roasted	131.70–260.50
Soy protein concentrate, aqueous washed	61.23–167.00
Soy protein concentrate produced by alcohol extraction	2.08–31.82
Soy protein isolate	46.50–199.25
Instant beverage, soy powder	100.10–125.00

FDA agrees that the data from the animal studies reviewed suggest that alcohol washing of soy protein can reduce its hypocholesterolemic effects. With respect to human studies, FDA finds the available evidence is insufficient to permit any conclusions about the impact of processing by alcohol extraction on the hypocholesterolemic effect of soy protein. Thus, FDA concludes it would be premature to exclude alcohol-washed products from eligibility to bear the health claim.

(Comment 38). One comment noted that several clinical trials designed to resolve questions about the impact of processing and isoflavone content are

currently in progress. Many of the comments on these issues urged that FDA proceed with the health claim regulation as proposed, but monitor research developments and make changes in the regulation as warranted by the results.

As noted above, FDA finds that, in light of the evidence that soy protein processed in various ways, containing unknown amounts of isoflavones, has hypocholesterolemic effects, FDA is not applying any criteria for inclusion of naturally occurring isoflavones or excluding alcohol-washed products from eligibility to bear the health claim on soy protein and CHD.

(Comment 39). A few comments suggested that, regardless of the conclusions about the significance of soy isoflavones to the reduction of CHD risk, food products that bear the soy protein health claim be allowed or required to state the isoflavone content of the product on the label. The comments did not provide any evidence that persuaded the agency that consumers would find this information helpful in making healthful dietary choices. Accordingly, the agency is not adopting this suggestion.

4. Amount of Soy Protein Required for Significant Effect on Cholesterol Levels

Based on the limited data reviewed that supported a dose-response and the data that showed clinically significant reductions in total and LDL-cholesterol with soy protein ingestion in the range of 17–31 g/day, and recognizing that the hypocholesterolemic effects of soy protein were dependent on initial blood lipid levels, the agency tentatively concluded that 25 g/day represented a reasonable, effective amount of soy protein (63 FR 62977 at 62992). In addition, the agency noted that an amount of 25 g/day of soy protein represents half of the Reference Daily Intake (RDI) of 50 g for protein and is a reasonable level of consumption in the context of the total daily diet. Thus, FDA tentatively concluded that the amount of soy protein associated with reduction in total and LDL-cholesterol levels and, thus, with reduced risk of CHD was 25 g or more of soy protein per day (63 FR 62977 at 62992).

(Comment 40). Many comments agreed with the agency's conclusion that 25 g or more of soy protein per day was associated with reduction in total and LDL-cholesterol levels. Several comments raised concerns about the adequacy of the available data to support an assessment of dose-response. One comment expressed concern that higher levels of soy protein are needed to modify cholesterol levels in normocholesterolemic individuals and that this should be indicated as part of the claim.

FDA agrees that the available data on the hypocholesterolemic effects of soy protein do not permit a dose-response assessment. However, FDA notes that dose-response data are not required to establish the qualifying criteria for a substance that is the subject of a health claim. Under § 101.70, which describes the requirements for health claim petitions, the petition must address whether there is an optimum level of the particular substance to be consumed beyond which no benefit would be expected (§ 101.70(f)(B)(1)). This information may or may not be based on dose-response data. For example, in its evaluation of the scientific evidence for a relationship between consumption of soluble fiber from psyllium seed husk and blood total and LDL-cholesterol levels, the agency found no reliable data to establish a dose-response for this relationship (62 FR 28234 at 28240). However, the agency did find that, in placebo-controlled studies that tested an intake of 10.2 g of psyllium seed husk per day as a part of a diet low in saturated fat and cholesterol, there were consistently significant effects of psyllium husk on blood total and LDL-cholesterol levels. Therefore, the agency based the qualifying level of soluble fiber from psyllium seed husk on a total daily intake of 10.2 g husk or about 7 g of soluble fiber.

The qualifying level of 25 g/day has been demonstrated to have a consistent, clinically significant effect on total and LDL-cholesterol levels. This 25 g/day level of intake for cholesterol lowering is confirmed by the new study of Teixeira et al. (Ref. 136), which showed significant hypocholesterolemic effects of 20 g/day of soy protein. Therefore, the agency disagrees with the comments suggesting that dose-response data are needed before the agency can authorize a health claim. The totality of scientific data, which establish a clinically significant reduction in blood cholesterol based on an intake of at least 25 g/day of soy protein, provides an adequate basis for establishing a qualifying level for soy protein-containing products.

The agency agrees that the available data indicate that the hypocholesterolemic effect of soy protein may be dependent on initial cholesterol levels, but notes that moderately hypercholesterolemic individuals are generally more responsive to dietary interventions than normocholesterolemic individuals. As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. The risk of dying from CHD is related to serum cholesterol levels in a continuous and positive manner, increasing slowly for levels between 150 mg/dL and 200 mg/dL and more rapidly when the cholesterol level exceeds 200 mg/dL (Ref. 37). The public health policy articulated by the NCEP, National Heart, Lung, and Blood Institute, is to extend the benefits of cholesterol lowering to the population as a whole by promoting adoption of eating patterns that can help lower the blood cholesterol levels of most Americans (Ref. 67). A dietary intervention that lowers blood cholesterol levels only in persons with high levels would, like an intervention that lowers cholesterol levels across the entire population range, cause a shift in the population distribution of blood cholesterol levels resulting in a decrease in the mean value for the blood cholesterol level in the general population (Ref. 67). The anticipated effect of such a shift would be to reduce the morbidity from CHD and to produce a continued or accelerated decline in the CHD mortality rate in the United States. The agency is persuaded by the evidence it has reviewed in this rulemaking that the consumption of soy protein, as part of a low saturated fat and cholesterol diet, can be a useful public health measure to assist in the national policy of promoting eating patterns that will help in achieving or maintaining desirable blood cholesterol levels in the general population. Therefore, it concludes that the health claim need not indicate that hypercholesterolemic individuals may be more responsive to consumption of soy protein than normocholesterolemic individuals. In addition, consistent with the agency's conclusions in rulemaking on the dietary saturated fat and cholesterol/CHD claim (58 FR 2739 at 2745, January 6, 1993), the wording of the health claim as '' 'may' or 'might' reduce the risk of heart disease'' adequately represents the fact that not all persons will realize the same magnitude of benefit from adopting the dietary change.

5. Summary of the Scientific Evidence

FDA reviewed human studies submitted by the petitioner and in comments that evaluated the effects on serum cholesterol and LDL-cholesterol levels of dietary interventions with soy protein in subjects with normal to elevated serum cholesterol levels and that met the agency's criteria for selection.

Most intervention trials in subjects with total cholesterol levels less than 300 mg/dL found that soy protein

reduced total and/or LDL-cholesterol levels to a clinically significant degree (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, 43, 136, and 137.). Moreover, HDL-cholesterol levels were unchanged (Refs. 31, 27, 51, 40, 37, 49, 36, 53, 136, and 137) or slightly increased (Refs. 28, 44, 58, and 59). In some cases (Refs. 27, 44, and 49), decreases in total and LDL-cholesterol were statistically significant only in subsets of subjects with the higher initial blood lipid levels. Results in normocholesterolemic subjects (Refs. 30, 36, 58, 59, and 53) were more variable than those in hypercholesterolemic subjects (Refs. 31, 28, 27, 51, 44, 40, 37, 49, 54, 29, 43, and 136) except in the study of Wong et al. (Ref. 137), in which normocholesterolemic and moderately hypercholesterolemic subjects were equally responsive. The outcome of an epidemiologic study (Ref. 65) also supported a relationship between higher levels of soy protein intake and lower blood lipid levels.

Most of the studies in subjects with total cholesterol levels less than 300 mg/dL used low saturated fat and low cholesterol diets (Refs. 31, 28, 27, 51, 44, 30, 36, 53, 29, 43, 136, and 137), but some used ''usual'' diets (Refs. 37, 49, 54, 36, 58, and 59). Although soy protein was found to lower blood lipid levels in some of the studies using ''usual'' diets, hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol. Given the variability of amounts and forms in which soy protein was provided in the diets, the response of blood lipid levels appears robust and notably consistent, particularly in subjects with moderate hypercholesterolemia.

Data from studies of adults with type II and familial forms of hypercholesterolemia (and total cholesterol levels in excess of 300 mg/dL) (Refs. 55, 33, 64, 56, 64, 46, and 35) were also consistent in showing large and statistically significant decreases in total and LDL-cholesterol, accompanied by no changes or slight increases in HDL-cholesterol levels. Nearly all of the subjects in these trials consumed low saturated fat and low cholesterol diets during the studies and had consumed such diets prior to studies with soy protein. Soy protein was tested in a variety of foods but produced fairly consistent results regardless of the food form fed and apparent differences in processing techniques.

The FDA concludes, based on the evidence submitted and reviewed, that soy protein, included in a diet low in saturated fat and cholesterol, can lower blood total and LDL-cholesterol levels, without adversely affecting HDL-cholesterol levels. The agency also concludes that the effect is due to soy protein per se and is not consistently related to the presence or absence of isoflavones. The evidence currently available, as reviewed in section II.B.3 of this document, does not permit a conclusion regarding how significantly alcohol processing may affect the hypocholesterolemic effects of soy protein. The intervention studies reviewed indicate that a minimum level of approximately 25 g of soy protein per day results in a clinically significant effect on total and LDL-cholesterol levels.

With respect to the scientific data and information about the relationship of soy protein and CHD, the relevant data are provided by well controlled and well designed studies. Soy protein, the food substance that is the subject of the claim, is measured in those studies. The relationship of the biomarkers evaluated—total and LDL-cholesterol—to the risk of CHD is validated and the studies measured the biomarkers appropriately. Finally, a consistent body of evidence from a variety of studies is available. Accordingly, the agency is able to conclude, based on the totality of the publicly available scientific evidence, that there is significant scientific agreement that soy protein, included at a level of 25 g/day in a diet low in saturated fat and cholesterol, can help reduce total and LDL-cholesterol levels, and that such reductions may reduce the risk of CHD.

C. Nature of the Food Eligible to Bear the Claim

1. The Qualifying Amount of Soy Protein

Using 25 g of soy protein as the qualifying amount for a CHD claim, the petitioner suggested that a single serving of a soy protein-containing product (*i.e.*, one RACC) should provide ¼ of this amount (based on four servings a day). Thus, a soy protein-containing product would have to contain at least 6.25 g soy protein (¼ × 25 g) per RACC. The petitioner stated that this approach was reasonable because it would permit a wide variety of low fat, soy protein-containing products to bear the health claim. The petitioner provided a list of products on the market that currently meet the proposed requirements and a list of products that could be modified to meet them (Ref. 1, Appendix V). The agency has generally made the assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993). The agency tentatively concluded in the soy protein proposed rule that the assumption of four servings per day of soy protein-containing foods was reasonable. Therefore, the agency found that use of the qualifying criterion set forth in the petition would be appropriate (63 FR 62977 at 62992).

Most comments agreed that the qualifying level of 6.25 g soy protein per RACC was appropriate. Many of these comments also indicated that a sufficient number and variety of soy protein-containing foods are available to enable consumers to select suitable products to consume a total of 25 g soy protein per day.

(Comment 41). Several comments suggested rounding the qualifying level to 6 or 7 g of soy protein per RACC, in keeping with the requirements for the labeling of protein in the Nutrition Facts panel.

FDA, however, notes that the Nutrition Facts panel contains the amount of total protein per serving of the product, regardless of the source ingredient. For many products that may bear the claim, soy protein may not be the sole contributor to total protein. Therefore, FDA finds that the amount of soy protein in a serving of a food that may bear the health claim will neither be required nor permitted to appear in the Nutrition Facts panel. The qualifying level need not conform to requirements specific to the Nutrition Facts Panel.

(Comment 42). One comment received in response to the soy protein reproposal indicated that food processors will be required to declare the corrected amount of protein and the percent Daily Value of protein on the Nutrition Facts panel, in accordance with 21 CFR 101.9(c)(7)(i). This comment noted that, in nearly all cases, the amount of protein declared will be lower than the quantity of protein present in the product and may, in some instances, be lower than the qualifying amount of soy protein.

FDA notes that compliance with the requirements of this regulation will be based on the actual amount of soy protein present in the food and not on the amount of protein declared on the nutrition label.

(Comment 43). One comment suggested that the qualifying level should be increased to 12.5 g soy protein per RACC because of concerns that consumers would not choose soy protein-containing foods frequently enough during a day to reach a total of 25 g and might believe that the health benefit may be attained by eating a single serving of a food that provided no more than 6.25 g soy protein. Several

other comments also raised concerns that consuming soy protein-containing foods up to four times daily would represent a significant change from the typical American diet that might not be selected by many consumers.

FDA cannot assess how many consumers would be interested in making such a change, but it is persuaded that it will be feasible for motivated consumers to do so. Doubling the qualifying level of soy protein per RACC would greatly and unnecessarily restrict the number of foods potentially eligible to bear the health claim. Because § 101.82(c)(2)(i)(G) requires that the claim specify both the daily dietary intake of soy protein that is necessary to reduce the risk of coronary heart disease and the contribution that one serving of the product makes to the specified daily dietary intake, consumers will not be misled about the amount of soy protein needed for the health effect.

(Comment 44). A number of comments suggested that greater flexibility in meeting the recommended total daily intake of 25 g soy protein per day could be achieved by permitting a lower qualifying level on the basis of increasing the number of servings or eating occasions per day from four to five or six or more. Several of these comments proposed that the qualifying level of soy protein should be reduced to 4 g per RACC; one suggested lowering the qualifying level to 2.5 g per RACC. Most of these comments indicated that 4 g soy protein per RACC is the maximum amount of soy protein from soy flour that can be incorporated in baked products that consumers find palatable and acceptable. These comments suggested that lowering the qualifying level would stimulate manufacturers to develop a wider range of products and indicated that use of ISP in baked products would be prohibitively expensive. One comment challenged FDA's assertion that consumers would be able to consume an effective amount of soy protein from a variety of products, including baked goods. FDA based the assertion on its observation that baked products had been used to provide soy protein in some studies the agency relied upon to justify authorization of the health claim (Refs. 27, 28, and 51); in one study (Ref. 27), the authors indicated that 25 g soy protein daily was provided in four muffins. ISP was the source of soy protein in the baked products used in these studies. Some comments stated that FDA need not base the qualifying level on four eating occasions per day as the agency had done for other health claims for substances (beta-glucan soluble fiber from whole oats and soluble fiber from psyllium seed husks).

FDA finds that these comments did not provide a compelling rationale for selecting an appropriate number of eating occasions on any other basis. The agency has not limited its previous determinations of an appropriate qualifying level of a substance that does not have a Daily Value in a food to be eligible to bear a health claim to consideration of the number of individual foods or classes of food products then available that might bear the claim. Rather, in determining what constitutes a level of the substance sufficiently high to justify the claim, FDA considers factors such as the number of servings likely to be consumed and the feasibility of developing a variety of foods that contain a significant proportion of the total daily intake needed for the claimed benefit. For example, when the psyllium claim was authorized, FDA was aware of only one conventional food product that would have been eligible to bear the claim and concluded that, if various psyllium-containing foods were available, consumption of four servings daily could be achieved. Based on experience with that claim and other health claims, FDA believes that manufacturers will be encouraged by the availability of a health claim for soy protein and CHD to develop new products that will be eligible to bear the claim. The agency is not persuaded by the comments received that it should abandon its assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993) and that one serving of a soy protein-containing product could reasonably be consumed at each eating occasion. As noted in the discussion above of the comments that expressed concerns about the willingness of consumers to select soy protein-containing foods as many as four times a day, such an eating pattern represents a considerable change from a typical American diet. Although one of the comments included detailed menus that illustrated the possibility of consuming more than one soy protein-containing product per eating occasion, FDA has concluded that it should not lower the amount of soy protein required for a food to be eligible to bear the health claim.

(Comment 45). One comment suggested that the amount of soy protein required for eligibility to bear the health claim be permitted to be determined on the basis of serving size as well as RACC.

This comment is outside the scope of this rulemaking. Current regulations (21 CFR 101.12(g)) require that, ''The reference amount [*i.e.*, the reference amount customarily consumed] * * * shall be used in determining whether a product meets the criteria * * * for health claims.'' In a previous rulemaking, FDA had considered permitting this option, but comments persuaded the agency that the most reasonable approach was to base claim evaluations on the reference amount (58 FR 2229 at 2287). FDA agreed with the comments that claims should reflect the true characteristics of a product, and that those characteristics do not change if the product is packaged in a different size container. The comment received in response to the soy protein proposed rule did not provide a convincing rationale to justify a change in this decision.

2. Method for Determining Qualifying Amount of Soy Protein in Foods

In the soy protein proposed rule (63 FR 62977 at 62992), FDA proposed use of the Association of Official Analytical Chemists (AOAC) official method of analysis No. 988.10 to measure soy protein in foods. As described in the soy protein reproposal (64 FR 45932 at 45933), each of the comments on this proposed analytical method disagreed with its use and concluded that the method was unlikely to produce a reliable measure of the soy protein content in every food. The comments noted a variety of problems with the assay. These comments persuaded the agency that AOAC official method of analysis No. 988.10 was not an appropriate method for the quantitation of soy protein in many of the products that may be eligible to bear the health claim.

In the soy protein reproposal, FDA discussed the alternative approaches suggested in comments for assessing compliance with the qualifying level of soy protein in products that bear the health claim. Based on this information, the agency provided its tentative rationale for a procedure employing measurement of total protein and, for products containing sources of protein other than soy, calculation of the soy protein content based on information contained in manufacturers' records (64 FR 45932 at 45934). Thus, in the soy protein reproposal, FDA modified previously proposed § 101.82(c)(2)(ii)(B) to provide for this alternative approach for compliance assessment that relied, in some cases, on records that the agency could inspect.

The agency received approximately 10 comments in response to the soy protein reproposal. One of the comments did not address the proposed

procedure for compliance assessment but, rather, reiterated concerns raised in comments on the soy protein proposed rule about the safety of soy isoflavones. Among the materials it referenced were two documents authored by FDA staff that the comment characterized as ''reports.'' FDA could not identify one of these documents from the citation given and the other was a letter submitted as a comment to Docket 98P–0683 in response to the soy protein proposed rule. Another comment raised concerns about the GRAS status of soy protein. FDA has addressed the issues raised in the earlier comments regarding GRAS status and safety in Section II.A of this document. In addition to commenting about the reproposal, one comment raised a technical issue about the nutrition labeling declaration of protein that is addressed in Section II.C.1.

(Comment 46). Two comments objected to the 30-day comment period allowed for the soy protein reproposal. FDA stated its rationale and authority for selecting this period in the soy protein reproposal (64 FR 45932 at 45936 and 45937) and notes that these comments were submitted and received in timely fashion. One of these comments asserted that after the comment period for the soy protein proposed rule had passed, no new submissions or evidence after that date other than that of FDA origin (or from published scientific documents accessed by FDA) was acceptable. As noted in the introduction of Section II of this document, FDA disagrees with this assertion. FDA considered comments received after the initial comment period, regardless of source, to the extent that each provided complete information for review or references accessible to the agency and addressed issues not raised in earlier comments.

(Comment 47). A comment asserted that the issue of the method FDA will use to verify that foods contain the qualifying amount of soy protein is irrelevant because FDA was required to consider and evaluate only the claims made for the substance identified in the petition, soy protein with naturally occurring isoflavones.

This comment misunderstands FDA's responsibility to review and evaluate the available scientific evidence and reach appropriately supported conclusions about the substance-disease relationship based on information provided in the petition, accessed in the public scientific literature, and received in comments. FDA notes, for example, that in response to a petition for oat bran and oatmeal, it proposed to authorize a health claim on the relationship of those foods and CHD (61 FR 296). Comments received in response to that proposal persuaded FDA to change the substance of its final rule to beta-glucan soluble fiber from whole oats (62 FR 3584). The agency has addressed the earlier comments on the role of isoflavones in the hypocholesterolemic effect of soy protein in Section II.B.3 of this document.

(Comment 48). Two comments objected to any use of recordkeeping for compliance assessment, questioning whether it could be an appropriate substitute for analytical methods to assess the truthfulness of health claims. One of these comments also reiterated objections to authorization of the health claim, because of concerns about incomplete scientific understanding of the biological activity of soy components, in terms of both safety and contribution to the protective effect of soy protein in CHD. The agency has addressed these concerns, which were raised in comments on the soy protein proposed rule, in Sections II.A and II.B.3, respectively, of this document.

The other comment asserted that an approved, scientifically accurate methodology is needed for any health claim. However, it also indicated that FDA should finalize its regulation as originally proposed, but did not propose an alternative for compliance verification other than suggesting that a manufacturer might voluntarily share analytical data with the agency if questions about compliance were raised.

FDA does not agree with the contention that an analytical method is an absolute requirement for a health claim, even though it is the preferred means for verifying compliance with the requirements of a health claim regulation and substantiating the truthfulness of all label statements.

(Comment 49). Many other comments supported continued work to develop appropriate analytical methodology for measuring the content of soy protein in foods, and urged FDA, in collaboration with other government agencies, industry, and scientific organizations, to pursue this effort. As noted in the soy protein reproposal, FDA intends to do so, to the extent that resources permit. Also, as noted in the soy protein reproposal, and as urged in a number of comments, FDA would propose to amend its regulation to provide for compliance verification based on one or more analytical methodologies when such methods have been validated.

(Comment 50). Several of the comments specifically addressed the method for assessing compliance set out in the soy protein reproposal. None of these comments objected to use of an analytical method for measuring total protein as a measure of soy protein in foods that contain soy as the only source of protein. Absent an appropriate analytical methodology, each of these comments supported the need for manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon request. These comments noted that in cases where records are needed to substantiate label claims, food manufacturers have historically provided such records voluntarily upon request to the FDA and could be expected to continue to do so in the future. They argued that FDA need not assert broad records inspection authority in order to obtain the information needed for compliance assessment. They noted 21 CFR 101.13(j)(ii)(A), which requires firms to have substantiation for the basis of nutrient reference values in comparative nutrient content claims and to make such substantiation available to appropriate regulatory officials upon request, as a model for requests of records.

FDA agrees that a manufacturer must have substantiation that a qualifying amount of soy protein is present in a product that bears the health claim and that such records can serve as the basis for substantiation of use of the health claim. FDA noted in the **Federal Register** of February 2, 1996 (61 FR 3885 at 3886) several examples of regulations that implemented the 1990 amendments in which the agency could not independently, using analytical methodology, verify the basis for statements on the food label, but instead would rely on access to a manufacturers' information supporting its labeling claims. These include access to:

(1) A detailed protocol and records of all data used to derive a density-adjusted reference amount for aerated foods (58 FR 2229 at 2272 and § 101.12(e));

(2) Information that provides the basis for deriving reference nutrient values for comparative nutrient content claims such as ''light'' (58 FR 2302 at 2365 and § 101.13(j)(1)(ii)(A));

(3) Specific information with respect to the caloric content of new products with reduced digestibility (58 FR 2079 at 2087 and 2111 and § 101.9(c)(1)(i)(D)); and

(4) Information supporting nutrient content claims for restaurant foods (58 FR 2302 at 2388 and § 101.13(q)(5)(ii)).

In each of these cases, verification of the truthfulness of a label claim can be assessed by FDA only with access to information known only by the manufacturer. The same is true, in the absence of a validated analytical method to measure the amount of soy protein in the presence of other proteins, for verifying that the qualifying amount of soy protein to bear the health claim is present in a food that contains sources of protein in addition to soy. Thus, the agency concludes, in agreement with these comments, that it is appropriate to require access to manufacturers' records substantiating the ratio of soy protein to total protein for foods that contain sources of protein in addition to soy to assess their compliance with this regulation. Also, in agreement with these comments, the agency concludes that it need not assert broad records inspection authority to have access to appropriate records. The agency disagrees, however, with comments that indicate that reliance on the voluntary provision of records by manufacturers is sufficient to meet the agency's need to verify compliance. Rather, the agency is taking the approach of codifying a requirement for the manufacturer to provide appropriate records, on request, as the agency has done previously.

Although most of the comments supported the use of records, in principle, for compliance assessment, they also raised concerns about the types of records that FDA might request, the circumstances under which FDA would request records, and the legal authority of the FDA to require records and records inspection.

(Comment 51). Several comments indicated that FDA had used overly broad and imprecise language in the soy protein reproprosal to describe the types of records that FDA would request. They indicated that a manufacturer is best able to determine the nature of the records that would be needed to substantiate the amount of soy protein in its own products and urged that manufacturers be allowed the flexibility to determine how to document substantiation. One comment argued that a recipe-based system would be too complex and burdensome for baked goods in particular. Other comments expressed concern that FDA would, in all cases, require inspection of a wide variety of records, including nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, and others.

FDA agrees that the manufacturer will be in the best position to know which of its records provide documentation of the amount of soy protein in its products, and specifically the ratio of soy protein to total protein. By listing the types of records that could provide such documentation in the soy protein reproposal, FDA did not intend to indicate that it would request all of these records and subject them to inspection, or even that it would specify any particular records when it requests them. Instead, FDA intended to suggest the types of records a manufacturer might use to substantiate the levels of soy protein in its foods. Accordingly, FDA has modified § 182(c)(2)(ii)(B) to clarify that the manufacturer is to identify these materials.

(Comment 52). One comment questioned whether FDA might request records for products in which soy is the only source of protein and urged FDA to specify that it would not request records for such products.

FDA agrees that, because measurement of total protein provides adequate assessment of compliance for products in which soy is the sole source of protein, that it would not, under the regulation, request records for substantiation of the amount of soy protein in such products. The agency believes that the proposed language adequately communicates this point and has made no changes to the regulatory language in response to this comment.

(Comment 53). One comment requested that FDA identify what circumstances would precipitate a request for records. Although FDA cannot specify all such circumstances, it notes, as did another of the comments, that a substantial proportion of its enforcement actions are undertaken in response to trade complaints.

(Comment 54). One comment asked that the agency specify that any records requested could be provided on site without the need for reproduction or duplication by the investigator. Another comment, however, objected to FDA making requests for information on site, arguing that most companies would have the necessary information at headquarters rather than at production facilities. This comment urged that FDA make any such requests in writing and allow the manufacturers to provide appropriate substantiation within a reasonable period of time. As FDA will not require inspection of records on site, the concern about reproduction or duplication is moot. FDA agrees that making a request for records in writing is appropriate and has modified the regulation accordingly.

(Comment 55). Some comments objected to the alternative offered in the soy protein reproposal that FDA would authorize the claim only for products that contain soy as the sole source of protein, if it could not proceed with a regulation to provide access to records for compliance verification. These comments noted that such an action would give unfair advantage to certain products, unfairly penalize products that were equally beneficial, and dilute the potential benefit of the health claim to consumers. Because the agency has authorized the claim for any food that contains adequate amounts of soy protein, without regard to other sources of protein, these comments are moot.

(Comment 56). One comment noted that, in addition to providing FDA, upon request, information regarding substantiation of the claim, food processors may, on a voluntary basis, present information on the food label or in labeling that may support the eligibility of the product to bear the claim and facilitate an FDA compliance review. Such information might take the form of statements about the percentage composition of soy protein in a serving of food. The agency agrees that manufacturers may voluntarily provide such truthful and not misleading information and that the provision of such information may aid consumer understanding of the claim.

(Comment 57). Several of the comments strongly objected to the proposal for records inspection on the basis that FDA lacks the statutory authority to require access to records for foods. Another comment argued that, once the agency determined that a substance-disease relationship meets the standard of significant scientific agreement, the act requires the agency to authorize a claim, and the agency may not require that manufacturers maintain records or that FDA be able to request or inspect them. This comment also asserted that, were FDA to require recordkeeping, record production, or records inspection, it would violate the First Amendment by conditioning the exercise of speech rights on the recordkeeping, record production, or records inspection requirement.

FDA disagrees with these comments. Other comments have convinced the agency that, in this instance, it need not assert its rulemaking authority to provide for inspection of records. This issue is therefore moot. The agency maintains, however, that it has the legal authority, using section 701(a) of the act, to promulgate record inspection requirements for the efficient enforcement of the act. The requirements that records be maintained and submitted to the agency upon request pass the test in *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1979). First, these requirements are limited to those records that the manufacturer

reasonably determines substantiate the level of soy protein in its food, and only with respect to foods that contain a source of protein in addition to soy. Second, the requirements assist in the efficient enforcement of the act. They focus only on those foods for which an adequate analytical method is not available. They allow FDA to verify that the authorized soy health claim is truthful and not misleading when it is used on such foods. The requirements, therefore, assist in the effective and efficient enforcement of the act. Third, these requirements are not unduly burdensome. They require maintenance of records that manufacturers should already have to validate that their food product may lawfully bear the claim, and they permit them to identify the records that substantiate their claim. FDA requests copies of the records in writing without inspection. These burdens are not unreasonably onerous.

With respect to significant scientific agreement, the comment misreads the statute. Under section 403(r)(3)(B)(i) of the act, FDA authorizes a claim about a substance-disease relationship only if the standard of significant scientific agreement is met. Under that section, significant scientific agreement is a necessary condition, but not a sufficient one, for FDA to authorize a health claim. FDA may impose other requirements in accordance with section 403(r) of the act.

The agency also disagrees that the recordkeeping and record access provisions violate the First Amendment. Under section 201(g)(1) of the act, a food is not a drug solely because its labeling contains a health claim authorized and made in accordance with the requirements of section 403(r) of the act. Section 201(g)(1) provides no such provision for a food whose labeling contains a health claim that is not authorized and made in accordance with the requirements of section 403(r) of the act. Congress provided for the use on foods of health claims authorized under and made in accordance with the requirements of section 403(r) of the act to promote the public health by, in part, helping consumers maintain balanced and healthful diets (58 FR at 2514). FDA has required that foods whose labels contain an authorized health claim must contain a sufficiently high level of the substance that is the subject of the claim in question (see 21 CFR 101.14(d)(2)(vii)). This provision assures that a food bearing the claim in fact contributes to the claimed effect (56 FR at 60553) and so may help consumers to maintain a balanced and healthful diet. Absent the recordkeeping and access provisions, FDA could not assure that, when the soy protein health claim appears on foods, they will, in fact, contain sufficiently high levels of soy protein. These provisions, therefore, directly advance Congress' substantial interest in permitting the use of health claims on foods and they are narrowly tailored to do so. In addition, when used on a food, the authorized soy protein health claim must identify the amount of soy protein in a serving of food. Accordingly, the provisions also permit FDA to assure that the claim as it appears on a food is not false and misleading.

3. Requirement that Food Meets the Criterion for Low Fat

In § 101.82(c)(2)(iii)(B), the agency proposed, consistent with other authorized heart disease health claims, that foods bearing the health claim meet the requirements for ''low saturated fat,'' ''low cholesterol,'' and ''low fat.'' In the preamble to the final rule authorizing the fruits, vegetables, and grain products and heart disease claim (§ 101.77, 58 FR 2552 at 2572), the agency stated that populations with diets rich in these low saturated fat and low cholesterol foods experience many health advantages, including lower rates of heart disease. In the preamble to the saturated fat/cholesterol proposed rule (56 FR 60727 at 60739), the agency stated that while total fat is not directly linked to increased risk of CHD, it may have significant indirect effects. Foods that are low in total fat facilitate reductions in intakes of saturated fat and cholesterol to recommended levels. Therefore, the agency tentatively concluded that proposed § 101.82(c)(2)(iii)(B) set forth appropriate requirements for foods to be eligible to bear the soy protein and CHD claim.

(Comment 58). No comments objected to the requirements that a food meet the criteria for ''low saturated fat'' and ''low cholesterol'' in order to bear a health claim about the relationship of soy protein and CHD. However, many comments objected to the requirement that a food meet the criterion for ''low fat,'' mainly on the basis that all foods made from whole soybeans would be disqualified by virtue of the inherent ratio of protein to fat (approximately 2 to 1) in soybeans. Several of these comments noted that makers of such foods would have to use soy protein isolates to develop qualifying products. The comments that provided additional rationale argued that saturated fat and cholesterol were properly restricted for a CHD claim, but that total fat need not be restricted to the same degree because it is not directly related to risk of CHD. These comments noted that products derived from whole soybeans that contain 6.25 g of protein per RACC would just exceed the criterion for ''low fat'' of 3 g fat per RACC. However, these products would not lead to an increase in the intake of saturated fat or cholesterol and, thus, negate the health benefits of soy protein. In addition, they would serve as sources of the essential fatty acids, linoleic acid and linolenic acid.

As noted above, the FDA has required that foods bearing any of the previously authorized CHD health claims meet the requirements for ''low saturated fat,'' ''low cholesterol,'' and ''low fat.'' In the saturated fat/cholesterol proposed rule, FDA proposed that in order for a food to bear the health claim, the food must also meet the requirements for a ''low'' claim relative to total fat content (56 FR 60727 at 60739). The agency noted that, while total fat is not directly related to increased risk for CHD, it may have significant indirect effects. Low fat diets facilitate reductions in the intake of saturated fat and cholesterol to recommended levels. Furthermore, the agency noted that obesity is a major risk factor for CHD, and dietary fats, which have more than twice as many calories per gram as proteins and carbohydrates, are major contributors to total calorie intakes. For many adults, maintenance of desirable body weight is more readily achieved with moderation of intake of total fat. The agency also concluded that this approach would be most consistent with the U.S. Dietary Guidelines and other dietary guidance that recommends diets low in saturated fat, total fat, and cholesterol. In the saturated fat/cholesterol final rule (58 FR 2739 at 2742), FDA reiterated the requirement for ''low fat,'' but allowed for the exception that fish and game meats could meet the requirement for ''extra lean,'' because these foods are appropriately included in a diet low in fat, saturated fat, and cholesterol. FDA also noted that the ''low fat'' requirement for foods to make the saturated fat/cholesterol and heart disease health claim would limit a manufacturer's ability to increase trans-fatty acid levels in foods, since any substitution of trans-fatty acids for saturated fatty acids would have to be accomplished within the 3 g per RACC or per 50 g limit for total fat. The agency considered this approach unlikely to result in significantly increased levels of trans-fatty acids in foods bearing the health claim (58 FR 2739 at 2744).

The latter consideration is not applicable to the case of foods made from whole soybeans. No substitution of one type of fatty acid for another is

contemplated for these products. The amount by which foods made from whole soybeans that are otherwise eligible to bear the soy protein health claim would exceed the ''low fat'' criterion due to the inherent fat content of soybeans is small and well below the disqualifying level for total fat that a food bearing any health claim must meet (§ 101.14 (a)(4)). FDA is persuaded that products derived from whole soybeans are useful sources of soy protein that they, like fish and game meats that are ''extra lean,'' can be appropriately incorporated in a diet that is low in fat, saturated fat, and cholesterol. Thus, FDA is modifying § 101.82(c)(2)(iii)(B) to require that all products meet the criteria for ''low saturated fat'' and ''low cholesterol'' and adding § 101.82(c)(2)(iii)(C) to require that a food meet the criterion for ''low fat'' in order to bear the soy protein health claim, except for products consisting of or derived from whole soybeans without additional fat.

D. Required Elements for the Claim

1. Context of the Total Daily Diet

In the soy protein proposed rule (63 FR 62977 at 62991), the agency tentatively found that, for the public to understand fully, in the context of the total daily diet, the significance of consumption of soy protein on the risk of CHD (see section 403(r)(3)(B)(iii) of the act), information about the total diet must be included as part of the claim. Therefore, in § 101.82(c)(2)(i)(D), the agency proposed to require that the claim include the fact that the effect of dietary consumption of soy protein on the risk of CHD is evident when it is consumed as part of a healthy diet and that, consistent with other authorized health claims related to CHD, the fat component of the diet be specified as ''saturated fat'' and ''cholesterol.''

(Comment 59). One comment objected to this requirement on several grounds: that FDA has been inconsistent in requiring specification of the need to consume diets low in saturated fat and cholesterol in previously authorized CHD health claims; that the effect of soy protein on blood cholesterol levels is independent of a low fat, low saturated fat, and low cholesterol diet; that the statutory requirement to place the claim in the context of the total daily diet need only relate the labeled product to the rest of the day's diet; and that consumers will conclude that soy protein will be of no benefit to them if they cannot reduce saturated fat and cholesterol in their diets. Other comments raised similar objections to the requirement. This comment and others proposed that FDA allow a variety of shortened claims that would effectively render this requirement an optional element of the claim or that FDA permit the information in this requirement to be presented in a split claim.

FDA disagrees with some of the characterizations of FDA's requirements for currently authorized heart disease claims. The comment notes that the agency requires a statement of the role of low saturated fat and cholesterol diets in the reduction of risk of heart disease in three of the authorized claims'the dietary lipids claim (21 CFR 101.75), the claim for fruits, vegetables, and grain products that contain dietary fiber, particularly soluble fiber (21 CFR 101.77), and the claim for soluble fiber from psyllium seed husks (21 CFR 101.81)—because the effect of the subject food substances had been established only in the context of such a diet. However, the comment maintained that evidence for the hypocholesterolemic effect of soluble fiber from whole oats showed it to be independent of other dietary changes. Thus, in requiring that the claim for this substance be stated in the context of a diet low in saturated fat and cholesterol (21 CFR 101.81), the comment asserted that FDA had failed to provide a claim that accurately and truthfully reflected the underlying science.

FDA disagrees with this characterization. The petition for a health claim for oat products stated that there was significant scientific evidence to show that the effect of oats on lowering serum lipids is independent of a diet low in saturated fat and cholesterol. In light of this evidence, the petitioner argued that any health claim that is authorized need not refer to such a diet. In the proposed rule for a health claim for oat products, the agency acknowledged that there were a number of studies that showed that high intakes of oat bran and oatmeal lowered blood total and LDL-cholesterol in subjects that otherwise consumed a typical American diet (61 FR 296 at 305). However, the agency also recognized that CHD is a major public health concern in the United States, and that the totality of the scientific evidence provides strong and consistent support that diets high in saturated fat and cholesterol are associated with elevated levels of blood total and LDL-cholesterol, and thus CHD (56 FR 60727 at 60737). Dietary guidelines from both government and private scientific bodies conclude that the majority of the American population would benefit from decreased consumption of dietary saturated fat and cholesterol. Although the results of several studies showed that daily consumption of oat bran or oatmeal lowered total cholesterol and LDL-cholesterol levels, the agency noted that the effects of dietary intake of oat bran or oatmeal were particularly evident when the diets were low in saturated fat and cholesterol (61 FR 296 at 306). Thus, the agency tentatively found it would be more helpful to Americans' efforts to maintain healthy dietary practices if the effect of oats on serum lipids were described in the context of a healthy diet (61 FR 296 at 306).

This tentative conclusion was supported by many of the comments received in response to the proposed rule and described in the final rule authorizing a health claim for soluble fiber from whole oats (62 FR 3584 at 3594). In the final rule, the agency noted that diets low in saturated fat and cholesterol are considered by expert groups to be the most effective dietary means of reducing heart disease risk, and that while soluble fiber from whole oats can contribute to this effect, its role is generally recognized as being of smaller magnitude (Ref. 5). Further, expert groups saw selection of foods with soluble fiber from whole oats as a useful adjunct to selection of diets low in saturated fat and cholesterol (Ref. 5). The agency concluded that it would not be in the best interest of public health or consistent with the scientific evidence to imply that selecting diets with soluble fiber from whole oats is a substitute for consuming diets low in saturated fat and cholesterol (62 FR 3584 at 3594). Therefore, FDA emphasized the importance of the dietary component of the health claim, *i.e.*, the necessity for soluble fiber from whole oats to be consumed as part of a low saturated fat, low cholesterol diet, for a complete understanding of the claim (62 FR 3584 at 3594).

The comment also characterized the claim for sodium/salt and hypertension (21 CFR 101.74) as a claim about risk of heart disease and indicated that FDA was not consistent because this claim is not required to be stated in the context of a diet low in saturated fat and cholesterol. FDA disagrees with this characterization of the claim and the conclusion that follows from it. This claim does not address the risk of heart disease, but rather is a claim specific for hypertension. The scientific evidence does not suggest that dietary saturated fat and cholesterol have a significant effect on blood pressure; thus, no mention of that dietary context is required. In addition, FDA has stated (58 FR 2739 at 2746) that it has not been presented with data that sodium intake

is a risk factor for heart disease and that a claim characterizing the relationship between sodium and heart disease would misbrand a food under section 403(r)(1)(B) of the act unless it were specifically authorized by the agency. The agency does agree with the comment that it has not found that all the risk factors for CHD must be stated in order to ensure that a heart disease health claim is truthful and not misleading. In fact, for CHD claims authorized more recently (21 CFR 101.81), FDA has not required that CHD be characterized in the claim as a disease caused by many factors, in contrast to the claims that FDA authorized earlier as part of the initial NLEA reviews (21 CFR 101.75 and 21 CFR 101.77).

In addition, FDA disagrees with the assertion that the cholesterol lowering effect of soy protein is independent of other dietary changes; the agency interprets the data differently. As noted in the discussion above, most of the scientific evidence for an effect of soy protein on blood lipid levels is provided by studies that used diets low in saturated fat and cholesterol. Although soy protein was found to lower blood lipid levels in some of the studies using ''usual'' diets, hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol. The agency concludes that the data supporting an independent effect for soy protein are more limited than those supporting an independent effect of soluble fiber from whole oats in reducing cholesterol levels. Moreover, because the hypocholesterolemic effects of soy protein are seen in addition to the effects of a low saturated fat, low cholesterol diet, combining the two practices will provide enhanced benefits.

Nor does FDA agree with the comment's assertion that the statutory requirement to place the claim in the context of the total daily diet need only relate the labeled product to the rest of the day's diet. In the 1993 health claims final rule (58 FR 2478 at 2513), the agency disagreed with comments that proposed that the requirement to enable the public to understand the significance of the claim in the context of the total daily diet would be fulfilled if a health claim merely characterized the level of a substance vis-a-vis a disease, provided that there was significant scientific agreement that that level of intake of the substance was beneficial in reducing the risk of disease. Rather, FDA found that section 403(r)(3)(B)(iii) of the act requires that a regulation that authorizes a health claim provide that the claim be stated in a manner that enables the public to comprehend the information in the claim and to understand the relationship of the substance to the disease, the significance of the substance in affecting the disease, and the significance of the information in the context of the total daily diet. Thus, a claim may need to address a wide variety of factors to fulfill these requirements, and the agency is not limited to requiring only that information that is necessary to prevent a claim from being misleading.

Finally, the agency is not persuaded that requiring the soy protein claim to be stated in the context of a total daily diet low in saturated fat and cholesterol will deter consumers who are interested in dietary control of cholesterol levels, and who have made unsuccessful attempts to lower dietary intake of saturated fat and cholesterol, from incorporating soy protein into their diets. Consumers now have had experience with the claims for soluble fiber from whole oats and psyllium seed husks. These claims, like the soy protein claim, accurately draw the consumer's attention to the dietary pattern associated most strongly with reduction of risk from heart disease—a diet low in saturated fat and cholesterol—and offer choices of specific foods that can be incorporated into this dietary pattern to enhance its beneficial effects. Thus, FDA is not modifying the requirement that the health claim for soy protein be stated in the context of a diet low in saturated fat and cholesterol.

2. Daily Dietary Intake of Soy Protein and Contribution of One Serving

In the soy protein proposed rule (63 FR 62977 at 62991), the agency proposed that § 101.82(c)(2)(i)(G) require that the claim specify the daily dietary intake of soy protein needed to reduce the risk of CHD and the contribution one serving of the product makes to achieving the specified daily dietary intake. The agency noted this requirement was consistent with requirements set forth in § 101.81 for claims about soluble fiber from whole oats and psyllium seed husks, food substances that (like soy protein) do not have Daily Values that can serve as a guide to consumers for appropriate levels of intake. It is also required by § 101.14(d)(2)(vii).

(Comment 60). Almost all of the comments that addressed these requirements supported the need for the claim to contain this information. Some comments expressed concern that even with this information some consumers might be misled into believing that a single serving of a soy protein-containing food would contribute the full daily amount needed for the claimed health benefit. FDA notes that these comments did not suggest what additional information might be helpful to consumers in understanding the claim.

(Comment 61). Several comments suggested that the daily dietary intake of soy protein needed to reduce the risk of CHD be required to be described as ''at least 25 g/day of soy protein'' or ''a minimum of 25 g/day of soy protein.''

FDA is not persuaded to require that such statements be used because it is concerned about the need to balance informing consumers about the effective level of soy protein intake needed to provide the claimed health benefit against encouraging excessive consumption of a single food substance. If consumers were to interpret the claim erroneously as supporting consumption of soy as the sole source of dietary protein or supplementing a diet already adequate in protein from various sources with additional soy protein, then the two most important tenets of a healthful diet—variety and moderation—would be violated.

(Comment 62). One comment noted that, in the second model claim, the characterization of the total dietary intake of soy protein appeared to have omitted indication that the amount is ''per day.'' FDA agrees. This omission was inadvertent and the agency has corrected § 101.82 (e)(1).

Although comments generally viewed as desirable providing information on both the total daily dietary intake of soy protein and the contribution of a single serving of a food to the total intake, some comments urged that it need not be provided in one place on the label with all of the other required information. Many of these comments encouraged FDA to make provisions for the use of abbreviated claims that would include a referral statement directing the consumer elsewhere on the package for the full claim. Issues associated with abbreviated and split claims are addressed below.

3. Abbreviated/Split Claims

(Comment 63). Although there were not substantive objections regarding most of the required elements FDA specified, a large number of comments objected to the model claims proposed in § 101.82 (e), asserting that they are excessively long, complicated, and cumbersome, and requested that FDA devise shorter claim statements. Many of these comments expressed concerns that manufacturers would be reluctant to use and consumers unlikely to read

such long, complex messages. They frequently suggested that FDA provide for split claims in this rule. These would comprise a short or abbreviated claim (that need not contain all of the required elements identified in the rule) appearing on the principle display panel of the label together with a referral statement for the full claim elsewhere on the package. As support for these suggestions, many of the comments cited the Keystone Dialog's (Ref. 159) endorsement of shorter claims and FDA's own health claim consumer research (Ref. 160), which the comments characterized as showing that short claims were more effective than long claims and that splitting claims between the front and back panels made little difference.

FDA notes, however, that the results of its consumer research were more complicated than indicated by that brief summary. The short and long claims studied differed in the inclusion of information about non-dietary risk factors and special populations at risk for the subject disease. The soy protein health claim already lacks these requirements. The study also found that, for some products with an abbreviated claim and a referral statement on the principal display panel, subjects were less likely to look at the back of the package for the full claim.

Concerns about health claims being too wordy and too lengthy have been raised to the agency in various ways, including by a petition submitted by the National Food Processors Association (NFPA) (Docket No. 94P–0390). In response to the NFPA petition, the agency proposed several changes to the requirements for health claims in the **Federal Register** of December 21, 1995 (60 FR at 66206) (the 1995 proposal). At that time, FDA stated that it had no desire for its regulations to stand in the way unnecessarily of the use of health claims and the presentation of the important information contained in them. The agency stated that, while health claims are being used on the label and in labeling, they could be used more extensively. The agency, therefore, proposed to provide for shorter health claims by making optional some of the elements that are presently required. FDA also proposed to authorize the use of abbreviated claims.

FDA has reviewed the comments received in response to the 1995 proposal on changing the requirements for health claims, including permitting the use of abbreviated claims, but it has not completed work on the final rule. Given that this rule is pending, and given its relevance to the issue of abbreviated claims, FDA has decided to defer a decision on allowing for abbreviated or split claims on soy protein and the risk of CHD. The agency intends to resolve this matter in the context of the rulemaking based on the NFPA petition. Thus, at this time, the agency is making provision only for a full claim.

E. Other Issues

1. Consideration of Health Claims for Benefits of Soy Protein in Addition to Effects on Cholesterol Levels and Risk of Coronary Heart Disease

(Comment 64). A few comments urged that FDA consider authorizing claims about other putative beneficial effects of soy protein or soy products on cardiovascular disease in addition to cholesterol lowering as well as putative beneficial effects on other diseases or health conditions such as cancer, osteoporosis, and menopausal symptoms. One comment suggested that statements derived from preliminary research on the putative beneficial effects of soy isoflavones be allowed on food labels and in labeling.

These suggestions are beyond the scope of the present rulemaking. The present rulemaking is based on FDA's review of information submitted in a petition about the relationship of soy protein and reduced risk of CHD based exclusively on studies of the cholesterol lowering effects of soy protein. The agency has neither received nor reviewed relevant data for any other possible effects of soy protein relevant to risk of heart disease or of other diseases or health-related conditions. Any interested person who has such data may submit a petition to the agency detailing the information for FDA's review and evaluation of whether such information meets the requirements for authorization of a health claim.

(Comment 65). At the same time, one comment expressed concern that the authorization of a health claim on the relationship of soy protein and risk of CHD might be read by some consumers as an implied claim for other putative benefits of soy foods.

FDA concludes, however, that the requirements it has set forth for the health claim already narrow the focus of the claim sufficiently to the relationship that FDA evaluated. Accordingly, consumers should not be so misled by the claim.

2. Drug Claims vs. Health Claims for Foods

(Comment 66). One comment objected to FDA's provision of a health claim for foods containing soy protein and reduced risk of CHD when FDA had not approved estrogen as a drug to have an indication for prevention of cardiovascular disease despite a large body of supportive evidence. The comment asserted that FDA must evaluate all products with the same ground rules.

This assertion is incorrect. As the agency explained in the 1993 health claims final rule (58 FR at 2506), the scientific standard for authorization of a health claims is less stringent than the requirements for approval of a new drug under section 505 of the act (21 U.S.C. 355).

3. Claims for Other Vegetable Proteins

(Comment 67). One comment reviewed data on the possible mechanisms for soy protein's hypocholesterolemic effects and concluded that they may be due in part to its amino acid composition, specifically its high arginine and low methionine content. The comment noted that other vegetable proteins, such as pea proteins, have a similar amino acid profile and would likely have the same effect on risk of CHD as soy protein. The comment proposed that qualifying levels of both arginine and isoflavones be required for the health claim and that the claim not be limited to soy protein. FDA finds that this suggestion is outside the scope of the current rulemaking. FDA has not reviewed any data on the hypocholesterolemic effects of specific vegetable proteins other than soy.

(Comment 68). Another comment that also discussed the possible importance of the amino acid composition of soy protein to its cholesterol-lowering ability suggested that the title of the new claim should be ''Protein from Certain Foods and Reduced Risk of CHD'' in anticipation that data will be generated showing hypocholesterolemic effects of other vegetable proteins with amino acid compositions similar to soy protein. Having reviewed data only on soy protein and being aware of no similar body of evidence about any other vegetable protein, FDA finds this suggestion premature.

4. Regulatory Issues Regarding Soy Protein Claims in Other Countries

(Comment 69). One comment provided extensive information about a complaint brought against a company regarding a particular television advertising campaign for a non-dairy soy beverage product in New Zealand that was alleged to be deceptive. This information included an unpublished report of a study comparing the effects of the non-dairy soy beverage to milk that was inadequate for assessing a

hypocholesterolemic effect for soy protein or the soy product itself because dietary saturated fat and cholesterol varied substantially in the two dietary treatments. Another comment raised concerns about the importation of foods from the United States that may bear health claims in violation of Mexican law.

The FDA advises that violations of laws or regulations of other countries with respect to claims made on food labels or labeling or claims made in advertising are outside the scope of the present rulemaking. Companies doing business in other countries are responsible for complying with the relevant statutory and regulatory requirements of those countries.

5. Genetically Modified Soybeans

(Comment 70). Two comments noted that much of the current soybean crop in the United States consists of genetically modified varieties of soybeans. One comment requested that products bearing the health claim be required to indicate on the label whether genetically modified soybeans were used. The other comment noted that genetic modification may alter the content of isoflavones and other biologically active components of soy and suggested that research was needed to determine if such genetic modifications raise additional safety concerns. The comments provided no data or other information to justify labeling or substantiate any safety concerns.

FDA has considered these comments and disagrees with both, for the following reasons. FDA has stated its expectation that companies consult with the agency early in the process of developing a bioengineered food and that they provide the agency with a summary of safety data and a nutritional assessment for its review (Ref. 161). To date, three companies have consulted with the agency about bioengineered soybeans. Two companies developed soybeans that are resistant to the herbicides glyphosate and glufosinate, respectively. A third company modified the oil composition of the soybean to increase its levels of oleic acid, and it must be labeled as high oleic acid soybean. One company stopped further development of a genetically modified soybean that involved the addition of a brazil nut protein when it discovered that the protein would cause allergic reactions.

The safety and nutritional assessments of the three bioengineered soybeans show that there are no unintended effects of the genetic modification (Refs. 162 through 167). In particular, these soybeans possess the same nutritional profile as their parent or other commercially available soybeans, except that the high oleic acid soybean has a modified fat profile, as intended. In addition, levels of isoflavones, trypsin inhibitors, and endogenous allergens are unchanged. The agency therefore concludes that there is no basis to the comment's assertion that currently available bioengineered soybeans may raise additional safety concerns. Nor is there any basis to require that bioengineered soybeans be identified in food labeling as such.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the soy protein proposed rule (63 FR 62977 at 62993) and the soy protein reproposal (64 FR 45932 at 45935). The agency determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment, and that neither an environmental assessment nor an environmental impact statement is required, but provided incorrect citations for categorical exclusion in the proposed rules. The correct citation is 21 CFR 25.32(p). No new information or comments have been received that would affect the agency's previous determination.

IV. Analysis of Economic Impacts

A. Cost-Benefit Analysis

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither an economically significant nor a significant regulatory action as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost benefit and other analyses. A significant rule is defined in 2 U.S.C. 1532 (a) as ''a Federal mandate that may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year.''

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801(a)(1)(A)(ii), the Administrator of the Office of Information and Regulatory Affairs of the Office and Management and Budget has determined that this final rule is not a major rule for the purpose of Congressional review. A major rule for this purpose is defined in 5 U.S.C. 804 as one that the Administrator has determined has resulted or is likely to result in: (A) an annual effect on the economy of $100,000,000 or more; or (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Options

FDA did not discuss regulatory options in the analysis of the proposed rule, because no costs were identified in that analysis. Public comments on the proposed rule raised a number of potential costs and a number of issues that may affect the benefits of this rule. The comments also suggested a large number of regulatory options. The primary options suggested in the comments were as follows:

(1) Take no new regulatory action.

(2) Take no action, but generate or wait for additional information on which to base a future action.

(3) Take proposed action.

(4) Take proposed action, but specify a different minimum level of soy protein for products bearing the claim.

(5) Take proposed action, but specify a minimum level of soy isoflavones in addition to a minimum level of soy protein for products bearing the claim.

(6) Take proposed action, but revise the wording of the claim or require that warnings or other statements accompany the claim.

(7) Take proposed action, but specify a different maximum total fat content or grant an exemption from the maximum total fat requirement for foods made with natural soy beans that have no added fat.

(8) Take proposed action, but use a different procedure for determining level of soy protein in particular products.

1. Option One: Take No New Regulatory Action

By convention, the option of taking no new regulatory action is the baseline in comparison with which the costs and benefits of the other options are determined. Therefore, neither costs nor benefits are associated with taking no new regulatory action.

2. Option Two: Take No Action, But Generate or Wait for Additional Information on Which To Base a Future Action

A number of comments suggested delaying action until further research is carried out on: (1) The mechanism by which soy protein reduces the risk of coronary heart disease (CHD), including the role of soy isoflavones; (2) the effect of particular methods of manufacturing soy protein isolates and products containing soy protein; (3) the effect of other characteristics of the diet such as fiber or mineral content; (4) potential health risks associated with increased intake of soy protein, soy isoflavones, other components of soybeans, and artifacts of particular methods of manufacturing soy protein isolates and products containing soy protein; (5) consumption patterns of foods containing soy protein and the percentage of such foods that meet the proposed requirements for the health claim; and (6) methods of measuring the level of soy protein in foods.

The cost of delay is the elimination of the benefits that would have been realized between the effective date of the non-delayed rule and the effective date of the delayed rule. The potential benefits of delay are: (1) The reduction of potential health risks, if any, associated with increased intake of soy protein and other relevant substances; (2) the reduced likelihood of the potential reduction in the perceived reliability of FDA-approved claims that might occur if future research were to require the soy protein health claim be revised; (3) the increase in the health benefits generated by a delayed health claim that, potentially, would be more accurate or complete.

As discussed below, the comments did not provide information establishing that the benefits of delaying the rule outweigh the costs.

3. Option Three: Take Proposed Action Costs

A number of comments suggested that this rule might lead to adverse health effects. According to these comments, potential health risks are associated with an increased intake of: (1) Soy protein; (2) other components of soybeans including soybean trypsin inhibitors and isoflavones such as genistein; (3) artifacts of particular methods of manufacturing soy protein isolates or products containing soy protein, such as nitrates, nitrosamines, and lysinolanine; and (4) artifacts of genetically engineered soy protein. Among the potential health concerns related to these substances mentioned in the comments were the following: (1) Allergenicity; (2) reduced bioavailability of vitamins and minerals including zinc and iron; (3) hormonal alterations, including changes in fertility and functioning of sex glands; (4) toxicity in estrogen sensitive tissues and an increase in estrogen-related diseases; (5) vascular dementia; (6) adverse effects on the central nervous system and behavioral changes; (7) thyroid abnormalities, including goiter; (8) cancer; (9) diabetes; (10) liver disease; (11) adverse effects on the immune and endocrine systems; and (12) adverse effects on metabolism. Other comments argued that no health concerns would be associated with the intake levels of soy protein and the other substances that can be associated with soy protein, such as soy isoflavones or various by-products of manufacturing soy protein isolates, that are likely to result from the proposed health claim.

As discussed previously in the preamble to this rule, FDA finds that there is no evidence that any increase in the intake of soy protein or the other substances discussed in the comments presents a risk of adverse health effects.

The availability of the health claim may increase the number of products containing soy protein. Increased availability of products containing soy protein may increase the likelihood that those who are allergic to soy protein may consume such products. The net effect of this rule on the incidence of allergic reactions to soy protein is unclear. As discussed earlier in the preamble, the presence of the health claim will serve to notify consumers of the presence of soy protein in products that bear the claim. However, some consumers who are allergic to soy protein may not already know they are allergic to soy protein and some consumers who do know they are allergic may inadvertently consume such products despite the presence of the health claim. FDA has insufficient information to estimate the net effect on the incidence of allergic reactions to soy protein. In addition, the addition of soy protein to products that do not currently contain soy protein may reduce, to some degree, the number of soy-free products that are available to those who are allergic to soy protein. This reduction in product choice may lead to utility losses for those consumers. However, a large number of products will continue to not contain soy protein, so this utility loss will probably be modest. This rule may also increase the incidence of the adverse health effects associated with zinc deficiency, which is typically related to largely plant-based diets, to some degree. However, FDA has insufficient information to estimate this effect.

Some comments suggested that this rule might indirectly increase the incidence of CHD. According to these comments, the proposed health claim could lead some consumers to overestimate the role of soy protein in preventing CHD and to neglect other actions that have an equal or greater effect on the risk of CHD. Other comments argued that this rule might lead to the adverse health effects caused by poor nutrition because the proposed health claim might lead some consumers to concentrate unduly on foods containing soy protein and to neglect the other components of a balanced diet. Another comment argued the proposed health claim could lead to miscellaneous adverse health effects because it might be interpreted by some consumers as an endorsement of the miscellaneous benefits that are sometimes claimed for soy products, such as the prevention of cancer or osteoporosis. This comment argued that this interpretation would lead some consumers to neglect the actions that reduce the risk of these other conditions.

Some consumers may misinterpret the proposed health claim (or any other health claim). However, the fact that the proposed health claim states that the risk of CHD may be reduced by an unspecified degree by consuming a specified level of soy protein per day, as part of a low saturated fat and low cholesterol diet, makes it unlikely that many consumers will neglect other activities that reduce the risk of CHD or neglect other types of foods. Similarly, the fact that the health claim specifies CHD makes it unlikely that many consumers will interpret the claim as an endorsement of other benefits that are sometimes claimed for soy products. The comments did not provide sufficient information to allow FDA to estimate the likelihood of these effects. Furthermore, these potential effects are no more likely to be associated with the proposed claim than with any other claim.

Some comments suggested that this rule might indirectly increase the incidence of miscellaneous adverse health effects by decreasing the perceived reliability of FDA-approved health claims in general. Some comments noted the presence of a certain degree of uncertainty concerning the mechanism by which soy protein reduces the risk of CHD. One comment argued that if further research on this mechanism were to find that isoflavones or other components of soybeans are involved, and the health claim were subsequently revised to reflect those findings, then FDA's scientific reputation and the perceived value of FDA-approved health claims could be adversely affected. Other comments implied that uncertainty over the mechanism means that future research might show that soy protein does not affect the risk of CHD. Other comments argued that the proposed claim would reduce FDA's scientific credibility because it would mean that FDA is treating soy protein in a manner that is inconsistent with how FDA treats certain other substances that may reduce the risk of CHD, including estrogens and linseed oil.

Future research could lead to results that would lead FDA to revise the soy health claim. However, the comments did not provide sufficient information to allow FDA to estimate the likelihood of revisions or to assess the impact of these revisions on the perceived reliability of FDA-approved health claims in general. The latter relationship is highly speculative, because it depends on consumers not knowing that scientific knowledge is in a constant state of development. In addition, although some revisions may be necessary, it is unlikely that future research will indicate that soy protein has no effect on CHD. As stated earlier in the preamble, FDA has concluded that the scientific evidence establishes that increased intake of soy protein reduces the risk of CHD and that this effect is not simply an artifact of the substitution of lower fat and cholesterol products for higher fat and cholesterol products. The comment that suggested otherwise ignores the many studies in which fat, saturated fat, and cholesterol were the same in treatment and control groups and soy protein still exerted an effect on the risk of CHD. Also, FDA disagrees that the only mechanism discussed in the petition was the soy isoflavone mechanism. Finally, the comments did not provide sufficient information to estimate the effect of the purported inconsistencies on the perceived value of FDA-approved health claims. However, in general, it is unclear that the failure to authorize a health claim for one substance would reduce the effectiveness of a health claim for another substance.

A number of comments addressed the method FDA proposed to use to determine the level of soy protein. Many of the comments recommended revising the proposed rule. These comments are discussed under Option 8 below.

C. Benefits

The analysis of the proposed rule discussed the benefit of this rule in terms of the value to consumers of the information communicated in the proposed health claim. The comments did not provide information directly relevant to estimating this value. However, a number of comments addressed the health and other benefits that might be generated by changes in consumer behavior that might follow from this rule. As discussed in the analysis of the proposed rule, the value of these other benefits may be considered a lower bound on the value to consumers of the information communicated in the health claim. This value is a lower bound because some consumers might want that information, but nevertheless choose not to modify their behavior. In addition, the value of these other benefits may be considered an appropriate independent metric for valuing the benefits of this rule because consumers may value the information in the claim based on the usefulness of that information for reducing the risk of CHD but may underestimate or overestimate the usefulness of that information.

Many comments argued that this rule would lead to a reduction in the incidence of CHD and provided information relevant to estimating that reduction. A few comments argued that this rule would not lead to a reduction in the incidence of CHD because soy protein does not affect the risk of CHD. One comment argued that this rule would generate benefits by obviating, in some cases, the need for riskier and more expensive pharmacological treatments for reducing the risk of CHD. Thus, according to this comment, this rule might generate benefits even if no reduction in the incidence of CHD were to take place.

Quantifying the effect of the proposed health claim on the incidence of CHD would involve a number of uncertainties and any ensuing estimate would be imprecise. In addition, there would be little value to generating such an estimate because, as discussed above, the comments did not provide sufficient information to estimate the purported costs of this rule. Therefore, although FDA believes this final rule will generate benefits, this analysis will not attempt to quantify the effect of this rule on the incidence of CHD.

Some comments argued that increasing soy intake would generate benefits other than a reduction in the risk of CHD, including reduction in the incidence of cancer, osteoporosis, and menopausal symptoms. These types of effects would be relevant to the estimation of the benefits of this rule. However, FDA has reviewed no scientific evidence to assess whether such benefits exist or to estimate the size of such benefits.

4. Option Four: Take Proposed Action, but Specify a Different Minimum Level of Soy Protein for Products Bearing the Claim

Many comments suggested revising the minimum level of soy protein that is required for a product to be able to bear the proposed health claim. Some comments addressed the significance of the 25 g per day of soy protein on which the proposed 6.25 g per RACC requirement was based. One comment noted that studies have found that soy protein affects the risk of CHD at intake levels of between 17 g and 31 g per day. Another comment argued that between 30 g to 50 g of soy protein per day is necessary to produce clinically significant results on the incidence of CHD.

Specifying the particular daily intake of soy protein that will have a significant effect on the risk of CHD involves some uncertainty. However, FDA does not have sufficient information to estimate the effect of specifying different levels and the comments did not provide sufficient information to allow FDA to do so. As discussed earlier in the preamble, FDA believes the 25 g soy protein per day level is supported by the scientific literature and disagrees that intake levels of 30 g to 50 g per day is necessary to produce clinically significant results on the incidence of CHD.

Other comments did not address the 25 g soy protein per day target level but did address the 6.25 g per RACC requirement derived from the daily target level. Some comments argued that the per RACC requirement was overly restrictive and that few products would qualify for the health claim under this requirement. One comment analyzed the list of products that was presented in the petition as qualifying for the health claim and found that only 61 products would qualify if multiple flavors of the same product were omitted, and that 88 products would

qualify if multiple flavors were not omitted. This comment also noted that many of the products on the list that would qualify are products that are meant to be added to other products rather than consumed on their own, that it was unclear whether the final products would themselves meet the requirements for the proposed claim. Another comment noted that many of the qualifying products listed in the petition were varieties of non-dairy soy beverages or tofu, which this comment argued have not been well accepted by American consumers. Other comments noted that most of the soy products that are available on the market that would meet the proposed per RACC requirement are entree-type products that consumers would probably not consume four times per day. Some comments suggested that only vegetarian or soy burgers, shakes, tofu, and non-dairy soy beverages would meet the proposed per RACC requirement. One comment noted that many of the products that meet the RACC requirements are specialty items that are only available at health food stores.

In contrast, other comments argued that many existing soy products meet the proposed per RACC requirement or could easily be reformulated to meet that requirement. One comment suggested that the vast majority of products containing soy protein that are currently available on the market meet the proposed RACC level. These comments argued that the assumption of four eating occasions per day that was used to derive the 6.25 g per RACC requirement from the 25 g per day level was reasonable. Among the products listed in these comments were the following: tofu, soy-based beverages, soy burgers and other meat alternatives, frozen deserts, protein bars, cheese and yogurt alternatives, soybeans, soynut butter, soynuts, tempeh, miso, and soy flour or soy protein powder. Another comment implied that any product in which protein is normally consumed could easily be modified to meet the per RACC requirements, including snack foods, breakfast cereals, burger patties, and more formal entrees.

Some comments argued that the 6.25 g per RACC restrictions would effectively prevent baked products from bearing the claim. One comment noted that achieving a level of 6.25 g per RACC in these products would require incorporating soy flour at 15 percent inclusion or greater and that would yield a product that would be unacceptable to consumers and would also be too costly to compete effectively with other products. Many comments argued that the benefits of this rule would be greater if commonly consumed products such as baked products were able to bear the proposed health claim. One comment argued that a per RACC requirement that allowed baked goods containing soy protein to bear the health claim might lead to additional benefits in terms of encouraging the consumption of products from grain group of the USDA/DHHS Food Guide Pyramid, which this comment claims are currently underconsumed.

Other comments argued that the proposed per RACC requirement would effectively prevent other types of products from bearing the health claim. One comment argued that it is difficult to incorporate 6.25 g soy protein into a single RACC of most such foods in a way that it would be palatable to most American consumers, given current and reasonably anticipated technology.

Some of the comments that argued that few products would be able to meet the 6.25 g per RACC requirement recommended lowering the minimum per RACC level to allow a wider variety of foods to qualify for the health claim and to make it easier for consumers to achieve an intake of 25 g soy protein per day. Some comments argued that a level of 4 g per RACC would allow baked goods, allow soy pasta, low-fat extended meat products, and vegetarian burgers made with soy flour and textured soy protein to bear the claim. These comments noted that assuming intake levels of 5 to 6 servings per day of these types of products would be reasonable and that 4 g per RACC would, therefore, be consistent with a daily intake of 25 g per day. Another comment suggested that FDA has legal precedent for setting the per RACC requirement as low as 2.5 g per RACC.

In contrast, some of the comments that argued that few products would meet the 6.25 g per RACC requirement recommended raising the per RACC level to reduce the number of servings that would be necessary to obtain 25 g soy protein per day. Some comments argued that if the primary source of soy protein were from meals in which high protein meat dishes are currently eaten, then the per RACC requirement should be based on two or three servings per day, rather than the proposed assumption of four servings per day. Thus, these comments suggested that FDA revise the per RACC requirement from 6.25 g to either 8.3 g or 12.5 g.

FDA has insufficient information on the characteristics of the soy products that are currently on the market to determine the proportion of such products that would qualify for the health claim, the ease with which existing products can be reformulated to meet the requirements for making the health claims, or the ease with which new products can be developed that would meet the requirements for making the health claim. In addition, FDA has insufficient information on the consumption patterns of the relevant products to determine whether lowering the per RACC level would lead more or fewer consumers to consume 25 g soy protein per day.

Some comments noted that the proposed health claim contains information on (1) the daily intake level of soy protein that is associated with reduced risk of CHD and (2) the level of soy protein in a serving of the product bearing the claim. According to these comments, the provision of this information obviates the need to restrict the claim to products having 6.25 g or more soy protein per RACC, because consumers can easily determine the relative significance of particular products as a source of soy protein. These comments implied that specifying a much lower minimum level of soy protein would increase benefits because a wider variety of products would then be able to bear the claim and consumers would more easily be able to achieve an intake of 25 g soy protein per day.

Allowing the claim to appear on products containing very low levels of soy protein might increase the usefulness of the claim for consumers and might lead to a greater reduction in CHD than would be produced by taking the proposed action. The agency is unable to determine the likelihood of this effect.

Other comments suggested revising the per RACC requirement for other reasons. One comment argued that the per RACC requirement should be changed to a requirement based on serving size. This comment argued, for example, that a single veggie burger that contains 6.25 g of soy protein should qualify for the health claim, even if the product does not meet the per RACC requirement because the burger pattie is larger than the applicable RACC.

Changing the per RACC requirement to a per serving requirement would probably increase the number of products that would be able to bear the proposed health claim and might, therefore, increase the health benefits generated by the claims. However, the comments did not provide sufficient information to estimate this effect. In addition, this revision would require revision of the regulations at 21 CFR 101.12(g), and is, therefore, beyond the scope of this rulemaking.

One comment noted that the correct declaration of 6.25 g soy protein is 6 g because current law mandates that the amount of protein be rounded to the nearest whole number. According to this comment, this rounding might confuse consumers. If consumers were confused about the level of soy protein in the RACC of a particular product and the significance of that product for meeting the specified daily intake level, then the benefits of the health claim might be lower than they would be otherwise. This comment suggested that the per RACC requirement be revised from 6.25 g to either 6 g or 7 g. As discussed previously, the rounding requirement applies only to the Nutrition Facts Panel and soy protein content is not allowed to appear on the Nutrition Facts Panel.

5. Option Five: Take Proposed action, but Specify a Minimum Level of Soy Isoflavones in Addition to the Proposed Minimum Level of Soy Protein for Products Bearing the Claim

Some comments argued that the effect of soy protein on the risk of CHD may depend on the presence of soy isoflavones. These comments recommended that the health claim be restricted to products that contain a minimum level of total soy isoflavones, of particular isoflavones, of both total isoflavones and particular isoflavones, or of amino acids such as arginine and methionine. Some of the comments that argued that the beneficial effects of soy protein may depend on the presence of soy isoflavones also noted that particular manufacturing or processing methods can affect the level of soy isoflavones. These comments recommended that the health claim be restricted to products that have been manufactured or processed in particular ways. For example, many comments noted that alcohol washing reduces isoflavone content and suggested that products containing alcohol washed or extracted soy protein isolate should not be authorized to bear the health claim. Some comments added that there is no evidence that adding purified soy isoflavone extract back into such products is effective and argued that any isoflavone requirement should be based on naturally occurring isoflavones.

As discussed earlier in this preamble, FDA finds that the scientific evidence does not indicate that the effect of soy protein on the risk of CHD varies with the presence of soy isoflavones or amino acids. Therefore, no additional benefit would result from restricting the claim to products having particular levels of isoflavones, or produced using particular methods of manufacture.

6. Option Six: Take Proposed Action, but Revise Wording of the Claim or Require That Warnings or Other Statements Accompany the Claim

Some comments suggested that FDA require additional information be put on the labels of product bearing the proposed claim that explains the conditions under which soy protein reduces the risk of CHD. For example, some comments suggested that product labels should make it clear that no benefits should be expected for daily soy protein intake levels of less than 25 g. Some comments argued that the beneficial effects of soy protein accrue only to consumers who have high cholesterol levels and suggested that the proposed health claim be revised to communicate this fact.

Although requiring a label statement clarifying that benefits should not be expected for daily soy protein intake levels of less than 25 g might generate benefits, the marginal benefits of such a statement are unclear given that the proposed health claim relates health effects to an intake of 25 g per day and not to the intake of any particular product. The comment did not provide sufficient information to estimate the marginal benefit of an additional statement concerning the significance of the 25 g per day intake level. Finally, as discussed previously in this preamble, FDA has determined that the effect of soy protein on the risk of CHD may depend, in part, on initial cholesterol levels, but does not accrue only to those with high initial cholesterol levels. Therefore, restricting the health claim to apply to only those with high initial cholesterol levels would not generate marginal benefits.

Some of the comments that argued that the increased consumption of products containing soy protein could lead to health risks suggested that FDA require warning labels on those products to alert consumers of the risks. Other comments suggested that various types of information relevant to the purported health risks be reported on product labels. For example, one comment that argued that increased intake of soy protein could lead to zinc deficiency suggested that the labels of products bearing the health claim indicate the phytate and zinc content per serving for those products. One comment suggested that labels indicate a recommended maximum daily intake of soy protein to prevent the health risks associated with overconsumption of products containing soy protein. This comment argued that daily consumption of between 25 g and 100 g of isolated soy protein could result in nitrosamine exposures that exceeds established No Significant Risk Levels. One comment argued that manufacturers should voluntary provide information on product labels on various issues such as manufacturing methods and the use of pesticides, because consumers have a right to such information.

FDA has determined that there is no evidence that health risks are associated with increased intake of soy protein or the other substances discussed in the comments. Label statements warning of possible allergic reactions to soy protein would provide some potentially valuable information to consumers who do not realize they are allergic to soy protein or that such allergies are possible. However, such labeling would not provide useful information to those consumers who are already aware of the fact that allergies to common foods are possible, and might discourage the consumption of soy protein by those who are not allergic to soy protein. FDA has insufficient information to estimate the costs or benefits of such a warning statement or to determine if such a warning statement would provide a net benefit to consumers. Associating warning statements with the proposed health claim would generate no marginal benefits for consumers who know they are allergic to soy protein because the health claim would already indicate the presence of soy protein.

Label statements addressed to the potential effect of increased consumption of products containing soy protein on zinc deficiency, such as a warning statement, indications of the zinc and phytate content of products containing soy protein, or recommended maximum daily intakes, might reduce the likelihood that increased consumption of these products will lead to zinc deficiency. Earlier in the preamble to this rule, FDA determined that consumers would not find information relating to the zinc and phytate content of products containing soy protein useful. The other suggested labeling approaches for addressing the effect of increased consumption of these products on zinc deficiency may be useful for some consumers. However, again, the benefit of such labeling must be compared to the possible costs in terms of discouraging the use of such products among those who are not at risk of zinc deficiency. FDA has insufficient information to estimate the costs or benefits of the other suggested labeling approaches or determining whether such approaches would generate net benefits.

One comment suggested eliminating the language relating the effect of soy protein to diets low in saturated fat and

cholesterol because the effect of soy protein on the risk of CHD is independent of these other factors. The benefit of eliminating this language is that consumers who are not currently eating a diet low in saturated fat and cholesterol may be more likely to react to the health claim if the effect of soy protein is not presented as applying only to those eating diets low in saturated fat and cholesterol. An increase in the number of consumers likely to react to the health claim may increase the benefits of the health claim. However, the size of this marginal benefit is unclear because, as discussed earlier, the available data on the effects of soy protein show that soy protein has a more consistent effect on CHD for those consuming a low fat and cholesterol diet than for others. The cost of eliminating this language is that some consumers might believe that achieving a certain intake of soy protein can substitute for eating a diet low in saturated fat and cholesterol and might, therefore, indirectly increase the intake of saturated fat and cholesterol. FDA has insufficient information to determine if eliminating the language relating the effect of soy protein to diets low in saturated fat and cholesterol would generate net benefits or costs.

Some comments suggested that the proposed health claim was either too long or too complicated to be effective. Many comments argued that the health claim would be more effective if it were shortened or replaced by a ''split claim.'' Many comments suggested wording for a shorter health claim. Increasing the effectiveness of the health claim would increase the benefits associated with the health claim and would not affect costs. However, FDA has insufficient information to analyze the effect of different labeling formats or wording. Although FDA has studied the effectiveness of split claims for other types of claims, the relevance of that information for a health claim on soy protein is unclear.

7. Option Seven: Take Proposed Action, but Specify a Different Maximum Total Fat Content or Grant an Exemption from the Maximum Total Fat Requirement for Foods Made With Natural Soybeans That Have No Added Fat

Many comments noted that the low fat requirement for products bearing the proposed health claim would prevent soybeans and traditional soybean products from bearing the health claim. This rule has been revised so that foods made from whole soybeans with no added fat are exempted from the low fat requirement. The benefit of this revision is that more products will be able to bear the proposed health claim and the benefits generated by the health claim may be increased. The cost of this revision is that the total fat content of some products bearing the claim may be slightly higher than under the proposed rule. As explained earlier in the preamble, a reduction of total fat facilitates maintenance of normal body weight and, therefore, reduces the risk of obesity. The reduction of this effect would cause an increase in the risk of obesity and, therefore, produce a countervailing increase in the risk of CHD. In this case, the benefit of increasing the number of products probably outweighs the slight increase in the total fat content of qualifying products.

8. Option Eight: Take Proposed Action, but Use a Different Procedure for Determining Level of Soy Protein in Particular Products.

Many comments on the proposal addressed the analytical method that FDA proposed to use to confirm the level of soy protein in products bearing the proposed health claim. These comments were discussed in the reproposal. The reproposal specified various types of records that might allow FDA to calculate the level of soy protein in particular products. FDA received a number of comments on the reproposal. Most of these comments addressed the issue of which records FDA will use to determine the soy protein content of foods. Many comments argued that the reproposal appeared to allow FDA wide discretion in determining which records to inspect and duplicate. These comments also expressed the concern that FDA might inspect and duplicate records of each of the various types that were specified as potentially relevant in the reproposal, and might also inspect and duplicate as yet unspecified records that FDA later determines are relevant. According to these comments, some of the resulting record inspection and duplication might be unwarranted. Many comments suggested that the rule be revised to require manufacturers to provide FDA with records that provide a reasonable basis for concluding that a particular product has sufficient soy protein content to bear the health claim. According to these comments, this revision would eliminate the possibility that FDA will use the records inspections clause to inspect and duplicate records in situations in which such actions are not strictly necessary. One comment argued that the records inspection provision would give an unfair market advantage to firms that manufacture products whose sole source of protein is soy and which, therefore, need not provide FDA access to records to establish the level of soy protein in their products.

If FDA were to require the inspection and duplication of records that firms attempting to use the soy protein health claim considered unnecessary to establish compliance with the requirements for making that claim, then those firms would have less incentive to use the claim and the benefits associated with allowing that claim would be reduced. However, FDA has modified its proposal to inspect records to provide, instead, that manufacturers must identify and supply to FDA, on written request, records that substantiate the amount of soy protein in a food that bears the soy protein health claim if soy is not the sole source of protein in the food. Therefore, this rule will not require record inspection or unnecessary duplication of records. This rule may generate some distributive effects because it may put firms that are required to provide such records at a competitive disadvantage relative to firms that produce products in which soy is the only source of protein. However, these effects will probably be small because manufacturers probably already maintain the necessary records.

D. Small Entity Analysis

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. No compliance costs are generated by this rule because this rule does not require any labels to be changed, or any product to be reformulated. Therefore, small businesses will only relabel or reformulate products if the benefits to those small businesses outweigh the costs. FDA did not receive any comments that challenged this conclusion. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description

are shown below with an estimate of the annual recordkeeping and reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Record Retention Requirements for the Soy Protein/CHD Health Claim

Description: The regulation set forth in this rule authorizes the use in food labeling of a health claim about the relationship between soy protein and CHD. Section 403(r) of the act requires that food bearing a health claim authorized by regulation on a petition to the agency be labeled in compliance with the regulation issued by FDA. In response to comments received on the soy protein proposed rule (63 FR 62977), the agency proposed an alternative procedure for assessing compliance with the requirement that a food contain a qualifying amount of soy protein in the soy protein reproposal (64 FR 45932). This procedure would have required that a manufacturer of a product bearing the proposed soy protein health claim whose product contains a source or sources of protein in addition to soy retain the records that permit the calculation of the ratio of soy protein to other sources of protein in the food. The manufacturer of such a food product would have been required to make those records available for review and copying by appropriate regulatory officials upon request and during site visits. Comments received on the soy protein reproposal have been addressed by the agency in section II.C.2 of this document, and this rule reflects modifications made in response to those comments. This final rule requires a manufacturer of a product bearing the soy protein health claim whose product contains a source or sources of protein in addition to soy to identify and retain records that reasonably substantiate the ratio of soy protein to total protein. The rule also requires the manufacturer of such a food product to provide those records upon written request to appropriate regulatory officials.

FDA had submitted the information collection requirements to OMB for review under the PRA at the time the August 1999 soy protein reproposal was published. In response, OMB requested that FDA respond to the need for the collection and the burden hours that will be imposed as a result of this collection.

To bear the soy protein and CHD health claim, foods must contain 6.25 g soy protein per RACC. For foods that contain soy as the sole source of protein, analytical methods for total protein can be used to quantify the amount of soy protein. At the present time, there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other proteins. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the qualifying amount of soy protein. Thus, FDA is requiring manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request.

Although no comments on the soy protein reproposal specifically addressed the estimated burden of the information collection requirements, several indicated that recordkeeping and record inspection would be burdensome. These comments expressed concern about FDA's record inspection authority. In response to this concern, FDA has determined that, in this case, it need not assert record inspection authority in order to obtain the information needed for compliance assessment. The comments also expressed concern about the potentially broad array of records that FDA might demand. In response to this concern, FDA clarified that it did not intend to specify the records to be supplied. Rather, the final rule indicates that records will be requested in writing and that manufacturers will be responsible for identifying the records that they have used to substantiate the proportion of soy protein in their products.

FDA estimates the burden of this collection of information as follows:

Description of Respondents: Businesses or others for-profit.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1] There are no capital costs or operating and maintenance costs associated with this collection.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
101.82(c)(2)(ii)(B)	5	1	5	1	5

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Manufacturers must determine that their products are qualified to bear any claim used on foods labels or in labeling, including meeting the requirement for a qualifying amount of soy protein to bear the health claim authorized for use by this regulation. In the absence of a validated analytical methodology for soy protein in foods that contain other proteins, manufacturers will need to use records, *e.g.*, the food's formulation or recipe, to determine if such a food contains 6.25 g per RACC. In this rule, FDA is requiring that firms maintain the records they use to determine that a food is qualified to bear the claim, and that those records be submitted to FDA upon written request. Based upon its experience with the use of health claims, FDA estimated that 25 firms would market products bearing a soy protein and CHD health claim and that one of each firm's products would contain a source or sources of protein in addition to soy. FDA received no comments that challenged this estimate. FDA estimates that, annually, it would request records to assess compliance from 20 percent of firms subject to the

recordkeeping requirement. The records that would be required to be retained by § 101.82(c)(ii)(B)(2) are records that, as described above, FDA believes a prudent and responsible manufacturer uses and retains as a normal part of doing business. Thus, the burden to the food manufacturer would be that involved in assembling and providing the records to appropriate regulatory officials upon written request. The requirements contained in this rule would require only a minimal burden, no more than one hour per response, from respondents.

The information collection provisions of this final rule have been submitted to OMB for review. FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. References

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

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

The authority citation for 21 CFR part 101 continues to read as follows:

1. **Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Add § 101.82 to subpart E to read as follows:

§ 101.82 Health claims: Soy protein and risk of coronary heart disease (CHD).

(a) *Relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD.* (1) Cardiovascular disease means diseases of the heart and circulatory system. CHD is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL)-cholesterol levels are associated with increased risk of developing CHD. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 millimole per liter (mmol/L)) or above and LDL-cholesterol levels of 160 mg/dL (4.13 mmol/L) or above. Borderline high risk total cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L) and 130 to 159 mg/dL (3.36 to 4.11 mmol/L) of LDL-cholesterol. The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total and LDL-cholesterol and, thus, with increased risk of CHD.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL-cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in plant foods that contain dietary fiber and other components.

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soy protein to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD.* (1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL-cholesterol are major modifiable risk factors in the development of CHD.

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 mg or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soy protein, when included in a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met.

(2) *Specific requirements*—(i) *Nature of the claim.* A health claim associating diets that are low in saturated fat and cholesterol and that include soy protein with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soy protein ''may'' or ''might'' reduce the risk of heart disease;

(B) In specifying the disease, the claim uses the following terms: ''heart disease'' or ''coronary heart disease'';

(C) In specifying the substance, the claim uses the term ''soy protein'';

(D) In specifying the fat component, the claim uses the terms ''saturated fat'' and ''cholesterol'';

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soy protein;

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soy protein is the only recognized means of achieving a reduced risk of CHD; and

(G) The claim specifies the daily dietary intake of soy protein that is necessary to reduce the risk of coronary heart disease and the contribution one serving of the product makes to the specified daily dietary intake level. The daily dietary intake level of soy protein that has been associated with reduced risk of coronary heart disease is 25 grams (g) or more per day of soy protein.

(ii) Nature of the substance. (A) Soy protein from the legume seed Glycine max.

(B) FDA will assess qualifying levels of soy protein in the following fashion: FDA will measure total protein content by the appropriate method of analysis given in the ''Official Methods of Analysis of the AOAC International,'' as

described at § 101.9(c)(7). For products that contain no sources of protein other than soy, FDA will consider the amount of soy protein as equivalent to the total protein content. For products that contain a source or sources of protein in addition to soy, FDA will, using the measurement of total protein content, calculate the soy protein content based on the ratio of soy protein ingredients to total protein ingredients in the product. FDA will base its calculation on information identified and supplied by manufacturers, such as nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein. Manufacturers must maintain records sufficient to substantiate the claim for as long as the products are marketed and provide these records, on written request, to appropriate regulatory officials.

(iii) *Nature of the food eligible to bear the claim.* (A) The food product shall contain at least 6.25 g of soy protein per reference amount customarily consumed of the food product;

(B) The food shall meet the nutrient content requirements in § 101.62 for a ''low saturated fat'' and ''low cholesterol'' food; and

(C) The food shall meet the nutrient content requirement in § 101.62 for a ''low fat'' food, unless it consists of or is derived from whole soybeans and contains no fat in addition to the fat inherently present in the whole soybeans it contains or from which it is derived.

(d) *Optional information.* (1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL-cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease;

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease is through the intermediate link of ''blood cholesterol'' or ''blood total and LDL-cholesterol'';

(3) The claim may include information from paragraphs (a) and (b) of this section, which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and CHD and the significance of the relationship;

(4) The claim may state that a diet low in saturated fat and cholesterol that includes soy protein is consistent with ''Nutrition and Your Health: Dietary Guidelines for Americans,'' U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

(5) The claim may state that individuals with elevated blood total and LDL-cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL-cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment;

(6) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or ''Nutrition and Your Health: Dietary Guidelines for Americans,'' USDA and DHHS, GPO;

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease:

(1) 25 grams of soy protein a day, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies ____ grams of soy protein.

(2) Diets low in saturated fat and cholesterol that include 25 grams of soy protein a day may reduce the risk of heart disease. One serving of [name of food] provides ____ grams of soy protein.

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27693 Filed 10–20–99; 10:35 a.m.]

BILLING CODE 4160–01–P

Federal Register

Tuesday
October 26, 1999

Part III

Department of Housing and Urban Development

Notice of Public Meeting and Solicitation of Comments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4540–N–01]

Notice of Public Meeting and Solicitation of Comments

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of meeting and solicitation of comments.

SUMMARY: The United States Department of Housing and Urban Development (HUD or the Department) announces a public meeting and requests public comments on a draft report developed by Steven Winter Associates (SWA) which identifies the variances between the Fair Housing Act's design and construction requirements and the:

- National Building Code, Building Officials and Code Administrators International (BOCA) 1996 edition;
- Uniform Building Code, International Conference of Building Officials (ICBO) 1997 edition;
- Standard Building Code, Southern Building Code Congress International (SBCCI) 1997 edition; and
- International Building Code First Draft, International Code Council (ICC) November 1997; Proposed International Building Code 2000, International Code Council (IBC–2000) Chapters 10 and 11, Appendix to Chapter 11, and Section 3407 (1999).

The draft report discusses only variances that do not meet the Fair Housing Act's design and construction requirements. As stated in the **BACKGROUND** section of this notice, the draft report is a precursor to a final report that HUD will deliver to the United States House of Representatives by December 31, 1999, as directed in the Committee Report of the FY 2000 HUD/VA Appropriations bill. After receipt and review of public comments, the Department will make its final revisions to the draft report and then issue the final report.

DATES: The meeting will be held on November 10, 1999, and will commence at 2:00 p.m. EST and continue until 5:00 p.m. EST. Written public comments will be received prior to the meeting, during the meeting, and after the meeting until the close of business (6:00 p.m. EST) on Monday, November 15, 1999.

ADDRESSES: The meeting will take place at the United States Department of Housing and Urban Development headquarters, 451 7th Street, SW, Washington, DC 20410 in the south side of the cafeteria on the ground floor of the HUD building. The Department of Housing and Urban Development is located at the L'Enfant Plaza Metro stop. The meeting will also be broadcast in HUD field offices. The addresses for the HUD field offices and telephone numbers for the Senior Community Builders may be obtained from www.hud.gov/directory/ascdir3.html or from Juanina Harris at the address and telephone number listed in the ''RESERVATIONS'' section of this notice.

Accessibility

The HUD headquarters building and field offices are accessible. The meeting in HUD headquarters will be interpreted in sign language and presented in open and real-time captioning. The broadcast will be open-captioned on television monitors in the HUD field offices with the exception of the following offices. The broadcast is available for listening only in Burlington, Vermont; Flint, Michigan; Wilmington, Delaware; and Springfield, Illinois. In Camden, New Jersey; Fargo, North Dakota; Memphis, Tennessee; Shreveport, Louisiana; Spokane, Washington; and Tucson, Arizona, the broadcast will be shown on computer monitors. If you plan to attend the broadcast in one of those offices, please notify the Senior Community Builder seven days before the meeting if you need the services of a sign language interpreter.

Hearing or speech-impaired individuals may access any of the HUD headquarters and field telephone numbers referenced in this notice via TTY/TDD by calling the toll-free federal Information Relay Service at 1–800–877–8339.

Reservations

If you would like to attend or view the meeting, you should make a reservation by 5:00 p.m. EST on November 8, 1999.

To make a reservation to attend the meeting at HUD headquarters in Washington, DC, you should telephone Juanina Harris at (202) 619–8046, extension 6979, with the following information: your name; the organization you are representing, if any; any reasonable accommodations you may need to attend or view the meeting; whether you intend to present oral comments; and the anticipated length of your comments. This telephone number is not toll-free. Commenters will be allowed no more than ten and, depending on the number of commenters, as few as five minutes to make their comments.

To make a reservation to view or listen to the broadcast of the meeting at a HUD field office, you should telephone the Senior Community Builder at the HUD field office where you would like to view or listen to the broadcast. You should provide the following information to the Senior Community Builder: your name; the organization you are representing, if any; and any reasonable accommodations you may need to view or listen to the broadcast of the meeting. The field office telephone numbers are not toll-free.

Alternatively, you may make a reservation to attend the meeting or to view or listen to the broadcast by using the registration form found at hud.gov/fhe/modelcodes, and following the instructions on the form.

Submission of Comments

Written comments should be submitted to Cheryl Kent, Director, Program Compliance and Disability Rights Support Division at 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500. Written comments will also be accepted at the public meeting. *Written comments must be submitted by close of business (6:00 p.m. EST) on Monday, November 15, 1999.*

Location of Documents

The HUD policy statement and draft report are located at www.hud.gov/fhe/modelcodes. The Fair Housing Act, the Fair Housing Act regulations, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this web site. Hard or Braille copies of the HUD policy statement and draft report may be requested from Ms. Harris at the telephone number or address listed in the ''RESERVATIONS'' section of this notice.

The Department recognizes that this report is designed to provide technical assistance to model code organizations and thus, because the report is responding to code language, it may be using terms unfamiliar to the general public. For this reason, the Department has arranged to have all of the source documents that SWA and the Department used in the analysis available to the public. The original and revised industry matrices that SWA and the Department reviewed are available at www.intlcode.org/fairhousing. You may also request a hard copy of the original and revised industry matrices from Ms. Harris at the telephone number or address listed in the ''RESERVATIONS'' section of this notice. The model code organizations have agreed to provide free of charge access to the chapters of the model codes that SWA and the Department reviewed. ANSI–A117.1 1992 and ANSI–A117.1 1998 are available for

purchase at that web address. ANSI–A117.1–1986 is out of print and not available except in the HUD headquarters library at 451 Seventh St., S.W., and at HUD Fair Housing HUBs in the following locations: New York, New York; Boston, Massachusetts; Atlanta, Georgia; Fort Worth, Texas; San Francisco, California; Seattle, Washington; Chicago, Illinois; Kansas City, Missouri; Philadelphia, Pennsylvania; and Denver, Colorado.

Copies of all the relevant documents are also available for viewing at the HUD Library at 451 Seventh St., SW, Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages and all of the documents, with the exception of the HUD policy statement and the draft report, are copyrighted and therefore not available for photocopying.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Director, Program Compliance and Disability Rights Support Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500; telephone (202) 708–2333, extension 7058. (This telephone number is not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

In December 1997, the Council of American Building Code Officials (CABO) submitted to the Department a matrix (''the industry matrix'') that compared the four model building codes referenced in the **SUMMARY** section of this notice to the Fair Housing Accessibility Guidelines (56 FR 9472–9515) (''the Accessibility Guidelines''). In response, the Department retained the services of SWA to analyze the industry matrix and to identify variances between the model building codes and the Fair Housing Act, 42 U.S.C. 3604; the Fair Housing Act Regulations, 24 CFR 100.205, and the Accessibility Guidelines, 56 FR 9472–9515. The Department also requested that SWA draft recommendations that code organizations could use to conform their codes with the Fair Housing Act, the Fair Housing Act Regulations, and the Accessibility Guidelines. SWA and the Department did not limit their review exclusively to the industry matrices or the Accessibility Guidelines. The review compared certain relevant chapters of each code with the Fair Housing Act, the Fair Housing Act Regulations, the Accessibility Guidelines, and ANSI–A117.1 1986, 1992, and 1998.

The Department is not promulgating any new technical requirements or standards by way of this draft report. This draft report and the final report will serve solely to respond to the model building code organizations' request for technical assistance and to provide technical assistance to other interested parties. This request for comment on the draft report is not a solicitation for changes to the design and construction requirements of the Act, its Regulations, or the Accessibility Guidelines.

Since the industry matrix was submitted to the Department, in December 1997, new editions of the BOCA and SBCCI codes have been published. Additionally, CABO indicated that there is a movement to fold all of the model building codes into one, the International Building Code. After consultation with CABO, CABO submitted a revised matrix to include the available proposed chapters of the Final Report for IBC–2000. The Final Report for IBC–2000 has not been published; however, the Department was able to obtain Chapter 10, Chapter 11, the Appendix to Chapter 11, and Section 3407 (1999) and has included an analysis of these in the draft report.

The United States House of Representatives Appropriations Committee issued a Report accompanying the Veterans Affairs and Housing and Urban Development Appropriations bill, HR–106–286 (Aug. 3, 1999). The Committee directed the Department to complete its review of the industry matrix and issue a policy statement by December 31, 1999. The Department intends to meet this deadline; however, prior to finalizing the report to Congress, the Department seeks public comment on the identification of variances and the recommendations contained in the draft report. Department staff have carefully reviewed and commented on the draft report and would like to hear from persons with disabilities, organizations representing persons with disabilities, code officials, home builders, and other interested parties prior to finalizing the report.

The draft report focuses only on the areas where the respective codes do not meet the requirements of the Fair Housing Act, the Fair Housing Act Regulations, the Accessibility Guidelines, ANSI–A117.1 1986, ANSI–A117.1 1992, or ANSI–A117.1 1998. If a particular provision of a code is not discussed, then the reader should presume that the position of SWA and the Department is that the provision meets the requirements of the Fair Housing Act even if the wording of the code provision and the Fair Housing Act requirements are not identical.

The November 10, 1999 Meeting

The November 10, 1999 meeting will be open to persons who register in advance. Attendance may be limited to the space available. A thirty-minute presentation by SWA will commence the meeting. The remainder of the time will be used for HUD officials to listen to public comments on the draft report. Members of the public may present oral comments during the meeting, to the extent that time permits, and file written comments with the Department for its consideration. Commenters will be limited to no more than ten minutes, and if there are numerous participants, as few as five minutes to make an oral statement. Written comments should be submitted to Cheryl Kent at the address listed in the **FOR FURTHER INFORMATION** section of this notice or to the registrar at the public meeting. The transcript of the meeting will be available for public inspection and copying by requesting them from Ms. Harris.

The Department will consider all comments received by close of business (6:00 EST) on November 15, 1999 and will publish its final report by December 31, 1999.

Dated: October 20, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–27839 Filed 10–25–99; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Tuesday
October 26, 1999

Part IV

Department of Health and Human Services

Office of the Secretary

Office of Inspector General

45 CFR Part 61

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0906–AA46

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a new CFR part to implement the statutory requirements of section 1128E of the Social Security Act, as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 221(a) of HIPAA specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners.

EFFECTIVE DATE: This rule is effective on October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, (301) 443–2300.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthcare Integrity and Protection Data Bank

On October 30, 1998, the Office of Inspector General (OIG) published a proposed rule in the **Federal Register** (63 FR 58341) designed to implement the statutory requirements of section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 221(a) of HIPAA specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers and practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or practitioners; (4) exclusion of a health care provider, supplier or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulation. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. Access to this new data bank is limited to Federal and State Government agencies and health plans. Reporting is limited to these same groups. Health care providers, suppliers and practitioners may self query the data bank, but have no reporting responsibilities. The Act also requires the Secretary to implement the national health care fraud and abuse data collection program in such a manner as to (1) assure that the privacy of individuals is maintained; (2) establish reasonable fees for disclosure of information to recover full operating costs; and (3) avoid duplication with the reporting requirements established for the National Practitioner Data Bank (NPDB). This new data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB).

II. Summary of the Proposed Rule

The proposed regulations published on October 30, 1998 were developed to establish a new 45 CFR part 61 to implement the requirements for reporting of specific data elements to, and procedures for obtaining information from, the HIPDB (and are applicable to Federal and State Government agencies and health plans). Set forth below is a description of the major provisions of the proposed rule, including, among other things, proposed definitions for certain terms associated with the HIPDB, a discussion of the specific reporting requirements and when such information must be reported, the fees applicable to requests for information, the issues of the confidentiality of information, and how to dispute the accuracy of information in the HIPDB.

Provisions of the Proposed Rule

1. Definitions

The proposed regulations expanded on previous regulatory definitions and clarified aspects of a number of terms set forth in the statute. The clarifications served to provide additional examples of the scope of the statutory definitions, but did not go beyond congressional intent. The proposed rule specifically set forth definitions for the terms ''affiliated or associated;'' ''Government agency;'' ''health care provider;'' ''health care supplier;'' ''health plan;'' ''licensed health care practitioner, licensed practitioner and practitioner;'' and ''other adjudicated actions or decisions.''

2. When Information Must Be Reported

The proposed regulations sought to establish the time frame for submitting reports to the HIPDB. As proposed, information would be submitted to the HIPDB (1) within 30 calendar days from the date the final adverse action was taken or the date when the reporting entity became aware of the final adverse action, or (2) by the close of the entity's next monthly reporting cycle, whichever is later. The date the final adverse action was taken, its effective date and duration of the action would all be contained in the information reported to the HIPDB.

We also proposed a list of ''mandatory'' data elements, as well as data elements that must be reported to the data bank ''if known.'' We note that section 1128E(b)(2)(A) of the Act mandates that Federal and State Government agencies and health care plans collect and report Social Security Numbers and Federal Employer Identification Numbers for the purposes of reporting to the HIPDB.

3. Reporting Errors, Omissions, Revisions and Actions on Appeal

In § 61.6 of the proposed regulations, we indicated that if any errors or omissions in the final adverse action are discovered after the information has been reported, the person or entity that reported such information must send an addition or correction to the HIPDB within 60 calendar days of the discovery. We also proposed that any revision to the action or to appeal status must similarly be reported within 30 calendar days after the reporting entity learns of such revision or appeal. In turn, we proposed that each subject of a report will receive a copy when it is entered into the HIPDB and a copy of all revisions and corrections to the report. This is an opportunity only for the reporting entity to correct any errors or omissions in the information, not for the subjects to request re-adjudication of their cases.

4. Reporting Licensure Actions Taken by Federal or State Licensing and Certification Agencies

In proposed § 61.7, we addressed the reporting of licensure actions taken by Federal and State licensing and certification agencies. We proposed defining the phrase ''any other negative action or finding'' by a Federal or State licensing and certification authority to mean any action or finding that is publicly available and rendered by a licensing or certification authority. These actions or findings include, but are not limited to, imposition of civil money penalties (CMPs) and administrative fines, limitations on the scope of practice, injunctions and forfeitures. As indicated in the proposed rule, this definition included final adverse actions occurring in conjunction with settlements in which no findings or admissions of liability have been made, and that would otherwise be reportable under the statute.

The statute also requires the reporting of a health care provider, supplier or practitioner who voluntarily surrenders a license or certification. Based on extensive discussions with various State agencies, we were advised that voluntary surrender and non-renewal of licensure and provider participation agreements are not infrequently used as means to exclude questionable health care providers, suppliers and practitioners from participating in Federal and State health care programs. These voluntary surrenders and non-renewal actions result in allowing questionable health care providers, suppliers or practitioners to move from State to State without the new State licensing agency becoming aware of the true nature of the action in the prior licensing State. Therefore, for reporting purposes, we proposed that the term ''voluntary surrender'' include a surrender made after a notification of investigation or a formal official request by Federal or State licensing or certification authorities for a health care provider, supplier or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). This proposed definition also included those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

We recognized that many voluntary surrenders are not a result of the types of adverse actions that are intended for inclusion in the HIPDB. Therefore, we proposed that voluntary surrenders and licensure non-renewals due to nonpayment of licensure fees, changes to inactive status, and retirement be excluded from reporting to the HIPDB unless they are taken in combination with one or more of the circumstances listed above (in which case they would be reportable).

5. Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

In proposed § 61.8, we stated that Federal and State law enforcement and investigative agencies would be required to report criminal convictions against health care providers, suppliers or practitioners. Consistent with section 1128E(g)(1)(A)(ii) of the Act, we also proposed that criminal convictions unrelated to the delivery of health care items or services would not be reported under this section.

6. Reporting of Civil Judgments in Federal or State Court Related to the Delivery of a Health Care Item or Service

In proposed § 61.9, we put forth that Federal and State law enforcement and investigative agencies and health plans be required to report civil judgments related to the delivery of a health care item or service (except those resulting from medical malpractice) against health care providers, suppliers or practitioners. The proposed rule indicated that civil judgments must be entered or approved by a Federal or State court. We also proposed that this reporting requirement would not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

7. Reporting Exclusion From Participation in Federal or State Health Care Programs

In proposed § 61.10, we stated that the OIG would be required to report health care providers, suppliers or practitioners excluded from participating in Federal or State health care programs. We also proposed that this section include exclusions made in a matter in which there also was a settlement even though the settlement itself is not reported because no findings or admissions of liability had been made.

8. Reporting Other Adjudicated Actions or Decisions

In proposed § 61.11, we proposed that Federal and State agencies and health plans be required to report other adjudicated actions or decisions. Although not specifically required by the statute, we proposed that ''any other adjudicated actions or decisions'' should relate to the delivery of a health care item or service, as do criminal convictions and civil judgments collected under the statute. We also proposed in this section that a due process mechanism be available with all adjudicated actions or decisions. In the proposed rule, we provided examples of an adjudicated action or decision to include, but not be limited to:

- Orders by an administrative law judge;
- CMPs and assessments;
- Revocations, debarments or other restrictions from participating in Federal or State government contracts or programs;
- Liquidation, dissolution, cancellation or revocation of a professional license; or
- Limitations on either clinical privileges or staff privileges by a health plan.

9. Fees Applicable to Requests for Information

Proposed § 61.13 addressed fees applicable to all requests for information from the HIPDB. In accordance with this proposed section, fees to be charged would be based on the full costs of operating the database, as authorized in section 1128E(d)(2) of the Act; criteria for assessing fees would be based on the guidelines set forth in OMB Circular A–25. These costs would encompass all direct and indirect costs of providing such information, including but not limited to:

- Direct and indirect personnel costs;
- Physical overhead, consulting, and other indirect costs;
- Agency management and supervisory costs; and
- Costs of enforcement, collection, research, establishment, regulations and guidance.

For maximum efficiency, we proposed that the HIPDB be an all-electronic system, with all fees collected through the most cost-effective methods (such as credit card and electronic funds transfer). The Act exempts Federal agencies from these fees.

10. Confidentiality of HIPDB Information

In proposed § 61.14, we stated that the confidentiality requirements would

apply to all information obtained from the HIPDB. The confidentiality requirements are clearly specified in sections 1128E(b)(3) and (d)(1) and 1128C(a)(3)(B)(ii) of the Act. Specifically, section 1128E(b)(3) of the Act requires the Secretary to protect the privacy of individuals receiving health care services when determining what information is required. Section 1128E(d)(1) of the Act requires that information in the HIPDB will be available to Federal and State Government agencies and health plans. Section 1128C(a)(3)(B)(ii) of the Act requires the Secretary to assure that HIPDB information is provided and utilized in a manner that appropriately protects the confidentiality of the information. We proposed that information from this system be confidential and disclosed only for the purpose for which it was provided. We also proposed that appropriate uses of the information would include the prevention of fraud and abuse activities and improving the quality of patient care. This proposed provision did not go beyond the requirements set forth in the Act. The proposed requirements would not prevent an authorized user from sharing information from the HIPDB within the entity that requested it, as long as the information is used solely for the purpose for which it was provided. However, in accordance with section 1128E(b)(3) of the Act, we proposed that information obtained by a Government contractor, *e.g.*, a Medicare carrier, an intermediary or auditor, may only be used in the furtherance of its contractual responsibilities.

11. How To Obtain Access to, and Dispute the Accuracy of, HIPDB Information

The proposed regulations outlined the procedures for obtaining access to a report, submitting a statement, filing a dispute, and revising disputed information in a previously submitted report. These procedures are basically comparable to, or more generous than, procedures established in the Department's Privacy Act regulations at 45 CFR part 5b. The Secretary has exempted the HIPDB from those Privacy Act requirements in order to establish a more comprehensive and generous notification, access and correction procedure. While these procedures basically are comparable to similar provisions in the Privacy Act, these procedures include significant rights in addition to those set forth in the Privacy Act. For example, when a HIPDB report is created or amended, we automatically provide subjects a copy of the all report. Subjects may also file a statement of disagreement with a report as soon as the report is filed , rather than at the end of an appeal process, as under the Privacy Act.

In addition, we proposed that the subject of a report may dispute only the factual accuracy of the information contained in the HIPDB report concerning the individual or entity. As indicated in the proposed rule, the dispute process would afford the subject an opportunity to bring relevant factual information, including reversals of criminal convictions by an appeals court, to the attention of the reporter. The proposed dispute process would be consistent with that for the NPDB.

12. Sanctions for Failure To Report

We incorporated the new CMP sanctions provision for failure to report information to the data bank, as set forth in section 4331 of Public Law 105–33, the Balanced Budget Act of 1997. In the proposed rule, we indicated that any health plan that fails to report information on a final adverse action that is required to be reported would be subject to a CMP of not more than $25,000 for each such adverse action not reported. Such penalties would be imposed and collected in the same manner as other CMPs under section 1128A of the Act.

III. Summary and Response to Public Comments

As we have noted, the statute upon which the proposed regulations were drafted is quite broad and affords the Secretary numerous areas of discretionary authority on which we sought the benefit of public comment and input. The proposed rule set forth a 60-day public comment period ending December 29, 1998. On December 30, 1998, we extended the comment period for the proposed rule by an additional 2 weeks until January 11, 1999 (63 FR 71819). As a result, we received a total of 117 timely-filed public comments from Federal and State law enforcement agencies; health care practitioner and provider licensing boards, health departments, private attorneys representing health care providers, suppliers and practitioners; and various health plans, health plan associations, hospitals, professional associations, health care practitioners and other individuals and entities. Based on review of the statute and the assessment of public comments received, we believe the final regulations implementing this authority fully and adequately balance the concerns of the Department with those expressed by outside individuals and entities.

Set forth below is an overview of the various comments and recommendations received and our responses to those concerns. Section IV. of this preamble sets forth a summary of the specific revisions and clarifications to be made to the final regulations as a result of those comments.

A. Scope and Intent of the HIPDB

Comment: A principal concern raised in the majority of comments was the interpretation of what constitutes the reporting threshold for all final adverse actions under the term ''health care fraud and abuse.'' Many commenters believed that the OIG broadened the definitions and criteria unnecessarily for reportable actions, well beyond a ''health care fraud and abuse'' data collection system. Specifically, these commenters only wanted actions involving health care related fraud and abuse reported to the HIPDB.

Response: It is clear from reviewing the statutory language of the implementing Act, and the legislative history (such as congressional conference reports), that the HIPDB is not merely about establishing an information collection system. Rather, it is directed at combating fraud and abuse in a broader scope. Congress used the term health care fraud and abuse only once in the provision's opening paragraph for purposes of naming the data collection program. The term does not appear elsewhere, especially with regard to limiting the scope of reportable actions. Instead, Congress defined reportable ''final adverse actions'' by specifying a finite list of actions. These actions include civil judgments related to the delivery of a health care item or service; Federal or State criminal convictions related to the delivery of a health care item or service; actions taken by Federal or State licensing or certification agencies; exclusions from participation in Federal or State health care programs; and any other adjudicated actions or decisions taken by a Federal or State Government agency or health plan. To limit the adverse actions collected by the data bank to only those that are based on health care fraud and abuse would create a data bank that does not fully capture the types of reports that Congress clearly intended to be collected in accordance with the statute.

The term ''health care fraud and abuse,'' as used in the statute, merely represents congressional intent that the HIPDB support efforts to prevent such activities. To limit actions collected only to those based on fraud and abuse would deny investigators, Government contracting officers, health plans and

others the reports which are necessary to effectively research the relevant backgrounds of potential providers, suppliers and practitioners. As indicated by one State licensing board, narrowing the scope of reportable actions may create an even greater burden on reporters to screen out final adverse action based solely on health care fraud and abuse. Accordingly, the definition related to final adverse actions, as well as the definitions of health care provider, supplier and practitioner, represent the statutorily-mandated reporting criteria for the HIPDB—and is not limited to health care fraud and abuse. It has been our goal to establish a complete and comprehensive data bank that effectively deters health care fraud and abuse in the health care industry, while promoting quality health care and protecting the public. A further discussion of the term ''health care fraud and abuse'' is contained in section III. B. 6. of this preamble.

B. Section-by-Section Analysis of Issues

Section 61.1 The Healthcare Integrity and Protection Data Bank

Comment: Several commenters viewed the regulations, in general, as overly-broad and complex. Two commenters stated that information reported to the HIPDB should be directly related to health care fraud and abuse (see discussion regarding the definition of ''health care fraud and abuse'' in the discussion of § 61.3 later in this section of this preamble). Another commenter expressed concern that the HIPDB would contain data on individuals who have not committed fraud. This commenter and others believed that the OIG will establish a vast system not targeted to identify truly egregious individuals and entities.

Response: We disagree with these comments. As indicated in the proposed rule and in the summary section above in this preamble, we believe this rulemaking and the HIPDB clearly focus on specific final adverse actions taken against individuals and entities, and that those actions relate to these actions that could be defined as ''health care fraud and abuse.'' We believe these implementing regulations and the data bank are consistent with statutory intent and are properly targeted at capturing specific types of information relevant to the HIPDB's intended purpose.

Section 61.3 Definitions

1. Affiliated or Associated

Comment: With regard to the definition and application of the term ''affiliated or associated,'' several commenters stated that the proposed definition overreached the intent of the statute.

Response: The OIG believes the definition supports congressional intent to enable authorized users who conduct fraud and abuse investigations to identify other business or commercial affiliations through which the subject may have committed other acts of wrongdoing, and to aid with subject identification, if the affiliation or association is known by the reporter.

Comment: Several commenters requested the definition be refined to exclude irrelevant affiliations and associations. The commenters recommended that the definition be limited to (1) those entities in which the subject has a business interest, and (2) those associations having the power to revoke or suspend a license.

Response: We agree that the definition and implementation of the term ''affiliated or associated'' set forth in the proposed rule may have resulted in some confusion. As a result, we are limiting the definition, in accordance with the first part of the commenters' concerns, to those health care entities in which the subject has a commercial interest.

Comment: A number of commenters believed that the collection of this information set forth in the definition would be in violation of the Privacy Act, as it implies guilt by association.

Response: The inclusion of an entity in this category by a reporter will in no way imply that the entity was a party to the act(s) or omission(s) that led to a reportable final adverse action. We believe that the revised definition will eliminate naming of professional affiliations or associations and the implied fear of invasion of privacy. We also note only individuals, *not* entities (even if the entity is an individual professional corporation), are protected by the Privacy Act.

Comment: One commenter believed that ''affiliated or associated'' entities should be included only if such entities had an active role in the underlying sanction. Another commenter stated the names of ''affiliated or associated'' entities should be expunged after an investigation that determined there was no involvement by the affiliation or association entity. A third commenter believed that there would be increased liability for reporters as a result of the definition set forth for this term.

Response: We believe limiting ''affiliations or associations'' to those health care entities with an active role in the underlying sanction, or removing the names after an investigation has determined there was no involvement by the affiliated or associated entity, would be contrary to the specific language of the statute. The statute explicitly requires that the names of affiliated or associated health care entities be reported. Involvement or non-involvement in the underlying action is irrelevant to this reporting requirement. Further, we do not agree that merely identifying an entity as being affiliated with the subject of a report somehow imputes wrongdoing to the affiliated entity, and a statement to this effect will be included in the data base report. There will be no independent identification of affiliated or associated entities in the HIPDB other than as part of a subject's report, unless the entity also has been the subject of a final adverse action. If it comes to the attention of a business entity that it is incorrectly identified in a subject's report as having a commercial business affiliation with the subject, then the business entity may avail itself of the same correction procedures that are available to the subject of a report. The affiliated entity first may ask the reporting agency or health plan to correct the subject's report. If the reporter declines to do so, the affiliated entity may request a correction to the subject's report by the Secretary. With respect to an increase in liability for reporters, the OIG is providing an immunity provision in the final rule that will alleviate any perceived increase in liability.

Comment: One commenter requested that the HIPDB provide written notice to each entity listed as an ''affiliated or associated health care entity'' within a final adverse action report, and that the HIPDB offer an appeal process to these entities in the event that the entities are incorrectly reported.

Response: The revised definition will require that a commercial relationship exist between the subject and the affiliate or associate. As we have previously noted, we believe that this data field in no way implies wrongdoing on the part of the reported affiliate or associate, and thus eliminates the need for these entities to be notified.

2. Any Other Negative Action or Finding

Comment: We received several comments regarding the manner in which the term ''any other negative action or finding'' was defined. Most of the commenters stated the proposed definition was too broad in nature and would create a tremendous burden on the reporters, especially if actions or findings pertaining to administrative fines and citations were to be included in the HIPDB. Several commenters

expressed concern that there is a range of actions or findings taken that may or may not be the same from State to State and do not relate to health care *per se* (such as a practitioner fined for failure to provide a new address). The commenters requested that the OIG clarify and limit the definition of this term to actions that are directly connected to health care violations.

Response: We agree with the commenters that there will be variation from State to State regarding the types of final actions taken against health care providers, suppliers and practitioners. However, the HIPDB is being designed as a ''flagging system'' that will contain information on actions taken in a particular State or program that are considered by the State or program to warrant attention. We intend the data to provide a summary of the actions taken against a health care provider, supplier or practitioner. In addition, we acknowledge that there are certain kinds of actions or findings that would not meet the intent of the legislation and should not be reportable. For instance, administrative actions, such as limited training permits, limited licenses for telemedicine, fines or citations that do not restrict a practitioner's practice, or personnel actions for tardiness, are not within the range of actions intended by the statute. As a result of these comments, we are modifying the final regulations to exclude administrative fines or citations, corrective action plans and other personnel actions unless they are (1) connected to the billing, provision or delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender. For example, a nurse agreed to settle claims that he received Medicare and Medicaid reimbursement to which he was not entitled. As a result of this action, the State licensing board reprimanded the nurse and imposed a $5,000 fine. This action would be reportable.

Comment: Several commenters expressed concern that the preamble language that indicated that ''settlements in which no findings or admissions of liability have been made will be excluded from reporting'' conflicted with the next sentence in that discussion, which read, ''However, any final adverse action that emanates from such settlements and consent judgments, and that would otherwise be reportable under the statute, is to be reported to the data bank.''

Response: We agree that the statutory language is clear that settlement in which no findings of liability have been made will not be reportable to the HIPDB. However, if another action is taken against the provider, supplier or practitioner of a health care item or service, as a result of or in conjunction with the settlement, the second action is reportable. For example, a civil court settlement in which no finding against or admission of liability by a practitioner is made is not reportable. However, for example, if the State licensing board suspends the practitioner's license as a result of a civil court settlement, the licensing board must report the suspension of the license. Similarly, if the OIG excludes a provider, supplier or practitioner based on actions that were also the subject of a civil settlement in which no finding or admission of liability was made, the exclusion must be reported to the HIPDB.

Comment: One commenter questioned whether non-practitioners, such as an executive director, should be reported to the HIPDB, while another commenter requested clarification on the reporting of actions pertaining to the handling of an impaired practitioner.

Response: The OIG reiterates the statutory intent that any final action taken against a licensed or certified health care provider, supplier or practitioner by a Federal or State licencing or certification agency that is publicly available information is a reportable action. If, for example in the case of an executive director, he or she is licensed or certified as a health care provider, supplier or practitioner, then that individual will be subject to the HIPDB reporting requirements. If a Federal or State licensing agency takes a final adverse action that is publicly available information against an impaired practitioner, the final adverse action is reportable.

3. Clinical Privileges

Comment: Several commenters expressed concern that Congress never intended that clinical privilege actions would be reported to the HIPDB, particularly since such actions are already reported to the NPDB. Some commenters expressed a desire that clinical privileges suspensions only be reported when they are in effect for a period longer than 30 days, indicating that this limitation would parallel existing NPDB requirements for reporting of clinical privilege actions. Another commenter questioned why the proposed definition specifically mentioned physicians and dentists, when they believed the definition was to apply to all licensed health care practitioners.

Response: The OIG agrees with these concerns and, as a result, the HIPDB will not collect data on clinical privileging actions. We note that clinical privileging actions are already collected by the NPDB. We believe that information on clinical privileging actions will not be of significant value to HIPDB queriers, since queriers who have a need for this information will already be accessing it through the NPDB. Accordingly, we are adding language to the definition of the term ''other adjudicated actions or decisions'' to specify that the reporting of clinical privileging actions is excluded.

4. Exclusion

Comment: One commenter raised a concern about the term ''exclusion'' and mistakenly applied the definition for this term to a reportable licensure action.

Response: The OIG has clarified that the term ''exclusion'' applies only to debarment of an individual or entity from participation in any Federal or State health care related program; this term is only applicable to reporting exclusion from participation in Federal or State health care programs.

5. Government Agency

Comment: One commenter asserted that the definition of ''Government agency'' was too broad and potentially open-ended. The commenter requested clarification as to which agencies qualify as ''Federal and State agencies responsible for the licensing and certification of health care providers, suppliers and practitioners.'' A second commenter suggested that the definition of ''Government agency'' be amended to include all agencies authorized to investigate health care fraud.

Response: We recognize the commenters' concerns and understand that regulatory boards and licensing programs vary from State to State. For this very reason, however, it is not possible for the OIG in this rulemaking to provide a listing of all agencies responsible for the licensing and certification of health care providers, suppliers and practitioners. In response to the proposed rule, we received only two comments from States that identified the agencies responsible for licensing. We believe that the definition of ''Government agency'' includes all agencies authorized to investigate health care fraud and abuse and, as a result, are making no changes to the final rule.

6. Health Care Fraud and Abuse

Comment: In general, comments reflected an assumption that the terms ''health care fraud'' and ''health care

abuse'' defined the reporting criteria for all final adverse actions mandated by the statute. Specifically, commenters found the term ''health care fraud,'' when used in conjunction with the proposed preamble definition of ''health care abuse,'' to be too broad. Several commenters requested that definitions for health care fraud and abuse (and thus the nature of adverse actions collected) be limited to activities relating to financial violations, or require the reportable activities to meet a legal standard of fraud or abuse. One commenter stated that health care abuse should be limited to those actions against a health care system and not those relating to personal abuse. Other commenters believed that the terms should be combined into one definition. One State licensing agency requested specific guidance on whether all final adverse actions must be based on health care fraud and abuse to be reportable to HIPDB. The agency pointed out that only one percent of its adverse licensing actions would meet such a fraud and abuse reporting threshold. Three commenters did acknowledge and agree that the term ''health care abuse'' was properly described within the regulation and the statute as ''final adverse actions.''

Response: By attempting to define the terms ''health care fraud'' and ''health care abuse'' in the proposed rule, we gave the erroneous impression to some readers that final adverse actions may not be reported to the data bank unless they are categorized by the reporter as being based upon ''health care fraud and abuse.'' That interpretation is too limiting. Congress intended that this data bank support efforts to prevent and combat health care fraud and abuse, and not merely catalogue adverse actions that reporters may choose to describe as arising from ''health care fraud and abuse.'' Restricting reportable final adverse actions to those specifically relating to health care fraud and abuse would eliminate the reporting of many relevant actions that are included in the statutory definition of ''final adverse actions.'' Accordingly, and as a result of the comments received, we are deleting the definition for the term ''health care fraud'' from the final rule and are opting not to define ''health care abuse.'' Instead, we defer to the statutory definition of ''final adverse actions'' as encompassing the range of actions to be reported.

Comment: Several commenters requested changes to the ''health care fraud and abuse'' definition to narrow the range of actions, indicating that final adverse actions related to billing errors, benefits administration, payment and reimbursement issues, and quality of patient outcomes be excluded from the definition of ''health care fraud and abuse.''

Response: There may be instances when billing errors, benefits administration, payment and reimbursement issues, and quality of patient outcomes meet the criteria and, therefore, will be reported. However, it is also foreseeable that certain of the aforementioned actions may not be final adverse actions and, therefore, not reportable. The OIG takes the position that any action is reportable to the data bank as long as the action meets the criteria of a ''final adverse action,'' as specified in the final rule.

Comment: One commenter requested that ''health care fraud'' exclude offenses by health plans or insurance companies and be limited to offenses by health care providers, suppliers, or practitioners against health plans or health plan sponsors. Another commenter stated that the reporting of health care abuse should be optional and CMPs should not be imposed for failure to report. One commenter questioned the value of report data containing actions related to health care abuse since such actions may suggest a standard of measurement less than a court adjudication or administrative review panel finding.

Response: The OIG believes that excluding organizations, such as health plans and insurance companies, would limit the effectiveness of the data bank to serve its intended function as a fraud and abuse prevention tool. We also believe that the intent of the statute is clear that all final adverse actions taken against a health care provider, supplier or practitioner must be reported to the HIPDB, and that failure to report such actions may result in the imposition of a CMP.

7. Health Care Provider

Comment: Several commenters indicated that the definition of ''health care provider'' was too broad and complex, and suggested as an alternative that the OIG use the definition set forth in section 1861(u) of the Act. Two commenters objected to the inclusion of health care entities, such as health maintenance organizations (HMOs) in this definition. The commenters believed the definition for this term was conflicting, since health care entities could be potential subjects of the HIPDB as well as reporting entities. One commenter stated that most States did not take compliance actions against these types of entities.

Response: Since Congress elected not to define ''health care provider'' in the Act, we believe the congressional intent was for this term to be defined broadly. There is no inherent conflict in health care entities being potential subjects of the HIPDB, as well as reporting entities. This is entirely consistent with the intent of the Act.

8. Health Care Supplier

Comment: The majority of commenters responding to the definition of ''health care supplier'' stated that the definition went beyond statutory authority and could allow inappropriate access to information. For example, several commenters noted that the definition included both direct and indirect providers of health care items and services. Several commenters recommended the definition be limited to suppliers as defined in section 1861(s) of the Act, and believed that the definition should not include health insurance or benefits providers, such as insurance agents, brokers, solicitors, consultants and reinsurance intermediaries. Other commenters pointed out that to broadly include health insurance or benefit providers in the definition of supplier also could have the effect of including nearly all public and private employers as the potential subjects of reports. These commenters requested that suppliers be limited to those who directly provide covered items or services to beneficiaries, or who directly receive reimbursement from a health care program.

One commenter requested that reportable subjects not be limited to practitioners, providers and suppliers, but rather encompass all individuals and entities involved in health care fraud, including beneficiaries, Government and private employees, managed care marketers and any individual who is responsible for the actions of an entity. One commenter requested clarification of the term ''subject.''

Response: We disagree with the contention of some commenters that Congress intended to collect final adverse action information only on *direct* providers of items or services covered by a health care program or plan. Such a definition would exclude many entities that are the subject of health care fraud and abuse investigations and actions. The OIG believes that the intent of Congress was to have a broad interpretation of the terms supplier, practitioner and provider. For example, Congress did define the terms ''health care practitioner'' and ''health care provider''

elsewhere in the statute, yet it did not specifically apply these definitions to the HIPDB. The term ''health care supplier'' is defined in these regulations to capture all final adverse actions relating to the delivery of a health care item or service. Accordingly, the OIG is electing to keep both direct and indirect suppliers in the definition of ''health care supplier.'' Including indirect suppliers in the definition also is consistent with the definition of ''supplier'' used in the regulations implementing OIG exclusion authorities resulting from HIPAA (63 FR 46676; September 2, 1998).

However, we do not intend to include in the definition of ''supplier'' all public and private employers, unless they are self-insured for health care coverage. The definition will still include health plans, consultants, health insurance producers, agents, brokers and reinsurance intermediaries. On the other hand, the definition will not include businesses that merely provide their employees with health insurance coverage through a contract with a health insurance producer or a health plan. Therefore, in response to the concerns raised by the various commenters, we have modified the definition of ''health care supplier'' to clarify and limit its scope. Accordingly, we are replacing the proposed language with the term ''health plan'' and are inserting additional language excluding employers, unless they are self-insured.

In response to the request that reporting be expanded beyond health care providers, suppliers and practitioners, we note that individuals or entities can only be subjects of HIPDB reports if final adverse actions were taken against them. Beneficiaries are not included in that category. For the purposes of this regulation, the term ''subject'' means a health care provider, supplier or practitioner upon whom a reportable final adverse action was taken.

Comment: Two commenters indicated that States' burden of reporting would be increased since States do not regulate or collect data about many of the types of entities included in the supplier definition.

Response: The OIG reiterates that only final adverse actions, as specified in the statute and these regulations, taken against health care providers, suppliers and practitioners are reportable. Such actions are to be reported by the organization taking the action. The specific data required to be reported and responses to comments regarding the reporting burden are addressed below in response to comments on the regulatory impact statement.

9. Health Plan

Comment: With regard to the proposed definition of the term ''health plan,'' commenters stated the definition is too broad, and suggested that the OIG use the definition as set forth in section 1128E of the Act, which incorporates the definition set forth in section 1128C(c) of the Act.

Response: The OIG maintains that the statutory intent of the definition was not meant to be exclusive or exhaustive. The OIG interprets congressional use of the word ''includes'' in the statutory definition as an indication that additional entities may be recognized as ''health plans'' if they meet the basic definition of ''providing health benefits.'' Therefore, we will continue to use a broad definition. The statutory language indicates that Congress intended that ''guarantors of payment'' for health care services and items, including ''self insured employers'' who are often the subjects of health care fraud, have access to HIPDB information. The OIG believes that limiting the definition to the language of the statute would not provide a workable basis for organizations and those who provide health care services to appropriately determine their reporting responsibilities under the statute. In response to one commenter's recommendation to make the definition more inclusive, we are providing further clarification and modifying the proposed definition.

Comment: One commenter requested an exclusion be provided within the definition for direct reimbursements of an employee, stating there is no relationship between the employer who provides the reimbursement and the practitioner who provides the service.

Response: As revised, the definition of the term ''health plan'' reflects the variety of benefit plans with a wide range of organizations, groups and individuals that currently offer such health benefits that would include direct reimbursement. Given this change, we believe any further revision is not necessary.

Comment: One commenter believed that State-sponsored workman's compensation programs should be included as an example of a health plan.

Response: It is our intention that State-sponsored workman's compensation programs be covered under the regulations, and we believe the definition, as written, includes such programs, although not stated explicitly.

Comment: Two commenters stated the proposed definition would cause confusion as to which entity is responsible for reporting the action, i.e., the employer providing the health care policy or the insurance corporation with whom the employer has contracted.

Response: We are aware of the multiple structures under which a ''health plan'' may operate within an integrated health system. The final regulations state the entity taking the action is responsible for reporting the action to the HIPDB. The activity of reporting can be delegated to another entity, but the ultimate responsibility for the report will still lie with the entity taking the action.

10. Licensed health care practitioner, licensed practitioner or practitioner

Comment: Several commenters suggested that the definition for this term should be more specific and include additional practitioner groups not listed, such as occupational therapists and occupational therapists' assistants. The commenters recommended that by providing a comprehensive list of all practitioners and allied health personnel eligible to be possible subjects of reports to the HIPDB, the OIG would ensure that all States report consistently regardless of their differences in professional licensing categories.

Response: We note that the meaning of the term ''licensed health care practitioner, licensed practitioner or practitioner'' is consistent with the definition in section 1128E(g)(2) of the Act. We added the phrase ''but not limited to'' before our listing in order to provide adequate leeway for the inclusion of other health care practitioners as each individual State develops its own reporting categories. While we recognize the benefits of conformity in reporting practices, we have chosen not to sacrifice State flexibility and authority in determining appropriate reporting categories. Even Federal definitions may vary as to ''categorizing'' health care workers. In section 1861(s) of the Act, for example, both physical and occupational therapists are listed under the definition of supplier.

Comment: Other commenters requested clarification on how this definition will be interpreted in States with ''title protection statutes.'' Generally, title protection statutes only restrict the use of a title of a health care practitioner and not the actual practice or the delivery of the service itself. Under title protection statutes, an individual may practice the profession without a license, but may not use the title unless licensed by the regulatory board.

Response: The definition, as written, is consistent with the statutory

language. We recognize that ''title protection statutes'' may vary with each individual State. However, the statute only authorizes the collection of final adverse action information on an individual who is licensed or otherwise authorized by the State to provide health care services (including any individual who, without authority, holds himself or herself out to be so licensed or authorized by the State).

11. Organization Name and Type

Comment: We received several comments concerning the mandatory element of ''organization name and type.'' Some commenters stated that they did not collect this type of information, while others were unclear as to the meaning of this term.

Response: As a result of these comments, we are clarifying this term by specifically adding a new definition in § 61.3 for the terms ''organization name'' and ''organization type.''

12. Other Adjudicated Actions or Decisions

Comment: Commenters raised numerous issues concerning different aspects of the definition for the term ''other adjudicated actions or decisions.'' Several commenters stated that the proposed definition was too broad or burdensome, and extended beyond the scope of the statute. A number of commenters suggested that all reportable ''adjudicated actions or decisions'' should be related only to fraud.

Response: The OIG believes that the range of reportable ''other adjudicated actions or decisions'' is not overly broad or beyond the scope of the Social Security Act, since the statutory language states that all final adverse actions must be reported. Furthermore, as indicated above, the statute does not define fraud and abuse; it only defines final adverse actions. To promote an effective system to aid in deterring fraud and abuse, we believe it is necessary to define this term more inclusively, as is contemplated by the statute.

Comment: The criteria set forth for the term ''other adjudicated actions or decisions'' caused confusion for a majority of commenters. Specifically, commenters indicated that they were unclear as to the meaning of the phrase ''official action,'' and whether actions involving (1) honest billing errors or differences in medical judgment, (2) employment or personnel-related actions and (3) CMPs would be reportable under this definition.

Response: In response to these concerns, we have restructured the definition to clarify that in order for a formal or official action to be reported under this provision it must meet the three criteria that it (1) is taken against a health care provider, supplier or practitioner by a Federal or State Governmental agency or a health plan; (2) includes the availability of a due process mechanism; and (3) is based on acts or omissions that affect or could affect the payment, provision or delivery of a health care item or service. We also made minor changes in the definition to provide further clarity about the types of actions that are excluded from the definition.

Comment: Two commenters requested clarification regarding the imposition of CMPs for failure to report. One commenter requested voluntary reporting of other adjudicated actions, in the hopes of eliminating such penalties. Another commenter asks that we include an intent clause as a necessary element to apply CMPs.

Response: We disagree with the commenter's alternative approach regarding voluntary reporting, which we believe to be inconsistent with Congress' intent in creating a CMP for failure to report. In accordance with the statutory language that requires such action, a health plan failing to report any ''other adjudicated actions or decisions'' could be assessed a CMP of not more than $25,000. The regulations implementing this CMP provision are not a direct part of this HIPDB implementing rule and are being addressed in specific detail through separate OIG final rulemaking directed toward new or revised exclusion and CMP authorities resulting from Public Law 105–33.

Comment: One commenter requested clarification on whether all reportable adjudicated actions must be related to professional competence or conduct.

Response: The term ''other adjudicated actions or decisions'' does not need to relate to professional competence or conduct However, such actions must relate to the delivery of health care items or services.

Comment: Several commenters stated the definition should be limited to final adverse actions involving a court or Government agency, in that reporting final adjudicated actions in which there was no finding of liability will discourage settlements; and adverse actions will vary from State to State, making it difficult to analyze or standardize the reporting process.

Response: We believe that the statutory language is clear about which entities are required to report. Certain health plan actions will meet the criteria of ''other adjudicated actions or decisions,'' and, therefore, will be reportable. The statute also is clear that final actions resulting from settlements in which no findings of liability have been made are not reportable. The OIG recognizes the variation among States in the types of other adjudicated actions or decisions taken. We stress that the HIPDB is intended as a ''flagging system'' and that the information in the HIPDB should serve only to alert Federal and State agencies and health plans that there may be a problem with a particular provider's, supplier's or practitioner's background. The HIPDB information should be considered together with other relevant data in evaluating a provider's, supplier's or practitioner's background.

A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. In general, if an ''adjudicated action or decision'' follows an agency's established administrative procedures (that ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. For example, a formal or official final action taken by a Federal or State Government agency or health plan may include, but is not limited to, a personnel-related action such as suspension without pay, reduction in grade for cause, termination or other comparable action in connection with the delivery of a health care item or service. For health plans that are not Government entities, an action taken following adequate notice and opportunity for a hearing that meet the standards of due process set forth in section 412(b) of the Health Care Quality and Improvement Act (42 U.S.C. 11112(b)) also will qualify as a reportable action under this definition. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final.

The revised definition for the term ''other adjudicated actions or decision'' specifically excludes clinical privileging actions taken by Federal or State governmental agencies, as well as the similar ''paneling actions'' taken by health plans. We will not collect'removal without cause'' actions taken by health plans, such as when the health plan has to eliminate some of its specialists or when the health plan concludes that a physician is not maintaining a desirable rate of patient visits. On the other hand, health plans will report ''quality actions'' that include the availability of a due process procedure, such as the formal removal

of a physician for problems based on quality of care or competence issues. Health plans also will report any health care related civil judgments they obtain against a health care practitioner, provider or supplier. The revised definition also clarifies that initial overpayment determinations by HCFA contractors, and similar overpayment decisions made by health plans, are not final, reportable actions.

13. Voluntary Surrender of License or Certification

Comment: We received several comments on the definition of ''voluntary surrender of license or certification'' from a variety of State and local agencies, private sector organizations and others. The majority of the commenters supported a broader definition of the term. One commenter did not believe voluntary surrenders should be included in the system because of added burden resulting from such action. Several commenters requested that the OIG provide further clarification of the term in the final regulations.

Response: In light of the strong support for the definition in the proposed regulations, we are adopting this definition in the final rule with certain clarifications. The OIG is aware that there are instances in which a voluntary surrender is used to identify practitioners who are deceased, retired, have not renewed their license or certification, or have simply moved out of the State. We are clarifying the definition to exclude non-disciplinary voluntary surrenders.

Section 61.4 How Information Must Be Reported

Comment: A number of commenters requested clarification on how information must be reported to the HIPDB. These commenters generally requested additional information on how electronic reporting would be accomplished, how consolidated reporting would occur for both the HIPDB and the NPDB, and whether all reporters would have the appropriate software and hardware to perform this function. Some commenters recommended, for example, that reporters be permitted to submit files electronically using file transfer protocol or electronic mail, and two commenters raised the issue of whether the HIPDB would accept paper reports.

Response: In response to these concerns, we are indicating in this final rule that reports may be submitted to the HIPDB either through a secure interactive web-based reporting service (using state-of-the-art encryption technology) or by mailing to the HIPDB properly formatted report data on a diskette. Other types of electronic submissions will not be accepted, nor will paper reports. Reporters who are required to submit the same report to both the NPDB and the HIPDB will be able to satisfy their reporting obligations by submitting their report only once. Web-based reporting or querying will require a personal computer with a modem and access to the Internet. We will provide technical details regarding required data formats and access to the web site through technical manuals, guidebooks and on-line user help. We believe that most reporters possess these basic tools required to gain access to the data bank. We also recognize that there may be a small number of reporters who do not have these capabilities, but these entities should be able to perform any required functions through the services of an authorized agent, who would report to and query the data bank on the entity's behalf.

Comment: One commenter requested that the NPDB and the HIPDB be consolidated in order to allow more efficient querying and reporting. The commenter also recommended allowing queriers to use search engines to more efficiently locate information.

Response: The issue of integrating the NPDB and HIPDB is addressed in greater detail in section III. C. of this preamble, ''General Issues and Alternatives Suggestions.'' In response to the commenter's recommendation regarding the use of search engines for querying, queriers will be required to provide certain information about a provider, supplier or practitioner in order to process their query. Specific methods for querying will be addressed in subsequent guidance and technical documentation.

Comment: To reduce the possibility that non-relevant reports will be submitted to the HIPDB, one commenter recommended that the Secretary establish a reporting threshold or specific criteria for each type of report.

Response: Through development of a policy guidance guidebook, the Department intends to provide specific examples and establish the criteria for determining whether a final adverse action meets the standards established in regulations. These criteria will be specific to each type of action and will include examples of reportable and non-reportable actions. It will be up to each reporter, however, to review, understand and apply these criteria when reporting.

Section 61.5 When Information Must Be Reported

Comment: Commenters recommended extending the 30-day period for reporting final adverse actions to the HIPDB to 60 days. The commenters stated that the time frame set forth in the proposed rule was too stringent and unrealistic to be met by State licensing boards. Several associations representing State licensing boards suggested this time frame would place significant burden on licensing boards. By extending the time frame from 30 days to 60 days, commenters indicated that licensing boards would have adequate time to provide the information to their agent and, in turn, for the agent to submit the information to the HIPDB.

Response: We are unable to make the changes suggested since the statutory language requires reports to be submitted regularly, but not less often than monthly.

Section 61.6 Reporting Errors, Omissions, Revisions or Whether an Action Is on Appeal

Comment: One commenter stated that if a reportable adverse action is on appeal, the action should not be reported until the appeal process is final; if the appeal reverses the decision, then the entire report should be removed from the HIPDB.

Response: We disagree with the first aspect of the comment since the statutory language (section 1128E(b)(2)(C)) requires specifically that a statement as to whether the action is on appeal must be included in the report to the HIPDB. With respect to the second part of the commenter's concern, we agree that reports which have been reversed on appeal will require a revision to the report. The report may be voided by the reporter at the time of the revision.

Comment: Some commenters stated that the reporting of revisions, such as a reinstatement of a license, will cause confusion for queriers, that the accuracy of the reports in the HIPDB will be compromised, and that reporters will abuse the system by reporting ''indiscriminately'' to avoid a sanction for failing to report and fulfilling the 30-day time frame. Commenters also expressed uncertainty as to who is responsible for reporting the revision.

Response: We believe that there is a misconception on the part of some of the commenters. Specifically, when a reinstatement of a license occurs, the reporter must submit a revision to an action regarding the reinstatement.

Comment: Two commenters raised concern over the fact that a subject of a

report may file a written statement to the HIPDB. The commenters believed this provision violates the due process rights of the entity taking the action. In addition, these commenters were concerned that the subject's statements could render an extremely inaccurate, biased and unreliable report. One commenter requested that reports be deleted after a 5-year period of time.

Response: We note that only final adjudicated actions are reportable. The Act does not provide for the removal of reports from the data bank except through the dispute process. A subject's statement provides the subject with the opportunity to state his or her views on the final adverse action report; the report and the addendum will be sent to subsequent queriers. It is unclear what ''due process rights'' of the reporting entity could be violated by giving the subject of a report the right to state his or her views about the report. Further, we note that this approach parallels the long-standing practice used in reporting to the NPDB.

Section 61.7 Reporting Licensure Actions Taken By Federal or State Licensing and Certification Agencies

Comment: Several commenters were concerned about the possibility of duplicative reporting when a practitioner is licensed in more than one State. The question was raised as to who reports the adverse licensing action. Several commenters questioned the process for reporting reinstatement of a license.

Response: The statute requires that the State taking the action is responsible for reporting that action to the HIPDB. Each respective State licensure action requires a separate report to HIPDB. This process of reporting parallels the approach taken under the NPDB. The process for reporting reinstatement of a license is explained in the preamble section discussing § 61.6.

Comment: With respect to reporting actions on individuals, a number of comments addressed the problem of collecting the mandatory and ''if known'' data elements.

Response: We are addressing this issue below in section III. C. of this preamble.

Comment: Several commenters believed that the description of actions in this section were too vague, and that the OIG should limit reportable actions to those that truly limit practice, such as revocation, suspension and limitation on licensure. Another commenter suggested the HIPDB should be collecting final adverse actions related only to fraud and abuse in the delivery of a health care item or service. Two commenters questioned whether censure letters and other de minimis sanctions are reportable since these actions are not usually subject to due process, and recommended that we include only actions taken against physicians holding full licenses to practice medicine.

Response: Section 1128E(g)(1)(A)(iii) of the Act states that Federal and State licensing and certification agencies must report to the HIPDB all of the following final adverse actions that are taken against a health care provider, supplier or practitioner:

- Formal or official actions, such as revocation or suspension of a license (and length of any such suspension), reprimand, censure or probation;
- Any other loss of the license or the right to apply for, or renew, a license of a provider, supplier or practitioner; and
- Any other negative action or finding as defined by the Federal or State agency.

Under section 1128E of the Act, the only limitation on a reportable disciplinary action is that it must be a formal or official action.

Comment: One commenter believed that automatic suspension of a license for failure to pay family support for a child or spouse, for example, should not be included as a reportable event.

Response: While we are aware of other ways in which a license may be suspended or revoked by other Federal laws not related to the HIPAA, this licensing action is considered a disciplinary action and, in accordance with the statute's definition of final adverse action, is reportable to the HIPDB.

Comment: Concerning what information must be reported on organizations, one commenter recommended that the actions reported by Federal and State licensing and certification agencies be limited to those who traditionally provide these services. The commenter believed that the combination of the definitions of ''supplier'' and ''adverse action'' could lead to a data bank for reporting complaints and appeals, and not fraudulent activities.

Response: In accordance with these comments, we are modifying the definitions of ''adverse actions'' and ''supplier'' in § 61.3 in order to collect meaningful data on subjects of reportable final adverse actions.

Comment: Several State licensing boards stated that they already report adverse action information to their individual professional association, and several professional associations also stated that they received reports from States on such actions. These commenters believed that they should be exempt from reporting to the HIPDB. Another commenter believed that HCFA should report all adverse actions to the HIPDB taken against Medicare and Medicaid providers and suppliers based on information that is already reported by State survey and certification agencies, thus leaving States with the responsibility to report only adverse actions taken against an entity based on State law.

Response: The statute does not provide an exclusion from reporting to the HIPDB for individual professions that may report to other data banks. We encourage these organizations to designate their professional associations to act as authorized agents with the HIPDB. The statute requires that Federal and State Government agencies and health plans report any adverse action taken against a health care provider, supplier or practitioner. The OIG recognizes that State survey and certification agencies already report their findings to HCFA and we will continue to work with HCFA to find methods of streamlining and coordinating the reporting process.

Section 61.8 Reporting Federal or State Criminal Convictions Related to the Delivery of a Health Care Item or Service

Comment: One commenter indicated that States already report convictions to the Federal Bureau of Investigation (FBI) and, as such, reporting to the HIPDB would be duplicative and costly. Another commenter requested clarification of the term ''delivery.''

Response: The scope of the HIPDB goes beyond the felony convictions obtained at the State and local level that are currently reported to the FBI. Information being reported to the data bank also will include misdemeanor convictions, nolo contendere pleas, and pre-trial diversions and similar actions, that are not reportable to the FBI. In addition, the FBI does not classify convictions as being related to the delivery of a health care item or service, nor does it classify those convicted individuals and entities as being health care providers, suppliers or practitioners. Consequently, the FBI's data bank does not contain every action that would be reportable to the HIPDB, nor does it provide a way in which all appropriate State and local convictions could be identified for use in the HIPDB. The term ''delivery'' includes, but is not limited to, participation in any part of the provision for or payment of a health care item or service.

Section 61.9 Reporting Civil Judgments Related to the Delivery of a Health Care Item or Service

Comment: One commenter was not clear as to when a health plan would be obligated to report a civil action, and recommended that health plans only be required to report when no Government agency was a party to the action. The commenter also suggested that health plans should be able to assign responsibility for reporting to another entity, if the other entity also were party to the suit. A second commenter believed that civil actions are best reported by a prosecuting entity.

Response: The OIG does not require that each party to a civil action report that action individually. However, to clarify who has the responsibility for reporting multi-claimant civil judgments, we are adding new language to § 61.9 to address responsibilities for the reporting of multi-claimant actions.

Section 61.10 Reporting Exclusion From Participation in Federal or State Health Care Programs

Comment: One commenter stated that the OIG did not provide adequate and clear information for providers to use to identify excluded individuals or entities.

Response: Revised OIG exclusion authorities were published as proposed rulemaking in the **Federal Register** on September 8, 1997 (62 FR 47182), and final regulations were published on September 2, 1998 (63 FR 46676). As indicated above in addressing the definition of the term ''health care supplier,'' in the OIG's final rulemaking on new exclusions and revised authorities resulting from HIPAA, the OIG has the authority to exclude any individual or entity who directly or indirectly provides or supplies items or services. The scope of this exclusion authority includes items or services manufactured, distributed or otherwise provided by individuals or entities that do not directly submit claims to Medicare, Medicaid or other Federal health care programs, but that supply items or services to providers, suppliers or practitioners who submit claims to these programs for such items or services. Therefore, the OIG has already established through that final rule the conditions for excluding an individual and entity from a Federal or State health care program. As such, we believe no further revisions or clarifications are necessary in this final rule.

Section 61.12 Requesting Information From the HIPDB.

Comment: Several commenters believed there should be public access to the HIPDB, while other commenters stated that access to the HIPDB should be open only to those who have the authority to take adverse actions. Additionally, citing the need to obtain the information for screening and credentialing potential employees, several commenters requested that hospitals also be able to request information. Several commenters also expressed concern regarding the data elements to be included in the release of aggregate data for research purposes.

Response: While the OIG actively supports legislative proposals for expanding access to the HIPDB, the existing statute clearly limits access to the HIPDB to those entities that meet the definition of Federal or State agency or a health plan. Under the current statutory definition of entities having access, some hospitals will meet the criteria and be in a position to request information from the HIPDB, while other hospitals will not have access to the data bank. With regard to what data elements would be included, the OIG is clarifying the language in the final rule, as is discussed later in this preamble.

As set forth in § 61.12, at the time subjects request information as part of a ''self-query,'' the subjects will receive (1) any report(s) in the HIPDB specific to them, and (2) a disclosure history from the HIPDB of the name(s) of any entity (or entities) that have previously received the report(s). This disclosure history will be restricted in accordance with revisions being made to the Department's Privacy Act regulations at 45 CFR part 5b which, when issued in final form, will include an exemption for law enforcement access of the HIPDB.

Section 61.13 Fees Applicable to Requests for Information

Comment: The majority of the comments received on this section were from State agencies. The commenters requested free or discounted rates for querying the HIPDB. The commenters suggested that those State agencies that actually file reports with the HIPDB should, in exchange, be able to query the data bank for free or at a discounted rate. One commenter expressed a concern over having to pay a separate fee to query both the HIPDB and the NPDB.

Response: The OIG is aware of the concerns of some State agencies. The HIPDB and the NPDB were established under separate statutes, each requiring a fee for querying. Each data bank, by statute, was designed to recover its own cost through the imposition of query fees. We are aware of the potential burden of dual querying and will make every effort to keep these fees to a minimum. The OIG cannot comply with this request to offer free or discounted queries to State agencies and others. Since the statute specifically mandates that the Department exempt only Federal agencies from query fees, in order to completely cover costs from paying customers, the OIG must charge all non-Federal customers the same rate.

The OIG intends to announce the actual amounts of the fees for the data bank in periodic notices in the **Federal Register**.

Comment: One commenter recommended that all Federal agencies also should be subjected to a fee when querying the HIPDB, while another commenter stated that since Federal agencies are exempted from paying fees, their access should be limited to ''bona fide'' purposes.

Response: With regard to the one commenter's suggestion as to Federal agencies fees, section 1128E(d)(2) of the Act specifically prevents the OIG from charging Federal agencies a fee to query the HIPDB. The appropriate uses of HIPDB information for all users, including Federal agencies, is being defined in § 61.14 of these regulations and the Privacy Act System of Records notice published in the **Federal Register** on February 16, 1999 (64 FR 7653).

Comment: One commenter recommended that the OIG not establish a fee for health care practitioners, providers or suppliers requesting information about themselves (self-queries) from the HIPDB. This commenter believed that State licensing boards will ''game the system'' by requiring licensees to submit self-query responses when requesting initial licensure or re-licensure. This commenter noted this type of activity already occurs with the NPDB.

Response: Since State licensing boards are not required by the statute to query, the OIG can not expressly mandate that they query the HIPDB directly in place of requiring practitioners to provide self-query responses. However, we will make every effort to strongly encourage State licensing boards to query the HIPDB directly to ensure they receive accurate and complete information.

Comment: One commenter asked that the HIPDB provide an automatic copy (without a request and free of charge) of every report to the health care provider, supplier or practitioner who is the subject of the report, and not just when the report is initially entered into the HIPDB. This would include any report that is ''amended or deleted.'' A second commenter recommended that the OIG add a sentence to the final regulations

stating that the HIPDB also will provide a copy of every HIPDB report automatically, without a request and free of charge, to the reporter who submitted the report.

Response: We agree with these comments and will modify the final regulations accordingly. The HIPDB will provide a copy of every HIPDB report to the reporter, as well as to the health care provider, supplier, or practitioner who is the subject of the report, when the report is initially entered. In addition, further notification will be made to these parties whenever the report is corrected or revised, and whenever the report is voided. We also agree to automatically provide the reporter with a copy of the revised report, without further request.

Section 61.14 Confidentiality of the HIPDB Information

Comment: The majority of the commenters responding to this provision questioned the confidentiality of the reported data bank elements and resulting privacy of the information once a report is submitted to the HIPDB. The confidentiality of individual elements, as well as of the report as a whole, were questioned and several commenters believed the final rule needed to be clarified further. Citing possible violation of the Privacy Act, commenters expressed concern about the ''purpose'' for which the data are provided and the process of how queriers may distribute and use the information provided in a report.

Response: Similar to the NPDB, the HIPDB requires specific data elements to be reported in order to maximize the accuracy of matching subjects of reports by the querier. The Privacy Act of 1974 established the guidelines for Federal governmental systems of records that are maintained by the names of individuals. The HIPDB was established as a system of records subject to the Privacy Act by notice published in the **Federal Register** on February 16, 1999 (64 FR 7653). Section 552(i)(3) of the Privacy Act provides that obtaining information knowingly from an agency system of records under false pretenses will be treated as a misdemeanor and will incur a fine of not more than $5,000 per occurrence. Section 552b(3) of the Privacy Act allows disclosure for ''routine use,'' compatible with the purpose for which it was collected. Appropriate uses for the HIPDB information will include credentialing and employment decisions, fraud and abuse investigations, and use as a part of a querying entity's screening process which would indicate more complete details are needed about the subject. This ''routine use'' does not allow disclosure to the general public. We are clarifying this discussion in § 61.14 of the final regulations.

We note that information which would identify Federal or State agency health program beneficiaries, or other patients of providers or practitioners, is not reportable to the HIPDB. Further, we will disallow references to individual patients or beneficiaries in any rebuttal documents submitted as part of a report dispute process, or submitted as part of the written comments that a subject may submit to be included with a report.

Comment: Several commenters stated that the wording of this section was confusing, and did not fully explain the ways in which information can be disseminated once it is released to an eligible entity.

Response: With respect to the confidentiality requirements of information obtained from the HIPDB indirectly from another party, as well as information obtained directly from the data bank, an individual or entity that receives information from the HIPDB is permitted to disclose such information further in the course of carrying out the activity for which the information was sought. For example, during the course of a health plan's credentialing process, the plan may request information from the HIPDB on a practitioner's history of final adverse actions. The health plan may share this information with other individuals who are part of the credentialing review and decision making process on the practitioner's application. Nevertheless, the confidentiality limitations of the Act apply both to the health plan staff who initially receive the information and to the specific departmental staff who subsequently review this same information; they may each only use and disclose the information with respect to the credentialing decision.

Section 61.15 How To Dispute the Accuracy of the HIPDB Information

Comment: Several commenters were supportive of the mechanism set forth in the proposed rule that would allow practitioners to attach a 2,000 word statement to their report for purposes of disputing the accuracy of HIPDB information. Some commenters indicated that the inclusion of a 2,000 word statement to a report was unnecessary and recommended eliminating this provision for the final rule.

Response: We believe this mechanism will be useful, and are retaining it in the final regulations.

Comment: While some commenters believed a dispute mechanism was unnecessary or would greatly increase the burden on reporting entities, other commenters supported the inclusion of an additional dispute mechanism under which reporting entities could report disagreements with a Secretarial decision to delete a report from the HIPDB.

Response: The statute specifically requires that the HIPDB have a dispute mechanism in place. We are adopting the dispute mechanism that currently is being used for reports to the NPDB, which has proven to be effective. We are addressing regulatory burden issues later in this preamble.

C. General Issues and Alternative Suggestions

1. Coordination and distinctions between the HIPDB and the NPDB

Comment: One commenter stated that an additional data bank was unnecessary. The commenter believed that the NPDB is adequate, and that the HIPDB will only serve to be duplicative in nature.

Response: While we agree that the NPDB is adequate for its intended purpose of protecting the public from incompetent or unprofessional health care practitioners, the HIPDB reflects separate and distinct congressional intent, with unique data elements. The HIPDB data base is intended to collect a wide range of final adverse actions. The HIPDB serves a dual purpose of protecting the public, and assisting fraud and abuse investigations of health care practitioners, suppliers and providers. The HIPDB also contains information that is not reported to the NPDB, for purposes of meeting its intended statutory objectives.

Comment: Some commenters expressed a desire that the HIPDB and the NPDB be combined into one system, and commenters believed that for reports required under both systems, the OIG should have reporters report such actions only once.

Response: Although the HIPDB and the NPDB must be separate data banks, and serve different purposes, the HIPDB and the NPDB will, for certain reporting and querying purposes, form an integrated system, whereby a report required under both systems will only need to be reported once. The system will subsequently store the report in the HIPDB, the NPDB, or both, as appropriate. Additionally, a querier eligible to have access to both data banks can query both through a single request.

Comment: One commenter expressed concern that under an integrated reporting system for the NPDB and the

HIPDB a medical malpractice insurer would be forced to submit certain fields required under the HIPDB, such as for an individual's Social Security Number.

Response: This provision is only applicable to reports required under *both* data banks. For example, medical malpractice payment reports are only required to be reported to the NPDB; they are statutorily *exempt* from HIPDB reporting. Therefore, the HIPDB data elements required, such as an individual's Social Security Number, do not apply to those reports.

Comment: One commenter expressed a desire that actions taken before August 21, 1996, the effective date of the HIPAA statute, be required to be reported to the HIPDB.

Response: Since the Department does not have the statutory authority to retroactively require reports before the statute's date of enactment, we cannot accept this recommendation, and we would be unwilling to impose the burden of retroactive reporting on the reporting entities even if we had the authority to do so.

2. Immunity Provisions Under the HIPDB

Comment: More than half of the comments received regarding immunity provision under the HIPDB stated that any immunity provisions must be included within the final regulations and not merely alluded to in the preamble. The commenters specifically requested immunity with regard to submitting reports to the HIPDB. Several commenters stated that any immunity provisions included within the final regulations needed to specifically provide immunity for agents.

Response: We agree with the comments, and are adding a new § 61.16 within the final regulations to address this concern.

Comment: Three commenters were supportive of the proposed definition for the term ''knowledge of falsity'' to mean actual knowledge of falsity by the submitting party. One commenter requested the elimination of immunity for those who file information with the HIPDB recklessly.

Response: The intention of the statute is to encourage final adverse actions to be reported against subjects, without fear of the subject retaliating with a lawsuit against those who report the action. In accordance with the comments and the statute, we will continue to interpret the term ''knowledge of falsity'' to mean actual acknowledge. Consequently, we are including language in the final regulations stating that the submitting reporter will not be immune from liability if there is actual knowledge of falsity of a report.

Comment: One commenter stated the subject of a report should be required to follow the dispute resolution procedures before filing suit against a reporter for false knowledge in reporting to the HIPDB.

Response: We decline to accept this comment. The statute does not provide the authority to require the subject of a report to follow the dispute resolution procedures prior to filing suit against a reporter. Further, we believe this would result in unnecessary delays in reporting final adverse actions to the HIPDB.

3. Sanctions for Failure To Report

Comment: With regard to sanctions for failure to report to the HIPDB, commenters stated that a potential CMP of $25,000 per occurrence against health plans that fail to report was too severe. One commenter recommended that, because of the perceived breadth and ambiguity of the reporting requirements, the OIG should only assess CMPs against health plans that ''knowingly and willfully fail to report.'' Another commenter stated that the CMP was proportionately unfair to single service health plans.

Response: Section 4331 of Public Law 105–33, the Balanced Budget Act (BBA) of 1997, authorizes a CMP of up to $25,000 for each adverse action not reported by a health plan. The statute does not require that this full amount be imposed; a lesser penalty could be assessed at the discretion of the OIG. The statute does not require a ''knowing and willful'' standard as part of the CMP criteria. However, the OIG has discretion in choosing whether to assess a CMP, and the OIG applies various mitigating and aggravating factors, as set forth in the OIG/CMP regulations, in determining the CMP amount up to the $25,000 limit. Specific policies and factors regarding imposition of this CMP are being set forth by the OIG in separate final rulemaking addressing new and revised sanction authorities resulting from the BBA.

Comment: One commenter asked whether the OIG would impose CMPs against health plans that cannot report because they do not collect all of the reportable data elements.

Response: Every effort has been made to specify a set of data elements that will not impose an undue burden on reporters and that still ensure a high degree of confidence in matching names of health care practitioners, providers and suppliers with existing reports in the HIPDB. Reporters will be required to report mandatory data elements, and may report all other fields if they are known. However, reporters that fail to submit reports with the minimum mandatory data required by statute and regulations may be subject to the sanctions referenced above.

Comment: Some commenters expressed concern that the OIG would impose CMPs for the non-reporting of adverse actions (or particular data elements associated with an adverse action) that occurred during the period between the effective date of HIPAA, August 21, 1996, and the effective date of this rule, a time period when the exact reporting requirements of the rule were not yet known to the entities now responsible for reporting.

Response: The basic types of actions to be reported were specified in the HIPAA and were, therefore, noticed to potential reporters as of August 21, 1996. We do realize, however, that the specific definitions of terms used, and the specification of exact data elements to be reported, are set forth in this rule. While there is a duty to report actions (and data elements) dating from the period between August 21, 1996 and the promulgation of this rule, the OIG will give due consideration to the ability of a reporting agency or health plan to comply with requirements to report such actions (and data elements) in determining whether to impose a CMP for failure to report in accordance with 42 CFR 1003.102(b)(5)(ii).

4. Implementation Schedule

Comment: Four comments were received regarding the implementation schedule for the HIPDB. Commenters stated that collecting data elements retroactively, as required by the Act, would be burdensome and difficult to obtain. One commenter recommended a separate date for ''other adjudicated actions,'' stating that these actions are not final until each case has exhausted all appeal rights. Several commenters suggested the OIG should allow for two different dates: one for data that are available at the time of the opening of the data bank, and another date (for example, 60 days later) for additional and retroactive data.

Response: The OIG has taken these points into consideration. This concern is being addressed below in the section of this preamble discussing the burden of data collection.

5. Paperwork Reduction Act Statement

a. *Data elements to be reported to the HIPDB.* The OIG solicited comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the

information will have practical utility; (2) the accuracy of the Department'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 other forms of information technology.

Comment: Over half of the comments received concerned the data elements in general. Commenters stated that the proposed rule was overreaching the scope of the statute and created unintended reporting burdens with regard to the various data elements specified for collection. Some commenters indicated that they did not collect one or more of the required data elements, while others suggested that not all of the requested data elements were necessary for the HIPDB, or that only a minimal set of elements were needed to insure proper identification of a subject. Some commenters stated that the required data elements would force physicians to devote additional time and expense to reporting these actions.

Response: The OIG disagrees with the commenters' assessments. The OIG continues to believe the data elements selected for inclusion into the HIPDB are essential for users in properly identifying individuals and entities which are the subjects of reports in the data bank. Further, as indicated earlier, with respect to the concerns indicated by some physicians, there are no requirements for physicians to report directly to the data bank and thus no additional non-medical time required of them with respect to the array of data elements.

Comment: A number of State agencies cited their respective State statutes that prohibit the collection or reporting of Social Security Numbers and, in some instances, other personal data (such as sex and date of birth). Ten commenters stated that their organizations did not routinely collect Social Security Numbers or Taxpayer Identification Numbers.

Response: The statute offers the OIG no discretion in this collection element provision. The Federal statute authorizing this data base takes precedence over and preempts State statutory requirements, and specifically requires the reporting of Taxpayer Identification Numbers, which includes Social Security Numbers and Federal Employer Identification Numbers. As to the inclusion of other personal identifiers, we have determined that these elements are required to insure proper identification of subjects reported to the data bank and, consequently, these requirements are being retained in the final regulations. We believe that the various reporting entities can make the proper adjustments to secure the required information without undue hardship or burden.

Comment: Some commenters raised concern over the need to include ''Occupation'' as one of the mandatory element under the HIPDB.

Response: For identification purposes, we believe it is important for a querier of the data bank to know a subject's occupation. Today's health care providers are frequently involved in different ventures and occupations. Reportable actions may arise in one area of a subject's endeavors, but not in others. Therefore, we believe that queriers must be made aware of all reportable actions against a subject, and an integral element of this is learning the occupation in which these actions were taken.

Comment: Three commenters requested that ''Other Names Used'' be a mandatory field, particularly with regard to female subjects.

Response: We are satisfied that this element should be reported ''if known,'' and we assume the reporters will provide these names if such information is available to them.

Comment: We received comments regarding the ''Physician Specialty'' data element. Commenters questioned why specialty data were only being collected on physicians and not on other types of practitioners.

Response: We agree with the suggestion that ''specialty'' should be reported for all practitioners, if applicable, and are modifying the regulations accordingly.

Comment: Twenty-six commenters suggested that the ''Name of the Affiliated or Associated Health Care Entity'' not be made a mandatory field.

Response: The statute requires that this information be reported ''if known.'' We agree with the commenters' concerns, and will clarify the language in the final regulations to emphasize that this information be reported only if known.

Comment: Several comments stated that potential reporters do not currently collect the mandatory element ''National Provider Identifier'' (NPI).

Response: We are aware that NPIs have not been issued and, therefore, cannot be reported. However, once HCFA issues these identification numbers, the collection and reporting of NPIs to the HIPDB will be mandatory. Reporters are advised to begin the necessary steps to collect this identifier in the future, as it becomes available. In this final rule, we are deleting the data field ''NPI for Affiliated or Associated Health Care Entities.''

Comment: One commenter suggested that the HIPDB also add the method used to detect the act that underlies the action being reported.

Response: We disagree. We believe this information will not be useful, and would create an additional reporting burden.

Comment: Commenters stated that some reporters do not collect data on the ''Name of Each Professional School Attended and Year of Graduation.''

Response: These data are mandatory requirements of the NPDB and are routinely provided by State agencies and organizations representing physicians and dentists. These NPDB requirements will remain unchanged. For reports made solely to the HIPDB, these data elements will be mandatory for licensing and certification actions reported by Federal and State agencies, which routinely collection this information, and will be designated as ''if known'' for all other reporters.

Comment: Several commenters noted the unreliability of a ''Work Address'' element for individual subjects, and other commenters stated that only an ''Address of Record'' would be known by certain reporters.

Response: The OIG agrees with these comments and is revising the final regulations accordingly. Only one address—either the subject's ''Home Address'' or the ''Address of Record''—will be mandatory for each report. Other addresses, such as a primary work address, will be reportable only ''if known.''

Comment: Twelve comments were received concerning the mandatory ''Description of the Acts or Omissions'' and the ''Description of the Action'' fields. The commenters suggested use of numerical codes in lieu of narrative descriptions.

Response: The statute is clear that the ''Description of the Acts or Omissions'' field is a mandatory element. However, to assist users of this information, we are adopting the suggestion of a code list that corresponds to the most common underlying acts expected to be reported. Use of this code will be mandatory, along with a narrative description of the acts or omissions and injuries upon which the reported action was based. With regard to the ''Description of the Action'' field, we have changed the final rule to show that the mandatory requirements for reporting an action are the date the action was taken, its effective date and duration, the amount of any monetary penalty, and whether

the action is on appeal. We believe these elements are essential for a user's understanding of the action being reported. The proposed rule also called for a mandatory ''Classification of the action'' in accordance with a reporting code adopted by the Secretary. While the ''Description of the action'' has been deleted, the ''Action code'' will remain as a mandatory element in the final regulations.

Comment: Five comments were received requesting additional clarification regarding the reporting of ''Professional license, certification or registration.''

Response: In response to these comments, we are clarifying the final regulations to indicate that for licensure certification or registration actions taken by Federal and State licensing and certification agencies, the mandatory information to be reported will be on the professional license, certification or registration on which the action was taken. Information on other licenses, certifications or registrations, including those issued in other States or by other agencies, will be reportable to the data bank ''if known.''

b. *Estimated burden of data collection requirements. Comment:* A number of commenters stated that the proposed rule did not accurately address the burden as it applies to the cost of creating and maintaining the data collection system, or the costs associated with collecting the required data elements. Commenters stated that the start-up cost, indicated at $5,000, was significantly underestimated. One commenter strongly believed that the costs associated with the HIPDB system would far outweigh its benefit, and several commenters stated that they would need to hire new employees in order to meet the HIPDB reporting requirements. One commenter indicated that, while their State proportionally had a smaller number of health care providers than some of the larger States, its State agency nevertheless took 712 actions last year that would need to be reported to the HIPDB, resulting in what they believed would be a larger than estimated burden nationwide.

Response: In developing our burden statement and estimate, calculations for the regulatory impact statement in the proposed rule were based on estimations derived from the regulatory impact prepared for the proposed rule currently being developed for State licensing boards addressing section 1921 of the Act. Section 1921 of the Act, as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 and by the Omnibus Budget Reconciliation Act of 1990, requires each State to adopt a system that reports to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities that are licensed or otherwise authorized by a State (or a political subdivision) to provide health care services. Similar to the information required for the HIPDB, section 1921 of the Act already requires, for reporting to the NPDB, that each State (1) report any negative actions or findings that a State licensing authority, peer review organization or private accreditation entity takes against a health care practitioner or health care entity; and (2) have an information reporting system in place as of January 1, 1992, regardless of whether the Secretary promulgated regulations to carry out these provisions. Therefore, since 1992, the States already have been required to collect much of the information to which they attribute their costs of collecting information for reporting to the HIPDB. However, we recognize that the regulatory impact will vary from State to State, and as a result, we have adjusted our burden estimates in this final rule accordingly. Specifically, after consideration of the concerns raised, we agree with the commenters that their developing or restructuring of a data collection system to incorporate the HIPDB requirements may have been underestimated. Therefore, we have increased the start-up cost estimate to $20,000 for each State licensing board. In terms of the reporting burden for State licensing agencies, we were advised by national organizations that represent State licensing boards that much of the requested data are already being collected and maintained by their organization. Therefore, we believe that the reporting burden for State licensing boards, such as nursing, chiropractic, optometry, physical therapist and social worker should be minimal.

Comment: Some commenters believed that complying with the HIPDB would be labor intensive and costly. Commenters suggested that the HIPDB data collection requirements would create an administrative burden for State licensing boards.

Response: As indicated above, the OIG has addressed the reporting requirements in detail in this preamble in response to public comments. We agree with many of the commenters' concerns, and are streamlining the HIPDB reporting requirements accordingly. The OIG believes that this final rule now reflects the least burdensome reporting requirements possible with respect to State agencies' compliance.

Comment: Several commenters proposed alternatives that they believed might ease the burden on State licensing boards. Specifically, commenters recommended that the OIG make use of various authorized agents, such as the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, National Association of Boards of Pharmacy and the American Association of State Social Work Boards to collect and report the required information, thus lessening the burden on individual health plans and State agencies.

Response: In developing this rulemaking, the OIG sought the input from States and representatives of various associations. Initially, the OIG met with State regulatory boards and associations, including the National Council of State Boards of Nursing, Federation of Chiropractic Licensing Boards, National Association of Boards of Pharmacy and the American Association of State Social Work Boards, to explain the requirements of the HIPDB and to explore options that would ease the regulatory burden on State agencies. As a result with respect to State licensing boards, we suggested the following options: (1) organizing a centralized or decentralized reporting mechanism within the State, or (2) reporting to the data bank through an authorized agent. If an authorized agent is utilized by the State, individual agreements must be made between the State and the professional association, as well as between the State and the HIPDB.

IV. Summary of Revisions in the Final Rule

Based on our review and response to the array of public comments, and based on the discretionary authority given the Department under the statute, we are making the following revisions to the proposed regulations that we believe will allow the collection and dissemination of information to and from the HIPDB to occur in a more effective and efficient manner:

Section 61.3

- We are revising the definition of the term ''Affiliated or associated'' to read as follows: *Affiliated or Associated* means health care entities with which a subject of a final adverse action has a commercial business relationship, including but not limited to, organizations, associations, corporations, or partnerships. It also includes a professional corporation or other business entity composed of a single individual.

• In the definition of the term ''Any other negative action or finding,'' we are adding the following sentence: ''This definition excludes administrative fines or citations and corrective action plans, unless they are: (1) Connected to the delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.''

• We are deleting the proposed definition for the term ''Clinical privileges.''

• We are amending the fourth element in the definition of the term ''Government agency'' to include both Federal and State law enforcement agencies, and law enforcement investigators as well as States Attorneys General.

• In the first sentence under the definition for the term ''Health care supplier,'' we have inserted a comma and are adding the phrase ''whether directly or indirectly,'' after the statement ''* * * or any individual or entity, other than a provider, who furnishes'' and we have replaced the example of ''manufacturers of health care related items'' with the phrase ''manufacturers of health care items.'' We have also revised the second sentence in the definition to read as follows: ''The term also includes any individual or entity under contract to provide such supplies, items or ancillary services, health plans as defined in this section (excluding employers that are not self-insured) and health insurance producers (including, but not limited to, agents, brokers, solicitors, consultants and reinsurance intermediaries).''

• We are modifying the fourth element in the proposed definition of the term ''Health plan'' to make the definition more inclusive. As revised the fourth element will include, but not be limited to, ''[A] plan, program, agreement or other mechanism established, maintained or made available by a self insured employer or group of self insured employers, a practitioner, provider or supplier group, third party administrator, integrated health care delivery system, employee welfare association, public service group or organization or professional association * * *''

• We are adding a definition for the term ''Organizational name and type.'' The ''organization name'' data element, to be reported for all types of actions described in §§ 61.7, 61.8, 61.9, 61.10 and 61.11, means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is involved, the one most closely related to the underlying acts must be reported in ''organization name,'' with the others being reported in the ''affiliated or associated health care entities'' field. The ''organization type'' is a brief description of the nature of that business or employer.

• The definition for ''Other adjudicated actions or decisions'' specifically excludes clinical privileging actions taken by Federal or State governmental agencies, paneling decisions made by health plans and overpayment determinations by Federal and State agency contractors or by health plans.

• We are also adding a new definition for the term ''Voluntary surrender'' to mean a surrender made after a notification of investigation or a formal official request by Federal or State licensing or certification authorities for a health care provider, supplier, or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Section 61.9

• With regard to reporting civil judgments related to the delivery of a health care item or service, we are adding the following language to § 61.9(a): ''If a Government agency is party to a multi-claimant civil judgment, it must assume the responsibility for reporting the entire action, including all amounts awarded to all the claimants, both public and private. If there is no Government agency as a party, but there are multiple health plans as claimants, the health plan which receives the largest award must be responsible for reporting the total action for all parties.''

Section 61.12

• With regard to requesting information from the HIPDB, we are revising the first sentence in § 61.12 (a)(4) to indicate that information in the data bank will be available, upon request, to ''[A] person or entity who requests statistical information, which does not permit any personal identifiers for any individual or entity.''

Section 61.13

• We are adding the following sentence to the end of § 61.13 (a) with regard to our policy on fees applicable to requests for information: ''For the same purpose, the Department will provide a copy of the report—automatically, without a request and free of charge—to the reporter that submitted it.''

Data Elements To Be Reported to the HIPDB

In view of the comments and responses discussed above, and in an effort to clarify reporting requirements, the data elements have been reformatted. Sections 61.7, 61.8, 61.9, 61.10 and 61.11 are structured as follows:

• The actions which must be reported and who is responsible for making those reports.

• The mandatory personal identifiers and employment or professional identifiers for individual subjects; the mandatory identifiers for organization subjects; and the mandatory data elements for all subjects relating to the acts or omissions, the action taken and the reporting entity.

• The ''if known'' personal identifiers and employment or professional identifiers for individual subjects; the ''if known'' identifiers for organization subjects; and the ''if known'' data elements for all subjects relating to the acts or omissions, and the action taken.

• Each section concludes with the sanctions for failure to report.

Section 61.16

• We are adding a new § 61.16 Immunity, to indicate that individuals, entities or their authorized agents and the HIPDB will not be held liable in any civil action filed by the subject of a report unless the individual, entity or their authorized agent submitting the report has actual knowledge of falsity of the information contained in the report.

V. Regulatory Impact Statement

Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and,

when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). The Unfunded Mandates Reform Act, Public Law 104–4, requires that agencies prepare an assessment of anticipated costs and benefits on any rulemaking that may result in an annual expenditure by State, local or tribal government, or by the private sector of $100 million or more. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. The resources required to implement the requirements in this final rule are minimal. We have determined that this final rule does not meet the criteria for a major rule, as defined by Executive Order 12866. As indicated above, this final rule is designed to establish procedures for reporting to and releasing from the HIPDB information on health care providers, suppliers, or practitioners against whom final adverse actions have been taken.

In accordance with the Unfunded Mandates Reform Act of 1995, we have determined the only costs (which we believe will not be significant) would include the ability to transmit the information electronically (*e.g.*, Internet service) and additional staff hours needed to transmit the information. Based on the public comments, we have increased the initial start-up cost from $5,000 to $20,000 per State licensing and certification agency ($20,000 per State licensing and certification agency × 216 State agencies = $4,320,000). The Department determined that the initial start-up cost will be less than $100 per health plan ($100 per health plan × 20,000 health plans = $2,000,000). Section 221(a) of HIPAA intends that the Federal Government will not incur any costs for the operation and maintenance of the HIPDB; user fees are intended to cover the full costs of the HIPDB. For the reasons stated above, the Department has determined that this rule does not impose any mandates on State, local or tribal governments, or the private sector that will result in an annual expenditure of $100 million or more, and that a full analysis under the Act is not necessary.

In addition, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, we are required to determine if this rule will have a significant economic effect on a substantial number of small entities and, if so, to identify regulatory options that could lessen the impact. For purposes of this final rule, we have not categorized health plans as small business entities in accordance with the RFA, nor have we included individuals and States in this definition of small entities. Rather, we have defined small entities as nonprofit organizations and local government agencies. Although the statute does not specify local government agencies as reporters, we also have given States the option to decide the manner in which they will report, i.e., having one centralized point for reporting or having multiple agencies such as municipalities and local government agencies (including District and County attorneys) report independently to the HIPDB. If States elect to have multiple agencies reporting independently to the HIPDB, we have determined that both the burden and costs associated with reporting to the HIPDB will be minimal. We also have determined that this rule would affect less than 100 nonprofit and local government agencies. Also with respect to health plans, we have determined that the burden and cost to them will be minimal. In an effort to reduce the reporting and impact burdens upon health plans, we have, as indicated above, clarified the definition of the term ''other adjudicated actions or decisions'' to emphasize that such an action requires the availability of a due process mechanism. We have in the rule specifically limited the types of actions that health plans will be required o report to a more limited and narrower category of actions. We are not preparing an analysis for the RFA, since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities and, in accordance with the threshold criteria of Executive Order 13132 (August 4, 1999), have determined that these regulations do not significantly affect the rights, roles and responsibilities of States.

Paperwork Reduction Act

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PWA) of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in final rulemaking. As indicated above, in order to properly implement the HIPDB, the OIG requires the collection of certain information as set forth in §§ 61.6, 61.7, 61.8, 61.9, 61.11, 61.12 and 61.15 of this final rule. In accordance with the PWA, we are submitting to OMB at this time the following requirements for seeking emergency review of these provisions. We are requesting an emergency review because the data collection and reporting of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability and reporting of data as necessary in order to improve the quality of patient care and to prevent health care fraud and abuse activities. Delaying the reporting process would delay implementation of the establishment of a complete data bank that effectively deters health care fraud and abuse in the health care industry and protects the public. We are requesting OMB review and approval of this collection within 16 working days from the date of publication of this rulemaking, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below within 15 working days from the dat of publication of these regulations. During this 180-day approval period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on the requirements set forth.

Collection of Information: The Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers and Practitioners.

Description: Information collected under §§ 61.6, 61.7, 61.8, 61.9, 61.11, 61.12 and 61.15 of this final rule would be used by authorized parties, specified in the proposed rule, to prevent health care fraud and abuse activities and to improve the quality of patient care.

Description of Respondents: Federal and State Government agencies and health plans. The reports from Federal agencies are not subject to the PRA.

Estimated Annual Reporting: The Department estimates that the public reporting burden for this final rule is

185,099 hours. As a result of the public comments, we acknowledge that the proposed rule significantly under estimated the number of licensure and certification actions taken by State licensing authorities against health care providers, suppliers and practitioners. Therefore, we have increased the reporting burden from 132,733 to 185,099 hours.

The estimated annual reporting and querying burden is as follows:

Section No.	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
61.6, Errors & Omissions	[1] 1,200	1	1,200	25	500
61.6, Revisions/Appeal Status	1,000	1	1,000	75	1,250
61.7—Licensure Actions:					
Disclosure by State Licensing Boards	[2] 1,836	22	40,400	75	50,500
Reporting by State Licensing Authorities	216	187	40,400	15	10,100
61.8, Criminal Convictions	[3] 54	13	700	75	875
61.9, Civil Judgments	[4] 62	8	500	75	625
61.11, Other Adjudicated Action or Decision	[5] 66	12	800	75	1,000
61.12:					
Queries	[6] 5,601	201	1,127,512	5	93,959
Self-queries	60,000	1	60,000	25	25,000
Entity verification [7]	5,000	1	5,000	10	833
Entity update	250	1	250	5	20
61.12, Authorized agent designation [7]	100	1	100	10	16
61.12, Authorized agent designation update	5	1	5	5	0.42
61.15—Disputed Reports & Secretarial Review:					
Initial Request	[8] 750	1	750	10	125
Request for Secretarial Review	37	1	37	480	296
Total	76,177	.....	1,278,654	185,099	

Footnotes:

1. Section 61.6 requires each Government agency or health plan that reports information to the HIPDB to ensure the accuracy of the information. If there are any errors or omissions to the reports previously submitted to the HIPDB, the individual or entity that submitted the report to the HIPDB is also responsible for making the necessary correction or revision to the original report. If there is any revision to the action or the action is on appeal, the individual or entity that submitted the original report to the HIPDB is also responsible for reporting revisions and whether the action is on appeal. Based on corrections and revisions made to information contained in the NPDB, we have estimated that a total of 1,200 respondents will need to correct their reports each year and that a total of 1,000 respondents will need to revise actions originally reported, or to report whether an action is on appeal each year. Based on experience with the NPDB, a correction is expected to take 25 minutes to complete and submit. A revision is expected to take somewhat longer (75 minutes) because it involves completing a new report form rather that just correcting the individual items that are in error.

2. Section 61.7 requires Federal and State agencies responsible for the licensing and certification of health care providers, suppliers and practitioners to report all disciplinary licensure actions to the HIPDB. Therefore, we estimate that approximately 34 State licensing boards in each State will report to the State licensing and certification authorities (54 States and territories x 34 licensing boards/per State = 1,836 State licensing and certification boards), and the State licensing and certification authorities (4 per State) will be responsible for reporting information to the HIPDB (54 States and territories x 4 State licensing and certification authorities/per State = 216 State licensing and certification authorities). We estimate that 40,400 reports will be submitted directly to the HIPDB each year, for an average of 187 reports per State licensing and certification authority and 22 reports per State licensing board. Since disciplinary licensure actions by State licensing authorities in the NPDB overlap with this statute, this estimate includes all licensure actions that will be reported to both the NPDB and the HIPDB. The HIPDB will use similar forms and procedures for reporting as the NPDB. As a result, we estimate that it will take a State licensing board 75 minutes to complete and submit an initial report. We also estimate that it will take a State licensing and certification authority 15 minutes to verify the accuracy and completeness of the information contained in the initial report before electronically submitting the information to the HIPDB.

3. Section 61.8 requires Federal and State prosecutors to report criminal convictions related to the delivery of a health care item or service. Based on the number of health care providers, suppliers and practitioners convicted by the Federal Government, we estimate that there will be an approximate total of 700 State criminal convictions reported to the HIPDB each year, for an average of 13 convictions per State. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

4. Section 61.9 requires Federal and State attorneys and health care plans to report civil judgments against health care providers, suppliers and practitioners related to the delivery of a health care item or service. We estimate that there will be an approximate total of 500 civil judgments each year that will be reported by the 54 States Attorneys and an estimated 8 health plans, for a total of 62 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

5. Section 61.11 requires Federal and State Governmental agencies and health plans to report any adjudicated action or decision related to the delivery of a health care item or service against health care providers, suppliers and practitioners. We estimate that there will be an approximate total of 800 other adjudicated actions or decision reports submitted to the HIPDB each year by 54 State governmental agencies and an estimated 12 health plans, for a total of 66 reporters. Based on experience with the NPDB, we estimate that it will take 75 minutes to complete and submit each report.

6. Certain queriers have access to both the NPDB and the HIPDB. When these entities query one data bank, they may elect to automatically receive reports from both. The Department estimates that there will be 1,127,512 queries submitted to the HIPDB per year on health care providers, suppliers and practitioners, including an estimated 60,000 self-queries. These estimates include only queries submitted directly to the HIPDB; it does not include those transferred from the NPDB. The estimates of burden per response are based on experience with similar querying of the NPDB.

7. To access the HIPDB, entities are required to certify that they meet section 1128E reporting and querying requirements by completing an Entity Registration form and submitting it to the HIPDB. The information collected on this form provides the HIPDB with essential information concerning the entity, such as name, address and entity type. Eligible entities, such as State licensing agencies or certain managed care organizations, that have access to both the NPDB and the HIPDB have already registered for the NPDB and are not required to register separately for the HIPDB. Entities eligible to access only the HIPDB must complete and submit the Entity Registration form. We estimate that it will take an entity 10 minutes to complete and submit the Entity Registration form to the HIPDB. If there are any changes in the entity's name, address, telephone, entity type designation, or query and report point of contact, the entity representative must update the information on the Entity Information Update form and submit it to the HIPDB. Of the 5,000 new registrants, we estimate 250 entities (5 percent of all new registrants) will need to update their organization's information each year.

An eligible entity may elect to have an outside organization query or report to the HIPDB on its behalf. This organization is referred to as an authorized agent. Before an authorized agent acts on behalf of an entity, the eligible entity must complete and submit an Agent Designation form to the HIPDB Help Line. The information collected on this form provides the HIPDB with essential information concerning the agent, such as name, address and telephone number. We estimate that 100 entities (2 percent of all new registrants) will elect an authorized agent to query or report to the HIPDB on their behalf. We estimate that it will take an entity 10 minutes to complete and submit the Agent Designation form to the HIPDB. Any changes to the authorized agent designation, such as routing of responses to queries or termination of an authorized agent, the eligible entity must update the information on the Agent Designation Update form and submit it to the HIPDB. We estimate that five of the 100 eligible entities will need to update their agent's information each year.

8. Section 61.15 describes the process to be followed by a health care provider, supplier or practitioner in disputing the factual accuracy of information in a report and requesting Secretarial review of the disputed report. Based on experience with the NPDB, we estimate that 750 (10 percent of all new reports) will be entered into the ''disputed status.'' We estimate that it will take a health care provider, supplier or practitioner 10 minutes to notify the HIPDB to enter the report into ''disputed status.'' Of the 750 disputed reports, we estimate that only 37 reports (5 percent) will be forwarded to the Secretary for review. We estimate that it will take a health care provider, supplier or practitioner 8 hours to describe in writing which facts are in dispute and to gather supporting documentation related to the dispute.

Forms to be used in the day-to-day management of the HIPDB would include the following:

Form name	No. of respondents	Responses per respondent	Total responses	Hrs. per response (minutes)	Total burden hours	Wage rate	Total cost
Account Discrepancy ...	2,000	1	2,000	5	166	$15	$2,490
Electronic Funds Transfer Authorization	850	1	850	5	70	15	1,050
Entity Reactivation	500	1	500	5	41	15	615
Total	3,350	.....	3,350	.....	277	.....	4,155

Comments on this information collection activity should be sent to: Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395–6974.

VI. Waiver of Delayed Effective Date

In publishing final regulations, we usually indicate an effective date of 30 days following their publication in the **Federal Register**. However, this procedure may be waived when an agency finds good cause that a delay in the effective date is impracticable, unnecessary or contrary to the public interest.

Section 221(a) of HIPAA stated that the Secretary establish a national health care fraud and abuse data collection program by January 1, 1997. After a series of meetings with more than 1,000 current users of the NPDB and potential users of, and reporters to, the HIPDB (including health plans, State licensing boards, law enforcement officials, Federal and State Government agencies and professional associations), on October 31, 1998, we published a notice of proposed rulemaking in the **Federal Register** in which we requested public comment on the implementation of the HIPDB. As indicated, we received 117 formal public comments in response to that proposed rulemaking. Further, in developing the final rule, we have also taken into consideration the concerns of numerous Federal agencies, including the Department of Justice, the Department of Defense, the Department of Veterans Affairs and the U.S. Postal Inspection Service. Through this process, the Department has continued to work closely with the 17 national licensing boards organizations—including those for nurses, chiropractors, optometrists and physical therapists—that represent more than 4 million health care practitioners. In addition, the OIG also has contacted each State Governor regarding the reporting requirements of the HIPDB and continues to work with the States to help implement the States' reporting.

To implement the requirements of the statute, we believe that it is urgent that final regulations be promulgated without further delay in order to (1) streamline the fact-gathering process by law enforcement officials, regulatory agencies and health plans; (2) allow health care-related final adverse actions taken against providers, practitioners and suppliers to be reported to the HIPDB; and (3) establish a centralized system that will make this information easily accessible to authorized users.

In light of the fact that we have provided ample opportunity for public input and comment, and have worked closely with Federal and State Government agencies and various national organizations and their members in developing the HIPDB, we find that imposing the normal 30-day delay would be contrary to public interest. Therefore, consistent with 5 U.S.C. 553(d), we find good cause to waive the delay in the effective date of this rule and allow for the timely implementation of final regulations and the start-up of the data bank.

List of Subjects in 45 CFR Part 61

Billing and transportation services, Durable medical equipment suppliers and manufacturers, Health care insurers, Health maintenance organizations, Health professions, Home health care agencies, Hospitals, Penalties, Pharmaceutical suppliers and manufacturers, Privacy, Reporting and recordkeeping requirements, Skilled nursing facilities.

Accordingly, a new 45 CFR part 61 is added to read as follows:

PART 61—HEALTHCARE INTEGRITY AND PROTECTION DATA BANK FOR FINAL ADVERSE INFORMATION ON HEALTH CARE PROVIDERS, SUPPLIERS AND PRACTITIONERS

Subpart A—General Provisions

Sec.

61.1 The Healthcare Integrity and Protection Data Bank.
61.2 Applicability of these regulations.
61.3 Definitions.

Subpart B—Reporting of Information

61.4 How information must be reported.
61.5 When information must be reported.
61.6 Reporting errors, omissions, revisions, or whether an action is on appeal.
61.7 Reporting licensure actions taken by Federal or State licensing and certification agencies.
61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.
61.9 Reporting civil judgments related to the delivery of a health care item or service.
61.10 Reporting exclusions from participation in Federal or State health care programs.
61.11 Reporting other adjudicated actions or decisions.

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

61.12 Requesting information from the Healthcare Integrity and Protection Data Bank.
61.13 Fees applicable to requests for information.
61.14 Confidentiality of Healthcare Integrity and Protection Data Bank information.
61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.
61.16 Immunity.

Authority: 42 U.S.C. 1320a-7e.

Subpart A—General Provisions

§ 61.1 The Healthcare Integrity and Protection Data Bank.

(a) Section 1128E of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services (the Secretary) to implement a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers, or practitioners. Section 1128E of the Act also directs the Secretary to maintain a database of final adverse actions taken against health care providers, suppliers or practitioners. This data bank will be known as the Healthcare Integrity and Protection Data Bank (HIPDB). Settlements in which no findings or admissions of liability have been made will be excluded from being reported. However, if another action is taken against the provider, supplier or practitioner of a health care item or service as a result of or in conjunction with the settlement, that action is reportable to the HIPDB.

(b) Section 1128E of the Act also requires the Secretary to implement the HIPDB in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank (NPDB) (See 45 CFR part 60). In accordance with the statute, the reporter responsible for reporting the final adverse actions to both the HIPDB and the NPDB will be required to submit only one report, provided that reporting is made through the Department's consolidated reporting mechanism that will sort the appropriate actions into the HIPDB, NPDB, or both.

(c) The regulations in this part set forth the reporting and disclosure requirements for the HIPDB.

§ 61.2 Applicability of these regulations.

The regulations in this part establish reporting requirements applicable to Federal and State Government agencies and to health plans, as the terms are defined under § 61.3.

§ 61.3 Definitions.

The following definitions apply to this part:

Act means the Social Security Act.

Affiliated or associated means health care entities with which a subject of a final adverse action has a commercial relationship, including but not limited to, organizations, associations, corporations, or partnerships. It also includes a professional corporation or other business entity composed of a single individual.

Any other negative action or finding by a Federal or State licensing agency means any action or finding that under the State's law is publicly available information, and rendered by a licensing or certification authority, including but not limited to, limitations on the scope of practice, liquidations, injunctions and forfeitures. This definition also includes final adverse actions rendered by a Federal or State licensing or certification authority, such as exclusions, revocations or suspension of license or certification that occur in conjunction with settlements in which no finding of liability has been made (although such a settlement itself is not reportable under the statute). This definition excludes citations, corrective action plans and personnel actions.

Civil judgment means a court-ordered action rendered in a Federal or State court proceeding, other than a criminal proceeding. This reporting requirement does not include Consent Judgments that have been agreed upon and entered to provide security for civil settlements in which there was no finding or admission of liability.

Criminal conviction means a conviction as described in section 1128(i) of the Act.

Exclusion means a temporary or permanent debarment of an individual or entity from participation in any Federal or State health-related program, in accordance with which items or services furnished by such person or entity will not be reimbursed under any Federal or State health-related program.

Government agency includes, but is not limited to—

(1) The U.S. Department of Justice;

(2) The U.S Department of Health and Human Services;

(3) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to, the U.S. Department of Defense and the U.S. Department of Veterans Affairs;

(4) Federal and State law enforcement agencies, including States Attorneys General and law enforcement investigators;

(5) State Medicaid Fraud Control Units; and

(6) Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or licensed health care practitioners. Examples of such State agencies include Departments of Professional Regulation, Health, Social Services (including State Survey and Certification and Medicaid Single State agencies), Commerce and Insurance.

Health care provider means a provider of services as defined in section 1861(u) of the Act; any health care entity (including a health maintenance organization, preferred provider organization or group medical practice) that provides health care services and follows a formal peer review process for the purpose of furthering quality health care, and any other health care entity that, directly or through contracts, provides health care services.

Health care supplier means a provider of medical and other health care services as described in section 1861(s) of the Act; or any individual or entity, other than a provider, who furnishes, whether directly or indirectly, or provides access to, health care services, supplies, items, or ancillary services (including, but not limited to, durable medical equipment suppliers, manufacturers of health care items, pharmaceutical suppliers and manufacturers, health record services such as medical, dental and patient records, health data suppliers, and billing and transportation service suppliers). The term also includes any individual or entity under contract to provide such supplies, items or ancillary services; health plans as defined in this section (including employers that are self-insured); and health insurance producers (including but not limited to agents, brokers, solicitors, consultants and reinsurance intermediaries).

Health plan means a plan, program or organization that provides health benefits, whether directly, through insurance, reimbursement or otherwise, and includes but is not limited to—

(1) A policy of health insurance;

(2) A contract of a service benefit organization;

(3) A membership agreement with a health maintenance organization or other prepaid health plan;

(4) A plan, program, or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third party administrator, integrated health care delivery system, employee welfare

association, public service group or organization or professional association; and

(5) An insurance company, insurance service or insurance organization that is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance.

Licensed health care practitioner, licensed practitioner, or practitioner means, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

Organization name means the subject's business or employer at the time the underlying acts occurred. If more than one business or employer is involved, the one most closely related to the underlying acts should be reported in the ''organization name,'' field with the others being reported in the ''affiliated or associated health care entities'' field.

Organization type means a brief description of the nature of that business or employer.

Other adjudicated actions or decisions means formal or official final actions taken against a health care provider, supplier or practitioner by a Federal or State governmental agency or a health plan; which include the availability of a due process mechanism, and; are based on acts or omissions that affect or could affect the payment, provision or delivery of a health care item or service. For example, a formal or official final action taken by a Federal or State governmental agency or a health plan may include, but is not limited to, a personnel-related action such as suspensions without pay, reductions in pay, reductions in grade for cause, terminations or other comparable actions. A hallmark of any valid adjudicated action or decision is the availability of a due process mechanism. The fact that the subject elects not to use the due process mechanism provided by the authority bringing the action is immaterial, as long as such a process is available to the subject before the adjudicated action or decision is made final. In general, if an ''adjudicated action or decision'' follows an agency's established administrative procedures (which ensure that due process is available to the subject of the final adverse action), it would qualify as a reportable action under this definition. This definition specifically excludes clinical privileging actions taken by Federal or State Government agencies and similar paneling decisions made by health plans. This definition does not include overpayment determinations made by Federal or State Government programs, their contractors or health plans; and it does not include denial of claims determinations made by Government agencies or health plans. For health plans that are not Government entities, an action taken following adequate notice and the opportunity for a hearing that meets the standards of due process set out in section 412(b) of the HCQIA (42 U.S.C. 11112(b)) also would qualify as a reportable action under this definition.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

Voluntary surrender means a surrender made after a notification of investigation or a formal official request by a Federal or State licensing or certification authority for a health care provider, supplier or practitioner to surrender the license or certification (including certification agreements or contracts for participation in Federal or State health care programs). The definition also includes those instances where a health care provider, supplier or practitioner voluntarily surrenders a license or certification (including program participation agreements or contracts) in exchange for a decision by the licensing or certification authority to cease an investigation or similar proceeding, or in return for not conducting an investigation or proceeding, or in lieu of a disciplinary action.

Subpart B—Reporting of Information

§ 61.4 How information must be reported.

Information must be reported to the HIPDB as required under §§ 61.6, 61.7, 61.8, 61.9, 61.10, 61.11 and 61.15 in such form and manner as the Secretary may prescribe.

§ 61.5 When information must be reported.

(a) Information required under §§ 61.7, 61.8, 61.9, 61.10 and 61.11 must be submitted to the HIPDB—

(1) Within 30 calendar days from the date the final adverse action was taken or the date when the reporting entity became aware of the final adverse action; or

(2) By the close of the entity's next monthly reporting cycle, whichever is later.

(b) The date the final adverse action was taken, its effective date and duration of the action would be contained in the information reported to the HIPDB under §§ 61.7, 61.8, 61.9, 61.10 and 61.11.

§ 61.6 Reporting errors, omissions, revisions or whether an action is on appeal.

(a) If errors or omissions are found after information has been reported, the reporter must send an addition or correction to the HIPDB. The HIPDB will not accept requests for readjudication of the case.

(b) A reporter that reports information on licensure, criminal convictions, civil or administrative judgments, exclusions, or adjudicated actions or decisions under §§ 61.7, 61.8, 61.9, 61.10 or 61.11 also must report any revision of the action originally reported. Revisions include, but are not limited to, reversal of a criminal conviction, reversal of a judgment or other adjudicated decisions or whether the action is on appeal, and reinstatement of a license.

(c) The subject will receive a copy of all reports, including revisions and corrections to the report.

(d) Upon receipt of a report, the subject—

(1) Can accept the report as written;

(2) May provide a statement to the HIPDB that will be permanently appended to the report, either directly or through a designated representative (The HIPDB will distribute the statement to queriers, where identifiable, and to the reporting entity and the subject of the report. The HIPDB will not edit the statement; only the subject can, upon request, make changes to the statement); or

(3) May follow the dispute process in accordance with § 61.15.

§ 61.7 Reporting licensure actions taken by Federal or State licensing and certification agencies.

(a) *What actions must be reported.* Federal and State licensing and certification agencies must report to the HIPDB the following final adverse actions that are taken against a health care provider, supplier, or practitioner (regardless of whether the final adverse action is the subject of a pending appeal)—

(1) Formal or official actions, such as revocation or suspension of a license or certification agreement or contract for participation in Federal or State health care programs (and the length of any such suspension), reprimand, censure or probation;

(2) Any other loss of the license or loss of the certification agreement or contract for participation in Federal or

State health care programs, or the right to apply for, or renew, a license or certification agreement or contract of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewal (excluding nonrenewals due to nonpayment of fees, retirement, or change to inactive status), or otherwise; and

(3) Any other negative action or finding by such Federal or State agency that is publicly available information.

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable;

(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA);

(iv) Name of each professional school attended and year of graduation; and

(v) With respect to the State professional license (including professional certification and registration) on which the reported action was taken, the license number, the field of licensure, and the name of the State or territory in which the license is held.

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by HCFA;

(v) Type of organization; and

(vi) With respect to the State license (including certification and registration) on which the reported action was taken, the license and the name of the State or territory in which the license is held.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;

(iv) The date the action was taken, its effective date and duration;

(v) If the action is on appeal;

(vi) Name of the agency taking the action;

(vii) Name and address of the reporting entity; and

(viii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name (s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN; and

(iv) If deceased, date of death.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Other State professional license number(s), field(s) of licensure, and the name(s) of the State or territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) Other State license number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) If the subject will be automatically reinstated; and

(ii) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this section.

§ 61.8 Reporting Federal or State criminal convictions related to the delivery of a health care item or service.

(a) *Who must report.* Federal and State prosecutors must report criminal convictions against health care providers, suppliers, and practitioners related to the delivery of a health care item or service (regardless of whether the conviction is the subject of a pending appeal).

(b) Entities described in paragraph (a) of this section must report the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Name;

(ii) Social Security Number;

(iii) Home address or address of record;

(iv) Sex; and

(v) Date of birth.

(2) If the subject is an individual, that individual's employment or professional identifiers, including:

(i) Organization name and type;

(ii) Occupation and specialty, if applicable; and

(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA).

(3) If the subject is an organization, identifiers, including:

(i) Name;

(ii) Business address;

(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);

(iv) The NPI, when issued by HCFA; and

(v) Type of organization.

(4) For all subjects:

(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;

(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;

(iii) Name and location of court or judicial venue in which the action was taken;

(iv) Docket or court file number;

(v) Type of action taken;

(vi) Statutory offense(s) and count(s);

(vii) Name of primary prosecuting agency (or the plaintiff in civil actions);

(viii) Date of sentence or judgment;
(ix) Length of incarceration, detention, probation, community service or suspended sentence;
(x) Amounts of any monetary judgment, penalty, fine, assessment or restitution;
(xi) Other sentence, judgment or orders;
(xii) If the action is on appeal;
(xiii) Name and address of the reporting entity; and
(xiv) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:
(1) If the subject is an individual, personal identifiers, including:
(i) Other name (s) used;
(ii) Other address; and
(iii) FEIN, when used by the individual as a TIN.
(2) If the subject is an individual, that individual's employment or professional identifiers, including:
(i) State professional license (including professional certification and registration) number(s), field(s) of licensure, and the name(s) of the State or territory in which the license is held;
(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);
(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and
(iv) Nature of the subject's relationship to each associated or affiliated health care entity.
(3) If the subject is an organization, identifiers, including:
(i) Other name(s) used;
(ii) Other address(es) used;
(iii) Other FEIN(s) or Social Security Number(s) used;
(iv) Other NPI(s) used;
(v) State license (including certification and registration) number(s) and the name(s) of the State or territory in which the license is held;
(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);
(vii) Names and titles of principal officers and owners;
(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and
(ix) Nature of the subject's relationship to each associated or affiliated health care entity.
(4) For all subjects:
(i) Prosecuting agency's case number;
(ii) Investigative agencies involved;
(iii) Investigative agencies case of file number(s); and
(iv) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on criminal convictions as required to be reported under this section.

§ 61.9 Reporting civil judgments related to the delivery of a health care item or service.

(a) *Who must report.* Federal and State attorneys and health plans must report civil judgments against health care providers, suppliers, or practitioners related to the delivery of a health care item or service (regardless of whether the civil judgment is the subject of a pending appeal). If a Government agency is party to a multi-claimant civil judgment, it must assume the responsibility for reporting the entire action, including all amounts awarded to all the claimants, both public and private. If there is no Government agency as a party, but there are multiple health plans as claimants, the health plan which receives the largest award must be responsible for reporting the total action for all parties.

(b) Entities described in paragraph (a) of this section must report the information as required in § 61.8(b).

(c) Entities described in paragraph (a) of this section should report, if known the information as described in § 61.8(c).

(d) *Sanctions for failure to report.* Any health plan that fails to report information on a civil judgment required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such adverse action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on civil judgments as required to be reported under this section.

§ 61.10 Reporting exclusions from participation in Federal or State health care programs.

(a) *Who must report.* Federal and State Government agencies must report health care providers, suppliers, or practitioners excluded from participating in Federal or State health care programs, including exclusions that were made in a matter in which there was also a settlement that is not reported because no findings or admissions of liability have been made (regardless of whether the exclusion is the subject of a pending appeal) .

(b) Entities described in paragraph (a) of this section must report the following information:
(1) If the subject is an individual, personal identifiers, including:
(i) Name;
(ii) Social Security Number;
(iii) Home address or address of record;
(iv) Sex; and
(v) Date of birth.
(2) If the subject is an individual, that individual's employment or professional identifiers, including:
(i) Organization name and type;
(ii) Occupation and specialty, if applicable; and
(iii) National Provider Identifier (NPI), when issued by the Health Care Financing Administration (HCFA).
(3) If the subject is an organization, identifiers, including:
(i) Name;
(ii) Business address;
(iii) Federal Employer Identification Number (FEIN), or Social Security Number when used by the subject as a Taxpayer Identification Number (TIN);
(iv) The NPI, when issued by HCFA; and
(v) Type of organization.
(4) For all subjects:
(i) A narrative description of the acts or omissions and injuries upon which the reported action was based;
(ii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary;
(iii) Classification of the action taken in accordance with a reporting code adopted by the Secretary, and the amount of any monetary penalty resulting from the reported action;
(iv) The date the action was taken, its effective date and duration;
(v) If the action is on appeal;
(vi) Name of the agency taking the action;
(vii) Name and address of the reporting entity; and
(viii) The name, title and telephone number of the responsible official submitting the report on behalf of the reporting entity.

(c) Entities described in paragraph (a) of this section should report, if known, the following information:

(1) If the subject is an individual, personal identifiers, including:

(i) Other name(s) used;

(ii) Other address;

(iii) FEIN, when used by the individual as a TIN;

(iv) Name of each professional school attended and year of graduation; and

(v) If deceased, date of death.

(2) If the subject is an individual, that *individual's* employment or professional identifiers, including:

(i) State professional license (including professional registration and certification) number(s), field(s) of licensure, and the name(s) of the State or Territory in which the license is held;

(ii) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Unique Physician Identification Number(s) (UPIN), and Medicaid and Medicare provider number(s);

(iii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(iv) Nature of the subject's relationship to each associated or affiliated health care entity.

(3) If the subject is an organization, identifiers, including:

(i) Other name(s) used;

(ii) Other address(es) used;

(iii) Other FEIN(s) or Social Security Number(s) used;

(iv) Other NPI(s) used;

(v) State license (including registration and certification) number(s) and the name(s) of the State or territory in which the license is held;

(vi) Other numbers assigned by Federal or State agencies, to include, but not limited to Drug Enforcement Administration (DEA) registration number(s), Clinical Laboratory Improvement Act (CLIA) number(s), Food and Drug Administration (FDA) number(s), and Medicaid and Medicare provider number(s);

(vii) Names and titles of principal officers and owners;

(viii) Name(s) and address(es) of any health care entity with which the subject is affiliated or associated; and

(ix) Nature of the subject's relationship to each associated or affiliated health care entity.

(4) For all subjects:

(i) If the subject will be automatically reinstated; and

(ii) The date of appeal, if any.

(d) *Sanctions for failure to report.* The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on exclusions or debarments as required to be reported under this section.

§ 61.11 Reporting other adjudicated actions or decisions.

(a) *Who must report.* Federal and State governmental agencies and health plans must report other adjudicated actions or decisions as defined in § 61.3 related to the delivery, payment or provision of a health care item or service against health care providers, suppliers, and practitioners (regardless of whether the other adjudicated action or decision is subject to a pending appeal).

(b) Entities described in paragraph (a) of this section must report the information as required in § 61.10(b).

(c) Entities described in paragraph (a) of this section should report, if known the information as described in § 61.10(c).

(d) *Sanctions for failure to report.* Any health plan that fails to report information on an other adjudicated action or decision required to be reported under this section will be subject to a civil money penalty (CMP) of not more than $25,000 for each such action not reported. Such penalty will be imposed and collected in the same manner as CMPs under subsection (a) of section 1128A of the Act. The Secretary will provide for publication of a public report that identifies those Government agencies that have failed to report information on other adjudicated actions as required to be reported under this section.

Subpart C—Disclosure of Information by the Healthcare Integrity and Protection Data Bank

§ 61.12 Requesting information from the Healthcare Integrity and Protection Data Bank.

(a) *Who may request information and what information may be available.* Information in the HIPDB will be available, upon request, to the following persons or entities, or their authorized agents—

(1) Federal and State Government agencies;

(2) Health plans;

(3) A health care practitioner, provider, or supplier requesting information concerning himself, herself or itself; and

(4) A person or entity requesting statistical information, which does not permit identification of any individual or entity. (For example, researchers can use statistical information to identify the total number of practitioners excluded from the Medicare and Medicaid programs. Similarly, health plans can use statistical information to develop outcome measures in their efforts to monitor and improve quality care.)

(b) *Procedures for obtaining HIPDB information.* Eligible individuals and entities may obtain information from the HIPDB by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees set forth in § 61.13. The HIPDB will comply with the Department's principles of fair information practice by providing each subject of a report with a copy when the report is entered into the HIPDB.

(c) *Information provided in response to self-queries.* (1) At the time subjects request information as part of a ''self-query,'' the subject will receive—

(i) Any report(s) in the HIPDB specific to them; and

(ii) A disclosure history from the HIPDB of the name(s) of any entity (or entities) that have previously received the report(s).

(2) The disclosure history will be restricted in accordance with the Privacy Act regulations set forth in 45 CFR part 5b.

§ 61.13 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the HIPDB, except requests from Federal agencies. However, for purposes of verification and dispute resolution at the time the report is accepted, the HIPDB will provide a copy—at the time a report has been submitted automatically, without a request and free of charge—of every report to the health care provider, supplier or practitioner who is the subject of the report. For the same purpose, the Department will provide a copy of the report—at the time a report has been submitted automatically, without a request and free of charge—to the reporter that submitted it. The fees are authorized by section 1128E(d)(2) of the Act, and they reflect the full costs of operating the database. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register**.

(b) *Criteria for determining the fee.* The amount of each fee will be determined based on the following criteria —

(1) Direct and indirect personnel costs;

(2) Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;

(3) Agency management and supervisory costs;

(4) Costs of enforcement, research and establishment of regulations and guidance;

(5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts; and

(6) Any other direct or indirect costs related to the provision of services.

(c) *Assessing and collecting fees.* The Secretary will announce through periodic notice in the **Federal Register** the method of payment of fees. In determining these methods, the Secretary will consider efficiency, effectiveness and convenience for users and for the Department. Methods may include credit card, electronic funds transfer and other methods of electronic payment.

§ 61.14 Confidentiality of Healthcare Integrity and Protection Data Bank information.

Information reported to the HIPDB is considered confidential and will not be disclosed outside the Department, except as specified in §§ 61.12 and 61.15. Persons and entities receiving information from the HIPDB, either directly or from another party, must use it solely with respect to the purpose for which it was provided. Nothing in this section will prevent the disclosure of information by a party from its own files used to create such reports where disclosure is otherwise authorized under applicable State or Federal law.

§ 61.15 How to dispute the accuracy of Healthcare Integrity and Protection Data Bank information.

(a) *Who may dispute the HIPDB information.* The HIPDB will routinely mail or transmit electronically to the subject a copy of the report filed in the HIPDB. The subject of the report or a designated representative may dispute the accuracy of a report concerning himself, herself or itself within 60 calendar days of receipt of the report.

(b) *Procedures for disputing a report with the reporting entity.* If the subject disagrees with the reported information, the subject must request in writing that the HIPDB enter the report into ''disputed status.''

(2) The HIPDB will send the report, with a notation that the report has been placed in ''disputed status,'' to queriers (where identifiable), the reporting entity and the subject of the report.

(3) The subject must attempt to enter into discussion with the reporting entity to resolve the dispute. If the reporting entity revises the information originally submitted to the HIPDB, the HIPDB will notify the subject and all entities to whom reports have been sent that the original information has been revised. If the reporting entity does not revise the reported information, or does not respond to the subject within 60 days, the subject may request that the Secretary review the report for accuracy. The Secretary will decide whether to correct the report within 30 days of the request. This time frame may be extended for good cause. The subject also may provide a statement to the HIPDB, either directly or through a designated representative, that will permanently append the report.

(c) *Procedures for requesting a Secretarial review.* The subject must request, in writing, that the Secretary of the Department review the report for accuracy. The subject must return this request to the HIPDB along with appropriate materials that support the subject's position. The Secretary will only review the accuracy of the reported information, and will not consider the merits or appropriateness of the action or the due process that the subject received.

(2) After the review, if the Secretary—

(i) Concludes that the information is accurate and reportable to the HIPDB, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report that describes the basis for the decision. The report will be removed from ''disputed status.'' The HIPDB will distribute the corrected report and statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(ii) Concludes that the information contained in the report is inaccurate, the Secretary will inform the subject of the determination and direct the HIPDB or the reporting entity to revise the report. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The HIPDB will distribute the corrected report and statement (s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iii) Determines that the disputed issues are outside the scope of the Department's review, the Secretary will inform the subject and the HIPDB of the determination. The Secretary will include a brief statement (Secretarial Statement) in the report describing the findings. The report will be removed from ''disputed status.'' The HIPDB will distribute the report and the statement(s) to previous queriers (where identifiable), the reporting entity and the subject of the report.

(iv) Determines that the adverse action was not reportable and therefore should be removed from the HIPDB, the Secretary will inform the subject and direct the HIPDB to void the report. The HIPDB will distribute a notice to previous queriers (where identifiable), the reporting entity and the subject of the report that the report has been voided.

§ 61.16 Immunity.

Individuals, entities or their authorized agents and the HIPDB shall not be held liable in any civil action filed by the subject of a report unless the individual, entity or authorized agent submitting the report has actual knowledge of the falsity of the information contained in the report.

Dated: May 4, 1999.

June Gibbs Brown,

Inspector General.

Approved: May 21, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27472 Filed 10–25–99; 8:45 am]

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Federal Register

Tuesday
October 26, 1999

Part V

The President

Proclamation 7243—National Day of Concern About Young People and Gun Violence, 1999

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Tuesday, October 26, 1999

Presidential Documents

Title 3—

The President

Proclamation 7243 of October 21, 1999

National Day of Concern About Young People and Gun Violence, 1999

By the President of the United States of America

A Proclamation

Events of the past year have dramatically demonstrated the continuing need for a National Day of Concern About Young People and Gun Violence. In communities across our country, we saw young lives cut short by gunfire. We watched, horrified, as the same scene played out repeatedly in classrooms, school yards, and places of worship. Out of cities like Fort Worth, Texas; Conyers, Georgia; Granada Hills, California; and Littleton, Colorado, came the images that have become painfully familiar—racing ambulances, terrified children, grieving families. As a national community, we shared a sense of devastating loss too immediate to comprehend. Behind these headlines, every day in our Nation 12 young people die as a result of gun violence.

In response to this disturbing cycle, my Administration has taken comprehensive action against youth violence. Last October, we held the first-ever White House Conference on School Safety, where I launched a new initiative to increase the number of safety officers in schools and unveiled a new plan to help schools respond to violence. After the tragedy in Littleton, we held a Summit on Youth Violence at which we launched a national campaign to end youth violence.

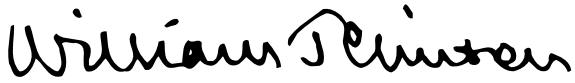
Earlier this month, I established the White House Council on Youth Violence to ensure the effective coordination of the many agencies and programs of the Federal Government that address youth violence issues. In addition, we have selected 54 communities to receive more than $100 million in Safe Schools/Healthy Students grants in an effort to find and fund the best ideas to reduce youth violence through community-based collaborative efforts. These funds will allow communities to implement important measures such as hiring more security personnel, installing security equipment, and improving student mental health services.

I have also called upon the Congress to do its part by passing a juvenile crime bill that closes the dangerous gun show loophole, requires child safety locks for guns, and bans the importation of large-capacity ammunition clips. I will continue to fight hard to win passage of these commonsense measures to keep guns out of the wrong hands.

As we observe this year's National Day of Concern About Young People and Gun Violence, I encourage every student in America to sign a Student Pledge Against Gun Violence, a solemn oath never to bring a gun to school and never to use a gun to settle a dispute. More than one million students signed the pledge last year, and I hope that many more will participate this year. I also urge all Americans to make their voices heard and support efforts to reduce gun violence. We need every sector of our society—families, educators, communities, businesses, religious leaders, policymakers, and members of law enforcement—to join together in this crusade to end the cycle of violence and create a brighter, safer future for our children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do herebyproclaim October 21, 1999, as a National Day of Concern About Young People and Gun Violence. On this day, I call upon all Americans to commit themselves anew to helping our young people avoid violence, to setting a good example, and to restoring our schools and neighborhoods as safe havens for learning and recreation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 71/P.L. 106–75

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Oct. 21, 1999; 113 Stat. 1125)

S. 323/P.L. 106–76

Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (Oct. 21, 1999; 113 Stat. 1126)

H.R. 560/P.L. 106–77

To designate the Federal building and United States courthouse located at the intersection of Comercio and San Justo Streets, in San Juan, Puerto Rico, as the ''Jose V. Toledo Federal Building and United States Courthouse''. (Oct. 22, 1999; 113 Stat. 1134)

H.R. 1906/P.L. 106–78

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Oct. 22, 1999; 113 Stat. 1135)

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