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Federal Register



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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 7, 1999 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538



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Title 3—**The President****Proclamation 7249 of November 12, 1999****Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Repression of the Civilian Population in Kosovo or for Policies That Obstruct Democracy in the Federal Republic of Yugoslavia (Serbia and Montenegro) (“FRY”) or Otherwise Lend Support to the Current Governments of the FRY and of the Republic of Serbia**

By the President of the United States of America

A Proclamation

In light of the actions of President Slobodan Milosevic and other officials of the Federal Republic of Yugoslavia (Serbia and Montenegro) (“FRY”) and the Republic of Serbia against elements of the civilian population of Kosovo, including actions within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia; in light of actions being taken by the Milosevic regime to obstruct democracy and to suppress an independent media and freedom of the press in the FRY, Serbia, Montenegro, and Kosovo; and in light of the ongoing efforts of the Milosevic regime and its supporters to thwart the economic sanctions imposed by the United States and other countries against the FRY, I have determined that it is in the interests of the United States to suspend the entry into the United States of certain officials of the FRY Government and the Government of the Republic of Serbia and of other persons who either act in support of such officials’ policies or who are closely associated with such officials.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the powers vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and non-immigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in sections 2 through 4 of this proclamation, be detrimental to the interests of the United States. I do therefore hereby proclaim that:

Section 1. The immigrant and nonimmigrant entry into the United States of the following persons is hereby suspended:

(a) Slobodan Milosevic and other persons who, as senior FRY or Serbian officials or as members of the FRY and/or Serbian military or paramilitary forces, formulated, implemented, or carried out repressive actions against the civilian population in Kosovo;

(b) Officials of the Government of the FRY or of the Republic of Serbia and FRY nationals who formulate, implement, or carry out policies obstructing or suppressing freedom of speech or of the press in the FRY, Serbia, Montenegro, or Kosovo, or who otherwise are obstructing efforts to establish a peaceful and stable democracy in these areas;

(c) Officials of the Government of the FRY or of the Republic of Serbia and FRY nationals who, individually or as officers or employees of business or financial entities, engage in financial transactions that materially support the Government of the FRY, the Government of the Republic of Serbia, Slobodan Milosevic, or members of the Milosevic regime; and

(d) Any spouse, minor child, close relative, or close personal associate of any person described in subsections (a) through (c) above, if the entry into the United States of such spouse, minor child, close relative, or close personal associate would not be in the interests of the United States in light of the objectives of this proclamation.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by sections 1 and 2 shall be identified by the Secretary of State, or the Secretary's designee, in the Secretary or the Secretary's designee's sole discretion, pursuant to such procedures as the Secretary may establish under section 5 below.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish.

Sec. 6. This proclamation is effective immediately and shall remain in effect, in whole or in part, until such time as the Secretary of State determines that it is no longer necessary and should be terminated, in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of November, 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.



Presidential Documents

Title 3—**Proclamation 7250 of November 15, 1999****The President****America Recycles Day, 1999****By the President of the United States of America****A Proclamation**

Recycling is one of the great success stories in America's crusade to protect our environment and preserve our natural resources. Americans have undergone a fundamental change in attitude about recycling during the past 4 decades. Where most Americans and many industries were once unmindful of our resources and careless in disposing of waste materials, people across our country now recognize the importance of recycling and have made it part of their daily routines. In 1996 alone, recycling nationwide diverted a total of 57 million tons of material away from landfills and incinerators—more than a quarter of our country's annual municipal solid waste.

Nonetheless, the recycling process is complete only when recovered materials return to the market as new products for purchase by consumers. The most effective way we can ensure the continued success of recycling in America is to expand markets for products that contain recycled materials. Buying recycled products conserves resources, reduces water and air pollution, saves energy, and creates jobs. Producing 1 ton of paper from recycled pulp saves 17 trees, 3 cubic yards of landfill space, and 7000 gallons of water. It also reduces air pollutants by 60 pounds, saves 390 gallons of oil, and conserves 4200 kilowatt hours of energy—enough to heat a home for half a year. Estimates show that 9 jobs are created for every 15,000 tons of solid waste recycled into new products.

The U.S. Government has helped promote recycling by purchasing recycled-content products—in fiscal 1997 alone, we purchased \$354 million worth of such products. In September of 1998, I was proud to sign Executive Order 13101—Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition—which directed all Federal agencies to expand and strengthen the Federal Government's dedication to recycling and to buying products made with recycled content. This responsible use of Government purchasing power will not only help the environment, but will also stimulate the growth of clean industries in the 21st century.

America Recycles Day unites business and industry, environmental and civic groups, and local, State, and Federal Government agencies to encourage recycling. This partnership challenges all businesses and consumers in America to increase their purchases of recycled products, to boost their recycling efforts, and to start new recycling programs. The theme for this year's observance—"For Our Children's Future . . . Buy Recycled Today"—reminds us of the profound and long-term implications of the actions we take today. By using products with recycled content and creating new markets for such products, we will conserve America's precious natural resources for the benefit of generations to come.

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 the laws of the United States, do hereby proclaim November 15, 1999, as America Recycles Day. I urge all Americans to observe this day with appropriate ceremonies and activities and to take personal responsibility for the environment not only by recycling, but also by choosing to purchase and use products made from recycled materials.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, 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.

William Clinton

[FR Doc. 99-30189

Filed 11-16-99; 8:45 am]

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Rules and Regulations

Federal Register

Vol. 64, No. 221

Wednesday, November 17, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 759 and 761

RIN 0560-AF70

Small Hog Operation Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule technical amendment.

SUMMARY: This interim rule amends the interim rules published February 10, 1999, (64 FR 6495) and August 30, 1999, (64 FR 47099) to redesignate the regulations for the Small Hog Operation Payment Program (SHOP) at 7 CFR part 761 as 7 CFR part 759. This change is needed to reorganize 7 CFR chapter VII to allow for the incorporation of the Farm Service Agency's (FSA's) farm loan program regulations, which will be moved from their current location in 7 CFR chapter XVIII to 7 CFR chapter VII. The redesignated part 759 remains an interim rule and is otherwise unchanged.

DATES: Effective November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch (RRFIDB), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250-0540; telephone: (202) 205-5851; e-mail: tom_witzig@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is in conformance with Executive Order 12866 and has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

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

Environmental Evaluation

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

Executive Order 12988

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

Executive Order 12372

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

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act of 1995

There are no information collections associated with this interim rule.

Executive Order 12612

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

on the distribution of power and responsibilities among the various levels of government.

Background

The Farm Service Agency published an Interim Rule adding 7 CFR part 761, Small Hog Operation Payment Program (SHOP), on February 10, 1999, at 64 FR 6495, with a comment period that ended March 12, 1999. An Interim Rule amending the program was published on August 30, 1999, at 64 FR 47097, with a comment period ending September 29, 1999. The Agency is also streamlining its farm loan program regulations to separate them from the former Farmers Home Administration regulations contained at 7 CFR chapter XVIII and move them to 7 CFR chapter VII. Due to the need to provide a continuous block of CFR parts for the farm loan program regulations, it is necessary to move the SHOP regulations to 7 CFR part 759. The redesignated part 759 remains an interim rule and is otherwise unchanged.

List of Subjects in 7 CFR Parts 759 and 761

Direct payments to small hog operations, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter VII is amended as follows:

PART 761—[REDESIGNATED AS PART 759]

1. Redesignate part 761 as part 759.
2. The authority citation for redesignated part 759 continues to read as follows:

Authority: 7 U.S.C. 612c.

Signed at Washington, DC, on November 10, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99-30013 Filed 11-16-99; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE**Farm Service Agency****7 CFR Parts 761 and 762****Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency****7 CFR Parts 1922, 1941, 1943, 1945, 1951, 1955, and 1965**

RIN 0560-AF69

Streamlining of Regulations for Real Estate and Chattel Appraisals

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action eliminates unnecessary and burdensome administrative provisions and procedures from the Agency's regulations governing real estate and chattel appraisals used in conjunction with the Farm Loan Programs, and clarifies the requirement that Agency real estate appraisals must comply with the guidelines and standards contained in the Uniform Standards of Professional Appraisal Practice. The changes to the regulations will allow for the use of appraisal forms and reports based on industry formats rather than requiring the use of specific Agency formats. This action will also move the core appraisal regulations as part of the Agency's overall effort to consolidate its regulations.

EFFECTIVE DATE: December 17, 1999.

FOR FURTHER INFORMATION CONTACT: Chris L. Greenwalt, Senior Loan Officer, Program Development and Economic Enhancement Division USDA/FSA/PDEED/STOP 0521, 1400 Independence Avenue, SW., Washington, DC 20250-0521, telephone (202) 690-0431, facsimile (202) 720-8474, e-mail: Chris_Greenwalt@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

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

Executive Order 12372

The programs to which this Executive Order may apply are listed in the

Catalog of Federal Domestic Assistance under the following:

10.407 Farm Ownership Loans

10.421 Indian Tribes and Tribal Corporation Loans

Programs listed under the numbers 10.407 and 10.421 are subject to, and have complied with, the provisions of Executive Order 12372. (See the Notices related to 7 CFR 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; and 50 FR 14088, April 10, 1985.)

Environmental Impact Statement

It is the determination of the issuing Agency that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement has not been prepared.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780, as applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The Farm Service Agency (FSA) certifies that this rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601). No actions are being taken under this rule that would favor large entities over small entities. According to the 1992 Census of Agriculture, 1.9 million farmers or over 99 percent of all farms in the United States are small entities as defined by the Small Business Administration (SBA). Under the SBA definition, few if any large entities are operators of family-sized farms who would be eligible for FSA credit. This rule is expected to result in the Agency adopting industry standards for appraisals which should reduce the costs of appraisals and afford faster completion time. Therefore, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act of 1995

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act of 1995.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies must prepare a written statement, including a cost benefit analysis, before promulgating a notice of proposed rulemaking that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

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

Discussion of the Final Rule

This rule involves the farm loan programs formerly administered by the Farmers Home Administration (FmHA). The Department of Agriculture Reorganization Act of 1994, abolished FmHA on October 13, 1994, and its Farmer Programs functions, now referred to as Farm Loan Programs, were subsequently transferred by the Secretary to the Farm Service Agency (FSA).

FSA is revising the existing core appraisal regulations, loan servicing regulations, and the loan making regulations regarding real estate and chattel appraisals for several reasons. Most importantly, these changes are being made to eliminate the

requirements that specific Agency appraisal formats must be used for real estate and chattel appraisals required under Farm Loan Programs. This change removes unnecessary administrative burdens and increases the tools available to FSA to complete real estate and chattel appraisals. Elimination of requirements for the use of specific forms for real estate and chattel appraisals provides FSA the opportunity to expand the use of contract appraisers who do not now participate due to the requirement that agency appraisals must be on Agency appraisal forms.

The rule maintains the current requirement that real estate appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and as applied to Federal agencies by Office of Management and Budget Circular A-129. While the rule allows for different formats for chattel appraisals, the rule maintains the current requirements regarding the information that such appraisals contain.

The rule also eliminates the specific provisions regarding appraisal of real property subject to an easement currently codified at 7 CFR 1922.209. This section is obsolete because it cross references procedures at 7 CFR 1922.209 which was removed from part 1922 without a replacement. Further, USPAP standards already adopted by FSA in its current appraisal regulations codified at 7 CFR 1922.201 address the issues regarding appraisals of real property that are subject to an easement. Therefore, separate regulations on this subject are not necessary.

The rule moves the core FSA appraisal regulations from 7 CFR part 1922 to 7 CFR part 761. This change is part of FSA's overall effort to consolidate the Farm Loan Programs regulations that had been initially promulgated by the former FmHA with FSA's other program regulations into one range of parts in title 7 of the Code of Federal Regulations. The rule also consolidates under § 761.7 the current provisions governing the use of existing real estate appraisals from the Operating Loan Program (7 CFR 1941.25(a)(6)), Farm Ownership Loan Program (7 CFR 1943.25(c)(3)), and Emergency Loan Program (7 CFR 1945.175(c)(1)(iv)) to 7 CFR 761.7(d)).

The Agency is not seeking public comment regarding this rule, because the rule does not change the standards applied to Agency appraisals, it merely

changes the location of the regulations in the Code of Federal Regulations and makes a procedural change to allow the use of any alternative appraisal format that complies with Agency appraisal standards. Therefore, pursuant to 5 U.S.C. 552(b), the Agency has concluded that it is unnecessary to seek public comment before implementing this rule.

List of Subjects

7 CFR Part 761

Accounting, Accounting servicing, Loan programs—Agriculture, Real Property-Appraisals, Rural areas.

7 CFR Part 762

Agriculture, Loan programs—Agriculture

7 CFR Part 1922

Loan programs—Agriculture, Real property-Appraisals, Rural areas

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture

7 CFR Part 1951

Accounting servicing, Debt restructuring, Credit, Loan programs—Agriculture

7 CFR Part 1955

Government property, Loan programs—Agriculture.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Rural areas.

For the reasons stated in the preamble, 7 CFR part 761 is added, 7 CFR part 1922 is removed and reserved, and 7 CFR parts 1941, 1943, 1945, 1951, 1955 and 1965 are amended as follows:

1. Add part 761 to read as follows:

PART 761—GENERAL AND ADMINISTRATIVE

Subpart A—General Provisions

Sec.

761.1–761.6 [Reserved]

761.7 Appraisals.

Authority: 7 U.S.C. 1989.

§ 761.1–761.6 [Reserved]

§ 761.7 Appraisals.

(a) *General.* This section describes Agency requirements for real estate and

chattel appraisals and reviews made in connection with the making and servicing of direct and guaranteed Farm Loan Program loans and nonprogram loans serviced under part 1951, subpart J of this chapter.

(b) Definitions.

Administrative appraisal review means a review of an appraisal to determine if the appraisal:

(1) Meets applicable Agency requirements; and

(2) Is accurate outside the requirements of standard 3 of USPAP.

Agency means the Farm Service Agency, including its employees and state and area committee members, and any successor agency.

Farm Loan Programs (FLP) loans refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST), and Rural Housing loans for farm service buildings (RHF).

Technical appraisal review means a review of an appraisal to determine if such appraisal meets the requirements of USPAP pursuant to standard 3 of USPAP.

USPAP (Uniform Standards of Professional Appraisal Practice) means standards governing the preparation, reporting, and reviewing of appraisals established by the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(c) *Appraisal standards.* (1) *Real estate.* Real estate appraisals, technical appraisal reviews of real estate appraisals, and their respective forms must comply with the standards contained in USPAP, as well as applicable Agency regulations and procedures for the specific Farm Loan Program activity involved. A current copy of USPAP along with other applicable appraisal procedures and regulations is available for review in each Agency State Office.

(2) *Chattel.* An appraisal of chattel property may be completed on an applicable Agency form (available in each Agency State Office) or other format containing the same information.

(d) *Use of an existing real estate appraisal.* The Agency may use an existing real estate appraisal to reach loan making or servicing decisions if:

(2) The Agency determines the appraisal meets the requirements of this section and applicable Agency loan making or servicing requirements;

(3) The appraisal was completed within the previous 12 months; and

(4) Current market values have remained stable since the appraisal was complete.

(e) *Appraisal reviews.* (1) *Real estate appraisals.* With respect to a real estate appraisal, the Agency may conduct a technical appraisal review or an administrative appraisal review, or both.

(2) *Chattel appraisals.* With respect to a chattel appraisal, the Agency may conduct an administrative appraisal review.

PART 762—GURANTEED FARM LOANS

2. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

§ 762.127 [Amended]

3. Amend § 762.127 to remove the second sentence in introductory text of paragraph (d).

PART 1922 [Removed and Reserved]

4. Remove and reserve part 1922.

PART 1941—OPERATING LOANS

5. The authority citation for part 1941 is revised to read as follows:

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

§ 1941.25 [Amended]

6. Amend § 1941.25 to remove the second sentence of the introductory text in paragraph (a) “Forms FmHA 440–21, ‘Appraisal of Chattel Property,’ FmHA 1922–1, ‘Appraisal Report-Farm Tract’ and FmHA 1922–11, ‘Appraisal for Mineral Rights,’ respectively” and add in its place “forms in accordance with § 761.7 of this title and, in the case of an appraisal of mineral rights’ the appropriate Agency form (available in each Agency State Office) or other format that contains the same information”.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

7. The authority citation for part 1943 continues to read as follows:

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

§ 1943.25 [Amended]

8. Amend § 1943.25 as follows:
a. Remove from paragraph (c)(1) “Forms FmHA 1922–1 or FmHA 1922–8, ‘Uniform Residential Appraisal Report,’ for farm real estate or residential farm real estate, respectively” and add in its place “forms in accordance with § 761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency

State Office) or other format that contains the same information”;

b. Remove paragraph (c)(3);

c. Redesignate paragraphs (c)(4), (c)(5), and (c)(6) as paragraphs 9c)(3), (c)(4), and (c)(5), respectively.

d. Remove from the first sentence in newly designated paragraph (c)(3) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”;

e. Add at the end of the last sentence before the period of newly designated paragraph (c)(3) “or other format that contains the same information”; and

§ 1943.75 [Amended]

9. Amend § 1943.75 as follows:

a. Remove from paragraph (c)(1) “Forms FmHA 1922–1 or FmHA 1922–8, ‘Uniform Residential Appraisal Report’ for farm real estate or residential farm real estate, respectively” and add in its place “forms in accordance with § 761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency State Office) or other format that contains the same information”;

b. Remove paragraph (c)(3);

c. Redesignate paragraphs (c)(4), (c)(5), and (c)(6) as paragraphs (c)(3), (c)(4), and (c)(5), respectively.

d. Remove from the first sentence in newly designated paragraph (c)(3) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”;

e. Add at the end of the last sentence before the period of newly designated paragraph (c)(3) “or other format that contains the same information”; and

PART 1945—EMERGENCY

10. The authority citation for part 1945 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1980.

§ 1945.169 [Amended]

11. In § 1945.169 remove from paragraph (p)(1)(iii) “in the comments section of Form FmHA or its successor agency under Public Law 103–354 1922–1, ‘Appraisal Report-Farm Tract’” and add in its place “on the real estate appraisal”.

§ 1945.175 [Amended]

12. Amend § 1945.175 as follows:

a. Remove from the introductory text to paragraph (c)(1) “Forms FmHA 1922–8, ‘Uniform Residential Appraisal Report’ for farm real estate or residential farm real estate, respectively” and add in its place “forms in accordance with § 761.7 of this title, and in the case of an appraisal

of residential real estate’ the appropriate Agency form (available in each Agency State Office) or other format that contains the same information”;

b. Add at the end before the period of paragraph (c)(1)(ii) “or other format that contains the same information”;

c. Remove paragraph (c)(1)(iv); and

d. Redesignate paragraphs (c)(1)(v) as paragraph (c)(1)(iv).

PART 1951—SERVICING AND COLLECTION

13. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

14. Amend § 1951.909 as follows:

a. Remove from the second sentence of paragraph (f)(1) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”; and

b. Revise paragraph (i)(3)(ii) to read as follows:

§ 1951.909 Processing primary loan service programs requests.

* * * * *

(i) * * *

(3) * * *

(ii) The appraisal report must conform to § 761.7 of this title for real estate and chattels.

* * * * *

§ 1951.910 [Amended]

15. In § 1951.910 remove from the third sentence of paragraph (a)(1) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

PART 1955—PROPERTY MANAGEMENT

16. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

§ 1955.10 [Removed]

17. In § 1955.10 remove from the fourth sentence of the introductory text of paragraph (e) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

18. In § 1955.66 revise paragraph (h)(2) to read as follows:

§ 1955.66 Lease of real property.

* * * * *

(h) * * *

(2) The purchase price (option price) will be the advertised sales price as determined by an appraisal prepared in accordance with § 761.7 of this title.

* * * * *

§ 1955.107 [Amended]

19. In § 1955.107 remove from the second sentence of paragraph (a)(1) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

PART 1965—REAL PROPERTY

20. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 42 U.S.C. 1480.

§ 1965.12 [Amended]

21. In § 1965.12 remove from the first and second sentences of paragraph (e) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

§ 1965.13 [Amended]

22. In § 1965.13 remove from the first sentence of paragraph (d) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

§ 1965.25 [Amended]

23. In § 1965.25 remove from paragraph (d)(1) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

§ 1965.26 [Amended]

24. In § 1965.26 remove from the second sentence of paragraph (a)(2) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

§ 1965.27 [Amended]

25. Amend § 1965.27 as follows:

a. Remove from paragraph (g)(5) “Forms FmHA or its successor agency under Public Law 103–354 1922–1 or FmHA or its successor agency under Public Law 103–354 1922–8, as appropriate,” and add in its place “Real estate appraisals meeting the requirements of 761.7 of this title”; and

b. Remove from the fourth sentence of paragraph (h)(1) “subpart E of part 1922 of this chapter” and add in its place “§ 761.7 of this title”.

Signed in Washington, D.C., on October 21, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–28371 Filed 11–16–99 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 52**

[Docket No. 98–123–5]

Pseudorabies in Swine; Receipt of Additional Funds and Extension of Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of receipt of additional funds and extension of indemnity program.

SUMMARY: In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of January 12, 1999, we established animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. In that interim rule, we announced that the indemnity program would end when funds allocated for the program were depleted, but no later than 6 months after publication of the interim rule. On July 12, 1999, we extended the program beyond the initial 6 months until further notice. We are giving notice that additional funds have been allocated for the program and that the indemnity program will continue until funds are depleted or until further notice.

FOR FURTHER INFORMATION CONTACT: Dr. Reed Rollo, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–5286.

SUPPLEMENTARY INFORMATION:**Background**

The Animal and Plant Health Inspection Service’s regulations in 9 CFR part 52 govern the payment of indemnity to owners of herds of swine that are depopulated because they are infected with pseudorabies. Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujeszky’s disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is known to cause reproductive problems, including abortion and stillborn death in neonatal pigs, and, occasionally, death in breeding and finishing hogs.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry

participation. Industry/State/Federal pseudorabies eradication efforts have been markedly successful. In 1992, for instance, approximately 8,000 herds of swine nationwide were known to be infected with the disease. At the end of 1998, approximately 1,300 herds were known to be infected. This represented slightly less than 1 percent of the herds of swine in the United States. The goal of the cooperative pseudorabies eradication program is the elimination of pseudorabies in the United States in the year 2000.

However, in 1998, market conditions in the swine industry jeopardized the progress of the pseudorabies eradication program. Depressed market conditions caused some producers to eliminate the costs they had been incurring to participate in the eradication program. Continued cessation of eradication efforts, particularly the elimination of herd vaccination, would likely have resulted in an increase in the number of herds infected with pseudorabies. This growth in pseudorabies-infected herds would likely have extended the amount of time necessary to eradicate pseudorabies and would ultimately have cost both the industry and the Federal and State governments additional time and monies in eradication efforts.

In response to this threat to the progress of the pseudorabies eradication program, we published an interim rule in the **Federal Register** (64 FR 2545–2550, Docket No. 98–123–2) on January 15, 1999, to establish an accelerated pseudorabies eradication program. In order to carry out the accelerated pseudorabies eradication program, the Secretary of Agriculture authorized the transfer of \$80 million in funds from the Commodity Credit Corporation.

Under the accelerated program, we began payment of fair market value to owners who depopulated infected herds. In addition to indemnity for the value of the animals, we have been providing funding for trucking costs to disposal, for euthanasia and disposal costs, and for cleaning and disinfection of conveyances used for transporting the swine to disposal.

In our January 15, 1999, interim rule, we stated that the indemnity program would extend 6 months from the date of publication of the interim rule (until July 15, 1999) or until funds allocated for the program were depleted, whichever came first. Based on the time we estimated to be necessary to depopulate all known infected herds should all owners take part, we projected that 6 months would be long enough to complete the program but

short enough to encourage rapid depopulation of infected herds.

Because, as of July 15, 1999, some States were still conducting their eradication programs, we considered it important to the pseudorabies eradication effort in the United States to continue our accelerated eradication program beyond that date. Therefore, on July 12, 1999, we informed the public in a notice in the **Federal Register** (64 FR 37395, Docket No. 98-123-4) that we would continue the accelerated eradication program until further notice.

To date, the accelerated pseudorabies eradication program, in combination with surveillance and quarantine under the ongoing standard pseudorabies eradication program, has significantly reduced the number of pseudorabies-infected herds in the United States. All States have eliminated or virtually eliminated their pseudorabies-infected herds, except for Indiana, Iowa, and Minnesota, which are still in the midst of substantial eradication programs.

At the start of the accelerated pseudorabies eradication program, 1,291 infected herds were known to exist in the United States. Enhanced surveillance for pseudorabies under the accelerated program contributed to the detection of another 550 infected herds. Of that total number of infected herds, 476 have been released from quarantine this year under the requirements of the ongoing standard pseudorabies eradication program and another 655 have been depopulated under the accelerated eradication program.

Due to increased surveillance efforts associated with our accelerated eradication program, we expect to discover approximately 200 more infected herds in FY 2000. In order to pay indemnity for those herds and for herds already known to be infected, we have received an additional \$40 million to conduct the accelerated eradication program and will continue the accelerated program until further notice. The accelerated program will be operated in combination with the ongoing standard pseudorabies eradication program.

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 10th day of November, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-30020 Filed 11-16-99; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-26-AD; Amendment 39-11423; AD 99-24-01]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc Tay 620-15, Tay 650-15, and Tay 651-54 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce plc Tay 620-15, Tay 650-15, and Tay 651-54 series turbofan engines, that requires initial and repetitive visual inspections of the emergency fuel shutoff cable for broken strands or failed cables, and, if necessary, replacement with serviceable parts. This amendment is prompted by reports of broken strands and failed emergency fuel shutoff cables. The actions specified by this AD are intended to prevent emergency fuel shutoff cable failure, which could result in the non-operation of the emergency fuel shut-off system in the event of a low pressure shaft failure.

DATES: Effective January 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby DE24 8BJ England; telephone +44 1332 242424, fax +44 1332 37645. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, 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 Rolls-Royce plc (R-R) Tay 620-15, Tay 650-15, and Tay 651-54 series turbofan engines was published in the **Federal Register** on June 23, 1999 (64 FR 33435). That action proposed to require initial and repetitive visual inspections of the

emergency fuel shutoff cable for broken strands or failed cables, and, if necessary, replacement with serviceable parts. That action was prompted by reports of broken strands and failed emergency fuel shutoff cables. That condition, if not corrected, could result in the non-operation of the emergency fuel shutoff system in the event of a low pressure shaft failure.

Comments Received

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

Excessive Time for Initial Inspection

One commenter states the proposed compliance time of 1,000 hours time in service (TIS) after the effective date of this AD for the initial inspection is excessive. Considering the time needed to process rulemaking, the commenter believes the compliance time to be excessive and drawn out for the initial inspection considering the potential hazards if emergency fuel shut-off control is lost. The commenter believes that non-operation of this component could result in the initiation of or the continued feeding of a fire.

The Federal Aviation Administration (FAA) does not concur. The emergency fuel shutoff system is designed to protect the aircraft in the event of a low pressure shaft failure. It has no other function. The failure detection elements are a simple linkage actuated by relative rotational movement between the engine center oil tube that is splined to the fan disc, and the rear of the low pressure turbine shaft. Effectively, it is monitoring the angular positions of the fan disc relative to the rear of the low pressure turbine. A failure of the low pressure shaft is therefore the only way in which the system can be activated. The emergency fuel shutoff system is not designed as a mechanism to control fire and is not activated in the event of a fire. The FAA has determined that the inspection intervals specified have been established in accordance with extensive service investigation and are appropriate.

Inspection Intervals Do Not Match Maintenance Checks

One commenter states that the initial and repetitive inspection interval of 1,000 hours TIS does not match any of the commenter's maintenance check intervals. The commenter would like to do the inspection at every one-half C-check interval or 2600 hours. Then if cable replacement is necessary, experienced mechanics and equipment

would be available to replace the cable. The commenter justifies the change request based upon the excellent reliability of the Tay series engine turbine. The engine series has never seen a fuel shutoff cable activation event. The commenter recommends that the FAA consider the engine reliability in the final rule and make the interval consistent with the regular C-check intervals.

The FAA does not concur. The 1,000 hours TIS inspection is based on service experience. Service experience has shown that cable strands fail on average of one per 890 hours and that a number of external strands will wear concurrently such that further strand failures occur relatively quickly following the first strand failure. The UK CAA has informed the FAA that adopting the requested 2,600 hour inspection cycle could result in as many as 9 broken cable strands. This could render the emergency fuel shutoff control ineffective. The sole purpose of the emergency fuel shutoff control is to guard against a turbine overspeed condition in the event of low pressure shaft shear.

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.

Economic Analysis

There are approximately 900 engines of the affected design in the worldwide fleet. The FAA estimates that 451 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 0.25 work hours to accomplish the inspections, 3 to 28 work hours per engine to remove and replace an unacceptable emergency fuel shutoff cable, depending on engine aircraft installation and position, and that the average labor rate is \$60 per work hour. Required parts cost approximately \$86 per engine. The total cost for inspections is estimated to be \$6,750. The total cost for replacing parts on the Fokker F70 and Fokker F100 aircraft is estimated to be \$75,125. The total cost for replacing parts on the No. 1 position engine on Boeing 727 aircraft is estimated to be \$14,918. The total cost for replacing parts on the No. 2 and 3 position engines on Boeing 727 aircraft, since engine removal is required for these two engine positions, is \$197,837. Based on these figures, the total cost impact of the on U.S. operators is estimated to be \$294,630.

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:

99-24-01 Rolls-Royce plc: Amendment 39-11423. Docket 99-NE-26-AD.

Applicability: Rolls-Royce plc (R-R) Tay 620-15, Tay 650-15, and Tay 651-54 series turbofan engines, installed on but not limited to Fokker F.28 Mark 0070 series, Fokker F.28 Mark 0100 series, and Boeing 727 series aircraft modified with STC SA8472SW.

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 emergency fuel shutoff cable failure, which could result in the non-operation of the emergency fuel shutoff system in the event of a low pressure shaft failure, accomplish the following:

Inspections

(a) Perform initial and repetitive visual inspections of the emergency fuel shutoff cable for broken strands or failed cables as follows:

(1) Initially inspect the emergency fuel shutoff cable within 1,000 hours time-in-service (TIS) after the effective date of this AD.

(i) If the emergency fuel shutoff cable has no strands broken, re-inspect within 1000 hours TIS after the inspection.

(ii) If the emergency fuel shutoff cable has 1, 2, or 3 strands broken, re-inspect within 800 hours TIS after the inspection.

(iii) If the emergency fuel shutoff cable has 4, 5, or 6 strands broken, replace the cable within 100 hours TIS after the inspection.

(iv) If the emergency fuel shutoff cable has 7 or more strands broken, or the cable has failed, replace the cable within 25 hours TIS after the inspection.

(2) Thereafter, perform inspections of the emergency fuel shutoff cable and replace the emergency fuel shutoff cable as provided in paragraph (a)(1) of this AD.

Note 2: Information on inspection of the emergency fuel shutoff cable and replacement of cables may be found in R-R Service Bulletin (SB) No. Tay 76-1434, Revision 1, dated August 28, 1998, and Maintenance Manual 76-23-00.

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

Ferry Flights

(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 January 18, 2000.

Issued in Burlington, Massachusetts, on November 9, 1999.

David A. Downey,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-29825 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 9, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1999,

through September 30, 2000, the fees in this notice will become effective October 1, 1999. The fees will apply to fiscal year 2000 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Fannie Kingsberry, Division of Financial Service, Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (202) 219-2885.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, room 2-A, Washington, DC 20426.

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CIPS, set your communications software to 19200, 134400, 12000, 96000, 7200, 4800, 2400 or 1200 bps, full-duplex, no parity, 8 data bits, and 1 stop bit. User assistance is available at 202-208-2474 or by E-mail to cipmaster@ferc.fed.us. This document is also available through the Commission's Records and Information Management System (RIMS) an electronic storage and retrieval system of documents submitted to and issued by Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contract, RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, D.C. 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1999, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a-825r; 42 U.S.C. 7101-7352.

2. In part 11, Appendix A is revised to read as follows:

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000

State	County	Rate per acre
ALABAMA	ALL COUNTIES	\$24.85
ARKANSAS	ALL COUNTIES	18.65
ARIZONA	APACHE	6.20
	COCHISE	
	GILA	
	GRAHAM	
	LA PAZ	
	MOHAVE	
	NAVAJO	
	PIMA	
	YAVAPAI	
	YUMA	
	COCONINO NORTH OF COLORADO RIVER	
	COCONINO SOUTH OF COLORADO RIVER	24.85
	GREENLEE	
	MARICOPA	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
CALIFORNIA	PINAL	12.43
	SANTA CRUZ	
	IMPERIAL	
	INYO	
	LASSEN	18.65
	MODOC	
	RIVERSIDE	
	SAN BERNARDINO	
	SISKIYOU	31.07
	ALAMEDA	
	ALPINE	37.30
	AMADOR	
	BUTTE	
	CALAVERAS	
	COLUSA	
	CONTRA COSTA	
	DEL NORTE	
	EL DORADO	
	FRESNO	
	GLENN	
	HUMBOLDT	
	KERN	
	KINGS	
	LAKE	
	MADERA	
	MARIPOSA	
	MENDOCINO	
	MERCED	
	MONO	
	NAPA	
	NEVADA	
	PLACER	
	PLUMAS	
	SACRAMENTO	
	SAN BENITO	
	SAN JOAQUIN	
	SANTA CLARA	
	SHASTA	
	SIERRA	
	SOLANO	
	SONOMA	
	STANISLAUS	
	SUTTER	
	TEHAMA	
	TRINITY	
	TULARE	
	TUOLUMNE	
	YOLO	
	YUBA	
	LOS ANGELES	6.20
	MARIN	
	MONTEREY	
	ORANGE	
	SAN DIEGO	
	SAN FRANCISCO	
	SAN LUIS OBISPO	
	SAN MATEO	
	SANTA BARBARA	
	SANTA CRUZ	
COLORADO	VENTURA	
	ADAMS	6.20
	ARAPAHOE	
	BENT	
	CHEYENNE	
	CROWLEY	
	ELBERT	
	EL PASO	
	HUERFANO	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	KIOWA KIT CARSON LINCOLN LOGAN MOFFAT MONTEZUMA MORGAN PUEBLO SEDGWICK WASHINGTON	
	WELD YUMA BACA	12.43
	DOLORES GARFIELD LAS ANIMAS MESA MONTROSE	12.43
	OTERO PROWERS RIO BLANCO ROUTT SAN MIGUEL ALAMOSA	24.85
	ARCHULETA BOULDER CHAFFEE CLEAR CREEK CONEJOS COSTILLA CUSTER DENVER DELTA DOUGLAS EAGLE FREMONT GILPIN GRAND GUNNISON HINSDALE JACKSON JEFFERSON LAKE LA PLATA LARIMER MINERAL OURAY PARK PITKIN RIO GRANDE SAGUACHE SAN JUAN SUMMIT TELLER	
CONNECTICUT	ALL COUNTIES	6.20
FLORIDA	BAKER	37.30
	BAY BRADFORD CALHOUN CLAY COLUMBIA DIXIE DUVAL ESCAMBIA FRANKLIN GADSDEN GILCHRIST GULF HAMILTON	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	HOLMES	
	JACKSON	
	JEFFERSON	
	LAFAYETTE	
	LEON	
	LIBERTY	
	MADISON	
	NASSAU	
	OKALOOSA	
	SANTA ROSA	
	SUWANNEE	
	TAYLOR	
	UNION	
	WAKULLA	
	WALTON	
	WASHINGTON	
	ALL OTHER COUNTIES	62.14
GEORGIA	ALL COUNTIES	37.30
IDAHO	CASSIA	6.20
	GOODING	
	JEROME	
	LINCOLN	
	MINIDOKA	
	ONEIDA	
	OWYHEE	
	POWER	
	TWIN FALLS	
	ADA	18.65
	ADAMS	
	BANNOCK	
	BEAR LAKE	
	BENEWAH	
	BINGHAM	
	BLAINE	
	BOISE	
	BONNER	
	BONNEVILLE	
	BOUNDARY	
	BUTTE	
	CAMAS	
	CANYON	
	CARIBOU	
	CLARK	
	CLEARWATER	
	CUSTER	
	ELMORE	
	FRANKLIN	
	FREMONT	
	GEM	
	IDAHO	
	JEFFERSON	
	KOOTENAI	
	LATAH	
	LEMHI	
	LEWIS	
	MADISON	
	NEZ PERCE	
	PAYETTE	18.65
	SHOSHONE	
	TETON	
	VALLEY	
	WASHINGTON	
ILLINOIS	ALL COUNTIES	18.65
INDIANA	ALL COUNTIES	31.07
KANSAS	MORTON	12.43
	ALL OTHER COUNTIES	6.20
KENTUCKY	ALL COUNTIES	18.65
LOUISIANA	ALL COUNTIES	37.30
MAINE	ALL COUNTIES	18.65
MICHIGAN	ALGER	18.65

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	BARAGA	
	CHIPPEWA	
	DICKINSON	
	DELTA	
	GOGEBIC	
	HOUGHTON	18.65
	IRON	
	KEWEENAW	
	LUCE	
	MACKINAC	
	MARQUETTE	
	MENOMINEE	
	ONTONAGON	
	SCHOOLCRAFT	
	ALL OTHER COUNTIES	24.85
MINNESOTA	ALL COUNTIES	18.65
MISSISSIPPI	ALL COUNTIES	24.85
MISSOURI	ALL COUNTIES	18.65
MONTANA	BIG HORN	6.20
	BLAINE	
	CARTER	
	CASCADE	
	CHOUTEAU	
	CUSTER	
	DANIELS	
	McCONE	
	MEAGHER	
	DAWSON	
	FALLON	
	FERGUS	
	GARFIELD	
	GLACIER	6.20
	GOLDEN VALLEY	
	HILL	
	JUDITH BASIN	
	LIBERTY	
	MUSSELSHELL	
	PETROLEUM	
	PHILLIPS	
	PONDERA	
	POWDER RIVER	
	PRAIRIE	
	RICHLAND	
	ROOSEVELT	
	ROSEBUD	
	SHERIDAN	
	TETON	
	TOOLE	
	TREASURE	
	VALLEY	
	WHEATLAND	
	WIBAUX	
	YELLOWSTONE	
	BEAVERHEAD	18.65
	BROADWATER	
	CARBON	
	DEER LODGE	
	FLATHEAD	
	GALLATIN	
	GRANITE	
	JEFFERSON	
	LAKE	
	LEWIS & CLARK	
	LINCOLN	
	MADISON	
	MINERAL	
	MISSOULA	
	PARK	
	POWELL	
	RAVALLI	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	SANDERS	
	SILVER BOW	
	STILLWATER	18.65
	SWEET GRASS	
NEBRASKA	ALL COUNTIES	6.20
NEVADA	CHURCHILL	3.10
	CLARK	
	ELKO	
	ESMERALDA	
	EUREKA	
	HUMBOLDT	
	LANDER	
	LINCOLN	
	LYON	
	MINERAL	
	NYE	
	PERSHING	
	WASHOE	
	WHITE PINE	
	CARSON CITY	31.07
	DOUGLAS	
	STOREY	
NEW HAMPSHIRE	ALL COUNTIES	18.65
NEW MEXICO	CHAVES	6.20
	CURRY	
	DE BACA	
	DONA ANA	
	EDDY	
	GRANT	
	GUADALUPE	
	HARDING	6.20
	HIDALGO	
	LEA	
	LUNA	
	MCKINLEY	
	OTERO	
	QUAY	
	ROOSEVELT	
	SAN JUAN	
	SOCORRO	
	TORRANCE	
	RIO ARRIBA	12.43
	SANDOVAL	
	UNION	
	BERNALILLO	24.85
	CATRON	
	CIBOLA	
	COLFAX	
	LINCOLN	
	LOS ALAMOS	
	MORA	
	SAN MIGUEL	
	SANTA FE	
	SIERRA	
	TAOS	
	VALENCIA	
NEW YORK	ALL COUNTIES	24.85
NORTH CAROLINA	ALL COUNTIES	37.30
NORTH DAKOTA	ALL COUNTIES	6.20
OHIO	ALL COUNTIES	24.85
OKLAHOMA	ALL OTHER COUNTIES	6.20
	BEAVER	12.43
	CIMARRON	
	ROGER MILLS	
	TEXAS	
	LE FLORE	18.65
	MC CURTAIN	
OREGON	HARNEY	6.20
	LAKE	
	MALHEUR	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	BAKER	12.43
	CROOK	
	DESCHUTES	
	GILLIAM	
	GRANT	
	JEFFERSON	
	KLAMATH	
	MORROW	
	SHERMAN	
	UMATILLA	
	UNION	
	WALLOWA	
	WASCO	12.43
	WHEELER	
	COOS	18.65
	CURRY	
	DOUGLAS	
	JACKSON	
	JOSEPHINE	
	BENTON	24.65
	CLACKAMAS	
	CLATSOP	
	COLUMBIA	
	HOOD RIVER	
	LANE	
	LINCOLN	
	LINN	
	MARION	
	MULTNOMAH	
	POLK	
	TILLAMOCK	
	WASHINGTON	
	YAMHILL	
PENNSYLVANIA	ALL COUNTIES	24.85
PUERTO RICO	ALL	37.30
SOUTH DAKOTA	BUTTE	18.65
	CUSTER	
	FALL RIVER	
	LAWRENCE	
	MEAD	18.65
	PENNINGTON	
	ALL OTHER COUNTIES	6.20
SOUTH CAROLINA	ALL COUNTIES	37.30
TENNESSEE	ALL COUNTIES	24.85
TEXAS	CULBERSON	6.20
	EL PASO	
	HUDSPETH	
	ALL OTHER COUNTIES	37.30
UTAH	BEAVER	6.20
	BOX ELDER	
	CARBON	
	DUCHESNE	
	EMERY	
	GARFIELD	
	GRAND	
	IRON	
	JAUB	
	KANE	
	MILLARD	
	SAN JUAN	
	TOOELE	
	UINTAH	
	WAYNE	
	WASHINGTON	12.43
	CACHE	18.65
	DAGGETT	
	DAVIS	
	MORGAN	
	PIUTE	
	RICH	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
	SALT LAKE	
	SANPETE	
	SEVIER	
	SUMMIT	
	UTAH	
	WASATCH	
	WEBER	
VERMONT	ALL COUNTIES	24.85
VIRGINIA	ALL COUNTIES	24.85
WASHINGTON	ADAMS	12.43
	ASOTIN	
	BENTON	
	CHELAN	
	COLUMBIA	
	DOUGLAS	
	FRANKLIN	
	GARFIELD	
	GRANT	
	KITTITAS	
	KLICKITAT	
	LINCOLN	
	OKANAGAN	
	SPOKANE	
	WALLA WALLA	12.43
	WHITMAN	
	YAKIMA	
	FERRY	18.65
	PEND OREILLE	
	STEVENS	
	CLALLAM	24.85
	CLARK	
	COWLITZ	
	GRAYS HARBOR	
	ISLAND	
	JEFFERSON	
	KING	
	KITSAP	
	LEWIS	
	MASON	
	PACIFIC	
	PIERCE	
	SAN JUAN	
	SKAGIT	
	SKAMANIA	
	SNOHOMISH	
	THURSTON	
	WAHIAKUM	
	WHATCOM	
WEST VIRGINIA	ALL COUNTIES	24.85
WISCONSIN	ALL COUNTIES	18.65
WYOMING	ALBANY	6.20
	CAMPBELL	
	CARBON	
	CONVERSE	
	GOSHEN	
	HOT SPRINGS	
	JOHNSON	
	LARAMIE	
	LINCOLN	
	NATRONA	
	NIOBRARA	
	PLATTE	
	SHERIDAN	
	SWEETWATER	
	FREMONT	
	SUBLETTE	
	UINTA	
	WASHAKIE	
	BIG HORN	18.65
	CROOK	

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2000—Continued

State	County	Rate per acre
ALL OTHER ZONES	PARK TETON WESTON	6.41

[FR Doc. 99–29834 Filed 11–16–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 385**

[Docket No. RM99–9–000; Order No. 610]

Designation of Corporate Officials or Other Persons To Receive Service

Issued: November 10, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adding a new paragraph (i) to § 385.2010 (Rule 2010) of its regulations to require that all entities regulated by the Commission designate a corporate official or other person to receive service of certain types of pleadings where a person to receive service has not otherwise been designated under the Commission's regulations. Each regulated entity would be required to file with the Commission: the name of the corporate official or other person that is to receive service; the title of the corporate official or person, if applicable; the address of the official, including, where applicable, department, room number, or mail routing code; the telephone number of the corporate official or person; the facsimile number of the corporate official or person, if applicable; and the electronic mail address of the corporate official or person, if applicable. Each regulated entity would have a continuing obligation to file updated information with the Commission.

The Commission will maintain a list of designated officials in the Office of the Secretary of the Commission and to make the list available to the public in hard copy and through the Commission's web site.

DATES: The regulations are effective December 17, 1999.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1275.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

The Federal Energy Regulatory Commission (Commission) is revising its regulations to require that all entities regulated by the Commission must designate a corporate official or other person to receive service.

I. Background

On July 28, 1999, as a result of a suggestion made by the Interstate Natural Gas Association of America (INGAA) on rehearing of Order No. 602,¹ the Commission issued a notice of proposed rulemaking (NPR) proposing to add a new paragraph (i) to § 385.2010 (Rule 2010) to require that all entities regulated by the Commission designate at least one, but not more than two, corporate officials or other persons to receive service of certain types of pleadings where a person to receive service has not otherwise been designated under the Commission's regulations.²

The NPR stated that the Commission would maintain a list of designated officials in the Office of the Secretary of the Commission and make the list available to the public in hard copy and through the Commission's web site. However, the Commission invited comments on what other ways the names of designated officials could be made available to interested persons. The Commission asked whether regulated entities should be required to post the names of designated corporate officials on a company's EBB or web site. The Commission also asked whether a company should be required to periodically mail the names of the designated corporate officials to its customers or other persons otherwise affected by its operations. The Commission was also interested in receiving comments on what level of burden, if any, will a distribution requirement place on a regulated entity.

¹ Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), III FERC Stats. & Regs. ¶ 31,071 (1999), *order on reh'g and clarification*, Order No. 602–A, 64 FR 43600 (Aug. 11, 1999), III FERC Stats. & Regs. ¶ 31,076 (1999), *order on reh'g*, Order No. 602–B, 88 FERC ¶ 61,294 (1999).

² Designation of Corporate Officials or Other Persons to Receive Service, 64 FR 42307 (Aug. 4, 1999), IV FERC Stats. & Regs. ¶ 32,543 (July 28, 1999).

In order to implement the new service requirements, the Commission proposed to add a new paragraph (i) to § 385.2010 (Rule 2010).³ In the NOPR, the Commission stated that placement of the requirements in the Rules of Practice and Procedure should provide sufficient notice of the obligations of both regulated entities and parties who desire to serve pleadings on regulated entities for purposes of initiating a proceeding before the Commission. However, the Commission requested comments on whether it would be appropriate to place the new requirements in that section of the regulations or whether there may be other places in the regulations which would be more appropriate.

Comments on the NOPR were filed by CNG Transmission Corporation (CNG), INGAA, Williston Basin Interstate Pipeline Company (Williston), Chevron Pipe Line Company (Chevron), and Duke Energy Corporation (Duke).

II. Discussion

All of the commenters support the NOPR and the proposed regulations as drafted. The final rule adopts the regulations as proposed in the NOPR subject to certain clarifications discussed below. Each regulated entity is required to file with the Commission:

(1) The name of the corporate official or other person that is to receive service; (2) the title of the corporate official or person, if applicable; (3) the address of the official, including, where applicable, department, room number, or mail routing code; (4) the telephone number of the corporate official or person; (5) the facsimile number of the corporate official or person, if applicable; and (6) the electronic mail address of the corporate official or person, if applicable. Each regulated entity has a continuing obligation to file updated information with the Commission.

The Office of the Secretary of the Commission will maintain a list of designated officials and make the list available to the public in hard copy and through the Commission's web site. For ease of use, the Commission proposed that the list be divided by industry. This list will be separate and apart from the official service lists that the Secretary maintains for each proceeding pursuant to § 385.2010(c) of the Commission's regulations (Rule 2010). Thus, in situations where an official service list is maintained for an existing proceeding, a party would be required to serve the person designated by the regulated entity for that proceeding. Where there is no service list because,

for example, the proceeding is initiated by the Commission or another entity, a party will be required to serve the person designated pursuant to proposed § 385.2010(i).

The commenters do not support duplication of service information through other methods of distribution such as periodic mailings or separate postings on company EBBs or web sites. The commenters submit that information will be most effective if the official data are maintained by the Commission on its web site and in hard copy. The commenters assert that maintaining multiple sources of information could create the possibility of inconsistent data leading to disputes about proper service. The commenters argue that such confusion would undermine the NOPR's purpose of the efficient service and receipt of pleadings.

The Commission agrees with the commenters that the service information required by the rule should be officially maintained only by the Commission in order to avoid confusion. Nevertheless, the Commission encourages regulated entities to maintain service information on their EBBs or web sites as a convenience to their customers.

Chevron requests clarification with respect to protests to oil pipeline tariff filings. Chevron states that the current Commission regulations allow a pipeline to designate, in the transmittal letter accompanying the tariff filing, the person to receive any protest to the tariff. Chevron interprets the Commission's statement in the NOPR that such a designation would continue to govern service of protests, rather than any general designation as envisioned in the NOPR. The Commission grants Chevron's request for clarification. As the Commission stated in the NOPR, proposed § 385.2010(i) was only designed to cover situations where a person to receive service has not otherwise been designated under the Commission's regulations. The situation described by Chevron is covered by two regulations. Under § 385.203 of the Commission's regulations, the initial pleading or rate filing of a person must contain, among other things, the name, address and telephone number of at least one person on whom service is to be made. In addition, § 343.3(a) states that:

Any protest pursuant to section 15(7) of the Interstate Commerce Act must be filed not later than 15 days after the filing of a tariff publication. If the carrier submits a separate letter with the filing, providing a telefax number and contact person, and requesting all protests to be telefaxed to the carrier by a protestant, any protest must be so telefaxed

to the pipeline at the time the protest is filed with the Commission.

Duke requests that the Commission clarify the proposed rule in two respects. First, Duke requests that the Commission make clear in the final rule that, for entities such as Duke that have numerous corporate affiliates and divisions conducting activities subject to the Commission's jurisdiction under the Federal Power Act, Natural Gas Act and other statutory provisions, each such corporate affiliate and division is to designate persons to receive service under the new regulation. Second, Duke states that in some cases individual companies conduct activities that are subject to Commission regulation under different statutory schemes. For example, Duke Power, which is a division of Duke Energy Corporation, engages in activities regulated by the Commission under Part II of the Federal Power Act and also is a hydroelectric licensee regulated by the Commission pursuant to Part I of the Federal Power Act. Duke believes that it makes sense for such companies to designate one person to receive service of documents pertaining to Part II matters and a different person to receive service of documents pertaining to Part I matters, and requests that the Commission so clarify in its final rule. Duke submits that the clarification requested will ensure that the company personnel responsible for a particular jurisdictional activity will receive service of the filed documents pertaining to that activity and thus will further the goal of the Commission's NOPR.

The Commission clarifies that companies subject to this regulation may provide the names of officials or persons to receive service for each jurisdictional activity in which the regulated entity engages. Thus, in Duke's case, for example, it can provide one contact person for electric matters and another person for hydroelectric matters. This should ensure that the appropriate personnel receive documents in a timely manner.

III. Information Collection Statement

The Commission finds that the information required to be provided by regulated entities is so minimal that it does not impose any measurable additional burden on regulated entities. Therefore, no public reporting burden estimates were made.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

³ 18 CFR 385.2010.

significant adverse impact on the human environment.⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁵ The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.⁶ Therefore, an environmental assessment is unnecessary and has not been prepared for this final rule.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have an impact on a substantial number of small entities.⁷ The Commission is not required to make such analyses if a rule would not have such an effect.⁸

In the Commission's view, this rule would not have a significant economic impact on small entities. The companies that are regulated by the Commission, who would have to designate a corporate official to receive service, generally do not meet the RFA's definition of a small entity.⁹ Further, it would be easier for any small entity to serve a pleading on a regulate company if that company had a specific official designated to receive service. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Effective Date

The regulations are effective December 17, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress certain final rules prior to their effective dates.¹⁰ Since this final rule concerns agency practice and procedure, a determination as to whether it is a major or non-major rule is not necessary and Congressional notification is not required.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,
Secretary.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 385.2010, new paragraph (i) is added to read as follows:

§ 385.2010 Service (Rule 2010)

* * * * *

(i) *Designation of Corporate Officials to Receive Service.* (1) Any entity subject to regulation by the Commission must designate at least one, but not more than two, corporate officials or other persons to receive service of complaints, petitions for declaratory order, show cause orders, data requests, investigatory letters or other documents where a person to receive service has not otherwise been designated under Commission regulations. Each entity must file with the Secretary of the Commission:

(i) The name of the corporate official or person that is to receive service;

(ii) The title of the corporate official or person, if applicable;

(iii) The address of the corporate official or person, including, where applicable, department, room number, or mail routing code;

(iv) The telephone number of the corporate official or person;

(v) The facsimile number of the corporate official or person, if applicable; and

(vi) The electronic mail address of the corporate official or person, if applicable.

(2) Each regulated entity has a continuing obligation to file with the Secretary of the Commission updated information concerning the corporate official or person designated to receive service.

(3) A list of corporate officials and persons designated to receive service pursuant to this paragraph will be maintained by the Secretary of the Commission and will be made available

to the public in hard copy upon request and through the Commission's web site at <http://www.ferc.fed.us>.

(4) Any person who wishes to serve a complaint or petition for declaratory order on any entity regulated by the Commission must serve the corporate official or person designated pursuant to this paragraph (i).

(5) The Commission will serve show cause orders, data requests, investigatory letters or other documents on the corporate official or person designated under this paragraph (i).

[FR Doc. 99–29979 Filed 11–16–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C–0348]

Listing of Color Additives for Coloring Bone Cement; FD&C Blue No. 2–Aluminum Lake on Alumina; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of October 5, 1999 (64 FR 48288), for the final rule that appeared in the **Federal Register** of September 3, 1999, and that amended the color additive regulations to provide for the safe use of FD&C Blue No. 2–Aluminum Lake on alumina to color bone cement. The agency also transferred the listing for the use of FD&C Blue No. 2 in sutures to reflect that sutures in which this color additive is used are devices, not drugs.

DATES: Effective date confirmed: October 5, 1999.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1999 (64 FR 48288), FDA amended the color additive regulations to provide for the safe use of FD&C Blue No. 2–Aluminum Lake on alumina to color bone cement. To reflect that sutures in which this color additive is used are devices, not drugs, the agency also transferred the listing for the use of FD&C Blue No. 2

⁴ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

⁵ 18 CFR 380.4.

⁶ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

⁷ 5 U.S.C. 601–612.

⁸ 5 U.S.C. 605(b).

⁹ 5 U.S.C. 601(3).

¹⁰ 5 U.S.C. 801.

in sutures from § 74.1102 *FD&C Blue No. 2* (21 CFR 74.1102) under subpart B—Drugs to new § 74.3102 *FD&C Blue No. 2* (21 CFR 74.3102) under subpart D—Medical Devices and made nonsubstantive amendments to § 74.1102.

FDA gave interested persons until October 4, 1999, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of September 3, 1999, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the September 3, 1999, final rule. Accordingly, the amendments issued thereby became effective October 5, 1999.

Dated: November 9, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99-29917 Filed 11-16-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F-0492]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of *N,N*-bis (2-hydroxyethyl) alkyl (C_{13} - C_{15}) amine as an antistatic agent in polypropylene homo- and copolymers intended for contact with food. This action is in response to a petition filed by ICI PLC.

DATES: This regulation is effective November 17, 1999; written objections and requests for a hearing by December 17, 1999.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 7, 1998 (63 FR 36699), FDA announced that a food additive petition (FAP 8B4602) had been filed by ICI PLC, c/o ICI Surfactants, P.O. Box 8340, Wilmington, DE 19803-8340. The petition proposed to amend the food additive regulations in § 178.3130 *Antistatic and/or antifogging agents in food-packaging materials* (21 CFR 178.3130) to provide for the expanded safe use of *N,N*-bis (2-hydroxyethyl) alkyl (C_{13} - C_{15}) amine as an antistatic agent in polypropylene homo- and copolymers intended for contact with food.

In its evaluation of the safety of this food additive, FDA has reviewed the safety of the additive itself, the starting materials used, and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of impurities, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to

the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive. *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, *N,N*-bis (2-hydroxyethyl) alkyl (C_{13} - C_{15}) amine, will result in exposure to no greater than 23 parts per billion (ppb) of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake of 69 micrograms per person per day ($\mu\text{g/p/d}$) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of exposure to the impurities from the petitioned use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as an antistatic agent in polypropylene homo- and copolymers intended for contact with food to be no more than 0.09 ppb in the daily diet (3 kg), or 0.28 $\mu\text{g/p/d}$ (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on 1,4-dioxane

demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.28 µg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 9.8×10^{-9} , or 9.8 in one billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as an antistatic agent in polypropylene homo- and copolymers intended for contact with food to be no more than 2 parts per trillion in the daily diet (3 kg) or 6 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide, conducted for the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that exposure to ethylene oxide will not exceed 6 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.1×10^{-8} , or 1.1 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency

concludes that there is reasonable certainty that no harm from the exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,4-dioxane and ethylene oxide present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime human risk from exposure to 1,4-dioxane and ethylene oxide, are very low, 9.8 in a billion and 1.1 in 100 million, respectively.

III. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive in food-contact articles is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3130 should be amended as set forth below in this document.

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

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4602 (63 FR 36699). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget

under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 17, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

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

1. Memorandum from the Chemistry Review Team (HFS-246) to the Division of Petition Control (HFS-215) entitled "FAP 8B4602 (MATS #976 M2.1): ICI Surfactants; Submission of 4/7/99. *N,N*-Bis(2-Hydroxyethyl) Alkyl (C_{13} - C_{15}) Amine as an Antistatic Agent in Polypropylene Used in Contact With Fatty Foods Hot Filled or Pasteurized Above 66 °C," dated May 28, 1999.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24-33, 1985.
3. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.
4. Memorandum from the Division of Petition Control (HFS-215) to Executive Secretary, Quantitative Risk Assessment Committee (HFS-308) entitled "Estimate of the Upper bound Lifetime Risk From Residual 1,4-Dioxane (DO) and Ethylene

Oxide (EO) in *N,N*-bis (2-Hydroxyethyl) Alkyl (C₁₃-C₁₅) Amine Intended for Use as an Antistatic Agent in Polypropylene Homo- and Copolymers Contacting Food: FAP 8B4602," dated June 8, 1999.

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: 924-933, 1982.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

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

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

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

2. Section 178.3130 is amended in the table in paragraph (b) by revising the entry for *N,N*-bis (2-hydroxyethyl) alkyl (C₁₃-C₁₅) amine under the heading "Limitations" to read as follows:

§ 178.3130 Antistatic and/or antifogging agents in food-packaging materials.

* * * * *

(b) * * *

List of substances	Limitations
* * *	* * *
<i>N,N</i> -bis(2-hydroxyethyl)alkyl (C ₁₃ -C ₁₅) amine (CAS Reg. No. 70955-14-5).	For use only: 1. As an antistatic agent at levels not to exceed 0.2 percent by weight in molded or extruded high-density polyethylene (having a density ≥0.95 g/cm ³ and polypropylene containers that contact food only of the types identified in § 176.170(c) of this chapter, Table 1, under types I, VI-B, VII-B, and VIII, under the conditions of use E through G described in Table 2 of § 176.170(c) of this chapter, provided such foods have a pH above 5.0. 2. As an antistatic agent at levels not to exceed 0.1 percent by weight in molded or extruded polypropylene homopolymers and copolymers that contact food only of the types identified in § 176.170(c) of this chapter, Table 1, under Types II, III, IV, V, VII-A, and IX, under the conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: November 4, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-29915 Filed 11-16-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Customs Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Customs Service, Treasury.

ACTION: Final Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule exempting the system of records entitled the Seized Asset and Case Tracking System (SEACATS) Treasury/Customs .213 from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT:

Ellen Mulvenna, Office of Information and Technology, U.S. Customs Service at (202) 927-0800.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting the system of records from certain provisions of the Privacy Act of 1974, as amended, on January 8, 1999, at 64 FR 1152. The United States Customs Service published the system notice in its entirety on December 1, 1998, at 63 FR 66232.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt any system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including information compiled as investigatory material about individuals to identify leads to possible criminal investigations.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The Seized Asset and Case Tracking System (SEACATS)Treasury/CS .213,

contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, no later than February 8, 1999. No comments pertaining to the proposed rule were received by the Office of Regulations and Rulings. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled Seized Asset and Case Tracking System (SEACATS)—Treasury/CS .213, is exempt from certain provisions of the Privacy Act of 1974, as amended. The provisions of the Privacy Act, from which exemption is claimed pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) are as follows: 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4), (G), (H) and (I), (e)(5) and (8), (f) and (g).

As required by Executive Order 12866, it has been determined that the final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic

impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that the final rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

Lists of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order in paragraphs a. 1 and b. 1 under the heading UNITED STATES CUSTOMS SERVICE:

* * * * *

a. * * *

1. * * *

* * * * *

00.213—Seized Asset and Case Tracking System (SEACATS)

* * * * *

b. * * *

1. * * *

* * * * *

00.213—Seized Asset and Case Tracking System (SEACATS).

* * * * *

Dated: October 8, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99–30039 Filed 11–16–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act; Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a final rule exempting an Internal Revenue Service system of records entitled the “Audit Trail Lead Analysis System—Treasury/

IRS 34.020,” from certain provisions of the Privacy Act. The exemption is intended to comply with the legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT:

Margaret Irving, Privacy Advocate, Internal Revenue Service, National Office at (202) 283–7750.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as amended on December 23, 1998, at 63 FR 71050. The proposed rule also removed the entry “Integrated Data Retrieval System (IDRS) Security Files—34.018,” from paragraph (a)(1) of 31 CFR 1.36 under the heading “The Internal Revenue Service.” The Internal Revenue Service (IRS) published the system notice in its entirety on November 18, 1998, at 63 FR 64141.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within an agency from certain provisions of the Privacy Act of 1974, as amended, if the system is investigatory material compiled for law enforcement purposes. The Audit Trail Lead Analysis System—Treasury/IRS 34.020 contains investigatory material compiled for law enforcement purposes.

The proposed rule requested that public comments be sent to the Governmental Liaison and Disclosure Office, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224, no later than January 22, 1999. The Governmental Liaison and Disclosure Office received no comments pertaining to the proposed rule. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled, “Audit Trail Lead Analysis System—Treasury/IRS 34.020,” is exempt from certain provisions of the Privacy Act. The provisions of the Privacy Act from which exemption is claimed pursuant to 5 U.S.C. 552a(k)(2) are as follows: 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H), (I) and (f).

As required by Executive Order 12866, it has been determined that the final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a

substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that the final rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36, under the heading “The Internal Revenue Service,” is amended by removing in paragraph (a)(1) the words “Integrated Data Retrieval System (IDRS) Security Files 34.018,” and in paragraph (b)(1) by adding the following entry in numerical order to read as follows:

* * * * *

(b) * * * (1) * * *

Name of system				No.
* * *	* * *	* * *	* * *	*
Audit Trail Lead Analysis System				34.020
* * *	* * *	* * *	* * *	*

* * * * *

Dated: October 8, 1999.

Sheila Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99–30038 Filed 11–16–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–99–185]

RIN 2115–AA97

Safety Zones: All Coast Guard and Navy Vessels Involved in Evidence Transport, Narragansett Bay, Davisville Depot, Davisville, Rhode Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone

within a five hundred (500) yard radius of the U.S. Coast Guard and U.S. Navy vessels carrying aircraft wreckage from Egypt Air Flight 990 as they transit through Narragansett Bay, into Davisville Depot, Davisville, Rhode Island. The Coast Guard is establishing a second safety zone in all waters two thousand (2000) yards around the pier facility at Davisville Depot, Davisville, Rhode Island during off loading of aircraft wreckage.

These safety zones are needed to protect personnel aboard the Coast Guard and Navy vessels from passing and spectator vessels that may hazard operations. Entry into this safety zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

DATES: This rule is effective from 2 p.m., Monday, November 1, 1999, until 12 a.m., Tuesday December 1, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435-2300.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. This temporary final rule establishes a safety zone around all Coast Guard and Navy vessels as they deliver the wreckage of the downed aircraft to Davisville Depot and establishes a safety zone around Pier 2 at Davisville Depot. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close portions of Narragansett Bay and its approaches to protect personnel involved in transfer operations from passing and spectator vessels that may hazard those operations.

Background and Purpose

This safety zone is needed to protect personnel transporting evidence from passing and spectator vessels that may hazard operations. Entry into these safety zones is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves areas of Narragansett Bay. Although this regulation prevents traffic from transiting in the transport route, the effect of this regulation will not be significant as all vessel traffic may safely pass around these safety zones and extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104-121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call CWO John W. Winter, telephone (401) 435-2300.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The

Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

We have analyzed this temporary interim rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal governments or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary interim rule would not impose an unfunded mandate.

Environment

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

Other Executive Orders on the Regulatory Process

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

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

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

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–185 to read as follows:

§ 165.T01–185 Safety Zone: Evidence Transport, Narragansett Bay, Rhode Island.

(a) *Location.* The following areas have been declared safety zones:

(1) All waters within five hundred (500) yard radius of all Coast Guard and Navy vessels carrying aircraft wreckage as they transit Narragansett Bay and its approaches from the vessel's entry into U.S. territorial waters at 12 nautical miles until the vessels are moored at the piers at Davisville Depot, Davisville, Rhode Island.

(2) All waters within 2000 yards of Pier 2 at Davisville Depot, Davisville, Rhode Island while Coast Guard and Navy vessels are preparing to offload or offloading aircraft wreckage.

(b) *Effective date.* This rule is effective from 2 p.m. on Monday, November 1, 1999, until 12 a.m., on Tuesday, December 1, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or movement within these zones is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: November 1, 1999.

Peter A. Popko,

Captain, U. S. Coast Guard, Captain of the Port.

[FR Doc. 99–30000 Filed 11–16–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300938; FRL–6388–5]

RIN 2070–AB78

Clopyralid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of 3,6-dichloro-2-pyridinecarboxylic acid (clopyralid) in or on flax seed. This action is in connection with a crisis exemption issued under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on flax. This regulation establishes a maximum permissible level for residues of clopyralid in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

DATES: This regulation is effective November 17, 1999. Objections and requests for hearings, identified by docket control number OPP–300938, must be received by EPA on or before January 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the “SUPPLEMENTARY INFORMATION.” To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300938 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production

Cat-egories	NAICS	Examples of Potentially Affected Entities
	112 311 32532	Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under “FOR FURTHER INFORMATION CONTACT.”

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select “Laws and Regulations” and then look up the entry for this document under the “**Federal Register**–Environmental Documents.” You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300938. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday

through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid, in or on flax seed at 0.5 part per million (ppm). This tolerance will expire and is revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for clopyralid on flax and FFDCA Tolerances

On June 25, 1999, the North Dakota Department of Agriculture declared a crisis exemption for use of clopyralid on flax. There are no adequate alternatives available to control Canada thistle and perennial sowthistle. The populations of these two pests have been increasing due to recent changes in weather. Under high weed pressure, yield in an infested field could easily be reduced by 25%. Beyond yield loss from weed competition, additional impacts from an infestation of Canada thistle could include total loss of the crop because State law may require destruction of thistle-infested areas in flax fields to prevent spread of these weeds. After having reviewed the related specific exemption, EPA concurs that emergency conditions existed for control of Canada thistle and perennial sowthistle in North Dakota.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of clopyralid in or on flax seed. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on flax seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether clopyralid meets EPA's registration requirements for use on flax or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not

believe that this tolerance serves as a basis for registration of clopyralid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than North Dakota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for clopyralid, contact the Agency's Registration Division at the address provided under "FOR FURTHER INFORMATION CONTACT."

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of clopyralid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of 3,6-dichloro-2-pyridinecarboxylic acid on flax seed at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clopyralid are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* For acute dietary risk assessment, EPA determined that no appropriate endpoint attributable to a single dose (exposure) was identified in oral toxicity studies. Therefore, an acute RfD was not established for either females 13+ years or the general population, including infants and children.

2. *Short-term and intermediate-term toxicity.* EPA determined that endpoints for both dermal and inhalation risk assessments for short, intermediate, and chronic occupational and residential exposure scenarios were not required due to the low toxicity in rats by the dermal and inhalation routes.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for clopyralid at 0.5 milligrams/kilograms/day (mg/kg/day). This RfD is based on a 2-year feeding study in rats. The no observable adverse effect level (NOAEL) of 50 mg/kg/day and an uncertainty factor of 100 is based on decreased body weight gain at the lowest observable adverse effect level (LOAEL) of 150 mg/kg/day.

4. *Carcinogenicity.* Clopyralid has not been classified by EPA, but there is no evidence of tumorigenic potential in Sprague Dawley rats up to 1,500 mg/kg/day for 2-years and CD-1 mice up to 2,000 mg/kg/day for 18 months.

C. Exposures and Risks

1. From food and feed uses.

Tolerances have been established (40 CFR 180.431) for residues of 3,6-dichloro-2-pyridinecarboxylic acid, in or on a variety of raw agricultural commodities, including meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from clopyralid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. For acute dietary risk assessment, EPA determined that no appropriate endpoint attributable to a single dose (exposure) was identified in oral

toxicity studies. Therefore, an acute RfD was not established for either females 13+ years or the general population, including infants and children. An acute dietary risk assessment is therefore not required.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% crop treated is assumed for all crops and residues will be at the level of the tolerance. The existing clopyralid tolerances (published and pending) result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the chronic RfD. As the 10x safety factor was removed, the chronic RfD is equal to the PAD (population-adjusted dose). As a result, the exposure given as a percentage of the total allowable exposure is reported as %PAD.

Population Subgroup	Exposure (mg/kg/day)	Percent Reference Dose ¹ (% Chronic PAD/RfD)
U.S. Population (total).	0.009030	1.8%
All Infants (<1 year old).	0.008191	1.6%
Nursing Infants (<1 year old).	0.003915	0.8%
Non-Nursing Infants (<1 year old).	0.009991	2.0%
Children (1–6 years old).	0.020987	4.2%
Children (7–12 years old).	0.014009	2.8%
Non-Hispanic Whites	0.009121	1.8%
Non-Hispanic/non-white/non-black.	0.009199	1.8%
Males 13–19 years ..	0.009860	2.0%

¹ Percentage reference dose (% Chronic PAD) = Exposure x 100% (as RfD=PAD in this case)/Chronic PAD

The subgroups listed above are: (1) The U.S. Population (total); (2) those for infants and children; and, (3) the other subgroups (except regions and seasons) for which the percentage of the chronic PAD occupied is greater than that occupied by the subgroup U.S. Population (total).

2. *From drinking water.* Clopyralid is persistent and mobile. There is no established Maximum Contaminant Level for residues of clopyralid in drinking water. No health advisory levels for clopyralid in drinking water have been established. Estimates for the concentration of clopyralid in surface water are based on GENEEC (Generic Estimated Environmental Concentration) modeling and in ground water on SCI-GROW modeling.

i. *Acute exposure and risk.* EPA determined that no appropriate endpoint attributable to a single dose (exposure) was identified in oral toxicity studies. Therefore, an acute RfD was not established for either females 13+ years or the general population, including infants and children. An acute risk assessment is therefore not required.

ii. *Chronic exposure and risk.* The highest EEC for clopyralid in surface water (27 µg/L) is from the non-cropland uses of clopyralid. The EEC for ground water is 9.7 µg/L which also results from non-cropland uses. For purposes of risk assessment, the maximum EEC for clopyralid in drinking water (27 µg/L) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following table.

Drinking Water Levels of Comparison for Chronic Exposure¹

Population Category ²	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure ³ (mg/kg/day)	DWLOC ^{4,5,6} (µg/L)
U.S. Population (total)	0.5	0.009030	0.4910	17,000
Females (13+ years, nursing)	0.5	0.008776	0.4912	15,000
Children 1-6 years	0.5	0.020987	0.4790	4,800

¹ Values are expressed to 2 significant figures.

² Within each of these categories, the subgroup with the highest food exposure was selected.

³ Maximum Water Exposure (Chronic) (mg/kg/day) = Chronic RfD (mg/kg/day) - Food Exposure (mg/kg/day).

⁴ DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10⁻³ mg/µg) * water consumed daily (L/day)].

⁵ EPA Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.

⁶ EPA Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

The estimated maximum concentrations of clopyralid in surface water and ground water are less than EPA's levels of comparison for

clopyralid in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed and

the fact that GENEEC can substantially overestimate (by up to 3x) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that

residues of clopyralid in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

3. From non-dietary exposure.

Clopyralid is currently not registered for use on residential non-food sites.

4. Cumulative exposure to substances with a common mechanism of toxicity.

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether clopyralid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clopyralid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clopyralid has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* EPA determined that no appropriate endpoint attributable to a single dose (exposure) was identified in oral toxicity studies. Therefore, an acute RfD was not established for either females 13+ years or the general population, including infants and children. An acute risk assessment is therefore not required.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clopyralid from food will utilize 1.8% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Despite the potential for exposure to clopyralid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. EPA determined that endpoints for both dermal and inhalation risk assessments for short, intermediate, and chronic occupational and residential exposure scenarios were not required because of the low toxicity in rats by the dermal and inhalation routes.

4. *Aggregate cancer risk for U.S. population.* Clopyralid has not been classified by EPA, but there is no evidence of tumorigenic potential in Sprague Dawley rats up to 1,500 mg/kg/day for 2-years and CD-1 mice up to 2,000 mg/kg/day for 18 months. Therefore, for the purposes of this action only, a cancer risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to clopyralid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of clopyralid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using

the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOAEL of 75 mg/kg/day is based on decreased body weight, decreased food consumption, and one death at the LOAEL of 250 mg/kg/day. The developmental (fetal) NOAEL is >250 mg/kg/day highest dose tested (HDT). In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL is >250 mg/kg/day (HDT). The developmental (fetal) NOAEL is also >250 mg/kg/day (HDT).

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOAEL is 500 mg/kg/day, based on decreased body weight at the LOAEL of 1,500 mg/kg/day (HDT). The reproductive (pup) NOAEL is >1,500 mg/kg/day (HDT).

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for clopyralid is complete with respect to current data requirements. There are no prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies as well as the 2-generation rat reproductive toxicity study. Based on the above, the 10x safety factor was removed (1x) for purposes of this action.

v. *Conclusion.* There is a complete toxicity data base for clopyralid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* EPA determined that no appropriate endpoint attributable to a single dose (exposure) was identified in oral toxicity studies. Therefore, an acute RfD was not established for either females 13+ years or the general population, including infants and children. An acute risk assessment is therefore not required.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clopyralid from food will utilize 4.2% of the RfD for children (1–6 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary

exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clopyralid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short-term or intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. EPA determined that endpoints for both dermal and inhalation risk assessments for short, intermediate, and chronic occupational and residential exposure scenarios were not required because of the low toxicity in rats by the dermal and inhalation routes.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to clopyralid residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately understood.

B. Analytical Enforcement Methodology

An adequate analytical method is available for enforcement of the proposed tolerances in flax seed. This method is a GC method using a Hall electrolytic conductivity detector. This method has been submitted to FDA for publication in PAM II. An enforcement method for animal commodities is available in PAM II. This method is entitled "Gas Chromatographic Determination of Clopyralid Residues in Eggs, Bovine Liver, and Milk."

The method for flax seed may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703)

305-5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

A tolerance of 0.5 ppm for flax seed will cover residues in flax meal. Flax meal is an animal feed item. It can comprise as much as 10% of the diets of beef cattle, dairy cattle, and swine. It can also comprise up to 30% of the diet of poultry. Clopyralid is registered for use on grasses and several cereal grains (i.e., barley, corn, oats, and wheat). Taking into account the tolerances and percent dry matter in these crops as well as those in flax meal, this latter commodity will not cause an increase in the dietary burden of animal commodities.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for clopyralid on flax.

E. Rotational Crop Restrictions

Crop	Rotation Crop Interval	Comments, Conditions and Limitations
Barley, grasses, field corn, oats, wheat.	30 days	Listed crops may be planted 30 days following application of Curtail M.
Sugar beets	5 months	Do not plant in the same growing season following application of Curtail M.
Alfalfa, asparagus, canola (rapeseed), cole crops, dry beans ¹ , grain sorghum, mint, onions, popcorn, safflower, soybeans ¹ , sunflowers ¹ , sweet corn, strawberries.	10.5 months	Do not plant listed crops for 10.5 months following application of Curtail M.
Lentils, peas, potatoes, broadleaf crops grown for seed.	18 months	Do not plant listed crops for 18 months after application unless the risk of crop injury is acceptable. The potential for injury may be reduced by burning, removal, or incorporation of treated crop residues followed by a minimum of 2 supplemental fall irrigations.

¹ If soils contain less than 2% organic matter and natural precipitation is <15 inches during the 10.5 months following application, these (footnoted) crops should not be planted until 18 months after application unless the risk of crop injury is acceptable. The potential for injury may be reduced by burning, removal, or incorporation of treated crop residues followed by a minimum of 2 supplemental fall irrigations.

VI. Conclusion

Therefore, the tolerance is established for residues of 3,6-dichloro-2-pyridinecarboxylic acid in flax seed at 0.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the

necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-300938 in the subject line on the first page of your submission. All

requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 18, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the

information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. Tolerance fee payment. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. Copies for the Docket. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-300938, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You

may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1999.

James Jones,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, 40 CFR chapter I is
amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180
continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and
371.

2. In § 180.431, in the table in
paragraph (b), alphabetically add the
following commodity to read as follows:

**§ 180.431 Clopyralid; tolerances for
residues.**

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Flax seed	0.5	12/31/01

* * * * *

[FR Doc. 99-30025 Filed 11-16-99; 8:45 am]
BILLING CODE 6560-50-F

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 64

[Docket No. FEMA-7725]

Suspension of Community Eligibility

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies
communities, where the sale of flood
insurance has been authorized under
the National Flood Insurance Program
(NFIP), that are suspended on the
effective dates listed within this rule
because of noncompliance with the
floodplain management requirements of
the program. If the Federal Emergency
Management Agency (FEMA) receives
documentation that the community has
adopted the required floodplain
management measures prior to the
effective suspension date given in this
rule, the suspension will be withdrawn
by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of
each community's suspension is the
third date ("Susp.") listed in the third
column of the following tables.

ADDRESSES: If you wish to determine
whether a particular community was
suspended on the suspension date,
contact the appropriate FEMA Regional
Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP
enables property owners to purchase
flood insurance which is generally not
otherwise available. In return,
communities agree to adopt and
administer local floodplain management
aimed at protecting lives and new
construction from future flooding.
Section 1315 of the National Flood
Insurance Act of 1968, as amended, 42
U.S.C. 4022, prohibits flood insurance
coverage as authorized under the
National Flood Insurance Program, 42
U.S.C. 4001 *et seq.*, unless an
appropriate public body adopts
adequate floodplain management
measures with effective enforcement
measures. The communities listed in
this document no longer meet that
statutory requirement for compliance
with program regulations, 44 CFR part
59 *et seq.* Accordingly, the communities
will be suspended on the effective date
in the third column. As of that date,
flood insurance will no longer be
available in the community. However,
some of these communities may adopt
and submit the required documentation
of legally enforceable floodplain
management measures after this rule is
published but prior to the actual
suspension date. These communities
will not be suspended and will continue
their eligibility for the sale of insurance.
A notice withdrawing the suspension of
the communities will be published in
the **Federal Register**.

In addition, the Federal Emergency
Management Agency has identified the
special flood hazard areas in these
communities by publishing a Flood
Insurance Rate Map (FIRM). The date of
the FIRM if one has been published, is
indicated in the fourth column of the
table. No direct Federal financial
assistance (except assistance pursuant to
the Robert T. Stafford Disaster Relief
and Emergency Assistance Act not in
connection with a flood) may legally be
provided for construction or acquisition
of buildings in the identified special
flood hazard area of communities not
participating in the NFIP and identified

for more than a year, on the Federal
Emergency Management Agency's
initial flood insurance map of the
community as having flood-prone areas
(section 202(a) of the Flood Disaster
Protection Act of 1973, 42 U.S.C.
4106(a), as amended). This prohibition
against certain types of Federal
assistance becomes effective for the
communities listed on the date shown
in the last column. The Associate
Director finds that notice and public
comment under 5 U.S.C. 553(b) are
impracticable and unnecessary because
communities listed in this final rule
have been adequately notified.

Each community receives a 6-month,
90-day, and 30-day notification
addressed to the Chief Executive Officer
that the community will be suspended
unless the required floodplain
management measures are met prior to
the effective suspension date. Since
these notifications have been made, this
final rule may take effect within less
than 30 days.

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

Regulatory Flexibility Act. The
Associate Director has determined that
this rule is exempt from the
requirements of the Regulatory
Flexibility Act because the National
Flood Insurance Act of 1968, as
amended, 42 U.S.C. 4022, prohibits
flood insurance coverage unless an
appropriate public body adopts
adequate floodplain management
measures with effective enforcement
measures. The communities listed no
longer comply with the statutory
requirements, and after the effective
date, flood insurance will no longer be
available in the communities unless
they take remedial action.

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

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

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

**Executive Order 12778, Civil Justice
Reform.** This rule meets the applicable
standards of section 2(b)(2) of Executive

Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.
Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*;
Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

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

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York: Brighton, town of, Monroe County.	360410	January 26, 1973 Emerg., June 18, 1980 Reg., November 8, 1999 Susp.	Nov. 8, 1999	November 8, 1999
Region III				
Virginia: Rocky Mount, town of, Franklin County.	510291	June 18, 1975 Emerg., May 1, 1980 Reg., November 8, 1999 Susp.	do	do.
Region V				
Michigan: Farmington Hills, city of, Oakland County.	260172	March 30, 1973 Emerg., February 1, 1980 Reg., November 8, 1999 Susp.	do	do.
Region VII				
Nebraska:				
Boelus, village of, Howard County	310117	August 25, 1975 Emerg., February 1, 1980 Reg., November 8, 1999 Susp.	do	do.
Howard County, unincorporated areas	310446	June 21, 1993 Emerg., September 30, 1997 Reg., November 8, 1999 Susp.	do	do.
Region IX				
Nevada: Douglas County, unincorporated areas.	320008	February 12, 1974 Emerg., March 28, 1980 Reg., November 8, 1999 Susp.	do	do.
Region X				
Washington:				
Arlington, city of, Snohomish County ...	530271	February 17, 1976 Emerg., November 16, 1983 Reg., November 8, 1999 Susp.	do	do.
Bothell, city of, King and Snohomish County.	530075	June 20, 1975 Emerg., June 1, 1982 Reg., November 8, 1999 Susp.	do	do.
Brier, city of, Snohomish County	530276	February 23, 1976 Emerg., September 24, 1984 Reg., November 8, 1999 Susp.	do	do.
Darrington, town of, Snohomish County.	530233	September 1, 1976 Emerg., August 19, 1985 Reg., November 8, 1999 Susp.	do	do.
Edmonds, city of, Snohomish County ..	530163	April 30, 1974 Emerg., August 8, 1978 Reg., November 8, 1999 Susp.	do	do.
Everett, city of, Snohomish County	530164	December 17, 1973 Emerg., April 3, 1978 Reg., November 8, 1999 Susp.	do	do.
Gold Bar, town of, Snohomish County	530285	December 17, 1976 Emerg., December 1, 1983 Reg., November 8, 1999 Susp.	do	do.
Index, town of, Snohomish County	530166	August 27, 1975 Emerg., December 1, 1983 Reg., November 8, 1999 Susp.	do	do.
King County, unincorporated areas	530071	October 13, 1972 Emerg., September 29, 1978 Reg., November 8, 1999 Susp.	do	do.
Lake Stevens, city of, Snohomish County.	530291	December 29, 1976 Emerg., April 17, 1989 Reg., November 8, 1999 Susp.	do	do.
Lynwood, city of, Snohomish County ...	530167	May 9, 1975 Emerg., June 5, 1985 Reg., November 8, 1999 Susp.	do	do.
Marysville, city of, Snohomish County	530168	October 16, 1974 Emerg., February 15, 1984 Reg., November 8, 1999 Susp.	do	do.
Mill Creek, city of, Snohomish County	530330	July 9, 1997 Reg., November 8, 1999 Susp	do	do.
Monroe, city of, Snohomish County	530169	August 14, 1974 Emerg., December 1, 1983 Reg., November 8, 1999 Susp.	do	do.
Mountlake Terrace, city of, Snohomish County.	530170	March 18, 1975 Emerg., August 19, 1985 Reg., November 8, 1999 Susp.	do	do.
Mukilteo, city of, Snohomish County	530235	February 3, 1977 Emerg., February 19, 1986 Reg., November 8, 1999 Susp.	do	do.
Snohomish, city of, Snohomish County	530171	September 3, 1974 Emerg., November 16, 1983 Reg., November 8, 1999 Susp.	do	do.
Snohomish County, unincorporated areas.	535534	November 27, 1970 Emerg., March 15, 1984 Reg., November 8, 1999 Susp.	do	do.
Spokane County, unincorporated areas	530174	May 30, 1975 Emerg., May 17, 1988 Reg., November 8, 1999 Susp.	do	do.
Stanwood, city of, Snohomish County	530172	March 6, 1975 Emerg., November 16, 1983 Reg., November 8, 1999 Susp.	do	do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Sultan, city of, Snohomish County	530173	May 16, 1975 Emerg., September 30, 1983 Reg., November 8, 1999 Susp.	do	do.
Region II				
New Jersey: Lavallette, borough of, Ocean County.	340379	September 11, 1970 Emerg., June 11, 1971 Reg., November 22, 1999 Susp.	do	do.
New York: Oswego, city of, Oswego County.	360656	April 30, 1973 Emerg., May 16, 1977 Reg., November 22, 1999 Susp.	do	do.
Region VI				
Louisiana:				
Ball, town of, Rapides Parish	220373	July 19, 1978 Emerg., July 18, 1985 Reg., November 22, 1999 Susp.	do	do.
Farmersville, town of, Union Parish	220325	May 19, 1978 Emerg., March 23, 1982 Reg., November 22, 1999 Susp.	do	do.
Lincoln Parish, unincorporated areas ...	220366	August 9, 1990 Emerg., March 1, 1991 Reg., November 22, 1999 Susp.	do	do.
Region X				
Newcastle, city of, McClain County	400103	July 18, 1975 Emerg., December 15, 1983 Reg., November 22, 1999 Susp.	do	do.
Oregon: Milwaukie, city of, Clackamas County.	410019	May 19, 1972 Emerg., June 18, 1980 Reg., November 22, 1999 Susp.	do	do.

Code for reading third column: Emerg.,-Emergency; Reg.,-Regular; Rein.-Reinstatement; Susp.-Suspension.

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

Issued: November 4, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-30018 Filed 11-16-99; 8:45 am]

BILLING CODE 6718-05-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7722]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

ADDRESSES: Flood insurance policies for property located in the communities

listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638-6620.

FOR FURTHER INFORMATION CONTACT:

Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-3619.

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

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

the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

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

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of

information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

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

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

Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.
Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
Missouri: Mill Spring, village of, Wayne County	290499	September 13, 1999	February 15, 1984.
South Dakota: Lead, city of, Lawrence County	460190	September 20, 1999.	
North Dakota:			
Sherwood, city of, Renville County	380204	September 22, 1999.	
Karlsruhe, city of, McHenry County	380048	do	
Maine: Ludlow, town of, Aroostook County	230429	September 30, 1999	February 21, 1975.
Missouri: Christian County, unincorporated areas	290847	do	April 19, 1983.
Texas: Gene Autry, city of, Carter County	400032	do	November 8, 1974.
NEW ELIGIBLES—Regular Program			
Puerto Rico: Ponce, Municipality of, ¹	720101	September 24, 1999	June 1, 1999.
REINSTATEMENTS			
Michigan: Marengo, township of, Calhoun County ...	260563	May 30, 1979, Emerg.; May 17, 1982, Reg.; May 17, 1982, Susp.; September 21, 1999, Rein.	May 17, 1982.
REGULAR PROGRAM CONVERSIONS			
Region I			
Maine: Rangeley, town of, Franklin County	230352	September 8, 1999, Suspension Withdrawn	September 8, 1999.
Massachusetts:			
Boxborough, town of, Middlesex County	250184	do	Do.
Bridgewater, town of, Plymouth County	250260	do	Do.
Region II			
New York:			
Chaumont, village of, Jefferson County	360329	do	Do.
Ilion, village of, Herkimer County	360308	do	Do.
LaGrange, town of, Dutchess County	361011	do	Do.
Mohawk, village of, Herkimer County	360314	do	Do.
Oswego, city of, Oswego County	360656	do	Do.
Poughkeepsie, town of, Dutchess County	361142	do	Do.
Region V			
Wisconsin: Muscoda, village of, Grant and Iowa Counties.	550153	do	Do.
Region VIII			
Montana: Yellowstone County, unincorporated areas.	300142	do	Do.
Region X			
Oregon:			
Athena, city of, Umatilla County	410206	do	Do.
Umatilla County, unincorporated areas	410204	do	Do.
Region II			
New Jersey: Mt. Laurel, township of, Burlington County.	340107	September 22, 1999, Suspension Withdrawn	September 22, 1999.
New York:			
Monroe, village of, Orange County	360622	do	Do.
Wappinger, town of, Dutchess County	361387	do	Do.
Wappingers Falls, village of, Dutchess County	360223	do	Do.
Region III			
Pennsylvania:			
Chanceford, township of, York County	422217	do	Do.
Columbia, borough of, Lancaster County	420543	do	Do.
North Londonderry, township of, Lebanon County.	420577	do	Do.
West Hempfield, township of, Lancaster County	421789	do	Do.
Region IV			
Mississippi: Holmes County, unincorporated areas ..	280211	do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region V			
Michigan: Hay, township of, Gladwin County	260984	do	Do.
Region VI			
Oklahoma:			
Bixby, city of, Tulsa County	400207	do	Do.
Broken Arrow, city of, Tulsa County	400236	do	Do.
Collinsville, city of, Tulsa County	400360	do	Do.
Glenpool, city of, Tulsa County	400208	do	Do.
Jenks, city of, Tulsa County	400209	do	Do.
Owasso, city of, Tulsa County	400210	do	Do.
Sand Springs, city of, Tulsa County	400211	do	Do.
Skiatook, town of, Tulsa County	400212	do	Do.
Sperry, town of, Tulsa County	400213	do	Do.
Tulsa, city of, Tulsa County	405381	do	Do.
Tulsa County, unincorporated areas	400462	do	Do.
Texas:			
Alvin, city of, Brazoria County	485451	do	Do.
Brazoria County, unincorporated areas	485458	do	Do.
Brookside Village, city of, Brazoria County	480067	do	Do.
Manvel, city of, Brazoria County	480076	do	Do.
Montgomery County, unincorporated areas	480483	do	Do.
Pearland, city of, Brazoria County	480077	do	Do.
Region VII			
Iowa: Van Buren County, unincorporated areas	190265	do	Do.
Missouri: Nixa, city of, Christian County	290078	do	Do.
Nebraska: O'Neil, city of, Holt County	310116	do	Do.
Region VIII			
Colorado:			
Severance, town of, Weld County	080317	do	Do.
Weld County, unincorporated areas	080266	do	Do.
Region X			
Idaho:			
Ada County, unincorporated areas	160001	do	Do.
Boise, city of, Ada County	160002	do	Do.
Eagle, city of, Ada County	160003	do	Do.
Garden City, city of, Ada County	160004	do	Do.
Kuna, city of, Ada County	160174	do	Do.
Meridian, city of, Ada County	160180	do	Do.
Region V			
Ohio:			
New Holland, village of, Pickaway and Fayette Counties	390448	do	Do.
Williamsport, village of, Pickaway County	390866	do	Do.

¹ The Municipality of Ponce has adopted the Commonwealth of Puerto Rico's Flood Insurance Rate Map dated June 1, 1999, panels 155, 160, 217-219.

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

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

Issued: November 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-30017 Filed 11-16-99; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7720]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed

to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

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

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

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director,

Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-3619.

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

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

construction of buildings in the special flood hazard areas shown on the map.

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

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of

information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
Alabama: Leesburg, town of, Cherokee County	010235	August 2, 1999	October 15, 1976.
Georgia: Calhoun County, unincorporated areas ...	130571	August 10, 1999.	
Michigan:			
Almer, township of, Tuscola County	261027	do.	December 22, 1978.
Fulton, township of, Gratiot County	261028	do.	
Meade, township of, Mason County	261026	do.	
Tennessee: Perry County, unincorporated areas ...	470144	do	
Idaho: Caribou County, unincorporated areas	160209	August 20, 1999.	
NEW ELIGIBLES—Regular Program			
Georgia: Euharlee, city of, Bartow County ¹	130570	August 2, 1999	September 29, 1989.
Alabama: Indian Springs Village, town of, Shelby County ² .	010430	August 10, 1999	September 16, 1982.
Texas: Old River-Winfree, city of, Chambers and Liberty Counties.	481637	August 10, 1999	February 17, 1993.
North Carolina: Lake Park, village of, Union County ³ .	370520	August 17, 1999	January 17, 1997
REINSTATEMENTS			
Missouri: Readings Mill, village of, Newton County	290484	June 5, 1975 Emerg., March 4, 1985 Reg., February 16, 1990 Susp., August 2, 1999 Rein.	September 4, 1985.
REGULAR PROGRAM CONVERSIONS			
Region I			
Connecticut: Vernon, town of, Tolland County	090131	August 9, 1999 Suspension Withdrawn	August 9, 1999.
Massachusetts: Bourne, town of, Barnstable County.	255210	do	Do.
Region III			
Pennsylvania: Upper Merion, township of, Montgomery County.	420957	do	Do.
Region X			
Washington: Brewster, city of, Okanogan County ..	530275	do	Do.
Region I			
New Hampshire: Concord, city of, Merrimack County.	330110	August 23, 1999 Suspension Withdrawn	August 23, 1999.

State location	Community No.	Effective date of eligibility	Current effective map date
Region II			
New Jersey: Absecon, city of, Atlantic County	340001	do	Do.
New York: Buffalo, city of, Erie County	360230	do	Do.
Region III			
Pennsylvania:			
Tunkhannock, borough of, Wyoming County ..	420917	do	Do.
Tunkhannock, township of, Wyoming County	422206	do	Do.
Region IV			
South Carolina:			
Atlantic Beach, town of, Horry County	450222	do	Do.
Aynor, town of, Horry County	450105	do	Do.
Briarcliffe Acres, town of, Horry County	450232	do	Do.
Conway, city of, Horry County	450106	do	Do.
Horry County, unincorporated areas	450104	do	Do.
Loris, city of, Horry County	450108	do	Do.
Myrtle Beach, city of, Horry County	450109	do	Do.
North Myrtle Beach, city of, Horry County	450110	do	Do.
Surfside Beach, town of, Horry County	450111	do	Do.
Sumter County, unincorporated areas	450182	do	Do.
Region VI			
Arkansas:			
Crittenden County, unincorporated areas	050429	do	Do.
Earle, city of, Crittenden County	050054	do	Do.
Region VIII			
New Mexico:			
Clovis, city of, Curry County	350010	do	Do.
Region IX			
Colorado:			
Calhan, town of, El Paso County	080192	do	Do.
El Paso County, unincorporated areas	080059	do	Do.
Region IX			
California: East Palo Alto, city of, San Mateo County.	060708	do	Do.

¹ The City of Euharlee has adopted the Bartow County (CID #130462) Flood Insurance Rate Map dated September 29, 1989.

² The town of Indian Springs Village has adopted the Shelby County (CID #010191) Flood Insurance Rate Map dated September 16, 1982.

³ The Village of Lake Park has adopted the Union County (CID #370234) Flood Insurance Rate Map dated January 17, 1997 panel 15D.

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

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

Issued: November 2, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-30016 Filed 11-16-99; 8:45 am]

BILLING CODE 6718-05-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1845 and 1852

Revisions to the NASA FAR Supplement on Property Reporting Requirements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to comply with OMB Bulletin 97-01 and makes other changes to NASA property reporting requirements. Specific changes include: raising the reporting

threshold for certain property categories from \$5,000 to \$100,000; adding a requirement to report Federal Supply Classification group codes for equipment, unit acquisition costs, and acquisition dates on shipping documents; and adding a statement that contractors are required to furnish, in addition to the information required by NASA Form (NF) 1018, any information specified in supplemental instructions issued by NASA for the current reporting period.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT:

James H. Dolvin, NASA Headquarters, Code HK, Washington, DC 20546, (202) 358-1279, jdolvin1@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Financial Accounting Standards Number 6, as implemented by OMB Bulletin 97-01, provides for new financial accounting requirements involving depreciation of Government property. Additional guidance is being

added to NFS Section 1845.7101, Instructions for preparing NASA Form 1018, to explain this change and to say that contractors will now be required to submit supplemental information with the form, and that this information may change from year to year, depending on OMB requirements.

A proposed rule was published in the **Federal Register** at 64 FR 26721-23, dated May 17, 1999. Revisions in this final rule consist of minor editorial changes in 1845.7101-1(b), 1845.7101-2(a), 1845.7101-3(e), and 1852.245-73 (b) and (d). Comments were received from the Aerospace Industries Association and the University of California at Berkeley. All comments were considered in the development of this final rule.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

because less than three per cent of NASA contracts with small businesses have property reporting requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, applies to this proposed rule because it contains information collection requirements. Approval for the additional requirements has been obtained under OMB Control No. 2700-0017, approving an increase in burden hours from 5,700 to 8,144.

List of Subjects in 48 CFR Parts 1845 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1845 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1845 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1845—GOVERNMENT PROPERTY

2. Sections 1845.7101, 1845.7101-1, 1845.7101-2, 1845.7101-3, 1845.7101-4, and 1845.7101-5 are revised to read as follows:

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA Form 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy and timeliness of the report are very important. NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal accounting standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain NASA's official records for its assets in their possession, NASA must obtain annual data from those records to meet these requirements. Changes in Federal accounting standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NF 1018. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart.

1845.7101-1 Property Classification.

(a) *General.* Contractors shall report costs in the classifications on the NF

1018, as described in this section. For Land, Buildings, Other Structures and Facilities, and Leasehold Improvements, contractors shall report the amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of 2 years or more. For Plant Equipment, Special Tooling, Special Test Equipment and Agency-Peculiar Property, contractors shall separately report—

(1) The amount for all items with a unit acquisition cost of \$100,000 or more and a useful life of 2 years or more; and

(2) All items under \$100,000, regardless of useful life.

(b) *Materials.* Contractors shall report the amount for all Materials in inventory, regardless of unit acquisition cost.

(c) *Land.* Includes costs of land and improvements to land.

(d) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(e) *Other structures and facilities.* Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences.

(f) *Leasehold improvements.* Includes NASA-funded costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract.

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, test equipment, including their accessory or auxiliary items).

(h) *Construction in Progress.* Includes costs of work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title.

(i) *Special Tooling.* Includes costs of equipment and manufacturing aids (and their components and replacements) of such a specialized nature that, without substantial modification or alteration, their use is limited to development or production of particular supplies or parts, or performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges.

(j) *Special Test Equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment.

(k) *Material.* Includes costs of NASA-owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Material that is part of work-in-process is not included.

(l) *Agency-Peculiar Property.* Includes costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include research aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

(m) *Contract Work-in-Process.*

Includes costs of all work-in-process; excludes costs of completed items reported in other categories.

1845.7101-2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, centers, and other Government agencies (*e.g.*, between contracts of the same center, contracts of different centers, a contract of one center to another center, a center to a contract of another center, and a contract to another Government agency or its contract). To enable NASA to properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed to provide an administrative and audit trail, even if

property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245-72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided to conduct repairs are reportable, regardless of contract type.

(a) *Approval and Notification.* The contractor must obtain approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded (including Federal Supply Classification group (FSC) codes for equipment), unit acquisition costs, original acquisition dates for items with a unit acquisition cost of \$100,000 or more and a useful life of two years or more, and any other appropriate identifying or descriptive data. Where the DD Form 250, Material Inspection and Receiving Report, is used, the FSC code will be part of the national stock number (NSN) entered in Block 16 or, if the NSN is not provided, the FSC alone shall be shown in Block 16. The original acquisition date shall be shown in Block 23, by item. Other formats, such as the DD Form 1149, Requisition and Invoice/Shipping Document, should be clearly annotated with the required information. Unit acquisition costs shall be obtained from records maintained pursuant to FAR part 45 and this part 1845, or, for uncompleted items where property records have not yet been established, from such other record systems as are appropriate such as manufacturing or engineering records used for work control and billing purposes. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA center responsible for their respective contracts when accountability for Government property is transferred to, or received from, other contracts, contractors, NASA centers, or Government agencies. Copies of

shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (*e.g.*, omission of property classification, FSC, unit acquisition cost, acquisition date, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505-2.

1845.7101-3 Unit acquisition cost.

(a) The unit acquisition cost shall include all costs incurred to bring the property to a form and location suitable for its intended use. For example, the cost may include the following, as appropriate, for the type of property:

- (1) Amounts paid to vendors or other contractors.
- (2) Transportation charges to the point of initial use.
- (3) Handling and storage charges.
- (4) Labor and other direct or indirect production costs (for assets produced or constructed).
- (5) Engineering, architectural, and other outside services for designs, plans, specifications, and surveys.
- (6) Acquisition and preparation costs of buildings and other facilities.
- (7) An appropriate share of the cost of the equipment and facilities used in construction work.
- (8) Fixed equipment and related installation costs required for activities in a building or facility.
- (9) Direct costs of inspection, supervision, and administration of construction contracts and construction work.
- (10) Legal and recording fees and damage claims.
- (11) Fair values of facilities and equipment donated to the Government.
- (12) Material amounts of interest costs paid.
- (13) Where appropriate, for Special Test Equipment, Special Tooling,

Agency-Peculiar Property and Contract Work-In-Process, related fees, or a prorata portion of fees, paid by NASA to the contractor. Situations where inclusion of fees in the acquisition cost would be appropriate are those in which the contractor designs, develops, fabricates or purchases property for NASA and part of the fees paid to the contractor by NASA are related to that effort.

(b) The use of weighted average methodologies is acceptable for valuation of Material.

(c) Contractors shall report unit acquisition costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and include all direct and indirect costs of fabrication.

(d) The contractor shall redetermine unit acquisition costs of items returned for modification or rehabilitation. If an item's original acquisition cost is \$100,000 or more, only modifications that improve that item's capacity or extend its useful life two years or more *and* that cost \$100,000 or more shall be added to the original acquisition cost reported on the NF 1018. The costs of any other modifications will be considered to be expensed. If an item's original unit acquisition cost is less than \$100,000, but a single subsequent modification costs \$100,000 or more, that modification *only* will be reported as an item \$100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under \$100,000 total. The quantity for the modified item will remain "1" and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under \$100,000, it shall be reported as under \$100,000.

(e) The computation of work in process shall include all direct and indirect costs of fabrication, including associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials issued from inventory.

1845.7101-4 Types of deletions from contractor property records

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Adjusted*. Changes in the deletion amounts that result from mathematical errors in the previous report.

(b) *Lost, Damaged or Destroyed*. Deletion amounts that result from relief from responsibility under FAR 45.503 granted during the reporting period.

(c) *Transferred in Place*. Deletion amounts that result from transfer of property to a follow-on contract with the same contractor.

(d) *Transferred to Center Accountability*. Deletion amounts that result from transfer of accountability to the center responsible for the contract, whether or not items are physically moved.

(e) *Transferred to Another NASA Center*. Deletion amounts that result from transfer of accountability to a center other than the one responsible for the contract, whether or not items are physically moved.

(f) *Transferred to Another Government Agency*. Deletion amounts that result from transfer of property to another Government agency.

(g) *Purchased at Cost/Returned for Credit*. Deletion amounts that result from contractor purchase or retention of contractor acquired property as provided in FAR 45.605-1, or from contractor returns to suppliers under FAR 45.605-2.

(h) *Disposal Through Plant Clearance Process*. Deletions other than transfers

within the Federal Government, *e.g.*, donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

1845.7101-5 Contractor's privileged financial and business information

If a transfer of property between contractors involves disclosing costs of a proprietary nature, the contractor shall furnish unit acquisition costs only on copies of shipping documents sent to the shipping and receiving NASA centers. Transfer of the property to the receiving contractor shall be on a no-cost basis.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.245-73 is revised to read as follows:

1852.245-73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106-70(d), insert the following clause:

Financial Reporting of NASA Property in the Custody of Contractors (Month/Year)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505-14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA. Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(b)(1) The Contractor shall mail the original signed NF 1018 directly to the Center Deputy Chief Financial Officer, Finance.

(2) Three copies shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate Center office.], unless the Contractor uses the NASA NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by the Government. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with (b)(1) and (2) of this clause.

(End of clause)

[FR Doc. 99-29910 Filed 11-16-99; 8:45 am]

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Proposed Rules

Federal Register

Vol. 64, No. 221

Wednesday, November 17, 1999

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

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 905

RIN 1901-AA84

Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rulemaking and public forum.

SUMMARY: The Western Area Power Administration (Western) is seeking public comment on its proposed revisions to current regulations that require customers to prepare integrated resource plans. Western is proposing revisions to allow customers more alternatives in meeting the integrated resource planning requirements, thereby enhancing customer competitiveness through increased flexibility and reduced burdens in complying with this rule.

DATES: Written comments, in hard copy or via email, must be received no later than 5 p.m. Mountain Standard Time on December 30, 1999. A joint public information and public comment forum will be held starting at 1 p.m. Mountain Standard Time on November 30, 1999.

ADDRESSES: Written comments should be sent to Mr. Simmons Buntin, Power Marketing Support Office, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213. Prior to November 30, 1999, comments can be sent by fax to (303) 275-1616; after November 30, 1999, the fax number is (720) 962-7427. Comments also can be sent by electronic mail to buntin@wapa.gov. The public forum will be held at the Radisson Hotel Denver, 3333 Quebec Street, Denver, Colorado 80207.

FOR FURTHER INFORMATION CONTACT: Mr. Simmons Buntin, prior to November 30, 1999, telephone number is (303) 275-1739; after November 30, his number is

(720) 962-7419. Mr. Buntin's electronic mail address is buntin@wapa.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Background
- II. Section by Section Discussion of Changes
- III. Public Information/Comment Forum Procedures
- IV. Procedural Requirements
 - A. Executive Order 12866
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act
 - D. Review Under the National Environmental Policy Act
 - E. Review Under Executive Order 13132
 - F. Review Under the Unfunded Mandates Reform Act of 1995
 - G. Review Under Executive Order 12988
 - H. Treasury and General Government Appropriations Act, 1999
 - I. Review Under Executive Order 13084

I. Introduction and Background

Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102-486, requires integrated resource planning by Western's customers. Western implemented EPAct through completion of the Energy Planning and Management Program (Program) in October 1995. The Program was published in the Code of Federal Regulations at 10 CFR part 905.

Western's Administrator is required by EPAct to initiate a public process to review Western's integrated resource planning (IRP) regulations within 1 year of January 1, 2000. The Administrator is authorized at that time to revise Western's criteria for approving integrated resource plans "to reflect changes, if any, in technology, needs, or other developments."

Both the wholesale and retail aspects of the electric utility industry are changing, and change is expected to continue. The 15 States within which Western markets power have taken very different approaches to deregulation with diverse schedules for implementing any changes to the status quo. Additionally, the timing and scope of any Federal restructuring legislation is uncertain. Given the increasingly competitive and deregulated electricity marketplace, Western's integrated resource planning regulations, which were adopted under the traditional utility planning framework, warrant review.

Western is proposing an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers

can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches include compliance with a defined level of investment in energy efficiency and/or renewables, compliance with an established public benefits program, or compliance with mandated energy efficiency and/or renewable energy reporting requirements.

Only subparts A and B of the existing regulations are proposed for revision.

II. Section by Section Discussion of Changes

Many wording and format changes contained in the proposed rule have been drafted to comply with the President's initiative to use plain language in government writing.

The purpose statement in § 905.1 would be updated to describe acceptable customer activities, in light of the changes taking place in the electric utility industry, that meet the objectives of section 114 of EPAct.

In § 905.2, we have proposed removing the definition for applicable IRP and adding new terms (energy efficiency and/or renewable energy report, minimum investment report and public benefits charge) in order to clearly describe the new alternatives for customer compliance. We propose shortening the definition of integrated resource planning, modifying the definition of small customer to include end-use customers, and removing the definition of least-cost option since a customer is free to pursue renewables and energy efficiency even if other resources appear to be less costly. Additionally, definitions would be added for Region, IRP cooperative, and renewable energy.

Changes to § 905.10 would be consistent with the broader array of compliance options available to customers under this proposed regulation. The exception for State-regulated, investor-owned utilities that exists today would be deleted, in order to assure equitable compliance by all of Western's long-term firm customers.

Section 905.11, which deals with the contents of an integrated resource plan, would be streamlined and simplified. The number of IRP criteria would be reduced from seven to six, eliminating least-cost designation as a separate criteria while combining its relevant parts with the identification of resource

options criteria. One prominent theme in this area is confidentiality of information. To ensure that proprietary information is not made available to competitors, customers would not have to submit sensitive information to Western. Summaries of customer activities would be adequate, as long as Western can obtain more detailed supporting information upon request. This proposal also intends to lessen the paperwork burden on customers. In recognition of the fast-paced change in the industry, Western proposes to allow customers to define their own action planning horizons to carry out IRP.

Several regulatory provisions would be renumbered to improve organization and flow. Proposed §§ 905.12 and 905.13 would reorganize the current provisions of § 905.12 for clarity, but Western proposes no substantive change to IRP submittal requirements. A more detailed discussion of the cooperative IRP submittal process would be added in § 905.13. Proposed § 905.14 contains the provisions of currently effective § 905.13. Proposed § 905.15, which deals with annual IRP progress reports, contains the substance of existing § 905.16.

Sections 905.15 and 905.16 would be modified to include statements that annual progress reports and update letters can be submitted outside of the 30-day anniversary date window if previously approved by Western.

Section 905.16 describes the proposed requirements of the small customer plan alternative for eligible customers. Changes to the existing rule would include expansion of the small customer plan method of compliance to include all end-use customers regardless of size. Small utilities could take advantage of the small customer provision, even if they belong to member-based associations or joint-action agencies.

Section 905.17 is a new section that would allow customers to comply with the regulation by adopting a minimum level of financial or resource investment in energy efficiency initiatives and/or renewable energy activities required by State, Tribal, or Federal law. In order to avoid duplication and conflicting mandates, Western is proposing to accept these customer efforts as satisfying the provisions of the EPAct. Such a minimum investment standard has already been adopted in the State of Iowa.

Section 905.18 is another new section that would allow customers to comply with the regulation by participating in a public benefits program required by State, Tribal, or Federal law, under which a defined minimum percentage of a customer's gross revenues is devoted

to public purposes. In order to avoid duplication and conflicting mandates, Western proposes to accept these customer efforts as satisfying the provisions of EPAct. Such a public benefits mandate has already been adopted in the States of California, Montana, and New Mexico.

State and Federal end-use customers often must comply with standards and reporting requirements that document efforts in IRP, energy efficiency, and renewable energy. An example of this compliance is Executive Order 13123, which requires Federal agencies to aggressively reduce energy consumption and to expand the use of renewable energy. Section 905.19 would accept these compliance efforts if they meet the objectives of EPAct.

Former §§ 905.15–905.21 would be renumbered as §§ 905.20–905.25 and would be modified to enhance understanding and clarity.

A redline-strikeout version comparing the proposed revisions with the current subparts A and B is available on Western's Website at www.wapa.gov.

III. Public Information/Comment Forum Procedures

Interested parties may submit comments on Western's proposed revisions to subparts A and B of the regulations in two ways: either (a) directly to the project manager via mail, e-mail, fax, or hand delivery no later than 5 p.m. Mountain Standard Time on December 30, 1999; or (b) in person or through a representative at the joint public information and public comment forum to be held beginning at 1 p.m. Mountain Standard Time on November 30, 1999, at the Radisson Hotel Denver. Addresses for comments and the forum are provided earlier in the preamble.

The joint public information and public comment forum will feature a presentation by Western staff summarizing proposed revisions to subparts A and B of the regulations, the reasons for revisions, and anticipated benefits arising from revisions. After the formal presentation of 30 minutes or less, attendees will have the opportunity to ask Western staff questions related to proposed revisions. Once all questions are asked and individually responded to by Western, the public comment forum will begin and interested parties will have the opportunity to comment on Western's proposed revisions. A court reporter will record the proceedings, and a transcript will be prepared. The public will be able to review the transcript at Western's offices, or may order a personal copy from the court reporter.

Comments from the public comment forum will be considered along with all other comments received prior to 5 p.m. Mountain Standard Time on December 30, 1999. Comments will be incorporated into the final rule as appropriate, and all comments will be addressed upon publication of the final rule in the **Federal Register**.

IV. Procedural Requirements

A. Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western's Administrator certifies that this proposed rule will have no significant adverse impact on a substantial number of small entities because the proposed revisions to these regulations reduce paperwork and financial and other burdens, as well as reporting redundancies for small entities.

C. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB for the collection of customer information in this rule, under control number 1910–1200.

D. Review Under the National Environmental Policy Act

Western prepared an environmental impact statement and record of decision pursuant to the National Environmental Policy Act of 1969 (NEPA) for the Energy Planning and Management Program, which established the existing IRP requirements for Western power customers. This met the requirements of NEPA, 42 U.S.C. 4321, *et seq.*, the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021). Since the proposed revisions would modify those IRP requirements, Western is conducting a review to determine if a supplemental environmental analysis is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the need for such actions. Western has examined this rule and determined that it does not preempt State law and does not have a substantial direct effect 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. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and Tribal governments and the private sector. Western has determined that this proposed regulatory action does not impose an additional Federal mandate on State, local, or Tribal governments or on the private sector.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposed on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section

3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. Western has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, Western has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Western may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. The incremental amendments involved in this proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

List of Subjects in 10 CFR part 905

Electric power, Electric utilities, Energy, Energy conservation, Hydroelectric power, Reporting and recordkeeping requirements.

Issued in Washington, D.C. on November 3, 1999.

Michael S. HacsKaylo,
Administrator.

For the reasons set forth in the preamble, 10 CFR part 905 is proposed to be amended as set forth below.

PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7152 and 7191; 32 Stat. 388, as amended; and 42 U.S.C. 7275-7276c.

2. Subparts A and B are revised to read as follows:

Subpart A—General Provisions

Sec.

- 905.1 What are the purposes of this part?
905.2 What are the key definitions of this part?

Subpart B—Integrated Resource Planning

- 905.10 Who must comply with this part?
905.11 What must an IRP include?
905.12 How must IRPs be submitted?
905.13 When must IRPs be submitted?
905.14 What are the criteria for Western's approval of IRPs?
905.15 What are annual IRP progress reports?
905.16 What are the requirements for the small customer plan alternative?
905.17 What are the requirements for the minimum investment report alternative?
905.18 What are the requirements for the public benefits report alternative?
905.19 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?
905.20 How are plans and reports processed?
905.21 When are customers in noncompliance with this rule, and how does Western ensure compliance?
905.22 What is the administrative appeal process?
905.23 How does Western periodically review plans and reports?
905.24 What are the opportunities for using the Freedom of Information Act to request data?
905.25 How often is this program reviewed?

Subpart A—General Provisions**§ 905.1 What are the purposes of this part?**

The purposes of this part are to meet the objectives of section 114 of the Energy Policy Act of 1992 (EPAct) and to extend the long-term firm power resource commitments while supporting customer integrated resource planning (IRP), energy efficiency and conservation, and the use of renewable energy. Subpart B allows customers of the Western Area Power Administration (Western) to meet the objectives of section 114 of EPAct through integrated resource planning or by other means, such as attaining a minimum level of investment in energy efficiency and/or renewable energy, collecting a charge to support defined public benefits, or complying with a mandated energy efficiency and/or renewable energy reporting requirement.

§ 905.2 What are the key definitions of this part?

Administrator means the Administrator of Western.

Customer means any entity that purchases firm capacity, with or without energy, from Western under a long-term firm power contract. The term also includes a member-based association (MBA) and its distribution

or user members that receive direct benefit from Western's power, regardless of which holds the contract with Western.

Energy efficiency and/or renewable energy (EE/RE) report means the report resulting from a mandate to conduct energy efficiency and/or renewable energy activities imposed by a State, Tribal, or the Federal Government upon a State, Tribal, or Federal end-use customer within its jurisdiction.

Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to a customer's electric consumers.

Integrated resource planning cooperative (IRP cooperative) means a group of Western's customers and/or their distribution or user members that Western has approved for IRP cooperative status.

Member-based association (MBA) means:

- (1) An entity composed of utilities or user members, or
- (2) An entity that acts as an agent for, or subcontracts with, but does not assume power supply responsibility for its principals or subcontractors, who are its members.

Minimum investment report means the report resulting from a mandatory minimum level of financial or resource investment in energy efficiency initiatives and/or renewable energy activities, such as investment of a set minimum percentage of the utility's gross revenues in renewable resources, which is imposed by State, Tribal, or Federal law upon a utility or other entity under its jurisdiction.

Public benefits charge means a mandatory financial charge imposed by State, Tribal, or Federal law upon a utility under its jurisdiction to support one or more of the following: energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and/or other programs defined by applicable State, Tribal, or Federal law. This term is also known as a public goods or system benefit charge in the utility industry.

Region means a regional office or management center of Western: the Desert Southwest Customer Service Region, the Rocky Mountain Customer Service Region, the Sierra Nevada Customer Service Region, the Upper

Great Plains Customer Service Region, or the Colorado River Storage Project Management Center.

Renewable energy means any source of electricity that is self-renewing, including plant-based biomass, waste-based biomass, geothermal, hydropower, ocean thermal, solar (active and passive), and wind. This term is also known as renewable resources in the utility industry.

Small customer means a utility customer with total annual sales and usage of 25 gigawatthours (GWh) or less, as averaged over the previous 5 years; or any end-use customer.

Western means the Western Area Power Administration.

Subpart B—Integrated Resource Planning

§ 905.10 Who must comply with this part?

(a) *Integrated resource plans (IRP)*. Each customer of Western must address its power resource needs in an IRP prepared and submitted to Western as described in this part.

(b) *Alternatives to IRP*. Alternatively, customers of Western may submit a small customer plan, minimum investment report, public benefits report, or EE/RE report as described in §§ 905.16 through 905.19 of this subpart.

(c) *Rural Utility Service and state utility commission reports*. For customers subject to IRP filings or other electrical resource-use reports from the Rural Utilities Service or a state utility commission, there is nothing in this part that would require a customer to take any action inconsistent with those requirements.

§ 905.11 What must an IRP include?

(a) *General*. An integrated resource plan supports customer-developed goals and schedules. The plan must take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; must take into account the ability to verify energy savings achieved through energy efficiency and the projected durability of such savings measured over time; and must treat demand and supply resources on a consistent and integrated basis.

(b) *IRP criteria*. IRPs must consider electrical energy resource needs and may consider, at the customer's option, water, natural gas, and other energy resources. Each IRP submitted to Western must include:

(1) *Identification of resource options*. Identification and comparison of all practicable energy efficiency and energy supply resource options. This is an

assessment and comparison of existing and future supply- and demand-side resource options available to a customer based upon its size, type, resource needs, geographic area, and competitive situation. Resource options evaluated by the specific customer must be identified. The options evaluated should relate to the resource situation unique to each Western customer as determined by profile data (such as service area, geographical characteristics, customer mix, historical loads, projected growth, existing system data, rates, and financial information) and load forecasts. Specific details of the customer's resource comparison need not be provided in the IRP itself. They must, however, be made available to Western upon request.

(i) Supply-side options include, but are not limited to, purchased power contracts and conventional and renewable generation options.

(ii) Demand-side options alter the customer's use pattern in a manner that provides for an improved combination of energy services to the customer and the ultimate consumer.

(iii) Considerations that may be used to develop the potential options include cost, market potential, consumer preferences, environmental impacts, demand or energy impacts, implementation issues, revenue impacts, and commercial availability.

(iv) The IRP discussion of resource options must describe the options chosen by the customer. The IRP may strike a reasonable balance among the applicable resource evaluation factors. It should clearly demonstrate that decisions were based on a reasonable analysis of resource options and environmental effects, were based on public input, and/or were required by State, Tribal, or Federal mandates.

(2) *Action plan*. An IRP must include an action plan describing specific actions the customer will take to implement its IRP.

(i) The IRP must state the time period that the action plan covers, and the action plan must be updated and resubmitted to Western when this time period expires. The customer may submit a revised action plan with the annual IRP progress report discussed in § 905.15.

(ii) For those customers not experiencing or anticipating load growth, the action plan requirement for the IRP may be satisfied by a discussion of current actions and procedures in place to periodically reevaluate the possible future need for new resources. The action plan must include a summary of:

(A) Actions the customer expects to take in accomplishing the goals identified in the IRP;

(B) Milestones to evaluate accomplishment of those actions during implementation; and

(C) Estimated energy and capacity benefits for each action planned.

(3) *Environmental effects.* The customer must minimize adverse environmental effects of new resource acquisitions and document these efforts in the IRP. Customers are neither precluded from nor required to include a quantitative analysis of environmental externalities as part of the IRP process. IRPs must include a qualitative analysis of environmental effects in summary format.

(4) *Public participation.* The customer must provide for full public participation in the preparation and development of an IRP (or any revision or amendment of an IRP). The IRP must include a brief description of public involvement activities, including how the customer gathered information from the public, identified public concerns, shared information with the public, and responded to public comments. Customers must make additional documentation identifying or supporting the full public process available to Western upon request.

(i) As part of the public participation process, the governing body of an MBA and each MBA member (such as a board of directors or city council) must approve the IRP, confirming that all requirements have been met. To indicate approval, a responsible official must sign the IRP submitted to Western or the customer must document passage of an approval resolution by the appropriate governing body included or referred to in the IRP.

(ii) For Western customers that do not purchase electricity for resale, such as some State, Tribal, and Federal agencies, the customer can satisfy public participation if there is review and concurrence by a top management official with resource acquisition responsibility. The customer must note this concurrence in the IRP.

(5) *Load forecasting.* An IRP must include a statement that load forecasting was conducted. Load forecasting should include data that reflects the size, type, resource conditions, and demographic nature of the customer using an accepted load forecasting methodology, including but not limited to the time series, end-use, and econometric methods. The customer must make the load forecasting data available to Western upon request.

(6) *Measurement strategies.* The IRP must include a brief description of

measurement strategies for options identified in the IRP in order to determine whether objectives in the IRP are being met. These validation methods must include identification of the baseline from which a customer will measure the benefits of its IRP implementation. A reasonable balance may be struck between the cost of data collection and the benefits resulting from obtaining exact information. Customers must make performance validation and evaluation data available to Western upon request.

§ 905.12 How must IRPs be submitted?

(a) *Number of IRPs submitted.* Only one IRP is required per customer, regardless of the number of long-term firm power contracts between the customer and Western.

(b) *Method of submitting IRPs.* Customers must submit IRPs to Western under one of the following options:

(1) Customers may submit IRPs individually.

(2) MBAs may submit individual IRPs for each of their members or submit one IRP on behalf of all or some of their members. An IRP submitted by an MBA must specify the responsibilities and participation levels of individual members and the MBA. Any member of an MBA may submit an individual IRP to Western instead of inclusion in an MBA IRP.

(3) Customers may submit IRPs as IRP cooperatives when previously approved by Western.

(c) *Alternatives to submitting individual IRPs.* Customers that Western approves for submittal of small customer plans, minimum investment reports, public benefits reports, or EE/RE reports may substitute the applicable plan or report instead of an IRP. Each customer that intends to seek approval for IRP cooperative, small customer, minimum investment report, public benefits report, or EE/RE report status must provide written notification to Western. A new customer must provide this notification to the Western Regional Manager of the Region in which the customer is located within 30 days from the time it becomes a customer. Any customer may resubmit an IRP or notify Western of its plan to change its compliance method at any time so long as there is no period of noncompliance between this part and Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999).

§ 905.13 When must IRPs be submitted?

(a) *Submitting the initial IRP.* Except as provided in paragraph (d) of this

section, customers that have not previously submitted IRPs must submit their initial IRP to the appropriate Regional Manager no later than 1 year after [the effective date of the final rule], or after becoming a customer, whichever is later. Customers already complying with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999) must maintain their current submission and resubmission schedules.

(b) *Western's review of IRPs.* If an IRP submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the IRP. Western, working together with the entity, will determine the time allowable for resubmitting the IRP. However, the time allowed for resubmittal will not be greater than 9 months after the date of the disapproval, unless otherwise provided by contract language in effect as of [the effective date of the final rule].

(c) *Updates and amendments to IRPs.* Customers must submit updated IRPs to the appropriate Regional Manager every 5 years after Western's approval of the initial IRP. Customers may submit amendments and revisions to IRPs at any time.

(d) *IRP cooperatives.* Customers that have geographic, resource supply, and other similarities may join together and request, in writing, Western's approval to become an IRP cooperative. Western will respond to IRP cooperative status requests within 30 days of receipt of the request. If Western disapproves a request for IRP cooperative status, the requesting participants must maintain their currently applicable integrated resource or small customer plans, or submit their initial IRPs no later than 1 year after the date of the letter of disapproval. Western's approval of IRP cooperative status will not be based on any potential participant's contractual status with Western. Each IRP cooperative must submit an IRP for its participants within 18 months after Western's approval of IRP cooperative status.

§ 905.14 What are the criteria for Western's approval of IRPs?

(a) *Approval criteria.* Western will approve plans and reports based upon:

(1) Whether the plan or report satisfactorily addresses the criteria in this part; and

(2) The reasonableness of the plan or report given the size, type, resource needs, geographic area, and competitive situation of the customer.

(b) *Review of resource choices.* Western will review resource choices in

accordance with section 114 of EPCA and this subpart. Western will disapprove IRPs if resource choices do not meet the reasonableness test in paragraph (a)(2) of this section and the provisions of section 114 of EPCA.

(c) *Accepting IRPs under other initiatives.* If a customer or group of customers implements integrated resource planning under a program responding to other Federal, Tribal, or State initiatives, Western will accept and approve the plan as long as it substantially complies with the requirements of this subpart.

(d) *Water-based plans and reports.* In evaluating a plan or report, Western will consider water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies. Customers that provide water utility services and customers that service irrigation load as part of their overall load may include water conservation activities in the plan or report. To the extent practicable, customers should convert their water savings to energy values.

§ 905.15 What are annual IRP progress reports?

Customers must submit IRP progress reports each year within 30 days of the anniversary date of the approval of the currently applicable IRP. The reports must describe the customer's accomplishments achieved under the action plan, including projected goals and implementation schedules, and energy and capacity benefits and renewable energy developments achieved as compared to those anticipated. Western prefers measured values, but will accept reasonable estimates if measurement is infeasible or not cost-effective. Instead of a separate progress report, the customer may use any other annual report that the customer submits to Western or another entity, at the customer's discretion, if that report contains all required data for the previous full year and is submitted within 30 days of the approval anniversary date of the currently applicable IRP. With Western's approval, customers may submit reports outside of the 30-day anniversary date window.

§ 905.16 What are the requirements for the small customer plan alternative?

(a) *Requesting small customer status.* Small customers may submit a request to prepare a small customer plan instead of an IRP. Requests for small customer status from electric utilities must include data on total annual energy sales and usage for the 5 years prior to the request. Western will average this

data to determine overall annual energy sales and usage so that uncontrollable events, such as extreme weather, do not distort leveled energy sales and usage. Requests from end-use customers must only document that the customer does not purchase electricity for resale.

Western will respond to small customer status requests within 30 days of receipt of the request. If Western disapproves a request, the customer must maintain its currently applicable IRP, or submit its initial IRP no later than 1 year after the date of the letter of disapproval.

Alternatively, the customer may submit a request for minimum investment report, public benefits report, or EE/RE report status, as appropriate.

(b) *Small customer plan contents.*

Small customer plans must:

(1) Consider all reasonable opportunities to meet future energy service requirements using demand-side management techniques, new renewable resources, and other programs that provide retail consumers with electricity at reasonable cost;

(2) Minimize, to the extent practicable, adverse environmental effects; and

(3) Present in summary form the following information:

(i) Customer name, address, phone number, e-mail and Website if applicable, and contact person;

(ii) Type of customer;

(iii) Current energy and demand profiles and data on total annual energy sales and usage for the previous 5 years for utility customers, or current energy and demand use for end-use customers;

(iv) Future energy services projections;

(v) How paragraphs (b)(1) and (b)(2) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

(c) *When to submit small customer plans.* Small customers must submit the first small customer plan to the appropriate Western Regional Manager within 1 year after Western's approval of the request for small customer status. Small customers must submit in writing a small customer plan every 5 years.

(d) *Maintaining small customer status.*

(1) Every year on the anniversary of Western's approval of the plan, small customers must submit a letter to Western verifying that either their annual energy sales and usage is 25 GWh or less averaged over the previous 5 years, or they continue to be end-use customers. The letter must also identify their achievements against their targeted action plans, as well as the revised summary of actions if the previous summary of actions has expired.

(2) Western will use the letter for overall program evaluation and comparison with the customer's plan, and for verification of continued small customer status. Customers may submit annual update letters outside of the anniversary date if previously agreed to by Western so long as the letter contains all required data for the previous full year.

(e) *Losing eligibility for small customer status.*

(1) A customer ceases to be a small customer if it:

(i) Is a utility and exceeds total annual energy sales and usage of 25 GWh, as averaged over the previous 5 years; or

(ii) Is no longer an end-use customer.

(2) Western will work with a customer who loses small customer status to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.17 What are the requirements for the minimum investment report alternative?

(a) *Request to submit the minimum investment report.* Customers may submit a request to prepare a minimum investment report instead of an IRP. Requests to submit minimum investment reports must include data on:

(1) The source of the minimum investment requirement (number, title, date, and jurisdiction of law);

(2) The initial, annual, and other reporting requirement(s) of the mandate, if any; and

(3) The mandated minimum level of investment for energy efficiency and/or renewable energy.

(b) *Minimum investment requirement.* The minimum investment must be a mandatory set percentage of customer gross revenues or other specific minimum investment in energy efficiency and/or renewable energy mandated by a State, Tribal, or Federal Government with jurisdictional authority.

(c) *Western's response to minimum investment report requests.* Western will respond to requests to accept minimum investment reports within 30 days of receipt of the request. If Western disapproves a request to allow use of the minimum investment report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, public benefits report, or EE/RE report status, as appropriate.

(d) *Minimum investment report contents.* Reports documenting compliance with a minimum level of

investment in energy efficiency and/or renewable energy must include:

- (1) Customer name, address, phone number, email and Website if applicable, and contact person;
- (2) Authority or requirement to undertake a minimum investment, including the source of the minimum investment requirement (number, title, date, and jurisdiction of law); and
- (3) A description of the minimum investment, including:
 - (i) Minimum percentage or other minimum requirement for energy efficiency and/or renewable energy;
 - (ii) Actual or estimated energy and/or capacity savings resulting from minimum investments in energy efficiency, if known;
 - (iii) Actual or estimated energy and/or capacity resulting from minimum investments in renewable energy, if known; and
 - (iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the requirement for minimum investment in energy efficiency and/or renewable energy, if known.

(e) *Minimum investment report approval.* Western will approve the minimum investment report when it meets the requirements in paragraph (d) of this section.

(f) *When to submit the minimum investment report.* The customer must submit the first minimum investment report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to accept the minimum investment report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999) including annual progress reports or update letters, until submitting the first minimum investment report to ensure there is no gap in compliance with section 114 of EPAAct.

(g) *Maintaining minimum investment reports.* (1) Every year on the anniversary of Western's approval of the first minimum investment report, customers choosing this option must submit a letter to Western verifying that they remain in compliance with the minimum investment requirement. The letter must also contain summary information identifying energy and capacity savings associated with minimum investments in energy efficiency, if known, and energy and capacity associated with minimum

investments in renewable energy, if known.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the minimum investment and associated energy efficiency and/or renewable energy savings and/or use, if known.

(h) *Loss of eligibility to submit the minimum investment report.* (1) A customer ceases to be eligible to submit a minimum investment report if:

- (i) A State, Tribal, or Federal mandate no longer applies to the customer, or
 - (ii) The customer does not comply with the minimum level of investment in applicable State, Tribal, or Federal law.
- (2) Western will work with a customer that is no longer eligible to submit a minimum investment report to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.18 What are the requirements for the public benefits report alternative?

(a) *Requests to submit a public benefits report.* Customers may submit a request to prepare a public benefits report instead of an IRP. Requests to submit public benefits reports must include data on:

- (1) The source of the public benefits requirement (number, title, date, and jurisdiction of law);
- (2) The initial, annual, and other reporting requirement(s) of the program, if any; and
- (3) The required public benefits charge, including charges to be collected for and spent on energy efficiency, conservation, or demand-side management; renewable energy; efficiency and alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits category.

(b) *Public benefits requirement.* Participation in a public benefits program requires either a mandatory set percentage of customer gross revenues or other specific charges to be applied toward the programs as determined by the applicable State, Tribal, or Federal authority. The revenues from the public benefits charge may be expended directly by the customer, or by another entity on behalf of the customer as determined by the applicable State, Tribal, or Federal authority.

(c) *Western's response to public benefits report requests.* Western will respond to requests to accept a public benefits report within 30 days of receipt of the request. If Western disapproves a request to allow use of the public benefits report, the requesting customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, minimum investment report, or EE/RE report status, as appropriate.

(d) *Public benefits report contents.* Reports documenting participation in a public benefits program must include:

- (1) Customer name, address, phone number, email and Website if applicable, and contact person;
- (2) Authority or requirement to participate in a public benefits program, including the source of the public benefits requirement (number, title, date, and jurisdiction of law); and
- (3) A description of the public benefits program, including:
 - (i) Overall public benefits charge, whether minimum investment or other set charge, including charges to be collected for and spent on energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits categories;
 - (ii) Actual or estimated energy and/or capacity savings associated with energy efficiency and resulting from participation in the public benefits program, if known;
 - (iii) Actual or estimated energy and/or capacity associated with renewable energy and resulting from participation in the public benefits program, if known;
 - (iv) A description of the energy efficiency and renewable energy activities to be undertaken by the customer over the next 2 years as a result of participation in the public benefits program, if known.

(e) *Public benefits report approval.* Western will approve the public benefits report when it meets the requirements in paragraph (d) of this section.

(f) *When to submit the public benefits report.* The customer must submit the first public benefits report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to prepare the public benefits report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect

before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999), including annual progress reports or update letters, until submitting the first public benefits report to ensure there is no gap in compliance with section 114 of EPAct.

(g) *Maintaining the public benefits report.* (1) Every year on the anniversary of Western's approval of the first public benefits report, customers choosing this option must submit a letter to Western:

(i) Verifying that they remain in compliance with the public benefits program; and

(ii) Identifying energy and capacity savings associated with energy efficiency, and energy and capacity associated with renewable energy, for the customer's public benefits contribution, if known.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the public benefits charge and associated customer energy efficiency and/or renewable energy savings and/or use, if known.

(h) *Loss of eligibility to submit the public benefits report.* (1) A customer ceases to be eligible to submit a public benefits report if:

(i) A State, Tribal, or Federal mandate no longer applies to the customer, or

(ii) The customer does not comply with the public benefits requirement in applicable State, Tribal, or Federal law.

(2) Western will work with a customer that is no longer eligible to submit a public benefits report to develop an appropriate schedule for submittal of an IRP or other report required by this subpart.

§ 905.19 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?

(a) *Requests to submit an EE/RE report.* Customers may submit a request to prepare an EE/RE report instead of an IRP. Requests to submit EE/RE reports must include data on:

(1) The source of the EE/RE reporting requirement (number, title, date, and jurisdiction of law);

(2) The initial, annual, and other reporting requirement(s) of the report; and

(3) A summary outline of the EE/RE report's required data or components,

including any requirements for documenting customer energy efficiency and renewable energy activities.

(b) *EE/RE report requirement.* The EE/RE report may include only electrical resource use and subsequent energy efficiency and/or renewable energy activities, or may additionally include other utility resource information, such as water and natural gas data. At a minimum, the EE/RE report must annually document energy efficiency and/or renewable energy activities undertaken by the customer.

(c) *Western's response to EE/RE report requests.* Western will respond to requests to accept EE/RE reports within 30 days of receipt of the request. If Western disapproves a request to allow use of the EE/RE report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the letter of disapproval. Alternatively, the customer may submit a request for small customer plan, minimum investment report, or public benefits report status, as appropriate, within 30 days after the date of the letter of disapproval.

(d) *EE/RE report contents.* EE/RE reports must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to complete the EE/RE report, including the source of the requirement (number, title, date, and jurisdiction of law); and

(3) A description of the customer's required energy efficiency and/or renewable energy activities, including:

(i) Level of investment or expenditure in energy efficiency and/or renewable energy, and quantifiable energy savings or use goals, if defined by the EE/RE reporting requirement;

(ii) Actual or estimated energy and/or capacity savings, if any, associated with energy efficiency and resulting from the EE/RE reporting requirement;

(iii) Actual or estimated energy and/or capacity, if any, associated with renewable energy and resulting from the EE/RE reporting requirement;

(iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the EE/RE reporting requirement.

(e) *EE/RE report approval.* Western will approve the EE/RE report when the report meets the requirements in paragraph (d) of this section.

(f) *When to submit the EE/RE report.* The customer must submit the first EE/RE report to the appropriate Western Regional Manager within 1 year after Western's approval of the request to

accept the EE/RE report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before [effective date of the final rule] (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 1999), including annual progress reports or update letters, until submitting the first EE/RE report to ensure there is no gap in compliance with section 114 of EPAct.

(g) *Maintaining EE/RE reports.*

(1) Every year on the anniversary of Western's approval of the first EE/RE report, customers choosing this option must submit an annual EE/RE report to Western. The report must contain summary information identifying customer energy and capacity savings associated with energy efficiency, if any, and customer energy and capacity associated with renewable energy, if any. If this information is not contained in the EE/RE report, the customer must submit this information with the report as a separate letter. The letter must also verify that the customer remains in compliance with the EE/RE reporting requirement.

(2) Customers may submit annual EE/RE reports outside of the anniversary date if previously agreed to by Western if the report contains all required data for the previous full year.

(h) *Loss of eligibility to submit the EE/RE report.* (1) A customer ceases to be eligible to submit a EE/RE report if:

(i) The EE/RE reporting requirement no longer applies to the customer, or

(ii) The customer does not comply with the EE/RE reporting requirements in applicable State, Tribal, or Federal law.

(2) Western will work with a customer that is no longer eligible to submit an EE/RE report to develop an appropriate schedule for submittal of an IRP or other report required under this subpart.

§ 905.20 How are plans and reports processed?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receipt.

§ 905.21 When are customers in noncompliance with this part, and how does Western ensure compliance?

(a) *Penalties for noncompliance.*

Western will impose a penalty on the long-term firm power customer for failure to submit or resubmit an IRP and action plan, small customer plan, minimum investment report, public benefits report, or EE/RE report as required by this subpart. Western will

also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(b) *Good faith effort to comply.* If it appears that a customer's activities may be inconsistent with the applicable plan or report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receipt of information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(c) *Written notification of penalty.* Western must provide written notice of the imposition of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for imposition of the penalty.

(d) *Imposition of penalty.* (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.22.

(2) The surcharge increases to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.

(3) After the first 12 months of imposition of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

(i) When it appears to be more effective to ensure customer compliance, or

(ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) *Assessing and ceasing penalties.* Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease

imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) *Penalties on MBAs and IRP cooperatives.* In situations involving an IRP submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

§ 905.22 What is the administrative appeal process?

(a) *Filing written appeals with Western.* If a customer disagrees with Western's determination of the acceptability of its IRP, small customer plan, minimum investment report, public benefits report, or EE/RE report submittal, its compliance with an approved plan or report, or any other compliance issue, the customer may request reconsideration by filing a written appeal with the appropriate Regional Manager. Customers may submit appeals any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts the customer believes should be brought to Western's attention. The Regional Manager will respond within 45 days of receipt of the appeal. If resolution is not achieved at the Regional Office level, the customer may appeal to the Administrator, who will respond within 30 days of receipt.

(b) *Alternative dispute resolution.* Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or disputes relating to compliance with this part.

(c) *Imposition of penalty during appeal.* Western will not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western will impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.

(d) *Meeting other requirements during appeal process.* A written appeal or use

of alternative dispute resolution procedures does not suspend other reporting and compliance requirements under this part.

§ 905.23 How does Western periodically review plans and reports?

(a) *Periodic review of customer actions.* Western will periodically review customer actions to determine whether they are consistent with the approved IRP, minimum investment report, or public benefits report. Small customer plans and EE/RE reports are not subject to this periodic review.

(b) *Reviewing representative samples of plans and reports.* Western will periodically review a representative sample of IRPs, minimum investment reports, and public benefits reports, and the customer's implementation of the applicable plan or report from each of its marketing areas. The samples will reflect the diverse characteristics and circumstances of the customers that purchase power from Western. These reviews will be in addition to, and separate and apart from, the review of initial and updated IRPs, minimum investment reports, and public benefits reports to ensure compliance with this subpart.

(c) *Scope of periodic reviews.* Periodic reviews may consist of any combination of review of the customer's annual IRP progress reports, minimum investment letters, or public benefits letters, telephone interviews, or on-site visits. Western will document these periodic reviews and may report on the results of the reviews in Western's annual report.

§ 905.24 What are the opportunities for using the Freedom of Information Act to request data?

IRPs, small customer plans, minimum investment reports, public benefits reports, and EE/RE reports and associated data submitted to Western are subject to the Freedom of Information Act (FOIA) and may be made available to the public upon request. Customers may request confidential treatment of all or part of a submitted document under FOIA's exemption for confidential business information found in 10 CFR 1004.11. Western will make its own determination whether particular information is exempt from public access and, if so, Western will treat this information as confidential and not disclose it to the public.

§ 905.25 How often is this program reviewed?

At appropriate intervals, Western may initiate a public process to review the regulations in this part to determine whether they should be revised to

reflect changes in technology, needs, or other developments.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-161-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-80 and MD-90-30 Series Airplanes, and Model MD-88 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 McDonnell Douglas Model DC-9-80 and MD-90-30 series airplanes, and Model MD-88 airplanes, that would have required a determination to be made of whether, and at what locations, metallized polyethyleneterephthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. That proposal was prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. This new action revises the proposed rule by expanding the applicability of the proposed rule to include additional airplanes. The actions specified by this new proposed AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-161-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial 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 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.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5334; fax (562) 627-5210.

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-161-AD." The postcard will be date stamped and returned to the commenter.

Comments submitted to the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 12, 1999 (64 FR 43966), do not need to be

re-submitted and will be considered along with any comments received to the supplemental NPRM.

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-261-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 McDonnell Douglas Model DC-9-80 and MD-90-30 series airplanes, and Model MD-88 airplanes was published as an NPRM in the **Federal Register** on August 12, 1999 (64 FR 43966). That NPRM would have required a determination to be made of whether, and at what locations, metallized polyethyleneterephthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. That NPRM was prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking.

That condition, if not corrected, could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, investigations (conducted by FAA and Boeing) revealed that, during manufacture of Model DC-9-80 series airplanes in 1981, MPET insulation blankets were installed. However, it is not possible to determine the exact manufacturer's fuselage numbers of these airplanes. Based on the date that the MPET covering material was first approved by the manufacturer and the time that was necessary to produce blankets for installation, the FAA has determined that Model DC-9-80 series airplanes manufactured after May 1981 (*i.e.*, manufacturer's fuselage numbers 995 through 1010 inclusive) could have MPET insulation blankets installed. In addition, two additional Model MD-90-30 series airplanes, manufacturer's fuselage numbers 2242 and 2243, were found to have MPET insulation blankets installed. The FAA has determined that affected airplanes having manufacturer's fuselage numbers 995 through 1010

inclusive, 2242, and 2243 are subject to the addressed unsafe condition.

Therefore, the FAA has revised the applicability statement of the supplemental NPRM from “* * * manufacturer’s fuselage numbers 1011 through 2241 inclusive; certificated in any category” to “*** manufacturer’s fuselage numbers 995 through 2243 inclusive; certificated in any category.”

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.

Regulatory Evaluation Summary

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.

The FAA conducted a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of this and one other proposed AD to operators of all 781 U.S.-registered McDonnell Douglas airplanes that have thermal/acoustical insulation blankets covered with a film of MPET. This analysis is included in the Rules Docket No.’s 99-NM-161-AD and 99-NM-162-AD. The FAA has determined that 625 Model DC-9-80 series airplanes and 22 Model MD-90-30 series airplanes operated by 16 entities would be affected by this proposed AD. Thirteen of these entities operate N-registered Model DC-9-80 series airplanes, three entities operate Model MD-90-30 series airplanes, and two entities operate both Model DC-9-80 series airplanes and Model MD-90-30 series airplanes.

The Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis, completed by the FAA and included in this Rules Docket, estimates that the affected airplanes could be retrofitted with thermal/acoustic insulation blankets covered with film that exhibit no flame propagation when tested in accordance with the requirements of ASTM E648 or FAA-approved equivalent. Testing conducted by the FAA indicates that there are films that are currently in use that meet the test standard required by this proposed AD. These include certain polyvinylfluoride

films that weigh no more than the materials they would replace. The FAA has identified three categories of costs associated with the retrofit: (1) Material costs of the blankets; (2) labor costs to remove existing blankets, install new blankets, and reinstall wiring, panels, floors, and other items; and (3) net lost revenues, or out of service costs. Over the four-year compliance period, material costs would be \$17.6 million, labor costs would be \$218.5 million, and net lost revenues would be \$13.6 million. Total costs would be \$249.7 million, or \$211.3 million discounted to present value at seven percent.

The Regulatory Flexibility Act (RFA) of 1980 establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Three of the operators affected by the proposed AD are considered small, that is, they employ fewer than 1,500 people. One of these operators is a private corporation and the FAA is unable to ascertain any financial information about it. The other two entities have revenues in excess of \$100 million. Two entities are not considered a substantial number of small entities by Small Business Administration criteria. Pursuant to the RFA, 5 U.S.C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities.

The provisions of this proposed AD would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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:

McDonnell Douglas: Docket 99–NM–161–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes; Model MD–90–30 series airplanes; and MD–88 airplanes; manufacturer's fuselage numbers 995 through 2243 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 (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 ensure that insulation blankets constructed of metallized polyethyleneterephthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 4 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Insulation blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 4 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets. The replacement procedures shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD–90–25–015, Revision 01, dated November 5, 1997 (for Model MD–90–30 series airplanes); or McDonnell Douglas Service Bulletin MD80–25–355, Revision 01, dated November 5, 1997 (for Model DC–9–80 series airplanes and Model MD–88 airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 4 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar covers specified in the service bulletins has been shown to have successfully passed the testing of the ASTM flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

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, 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 5: 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

(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.

Issued in Renton, Washington, on November 10, 1999.

D. L. Riffin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30057 Filed 11–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99–NM–162–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –30F Series Airplanes, and Model MD–11 and –11F 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 McDonnell

Douglas Model DC–10–30 and –30F series airplanes, and Model MD–11 and –11F series airplanes, that would have required that a determination be made of whether, and at what locations, metallized polyethyleneterephthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. That proposal was prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. This new action revises the proposed rule by expanding the applicability of the proposed rule to include additional airplanes. The actions specified by this new proposed AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

DATES: Comments must be received by December 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial 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 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.

FOR FURTHER INFORMATION CONTACT: Robert Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5334; fax (562) 627–5210.

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-162-AD." The postcard will be date stamped and returned to the commenter.

Comments submitted to the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 12, 1999 (64 FR 43966), do not need to be re-submitted and will be considered along with any comments received to the supplemental NPRM.

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-162-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 McDonnell Douglas Model DC-10-30 and -30F series airplanes, and Model MD-11 and -11F series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 12, 1999 (64 FR 677631). That NPRM would have required that a determination be made of whether, and at what locations, metallized polyethyleneterephthalate (MPET) insulation blankets are

installed, and replacement of MPET insulation blankets with new insulation blankets. That NPRM was prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. That condition, if not corrected, could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

Actions Since Issuance of Previous Proposal

The applicability of the NPRM was based on the FAA's understanding that, as part of the transition from manufacturing McDonnell Douglas Model DC-10-30 and -30F series airplanes to Model MD-11 series airplanes, only the last few Model DC-10-30 and -30F series airplanes (manufacturer's fuselage numbers 440 through 446 inclusive) that were manufactured had MPET insulation blankets installed. (MPET was the original approved material for the insulation blankets installed on Model MD-11 and -311F series airplanes.)

Since the issuance of that NPRM, investigations [conducted by FAA, Boeing, operators, and the United States Air Force (USAF)] revealed that MPET insulation blankets have been installed on Model DC-10-30 and -30F series airplanes [including KC-10A (military) series airplanes] as early as May 1981. The majority of these airplanes that were manufactured from 1981 through 1987 were KC-10A (military) series airplanes. However, it is not possible to determine the exact manufacturer's fuselage numbers of these airplanes. Based on the date that the MPET covering material was first approved by the manufacturer and the time that was necessary to produce blankets for insulation, the FAA has determined that Model DC-10-30 and DC-10-30F series airplanes manufactured after May 1981 (i.e., manufacturer's fuselage numbers 359 through 439 inclusive) could have MPET insulation blankets installed. The FAA finds that the subject model airplanes having serial numbers 359 through 439 inclusive, are subject to the addressed unsafe condition.

Therefore, the FAA has revised the applicability statement of the supplemental NPRM from "* * * manufacturer's fuselage numbers 440 through 632 inclusive; certificated in any category" to "* * * manufacturer's fuselage numbers 359 through 632 inclusive; certificated in any category."

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.

Regulatory Evaluation Summary

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.

The FAA conducted a Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis to determine the regulatory impacts of this and one other proposed AD to operators of all 781 U.S.-registered McDonnell Douglas airplanes that have thermal/acoustical insulation blankets covered with a film of MPET. This analysis is included in Rules Docket No.'s 99-NM-162-AD and 99-NM-161-AD. The FAA has determined that 61 Model MD-11 and -11F series airplanes and 73 Model DC-10-30 and -30F series airplanes operated by 10 entities would be affected by this proposed AD.

Three entities operate Model MD-11 and -11F series airplanes, and 4 entities operate both Model MD-11 and -11F series airplanes and Model DC-10-30 and -30F series airplanes.

The Preliminary Cost Analysis and Initial Regulatory Flexibility Analysis, completed by the FAA and included in the Rules Docket, estimates that the affected airplanes could be retrofitted with thermal/acoustic insulation blankets covered with film that exhibit no flame propagation when tested in accordance with the requirements of ASTM E648 or FAA-approved equivalent. Testing conducted by the FAA indicates that there are films that are currently in use that meet the test standard required by this proposed AD. These include certain polyvinylfluoride films that weigh no more than the materials they would replace. The FAA has identified three categories of costs associated with the retrofit: (1) Material costs of the blankets; (2) labor costs to remove existing blankets, install new blankets, and reinstall wiring, panels, floors, and other items; and (3) net lost revenues, or out of service costs. Over the four-year compliance period, material costs would total \$6.7 million,

labor costs would be \$83.0 million, and net lost revenues would be \$13.7 million. Total costs would be \$103.4 million, or \$87.4 million discounted to present value at seven percent.

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the size of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Two entities affected by the proposed AD are considered small. This entity has revenues in excess of \$100 million. Two entities are not considered a substantial number of small entities by Small Business Administration criteria. Pursuant to the RFA, 5 U.S.C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities.

The provisions of this proposed AD would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more

(adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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:

McDonnell Douglas: Docket 99-NM-162-AD.

Applicability: Model DC-10-30 and -30F series airplanes, and Model MD-11 and -11F series airplanes; manufacturer's fuselage numbers 359 through 632 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 (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 ensure that insulation blankets constructed of metallized polyethyleneterephthalate (MPET) are removed from the fuselage, accomplish the following:

Inspection

(a) Within 4 years after the effective date of this AD, determine whether, and at what locations, insulation blankets constructed of MPET are installed. This determination shall be made in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Insulation blankets that are stamped with "DMS 2072, Type 2, Class 1, Grade A" or "DMS 1996, Type 1" are constructed of MPET.

Corrective Actions

(b) For insulation blankets that are determined not to be constructed of MPET, no further action is required by this AD.

(c) For insulation blankets that are determined to be constructed of MPET, within 4 years after the effective date of this AD, replace the MPET insulation blankets with new insulation blankets. The replacement procedures shall be done in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10-25-368, dated October 31, 1997 (for Model DC-10-30 and -30F series airplanes); or McDonnell Douglas Service Bulletin MD11-25-200, Revision 01, dated March 20, 1998 (for Model MD-11 and -11F series airplanes); as applicable. The replacement insulation blankets must be constructed of materials tested in accordance with Standard Test Method American Society for Testing and Materials (ASTM) E648 and approved by the Manager, Los Angeles ACO.

Note 3: Although this paragraph allows up to 4 years for the required replacement, the FAA anticipates that operators will comply at the earliest practicable maintenance opportunity.

Note 4: Only one of the two metallized Tedlar covers specified in the service bulletins has been shown to have successfully passed the testing of the ASTM flammability standard and is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install an MPET insulation blanket on any airplane.

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, 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 5: 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

(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.

Issued in Renton, Washington, on November 10, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-30058 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 12****RIN 1515-AC36****Forced or Indentured Child Labor**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the seizure and forfeiture of merchandise that is found to be a prohibited importation under applicable Customs law concerning products of convict labor, forced labor, or indentured labor under penal sanctions. Furthermore, this document proposes to amend the Customs Regulations to make clear that nothing in those regulations precludes Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law dealing with prison-labor goods. The proposed amendments are intended to stop illegal shipments of products of forced or indentured child labor and to punish violators.

DATES: Comments must be received on or before January 18, 2000.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Office of Regulations and Rulings, 202-927-2320.

SUPPLEMENTARY INFORMATION:**Background**

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), generally prohibits the importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions. Such prohibitions are enforced by Customs under §§ 12.42-12.44 of the Customs Regulations (19 CFR 12.42-12.44).

If Customs finds, on the basis of information presented and investigated under the procedures described in § 12.42(a)-(e), that a class of merchandise is subject to the prohibition under section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to this effect in the weekly issue of the Customs Bulletin and in the **Federal Register**, as prescribed in § 12.42(f).

Under § 12.43, an importer is afforded the opportunity to furnish proof within 3 months after importation in order to establish the admissibility of particular imported merchandise detained by Customs under § 12.42(e) or covered by a finding under § 12.42(f), that the particular merchandise being imported is not itself produced with the use of a type of labor specified in section 307.

Section 12.44 deals with the disposition of merchandise determined to be inadmissible under section 307. Currently, § 12.44 provides in pertinent part that such merchandise (1) may be exported at any time within the 3-month period after importation or (2) if not so exported and if no proof of admissibility has been provided, the importer is advised in writing that the merchandise is excluded from entry and, 60 days thereafter, the merchandise is deemed abandoned and will be destroyed unless a protest is filed under 19 U.S.C. 1514.

Forced or Indentured Child Labor

A general provision in the Fiscal Year (FY) 1998 Treasury Appropriations Act made clear what is implicit in the law: that merchandise manufactured with the use of forced or indentured child labor falls within the prohibition of section 1307. This Act requires that Customs not use any of the appropriation to permit the importation into the United States of such merchandise.

Following the enactment of the FY 1998 appropriations amendment regarding forced or indentured child

labor, both the Treasury Department and the National Economic Council chaired in-depth interagency discussions aimed at strengthening the capability of the Executive Branch to enforce the prohibition on forced or indentured child labor imports.

To this end, the Treasury Department, by a document published in the **Federal Register** on June 5, 1998 (63 FR 30813), proposed the establishment of a Treasury Advisory Committee on International Child Labor Enforcement, whose ultimate purpose is to support a vigorous law enforcement initiative to stop illegal shipments of products of forced or indentured child labor and to punish violators.

Proposed Amendment

Accordingly, as part of the foregoing initiative, Customs proposes to amend § 12.44 regarding the disposition to be accorded merchandise that is a prohibited importation under section 307.

Specifically, under the proposed amendment, in the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of a particular importation of such merchandise, or if no proof is furnished in this regard, the merchandise will then be seized and subject to the commencement of forfeiture proceedings under subpart E of part 162 of the Customs Regulations (19 CFR part 162, subpart E). Currently, such merchandise is permitted to be exported at any time before it is deemed to have been abandoned.

Also, Customs further proposes to amend § 12.44 to state expressly that nothing in the Customs Regulations (19 CFR Chapter I) precludes Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law (18 U.S.C. 1761-1762) dealing with prison-labor goods.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania

Avenue, NW, 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Because the importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by forced labor is prohibited, Customs anticipates that there will not be a substantial number of small entities that would become involved in a prohibited importation. The rule applies to products subject to a "finding" that the class of merchandise was produced with forced or indentured child labor, a more formal Customs action with a higher burden of proof than simple Customs detention of merchandise based on reasonable suspicion. Also the range of countries and products which are likely to be implicated in forced or indentured child labor findings is likely to be fairly narrow. Accordingly, it is certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that, if adopted, the proposed rule will not have a significant economic impact on a substantial number of small entities. Nor does the document meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Seizure and forfeiture.

Proposed Amendments to the Regulations

It is proposed to amend part 12, Customs Regulations (19 CFR part 12), as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 would continue to read as follows, and the relevant specific sectional authority would be revised 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 (HTSUS)), 1624;

* * * * *

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307 and Pub. L. 105-61 (111 Stat. 1272);

* * * * *

2. It is proposed to amend § 12.42 by revising the first sentence of paragraph (a) to read as follows:

§ 12.42 Findings of Commissioner of Customs.

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise which is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs.

* * *

* * * * *

3. It is proposed to revise § 12.44 to read as follows:

§ 12.44 Disposition.

(a) *Seizure and summary forfeiture.* In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(b) *Prison-labor goods.* Nothing in this chapter precludes Customs from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

Approved: August 12, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99-29928 Filed 11-16-99; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

RIN 1515-AC48

Endorsement of Checks Deposited by the U.S. Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reflect that Customs employees authorized to accept certain monetary instruments (such as checks) in

payment of Customs duties, taxes, and other charges are no longer required to place their names and badge numbers on the instrument and that certain other information must be placed on the face (front) side of the instrument, rather than the reverse side of the instrument. The proposed changes are designed to avoid a conflict with Federal Reserve System regulations that govern the endorsement of checks by banks.

DATES: Comments must be received on or before January 18, 2000.

ADDRESSES: Written comments (preferably in triplicate), regarding both the substantive aspects of the proposed rule and how it may be made easier to understand, may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Cohen, Acting Director, Financial Management Division, Office of Finance (202-927-6140).

SUPPLEMENTARY INFORMATION:

Background

Under § 24.1 of the Customs Regulations (19 CFR 24.1), procedures for the collection of Customs duties, taxes, and other charges and fees are set forth. Currently, under § 24.1(b), applicable to noncommercial importations at piers, terminals, bridges, airports, and other similar places, Customs employees authorized to collect payments may accept a personal check and shall ensure that certain information is recorded on the check. Under § 24.1(b)(1), with respect to personal checks received under § 24.1(b) and certain other checks and money orders received under § 24.1(a), Customs employees shall show their name, badge number, and the serial or other identification number from the collection voucher on the reverse side of the check.

Requirements applicable to banks endorsing checks are set forth under regulations of the Federal Reserve System (12 CFR 229.35). Appendix D to Part 229 of the Federal Reserve System regulations (Title 12, Chapter II)(entitled "Indorsement Standards") pertains to the endorsements of depository, collecting, and returning banks. It sets forth the specific information that shall or may be provided and requires that such information shall be recorded on the reverse side of checks. The Appendix also provides that the readability, identifiability, and legibility of the depository bank's endorsement must be

protected. It cautions the depository bank not to interfere with the readability of the endorsement, and it carefully sets forth specific requirements for collecting and returning banks to follow for the purpose of protecting that endorsement.

The requirement under the Customs Regulations that Customs employees must place information on the reverse side of monetary instruments conflicts with the requirements of 12 CFR 229.35 and App. D of Part 229 of Title 12 CFR regarding the protection of bank endorsements. In order to ensure that the practice of Customs employees in accepting checks and other monetary instruments does not interfere with the readability, identifiability, and legibility of endorsements of depository and other banks, Customs proposes to amend § 24.1(b) and § 24.1(b)(1).

Section 24.1(b)(1) is proposed to be amended to reflect that authorized Customs employees are no longer required to place their name and badge number on the instrument and that the collection voucher number (or other identifier) should now be placed on the face (front) side of the instrument, rather than the reverse side of the instrument. Section 24.1(b) is proposed to be amended to reflect that certain other information that is required on the instrument also should be placed on the face of the check. This information includes the payor's home and business phone numbers and either a social security number, current passport number, or current driver's license number (showing the issuing state).

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed

amendments to the Customs Regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Adoption of the proposed amendments regarding the endorsement of checks and other instruments will improve the process for accepting and depositing these instruments, without any additional burden on businesses or individuals. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, part 24 of the Customs Regulations (19 CFR part 24) is proposed to be amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

* * * * *

2. In § 24.1, the second and third sentences of introductory paragraph (b) and all of paragraph (b)(1) are revised to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

* * * * *

(b) * * * Where the amount of the check is over \$25, the Customs cashier or other employee authorized to receive Customs collections will ensure that the payor's name, home and business telephone number (including area code), and date of birth are recorded on the face (front) side of the monetary instrument. In addition, one of the following will be recorded on the face side of the instrument: preferably, the payor's social security number or, alternatively, a current passport number

or current driver's license number (including issuing state). * * *

(1) Where the amount is less than \$100 and the identification requirements of paragraph (a)(4) of this section have been met, the Customs employee accepting the check or money order will place his name and badge number on the collection voucher and place the serial number or other form of voucher identification on the face side of the check or money order so that the check or money order can be easily associated with the voucher.

* * * * *

Approved: September 15, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–29929 Filed 11–16–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act; Proposed Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Treasury, Internal Revenue Service (IRS) gives notice of a proposed rule to exempt a new system of records entitled "IRS Audit Trail and Security Records System—Treasury/IRS 34.037," from certain provisions of the Privacy Act. The exemptions are intended to comply with the legal prohibitions against the disclosure of certain kinds of information and to protect certain information, about individuals, maintained in this system of records.

DATES: Comments must be received no later than December 17, 1999.

ADDRESSES: Please submit comments to Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. Persons wishing to review the comments should call 202–622–6200 to make an appointment with the Office of Governmental Liaison and Disclosure.

FOR FURTHER INFORMATION CONTACT: David Silverman, Tax Law Specialist, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service at 202–622–6200.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a, if the system is investigatory material compiled for law enforcement purposes. The IRS compiles records in this system for law enforcement purposes. Treasury/IRS 34.037—IRS Audit Trail and Security Records System, contains records that enable the IRS to investigate and monitor the activities of individuals who access IRS information systems which process IRS information. The IRS will use the information to ensure the protection and confidentiality of IRS information for the detection and deterrence of unauthorized access and abuse of the information.

The IRS is hereby giving notice of a proposed rule to exempt Treasury/IRS 34.037—IRS Audit Trail and Security Records System, from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption is from provisions 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (f). Pursuant to the provisions of 5 U.S.C. 552a (k)(2), it is proposed to exempt system of records 34.037, the IRS Audit Trail and Security Records System, from the foregoing provisions of the Privacy Act of 1974, because the system contains investigatory material compiled for law enforcement purposes. The records will be used to enforce 26 U.S.C. 7213, 7213A, 7214, and 18 U.S.C. 1030(a)(2)(B). The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a (c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the

altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a (d)(1), (d)(2), (d)(3), (d)(4), (e)(4) (G), (H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requested access to records; the agency procedures relating to access to records and the contest of the information contained in such records and the administrative remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting this system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of an investigative file pertaining to such individual or to grant access to an investigative file pertaining to such individuals or grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and, disclose investigative techniques and procedures.

(3) U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The IRS will limit its inquiries to information that is necessary for the enforcement and administration of computer security laws and tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What

appears relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(iii) When information is received by the IRS relating to violations of law within the jurisdiction of other agencies, the IRS processes this information through the IRS systems in order to forward the material to the appropriate agencies.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order under the heading The Internal Revenue Service in paragraph (b)(1) to read as follows:

* * * * *

(b) * * *

(1) * * *

Name of system	No.
* * * * *	
IRS Audit Trail and Security	
Records System	34.037
* * * * *	
* * * * *	

Dated: September 21, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99-30036 Filed 11-16-99; 8:45 am]

BILLING CODE 4830-01-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 99-1]

RIN 3014-AA20

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Public Hearings

AGENCY: Architectural and
Transportation Barriers Compliance
Board.

ACTION: Proposed rule; public hearings.

SUMMARY: On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). These guidelines cover new construction and alterations and serve as the basis for enforceable standards issued by other Federal agencies. The Access Board will hold two public hearings on the proposed guidelines. This document gives the dates, times, and locations of the public hearings.

DATES: The hearing dates are:

1. January 31, 2000, 9:30 a.m. to 5 p.m., Los Angeles, CA.
2. March 13, 2000, 9:30 a.m. to 5 p.m., Arlington, VA.

ADDRESSES: The hearing locations are:

1. Los Angeles—Los Angeles Airport Marriott, 5855 West Century Boulevard, Los Angeles, CA 90045.
2. Arlington—Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Interested members of the public may contact Alfonso Baes to preregister to give testimony or may register on the day of the hearings. Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone numbers (202) 272-5434 extension 118; (202) 272-5449 (TTY). These are not toll free numbers. E-mail address: baes@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this document may be obtained at no cost by calling the Access Board's automated publications order line (202) 272-5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S-36A (ADA and ABA Accessibility Guidelines Notice of Proposed Rulemaking, Public Hearings). Persons using a TTY should call (202) 272-5449. Please record a name, address, telephone number and request publication S-36A. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is available on the Board's Internet site (<http://www.access-board.gov/ada-aba/hearings.htm>).

Public Hearings

On November 16, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). To facilitate substantive public review of the proposed rule, the Access Board will hold two public hearings on the proposed guidelines. This document gives the dates, times, and locations of the public hearings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99-30062 Filed 11-16-99; 8:45 am]

BILLING CODE 8150-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA-99-6472]

RIN 2127-AH15

Federal Motor Vehicle Safety Standards; Motorcycle Brake Systems

AGENCY: National Highway Traffic
Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, we (NHTSA) propose to amend the Federal Motor Vehicle Safety Standard on motorcycle brakes by reducing the minimum hand lever force from 5

pounds (presently specified) to 2.3 pounds and the minimum foot pedal force from 10 pounds (presently specified) to 5.6 pounds in the fade recovery and water recovery tests. We believe these proposals, if adopted, would facilitate the manufacture of motorcycles with combined or "linked" braking systems (where hand and foot brakes work in tandem) that do not need so much force exerted on them to be effective. This rulemaking was initiated in response to a petition from American Honda Motor Co., Inc.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 18, 2000.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call the Docket at 202-366-9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For technical issues, you may call Mr. Joseph Scott, Office of Crash Avoidance Standards at (202) 366-8525. His FAX number is (202) 493-2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366-2992. Her FAX number is (202) 366-3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 122, *Motorcycle brake systems*, (49 CFR § 571.122) took effect on January 1, 1974 (see **Federal Register** notice of June 16, 1972, 37 FR 1973). Standard No. 122 specifies performance requirements for motorcycle brake systems. The purpose of the standard is to provide safe motorcycle braking performance under normal and emergency conditions. The safety afforded by a motorcycle's braking system is determined by several factors, including stopping distance, linear stability while stopping, fade resistance, and fade recovery. A safe system should have features that both guard against malfunction and stop the vehicle if a malfunction should occur in the normal service system. Standard No. 122 covers each of these aspects of brake safety, establishing equipment and performance requirements appropriate

for two-wheeled and three-wheeled motorcycles. Among other requirements, the motorcycle manufacturer must be sure that each motorcycle can meet requirements under conditions specified in *S6 Test conditions* and as specified in *S7 Test procedures and sequence*. Two of the tests specified in S7 are the fade and recovery test and the water recovery test. Each test includes a baseline check test.

The baseline check is used to establish a specific motorcycle's pre-test performance to provide a basis for comparison with post-test performance. This comparison is intended to ensure adequate brake performance, at reasonable lever and pedal forces, after numerous high speed or wet condition stops. The two tests for which minimum lever and pedal forces are specified in Standard No. 122 are the baseline checks for fade and recovery, and for water recovery.

The fade and recovery test compares the braking performance of the motorcycle before and after ten 60 mile per hour stops at a deceleration of not less than 15 feet per second per second (fps²). Three baseline stops are conducted from 30 miles per hour at 10 to 11 fps², with the maximum brake lever and maximum pedal forces recorded during each stop, and averaged over the three baseline stops. Ten 60-mile-per-hour stops are conducted at a deceleration rate of 14 to 17 fps², followed immediately by five fade recovery stops from 30 miles per hour at a deceleration rate of 10 to 11 fps². The maximum brake pedal and lever forces measured during the fifth recovery stop must be within plus 20 pounds and minus 10 pounds of the baseline average maximum brake pedal and lever forces.

The water recovery test compares the braking performance of the motorcycle before and after the motorcycle brakes are immersed in water for two minutes. Three baseline stops are conducted from 30 miles per hour at 10 to 11 fps², with the maximum brake lever and pedal forces recorded during each stop, and averaged over the three baseline stops. The motorcycle brakes are then immersed in water for two minutes, followed immediately by five water recovery stops from 30 miles per hour at a deceleration rate of 10 to 11 fps². The maximum brake pedal and lever forces measured during the fifth recovery stop must be within plus 20 pounds and minus 10 pounds of the baseline average maximum brake pedal force and the lever force.

American Honda Motor Co., Inc. Petition for Rulemaking

In a submission dated November 3, 1997, American Honda Motor Co., Inc. (Honda) petitioned us to amend Standard No. 122 to eliminate the minimum hand lever force of 5 pounds and the minimum foot pedal force of 10 pounds for the fade recovery and water recovery tests. Honda requested these changes in order to facilitate the U.S. sale of the Honda CBR1100XX, a high performance motorcycle, and to avoid having to manufacture two separate versions of the vehicle, one for the United States and another for Europe. Honda's stated rationale for the proposed changes was to provide the motorcycle rider with a more linear braking lever input force, so that the safety advantages of the CBR1100XX Combined Brake System (CBS) can be fully utilized. The safety advantages cited were enhanced motorcycle stability and decreased stopping distance. Honda stated that the CBS provides the advantages by applying braking to both wheels when either the hand lever or the foot pedal is applied.

In its petition, Honda stated that: "when Standard No. 122 was originally drafted, it was clearly based on motorcycle independent front and rear brake systems, and did not anticipate or fully address the current generation of relatively advanced braking systems." Honda explained that the CBS allows the rider to apply the brakes to both wheels by activating either the hand lever or the foot pedal. In the past (and when Standard No. 122 was first promulgated), motorcycles used independent controls, i.e., the hand lever controlled the front brakes and the foot pedal controlled the rear brakes. On the CBR1100XX, in contrast, the brake forces are proportioned to both the front and the rear brakes depending on whether the hand lever or the foot pedal is used. For example, if the motorcyclist applies only the hand lever, a greater portion of the braking occurs at the front wheel. Similarly, if the motorcyclist applies only the foot pedal, most of the braking will occur at the rear wheel. These results are achieved by using multi-piston brake calipers at each wheel, which can be partially or fully applied, depending on whether the hand lever or the foot pedal is applied.

Honda stated that the requested amendments to Standard No. 122 are needed because of the gradual reduction in the motorcycle operator force levels (in advanced designs such as the CBR1100XX) needed for brake actuation. Honda explained that reductions in force levels are possible

because of technological advances such as better brake pads, rotor designs and materials; better brake hose materials; stiffer caliper designs and attachments; improved motorcycle tire design, construction, and compounds; and the CBS. Honda asserts that its CBS represents a technological improvement for motorcycles. With its new system, motorcycle operator control and braking characteristics are similar to those of an automobile driver, i.e., one input results in braking at all wheels.

Honda also stated that a minimum lever or pedal force is not required in the European motorcycle regulation, ECE Regulation 78, and that no related safety problems or "excessively sensitive brakes" have been reported in Europe or elsewhere. Honda stated its belief that the elimination of a minimum force requirement in Standard No. 122 would increase global harmonization.

In a letter dated July 13, 1998, Honda amended its petition, requesting that, in Standard No. 122, the minimum hand lever force be reduced to 10 Newtons (2.3 pounds) and the minimum foot pedal force be reduced to 25 Newtons (5.6 pounds).

In a **Federal Register** notice dated October 7, 1997 (62 FR 52372), we granted Honda a temporary exemption from the following Standard No. 122 provisions for the CBS100XX motorcycle: S5.4.1 Baseline check—minimum and maximum pedal forces, S5.4.2 Fade, S5.4.3 Fade recovery, S5.7.2 Water recovery test, and S6.10 Brake actuation forces. Honda was granted a second one-year exemption from those provisions in a **Federal Register** notice of November 25, 1998 (63 FR 65272). The second one-year exemption expired on September 1, 1999.

In a letter dated March 16, 1999 NHTSA granted Honda's petition for rulemaking.

Notice of Proposed Rulemaking

In this notice, we propose amending Standard No. 122 by reducing the minimum hand lever force to 10 Newtons (2.3 pounds), and reducing the minimum foot pedal force to 25 Newtons (5.6 pounds). We also explain why we are not proposing the complete elimination of a minimum braking force for the hand lever and the foot pedal, and why we believe there are benefits to specifying lower minimum hand lever and foot pedal forces.

Determination of Minimum Hand Lever and Foot Pedal Forces

The following explains how we have recalculated the fade recovery (S5.4.3) and the water recovery (S5.7.2) test

ranges to take into account the lower minimum hand lever and foot pedal forces. As earlier noted, the fade recovery and the water recovery tests include a range within which the hand lever and foot pedal forces must be for the fifth recovery stop. At present, Standard No. 122 specifies a 30-pound range with upper and lower limits of plus 20 pounds to minus 10 pounds, respectively, of the baseline check average force obtained from conducting the baseline checks. We propose to revise the limits to correspond with the proposed minimum lever and pedal brake forces.

Standard No. 122 was developed using the "Report of the Motorcycle Committee and Brake Committee"; July 1969 from the Society of Automotive Engineers (SAE). For foot pedals, the current lower limit value specified, minus 10 pounds, is based on the minimum foot pedal force level required for the brake actuation forces for the baseline check stops. Since the baseline check average for the foot pedal force is required to be at least 10 pounds, a lower limit of minus 10 pounds, therefore, allows the pedal force achieved during the fifth recovery stop to be zero pounds. Similarly, the baseline check average for the hand lever force is required to be at least five pounds. However, within the specified range of plus 20 pounds and minus 10 pounds, the hand lever force for the fifth recovery stop could theoretically be as low as minus five pounds. It is physically impossible for the lever force to be less than zero. Thus, the practical range of the hand lever force for the fifth recovery is reduced from 30 pounds to 25 pounds. For hand lever forces of 10 pounds or more achieved during the baseline check stop, the range for the resulting forces during the fifth recovery stop would be 30 pounds.

In this NPRM, we propose to maintain this 30-pound range in the braking forces. The 30-pound range in metric measurement is 135 Newtons. For the hand lever forces, different upper and lower values for the range are proposed to ensure that the force in the fifth recovery stop could not be specified as less than zero Newtons. Taking into consideration the proposed reductions in the minimum foot pedal and hand lever forces for the baseline check stops, we have proposed revised upper and lower limits accordingly, so that the forces obtained in the fifth recovery stop could not be theoretically less than zero Newtons. We propose the following limits:

For the proposed 25 Newton (5.6 pounds) foot pedal minimum, we

propose as limits plus 110 Newtons (24.7 pounds) and minus 25 Newtons (5.6 pounds); and

For the proposed 10 Newton (2.3 pounds) hand lever minimum, we propose as limits plus 125 Newtons (28.1 pounds) and minus 10 Newtons (2.3 pounds).

We believe that these limits more appropriately reflect the corresponding minimum lever and pedal efforts proposed for the baseline check stops.

Striking a Balance between Mature and State-of-the-Art Technologies

One important reason for retaining minimum braking forces is that motorcycles are still being manufactured that do not have the linked braking system found on the Honda CBR1100XX. For model year 1999, cable-actuated brakes and drum brakes (the predominant technology at the time Standard No. 122 was issued) continue to be used on many new motorcycles. In this rulemaking, we seek a common ground between the old and new technologies, ensuring that Standard No. 122's safety requirements remain applicable to motorcycles manufactured with mature technology, but are flexible enough to ensure that motorcycles manufactured with new technology meet the need for safety. Maintaining a minimum hand lever and foot pedal force will ensure that motorcycles using mature technology will not have problems with overly sensitive brakes.

For motorcycles using state-of-the-art technologies, we foresee a continuing trend towards lower braking forces. We believe that in the future, electronic braking technology could become commercially available on motorcycles. That application might allow motorcyclists to stop their motorcycles using less hand lever or foot pedal force. Even with these trends toward lower brake forces, the minimum forces proposed in this rulemaking are for a deceleration rate of 10 to 11 fps^2 and would therefore always be greater than the lever and pedal forces needed for the onset of braking.

International Harmonization Issues

Based on information obtained from the United Nations' Economic Commission for Europe (ECE) and Dr. Nicholas Rogers, Secretary General of the International Motorcycle Manufacturers' Association (in Geneva), we understand that minimum hand lever or foot pedal forces are not required in ECE Regulation 78. However, even though minimum forces are not specified in the European regulation, that does not mean that

current production European motorcycles' braking systems are activated with extremely low lever or pedal forces. As an example, on a European version of the Honda CBR1100XX, the minimum hand lever force measured for the fade and water recovery tests is 4.6 pounds, a force close to the 5 pound hand lever force minimum presently in Standard No. 122.

Human Factors Issues

Eliminating minimum hand lever and foot pedal forces may raise a human factors concern for American riders who are not accustomed to the lower hand and foot forces that European motorcyclists have experienced. We seek specific public comment on this issue. With regard to lower minimum forces, however, many motorcyclists have noted that reduced hand lever and foot pedal braking forces may result in better control, a safety benefit. We also note that increasing numbers of motorcyclists are older persons (older than 65 years of age) and women, population groups who may welcome the availability of motorcycles with linked braking systems and the reduced braking inputs required at the lever and the pedal. As earlier noted, linked braking systems such as Honda's CBS can balance the undesired handling and braking characteristics of "sensitive brakes" by applying the brakes at both wheels when either the lever or pedal is applied.

Other Rulemaking Issues

Finally, our review of Standard No. 122, disclosed that the introductory text to S6, Test conditions, had been inadvertently removed. We are proposing to restore the removed language, provided in the proposed regulatory text that follows.

Leadtime

We propose that the proposed amendments, if made final, would take effect one year after the publication of the final rule. We believe that manufacturers are already making motorcycles that can meet the proposed minimum braking forces. In the event changes in design or manufacturing procedures are necessary, we believe one year would be enough lead time for industry to make any necessary changes. Motorcycle manufacturers would be given the option of complying immediately with the new requirements.

Regulatory Analyses and Notices*Executive Order 12866 and DOT*

Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a 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 a "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, NHTSA believes that this proposal, if made final, would not have any cost effect on motorcycle manufacturers. We believe that all motorcycle manufacturers are manufacturing motorcycles that meet the new minimum hand lever and foot pedal forces proposed in this NPRM.

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

Executive Order 12612

We have analyzed this proposal in accordance with Executive Order 12612 ("Federalism"). We have determined that this proposal does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

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

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

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The factual statement that is the basis for this certification is that since all motorcycle manufacturers, including small manufacturers, are already manufacturing motorcycles that would meet the new minimum braking forces proposed in this notice of proposed rulemaking, any changes made by this proposed rule would have no substantive effect on small motorcycle manufacturers. The U.S. Small Business Administration's size standards (at 13 CFR 121.201) defines a small motorcycle manufacturer (under Standard Industrial Classification Code 3711 "Motor Vehicles and Passenger Car Bodies") as a business operating primarily in the United States that has fewer than 1,000 employees. Accordingly, the agency believes that this proposal, if made final, would not affect the costs of the motorcycle manufacturers considered to be small business entities.

National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not propose any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have determined that there are no available and applicable voluntary consensus standards that we can use in this notice of proposed rulemaking.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

For the reasons stated above, this proposal would not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in

developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.122 would be amended by revising S5.4.3, revising S5.7.2, adding S6., and revising the first sentence of S6.10 to read as follows:

§ 571.122 Standard No. 122; Motorcycle braking systems.

* * * * *

S5.4.3. *Fade recovery.* Each motorcycle shall be capable of making

five recovery stops with a pedal force that does not exceed 400 Newtons (90 pounds), and a hand lever force that does not exceed 245 Newtons (55 pounds) for any of the first four recovery stops and that for the fifth recovery stop, is within, for the foot pedal force, plus 110 Newtons (24.7 pounds) and minus 25 Newtons (5.6 pounds) and, for the hand lever force, plus 125 Newtons (28.1 pounds), and minus 10 Newtons (2.3 pounds) of the fade test baseline check average force (S7.6.3).

* * * * *

S5.7.2 *Water recovery test.* Each motorcycle shall be capable of making five recovery stops with a pedal force that does not exceed 400 Newtons (90 pounds), and hand lever force that does not exceed 245 Newtons (55 pounds), for any of the first four recovery stops, and that for the fifth recovery stop, is within, for the foot pedal force, plus 110 Newtons (24.7 pounds) and minus 25 Newtons (5.6 pounds) and, for the hand lever force, plus 125 Newtons (28.1 pounds) and minus 10 Newtons (2.3 pounds) of the water recovery baseline check average force (S7.10.2).

* * * * *

S6 *Test conditions.* The requirements of S5 shall be met under the following conditions. Where a range of conditions is specified, the motorcycle shall be capable of meeting the requirements at all points within the range.

* * * * *

S6.10 *Brake actuation forces.* Except for the requirements of the fifth recovery stop in S5.4.3 and S5.7.2 (S7.6.3 and S7.10.2), the hand lever force is not less than 10 Newtons (2.3 pounds) and not more than 245 Newtons (55 pounds) and the foot pedal force is not less than 25 Newtons (5.6 pounds) and not more than 400 Newtons (90 pounds). * * *

* * * * *

Issued on: November 10, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99-29952 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 991108299-9299-01; I.D. 102299A]

RIN 0648-XA39

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF80

Endangered and Threatened Species; Proposed Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed Rule, notice of public hearing.

SUMMARY: NMFS and FWS (the Services) have completed a status review of U.S. Atlantic salmon populations and have determined that a distinct population segment (DPS) of Atlantic salmon in the Gulf of Maine is in danger of extinction. The Services have reviewed the status of the species and the efforts being made to protect the species and are proposing to place the Gulf of Maine DPS of Atlantic salmon on the list of endangered species under the Endangered Species Act of 1973, as amended (ESA). The Services have determined that the species' status has declined since the December 1997 determination that listing was not warranted. Specifically, documented adult returns have remained low despite projections of increased marine survival, presmolt survival has been found to be lower than previously estimated, the detection of a new disease led to the destruction of the Pleasant River broodstock, a disease from Europe has affected the Canadian aquaculture industry and spread toward the U.S. border, the use of non-North American strains of Atlantic salmon in the U.S. aquaculture industry has increased, aquaculture escapees continue to be detected in the wild, and salmon habitat continues to be threatened by water withdrawal and sedimentation. If this proposed listing is finalized, the protective measures of the ESA will extend to the Gulf of Maine

DPS of Atlantic salmon, and a recovery plan will be prepared and implemented.

DATES: Comments on this proposal and on the July 1999 Status Review announced in the October 19, 1999, **Federal Register** (64 FR 56297) must be received by February 15, 2000. A public hearing will be held at 6:00 pm on January 19, 2000.

ADDRESSES: Send all comments and materials concerning this proposed rule and the 1999 Status Review to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or the Endangered Species Program Coordinator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, Massachusetts 01930. The public hearing location is in the cafeteria of Ellsworth Middle School, 20 Forrest Avenue, Ellsworth, Maine 04605. The 1999 Status Review may be obtained by contacting either of the above individuals or downloaded from the following site: <http://news.fws.gov/salmon/asalmon.html>. Please note that electronic mail or internet site comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, at the address above (978-281-9116) or Paul Nickerson, FWS, at the address above (413-253-8615).

SUPPLEMENTARY INFORMATION:

Background

In 1991, the FWS designated Atlantic salmon in five rivers in "Downeast" Maine (the Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers) as Category 2 candidate species under the ESA (56 FR 58804, November 21, 1991). This designation simply indicated that the FWS had determined that listing was possibly appropriate but that further biological information was needed to support a proposed rule to list the species. The FWS then began working more vigorously with the NMFS as well as with the State of Maine and private agencies to reverse the decline in salmon abundance. During that same period, the NMFS was conducting an exhaustive 5-year study of the Narraguagus River, demonstrating that spawning and nursery habitat appeared suitable and should produce more fish given adequate escapement levels.

The Services received identical petitions in October and November of 1993 to list the Atlantic salmon (*Salmo salar*) throughout its historical range in the contiguous United States under the ESA. The Services found on January 20, 1994 (59 FR 3067), that the petition presented substantial scientific

information indicating that a listing may be warranted. A biological review team (BRT) consisting of three members from each Service was appointed to review the petition and prepare a formal status review.

The Services completed a status review of the species in January 1995 and concluded that the available biological evidence indicated that the species described in the petition, that is, Atlantic salmon throughout its range in the United States, did not meet the definition of "species" under the ESA. Therefore, the Services concluded that the petitioned action to list Atlantic salmon throughout its historic U.S. range was not warranted (60 FR 14410, March 17, 1995). In the same notice, the Services determined that a DPS that consists of populations in seven rivers (the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap and Sheepscot Rivers) was in danger of extinction. On September 29, 1995, after reviewing the information in the status review, as well as State and foreign efforts to protect the species, the Services proposed to list the seven rivers DPS as a threatened species under the ESA (60 FR 50530, September 29, 1995). The proposed rule contained a special rule under section 4(d) of the ESA, which would have allowed for a State plan, approved by the Services, to define the manner in which certain activities could be conducted without violating the ESA.

Immediately following the publication of the proposed rule, the Governor of Maine created a Task Force to draft a conservation plan for the species. The Task Force had subgroups focusing on agriculture, aquaculture, forestry, and recreational fishing. The Task Force created a draft conservation plan and held public hearings to gain additional input from the public. In March of 1997, the State submitted its Atlantic Salmon Conservation Plan for Seven Maine Rivers (Conservation Plan) to the Services.

Subsequent to the publication of the listing proposal, the Services received several requests for public hearings but were unable to conduct them because of Federal furloughs and legislative and funding restrictions. Once the restrictions were lifted in 1996, three hearings on the proposed rule were held in Augusta, Ellsworth, and Machias, Maine, on September 17, 18 and 19, 1996, respectively.

On May 23, 1997, the Services reopened the public comment period on the proposed listing rule for 30 days to solicit public input on the Conservation Plan (62 FR 28413). The intent was to ensure that the public had opportunity

for input during all phases of the listing process. The Conservation Plan represented new information not previously considered.

The Services reviewed information submitted from the public and current information on population levels and, on December 18, 1997, withdrew the proposed rule to list the seven rivers DPS of Atlantic salmon as threatened under the ESA (62 FR 66325). In that withdrawal notice, the Services redefined the species under analysis as the Gulf of Maine DPS to acknowledge the possibility that other populations of Atlantic salmon could be added to the DPS if they were found to be naturally reproducing and to have historical, river-specific characteristics. The Services stated that they had considered the current status of the Gulf of Maine DPS of Atlantic salmon and had taken into account those efforts being made to protect the species, including development of the Conservation Plan, the extent of implementation of the Conservation Plan to date, private and Federal actions to restore the species, and international efforts to control ocean harvest through the North Atlantic Salmon Conservation Organization (NASCO). Based on this review, the Services determined that the Gulf of Maine DPS was not likely to become endangered in the foreseeable future and that, therefore, an ESA listing was not warranted.

In the 1997 withdrawal notice, the Services outlined three circumstances under which the process for listing the Gulf of Maine DPS of Atlantic salmon under the ESA would be reinitiated: (1) An emergency which poses a significant risk to the well-being of the Gulf of Maine DPS is identified and not immediately and adequately addressed; (2) the biological status of the Gulf of Maine DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the Gulf of Maine DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The Services received the State of Maine 1998 Annual Progress Report on implementation of the Conservation Plan in January 1999. This first annual report was made available for public review and comment on January 20, 1999, and the comment period remained open until March 8, 1999 (64 FR 3067). The Services reviewed all comments submitted by the public and provided a summary of those, along with their own comments, to the State of Maine in March 1999. The Services received a

response to the comments from the State of Maine on April 13, 1999.

In order to conduct a comprehensive review of the status of the species and protective measures in place, the BRT was reconvened to update the January 1995 Status Review for Atlantic salmon. Significant developments since the 1995 status review and the 1997 determination include the following: detection of Salmon Swimbladder Sarcoma Virus (SSSV) which resulted in destruction of an entire broodstock for the Pleasant River and the destruction of excess broodstock for other rivers; continued decline in numbers of documented adult returns; finding that juvenile survival was previously overestimated; documentation of high mortality of outmigrating smolts; continuation of a directed catch and release fishery despite scientific advice to the contrary; current absence of water use management plans and State regulations for all water withdrawals from the rivers in which the DPS is or may be present; continued documented escapement from aquaculture marine cages and freshwater hatcheries and the apparent increase in the prevalence of reproductively viable non-North American strains of Atlantic salmon; and the detection and spread of Infectious Salmon Anemia (ISA) in Canada.

The 1999 Status Review was made available on October 19, 1999 (64 FR 56297). The findings of the 1999 Status Review have been accepted by the Services and are summarized below. The Status Review contains a more comprehensive discussion and complete literature citations for the information summarized in this proposed rule.

Consideration as a "species" under the Endangered Species Act

The ESA defines species as "any species of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife that interbreeds when mature." 16 U.S.C. 1532(15). This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. To qualify as a DPS, a population (or group of populations) of indigenous Atlantic salmon must be reproductively isolated from conspecific populations and must be biologically significant. Anadromous salmonines have a strong homing capability that fosters the formation of discrete populations (stocks) exhibiting important adaptations to local riverine ecosystems.

On February 7, 1996, the Services published a policy (61 FR 4722) to

clarify the phrase "distinct population segment" for the purposes of listing, delisting and reclassifying species under the ESA. This policy (DPS Policy) identifies three elements to be considered in a decision regarding the status of a possible DPS as endangered or threatened under the ESA: (1) The *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs; (2) the *significance* of the population segment to the species or subspecies to which it belongs; and (3) the *conservation status* of the population segment in relation to ESA listing standards. The conservation status for of this DPS will be discussed in relation to the ESA listing factors.

According to the DPS Policy, a population segment may be considered discrete if it satisfies one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries across which there is a significant difference in control of exploitation, management of habitat, or conservation status.

The Services examined genetic, life history, biogeographic, and environmental information in evaluating Atlantic salmon throughout its U.S. range. The Services used zoogeographic maps of boundaries between areas that would likely have different selective pressures for Atlantic salmon populations and substantial differences in riverine-marine ecosystem structure and function. Key elements to these determinations were: (1) spatial arrangements of river systems that create isolation, and (2) watershed location within ecological provinces and subregions that affect the productivity and ecology of riverine-marine ecosystem complexes. Using zoogeographic maps, the Services determined that historic U.S. salmon populations were minimally comprised of the following three DPSs: the Long Island Sound DPS, the Central New England DPS, and the Gulf of Maine DPS. As detailed in the 1999 Status Review, the Long Island Sound DPS and the Central New England DPS have been extirpated.

The Gulf of Maine DPS includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found in a range north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the US-Canada border. The DPS includes both early- and late-run

Atlantic salmon (Baum, 1997). Historically, the Androscoggin River delimited the range of the DPS to the south, but populations south of the Kennebec River have been extirpated. The population in the mainstem Penobscot River, which is within the DPS range, is not included in the DPS at this time because of the lack of a comprehensive genetic survey of this stock that includes both hatchery and wild returns. It would be premature to determine the status of the Penobscot population in relationship to the Gulf of Maine DPS without comprehensive genetic data. Sample collections, genetic analyses, and biological information are still being collected by the FWS and will be analyzed to make a final determination of the status of the Penobscot River population relative to the coastal Atlantic salmon populations of the Gulf of Maine DPS. Samples were collected in October 1999, and analyses of these data should be completed in early 2000. The tributaries of the lower Penobscot estuary (downstream of the Veazie Dam) are considered within the DPS range, but the existence of naturally reproducing Atlantic salmon with historical river-specific characteristics must be confirmed before additional tributary populations can be included in the DPS (the population in Cove Brook, tributary to the lower Penobscot River, is already included in this DPS).

There are at least eight rivers in the DPS range that still contain functioning wild salmon populations, although at substantially reduced abundance levels (Baum, 1997; King *et al.*, 1999). The core of these remnant populations is located in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers. These river systems contain the greatest amount of historic river habitat currently accessible, averaging greater than 300,000 square meters (sq. m) of juvenile production habitat (Baum, 1997). The smallest of these seven populations is the Ducktrap River with 80,000 sq. m of juvenile production habitat. Recent survey work also indicates that a naturally reproducing population that is genetically distinct (alleles only found in that population) remains in Cove Brook (Buckley, 1999; King *et al.*, 1999). This information demonstrates that Atlantic salmon can retain unique genetic material in a relatively small drainage since juvenile habitat area in Cove Brook is estimated at only 23,500 sq. m (Ed Baum, Atlantic Salmon Authority (ASA), pers. comm., 1999). Surveys have also identified juvenile Atlantic salmon to be present in other river systems which have

relatively limited juvenile production habitat such as Bond, Togus, Passagassawaukeag, Eaton, Felts, South Branch Marsh, Kenduskeag, and Pennamaquan Rivers (Buckley, 1999). Results from genetic studies of fish from these and any other occupied rivers within the DPS range will be used to determine the appropriateness of adding these populations to the DPS.

Discreteness of the Gulf of Maine DPS of Atlantic Salmon

To examine whether the Gulf of Maine DPS of Atlantic salmon is separate from other populations, the Services examined three major indicators: straying of spawning fish from their natal river; recolonization rates outside of the range of the DPS; and genetic differences observed throughout the range of Atlantic salmon. Available information supports the hypothesis that most straying documented for U.S. Atlantic salmon stocks is limited to neighboring rivers within the DPS range. North American Atlantic salmon stocks have been found to be distinct from European stocks using both electrophoretic and mitochondrial DNA analyses (Stahl, 1987; Bermingham *et al.*, 1991; Taggart *et al.*, 1996). Recent data from King *et al.* (1999) further support the differences between North American and European stocks, and these scientists have provided analytical methods to distinguish continent-of-origin with 100 percent accuracy. In all these studies, genetic differences are strongly geographically patterned and, while variation is low compared to freshwater fish, it is consistent with results from other anadromous species (King *et al.*, 1999). The genetic differences between North American and European Atlantic salmon are substantial enough that introgression of these stocks (the introduction of a gene from one to the other) is likely to decrease the genetic suitability of the wild stocks for survival in their natal habitat (King *et al.*, 1999). Separateness of the Gulf of Maine DPS and other Atlantic salmon populations outside the DPS is strongly supported by the following: (1) Persistence of these populations, (2) geographic segregation; (3) limited stocking from outside the DPS; and (4) current genetic analyses. The Services conclude that there are adequate genetic and demographic data to demonstrate that an ecologically important separation exists between the Gulf of Maine DPS and other populations to the north; all naturally occurring populations south of the DPS range have been extirpated.

The Services also conclude that while it is unlikely that any U.S. Atlantic

salmon populations exist in a genetically pure native form, present populations are descendants of these aboriginal stocks, and their continued presence in indigenous habitat indicates that important heritable local adaptations still exist. The conservation of the populations of the Gulf of Maine DPS is essential because these Atlantic salmon represent the remaining genetic legacy of ancestral populations that were locally adapted to the rivers and streams of the region. The Gulf of Maine DPS represents the remaining genetic legacy of a U.S. Atlantic salmon resource that formerly extended from the Housatonic River to the headwaters of the Aroostook River.

The northern range of the Gulf of Maine DPS is delimited not only by the natural zoogeographical constraints on local adaptations but by an international boundary. There are substantial differences in the control of exploitation, management of habitat, conservation status, and regulatory mechanisms of Atlantic salmon between the United States and Canada (May, 1993; Baum, 1997). Management and conservation programs in the United States and Canada have similar goals, but differences in legislation and policy support the use of the United States/Canada international boundary as a measure of discreteness for the purposes of evaluating stock status. Based on the information available, the Services conclude that the Gulf of Maine DPS of Atlantic salmon satisfies both criteria for discreteness as outlined in the Services' DPS Policy. Only one of these is needed to conclude that the DPS is discrete from other populations.

Significance of the Gulf of Maine DPS of Atlantic Salmon

The second element of the Services' DPS Policy is the consideration of the population segment's biological and ecological significance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Riverine habitat occupied by the Gulf of Maine DPS of Atlantic salmon is

unique in that it is at the southern extent of the North American range of Atlantic salmon (Saunders, 1981; Baum, 1997). To survive at the extreme southern range of the species, U.S. Atlantic salmon populations had to adapt to distinct physical and environmental conditions (Saunders, 1981). The Services conclude that there is substantial evidence that remnant populations of the Gulf of Maine DPS have persisted in their native range. The loss of this DPS would result in a significant gap in the range of this taxon, moving the range of this population an additional degree of latitude to the north. The loss of these populations would restrict the natural range of Atlantic salmon to the region above the 45th parallel and beyond the borders of the United States.

Taking into account all of the foregoing factors, the Services determined that differences in life history characteristics historically contributed to the distinctness of the Gulf of Maine DPS. Remnant stocks have maintained the most characteristics of these factors: smoltification at a mean age of 2 and predominant adult returns as 2 sea winter (SW) fish (age 4). Since the proportion of 2SW fish in an Atlantic salmon stock has a documented genetic basis (Glebe and Saunders, 1986; Ritter *et al.*, 1986; Hutchings and Jones, 1998), the Services conclude that the DPS has unique life history characteristics that have a heritable basis. The Services conclude that both environmental and genetic factors make the Gulf of Maine DPS markedly different from other populations of Atlantic salmon in their life history and ecology.

The 1999 Status Review concluded that most of the recolonization of the Gulf of Maine DPS stocks in individual rivers was achieved naturally through processes of recolonization from within river (below impoundment) and within DPS (neighboring river) refugia. The fact that artificial selection created in hatchery environments has had some influence upon the present genome of the Gulf of Maine DPS can not be totally discounted. Given our current understanding of the genetic composition of these stocks (Bentzen and Wright, 1992; Kornfield, 1994; King *et al.*, 1999), the documented persistence of native stocks (Kendall, 1935; Baum, 1997), and the fact that most of the hatchery stocking influences were internal to the Gulf of Maine DPS range including the Penobscot (Baum, 1997), the Services conclude that the influence of hatchery fish upon the DPS has not been sufficient to completely or substantially introgress with the

remnant populations and genomes of the Gulf of Maine DPS. The Services believe that there are components of an important genetic legacy remaining in these populations, and the loss of these populations would negatively affect the genetic resources of Atlantic salmon as a whole because it would contribute to further range reduction. The genetic resources of these most southerly stocks may be vitally important to the species' future survival.

Description of the Habitat within the Gulf of Maine DPS

The Gulf of Maine DPS encompasses all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of Edwards Dam northward to the mouth of the St. Croix River. The watershed structure, available Atlantic salmon habitat, and abundance of Atlantic salmon stocks at various life stages are best known for the seven largest rivers with extant Atlantic salmon populations. The habitat and population ecology of populations in smaller rivers is less well known with the possible exception of Cove Brook (Meister, 1962; Baum, 1997). This section focuses on the eight core rivers where the most comprehensive and quantitative information is available.

The Dennys River originates in Lake Meddybemps in the town of Meddybemps, Washington County, Maine. The drainage area of the Dennys River is 34,188 hectares (ha), and it flows a distance of 32 kilometers (km) to Cobscook Bay. In addition to Lake Meddybemps, Cathance and Little Cathance Lakes are located in the headwaters of the drainage. The confluence of Cathance Stream, a major tributary, is located approximately 1.0 km upstream from tidewater. The upper reach of the river, from Lake Meddybemps to the falls, is flat and slow moving. The reach from the falls to Cathance Stream has flat water stretches and a few riffle areas. The estuary is large, has numerous coves and bays, and numerous peninsulas and islands between Dennysville and the ocean (Beland *et al.*, 1982). Lands within the drainage are sparsely populated and managed for the growth and harvest of forest products and lowbush blueberries. Water quality is generally good, but logging throughout the area has resulted in an abundance of woody debris in some reaches of the river.

The East Machias River originates at Pocomoonshine Lake in the towns of Princeton and Alexander in Washington County, Maine. The river has drainage of 65,009 ha that contains 26 lakes and ponds, and over 50 named tributaries. It

flows a distance of 59.5 km to Machias Bay. The watershed is sparsely settled and forested with a mix of spruce and fir. Organic materials from wetlands and bordering lakes and ponds discolor the waters of the river. The East Machias and Machias Rivers enter the same estuary, and the lower 3.2 km of the estuary is common to both rivers (Dube and Fletcher, 1982).

The Machias River drains an area of over 119,140 ha. It originates from the five Machias lakes and flows 98 km to Machias Bay. The watershed is located in Washington and Hancock Counties, and more than 160 tributaries and 25 lakes and ponds exist in the system. A natural gorge at the mouth of the river in the town of Machias may impede the passage of salmon during periods of extreme high flow. The gorge is being studied by the State of Maine to determine if passage can be improved as part of State rehabilitation efforts for Atlantic salmon in that river. The Machias River headwaters are characterized by rolling hills with forested stream valleys and a number of barren areas, with ground cover typically consisting of shrubs. The lower portion of the basin is composed of large forested areas (Fletcher and Meister, 1982). The Machias and East Machias Rivers share a common estuary. The estuary is elongate, approximately 9.6 km in length, but relatively narrow.

The Pleasant River watershed in Washington County originates above Pleasant River Lake in Beddington and drains an area of 22,015 ha. It flows 45 km to the head of tide in the town of Columbia Falls. There are few lakes in the watershed, and the tributaries are a network of small feeder streams with a combined length of 109.4 km (Dube and Jordan, 1982). The headwaters are composed mostly of hills and ridges, with forests of spruce, fir, and hardwoods. The river water exhibits a high degree of red-brown coloration caused by leaching of roots, leaves, and other organic materials that originate from extensive peat bogs in the drainage. The bogs provide water during dry periods, storage during wet periods, and moderate discharge in the basin (Dube and Jordan, 1982).

The Narraguagus River originates at Eagle Lake, flows through Washington and Hancock Counties, and drains an area of approximately 60,088 ha. The mainstem drops a total of 124 m over a distance of 69 km to the head of tide in Cherryfield. The West Branch of the Narraguagus, a major tributary, has a drainage area of approximately 18,100 ha and reaches the mainstem 3.2 km upstream from the head of tide. There are more than 402 km of streams and

ridges, and forests that are primarily a mix of spruce and fir interspersed with hardwoods. There are large blueberry barrens in the watershed, and lands are primarily managed for berry production and forest products.

Cove Brook originates as a series of springs and hillside drainages and flows northeast into the Penobscot River estuary in Penobscot County. The watershed is approximately 2,460 ha and is composed of 16.6 km of stream and two permanent tributaries. The lower reaches of the river have coldwater fish habitat while the upper reaches are warm, shallow marshlands (Meister, 1962).

The Ducktrap River is relatively small compared to other Atlantic salmon rivers in Maine. It originates in Tilden Pond in Belmont Township, Waldo County, has a drainage area of approximately 9,324 ha, and flows for a distance of 10.7 km to Lincolnville where it enters Penobscot Bay. There are four ponds in the drainage and two major tributaries. The two tributaries, Kendall and Black Brooks, enter the mainstem in the lower portion of the drainage. The surrounding area is sparsely settled, and former agricultural lands are either overgrown or reverting to early successional growth. The drainage is rugged and hilly, and in the lower portion the riverbanks rise sharply from the stream to heights that exceed 30.5 m (Bryant, 1956).

The Sheepscot River originates as a series of hillside springs in West Montville, Waldo County, and flows a distance of 54.7 km to the estuary near Alna. The West Branch of the river originates at Branch Pond in Kennebec County, flows a distance of 24 km and enters the mainstem in Sheepscot. The Dyer River, the largest of the tributaries, has a length of 27.3 km and flows to the estuary. The Sheepscot River drainage includes 24 lakes and ponds and encompasses an area of 59,052 ha. The upper portion of the Sheepscot River estuary resembles a fjord, whereas the lower portion is typical of other Gulf of Maine DPS watersheds, with mud flats and salt marsh covering large areas. Sheepscot Falls, located in the upper estuary, is an area composed of ledge, and the site of a former dam (Meister, 1982). Land within the watershed was once intensively farmed, but the majority is now forested. Deposited glacial material provides a source of boulder, rubble, and cobble in the drainage.

Population Abundance of the Gulf of Maine DPS

Species abundance is a critical concern in assessing the population status of a species under the ESA. An examination of current abundance compared to historical levels and analysis of recent trends were used to determine the status of Atlantic salmon of the Gulf of Maine DPS. Documented returns of adult Atlantic salmon to the DPS rivers within the DPS range surveyed remain low relative to conservation escapement goals (U.S. Atlantic Salmon Assessment Committee (USASAC), 1999). Total documented natural (wild & stocked fry) Gulf of Maine DPS spawner returns to the rivers of the Gulf of Maine DPS range for the past 5 years are: 1995 (83); 1996 (74); 1997 (35); 1998 (23); 1999 (29) (preliminary data). It must be noted that counts are only provided for rivers with trapping facilities and only for times that those facilities are operational and therefore do not represent a complete count of returns of the DPS. The pre-fishery abundance index of North American salmon stocks that migrate to the Greenland region of the North Atlantic Ocean continues to be low in spite of apparently improving marine habitat conditions as reflected by ocean surface temperature data in the past few years (North Atlantic Salmon Work Group (NASWG), 1999). The apparent non-response to improving marine habitat to date is believed to be due, in part, to generally depressed spawning populations in North American home rivers and the resultant low number of juvenile salmon entering the ocean. Based on estimates of the pre-fishery abundance of North American salmon stocks in the West Greenland Sea provided by the International Council for the Exploration of the Sea (ICES), relatively low adult returns should be anticipated in many North American salmon rivers again in 1999 (NASWG, 1999).

Generally speaking, densities of young-of-the-year salmon (0+) and parr (1+ and 2+) remain low relative to potential carrying capacity. These depressed juvenile abundances are a direct result of low adult returns in recent years. A total parr population estimate is not available for the entire DPS.

However, the Atlantic Salmon Commission (ASC) and NMFS have conducted a basin-wide parr population study on the Narraguagus River since 1991. The 1997 parr population estimate in the Narraguagus River was the highest estimate in the time series of data. In 1997, the basin-wide population

estimate of 1+ and older parr in the Narraguagus was 26,682, an increase of 113 percent from the 1996 estimate (Beland and Dubé, 1999). The basin-wide population of age 1+ and older parr on the Narraguagus River in 1998 was approximately 25,382, a 5 percent decrease from the 1997 high (USASAC, 1999).

The NMFS and the ASC in addition have been conducting a study on the Narraguagus River monitoring outmigration of smolts by documenting timing of migration, survival, length, weight and number of smolts from 1996 through 1999 (Kocik *et al.*, 1998a). These studies suggest that there is a 99 percent probability that overwinter freshwater survival from 1+ and older parr to smolt was less than 30 percent, the minimum estimate cited in previous studies. Survival estimates in all years are substantially lower than estimates previously reported in scientific literature and previously accepted estimates for this region (Bley, 1987; Bley and Moring, 1988; Baum, 1997; Kocik *et al.*, 1999). Thus freshwater production is below rates for full freshwater production. These substantially lower survival rates could be negatively impacting population recovery. It is unknown whether these overwinter freshwater survival rates are typical for the Narraguagus River on a long-term basis or if they are comparable to other rivers within the Gulf of Maine DPS range. NMFS and ASC researchers illustrated that nearly 130 percent increases in 1+ and older parr production have resulted in less than a 4 percent increase in smolt production. Additionally, these researchers found that approximately half of these emigrating smolts do not reach the Gulf of Maine. These preliminary data led the Services to conclude that low overwinter and emigration survival rates may be impeding the recovery of these populations and are an issue of concern.

Given the data reviewed in this section, the Services conclude that naturally reproducing Atlantic salmon populations of the Gulf of Maine DPS are at extremely low levels of abundance. This conclusion is based principally on the facts that spawner abundance is below 10 percent of the number required to maximize juvenile production, juvenile abundance indices are lower than historical counts, and freshwater smolt production is less than a third of estimated capacity.

Conservation Hatchery Programs

Broodstock for the Dennys, East Machias, Machias, Narraguagus and Sheepscot Rivers are held at Craig Brook

National Fish Hatchery (CBNFH). These broodstock should increase the effective population size for these rivers (wild and captive) and provide a buffer against extinction. Parr were collected from the Pleasant River and were transferred to the North Attleboro National Fish Hatchery. These fish were later destroyed due to the presence of a newly discovered Atlantic salmon disease-SSSV.

The response of Atlantic salmon populations to supplemental stocking programs can be partially evaluated based on juvenile production, but adult returns are the ultimate evaluation stage. It takes about 4 years from initial stocking to evaluate population level responses since there is a lag between removal of parr for broodstock development, the subsequent stocking of their offspring, juvenile assessments, and adult returns. The first opportunities to make a comprehensive evaluation will be when adults of fry-stocked origin (as 2 SW fish) potentially contribute to the 1999 spawning run that ends in October. The 1999 returns are from the moderately high fry stocking levels of 1995 for the Dennys, Machias, and Narraguagus Rivers. Because stocking began in 1996 in some rivers, it will not be known until 2001 if fry-stocked fish will contribute a substantial element to all five rivers with river-specific stocking programs.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 also requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their application to the Gulf of Maine DPS of Atlantic salmon are described below.

(a) *The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range*

Demonstrated and potential impacts to Atlantic salmon habitat within the DPS watersheds result from the following causes: (1) Water extraction; (2) sedimentation; (3) obstructions to passage including those caused by beaver and debris dams and poorly designed road crossings; (4) input of nutrients; (5) chronic exposure to

insecticides, herbicides, fungicides, and pesticides (in particular, those used to control spruce budworm); (6) elevated water temperatures from processing water discharges; and (7) removal of vegetation along streambanks. The most obvious and immediate threat is posed by water extraction on some rivers within the DPS range, as it has the potential to expose or reduce salmon habitat.

The threat of blocked passage due to debris or beaver dams is an annual event. The ASC, Project SHARE (Salmon Habitat and River Enhancement), and the Watershed Councils have demonstrated an ability to annually remove or reduce that threat. Impacts from chronic exposure to chemical residues in the water are a potential threat and one that warrants further investigation. In particular, potential impacts during the process of smoltification should be examined. Sedimentation from a variety of sources also warrants closer review as it may be altering habitat and rendering it incapable of supporting Atlantic salmon. Water temperatures in the vicinity of processing water discharges should be monitored to determine if they make habitat unsuitable for Atlantic salmon. Permit exemptions for agriculture practices should be evaluated to determine if they provide adequate protection of riparian habitat.

All of these potential impacts to Atlantic salmon habitat need to be examined in more detail for their individual and cumulative impacts. Study results on the Narraguagus River demonstrate that full freshwater production is not being achieved despite fry stocking efforts. These results could mean that one or a combination of factors within the rivers is negatively impacting freshwater habitat for Atlantic salmon. The relationship between these factors and freshwater production and survival of salmon needs to be studied in detail so that cause and effect connections can be determined or ruled out. Corrective actions can then be implemented as appropriate to enhance recovery.

Although there does not appear to be one particular habitat issue which poses a significant threat by itself, the cumulative impacts from habitat degradation discussed above may reduce habitat quality and limit habitat quantity available to Gulf of Maine DPS salmon at various stages in their life history within freshwater. Given current low levels of abundance, it is critical that efforts be undertaken to better understand, avoid, minimize and mitigate these factors.

(b) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Atlantic salmon smolts leave their natal rivers in New England in the spring and begin their extensive ocean migration. The migration brings them into Newfoundland waters in the spring, along the Labrador and Greenland coasts in summer, and on what is believed to be a return migration back into Newfoundland waters by early fall. After their first winter in the ocean, North American Atlantic salmon stocks have historically been the target of marine fisheries in the Labrador Sea-West Greenland and Atlantic Canada regions (Moller Jensen, 1986; O'Connell *et al.*, 1992). To put the effects of alternate harvest levels into perspective, the combined harvest of 1 SW Atlantic salmon of U.S. origin in the fisheries of West Greenland and Canada averaged 5,060 fish and returns to U.S. rivers averaged 2,884 fish from 1968 to 1989 (International Council for the Exploration of the Sea (ICES)-NASWG, 1993). To indicate the extent of exploitation, the ICES-NASWG calculated the potential return to these rivers in the absence of the West Greenland and Canada fisheries. The ICES-NASWG estimates that returns of spawners to U.S. rivers could have potentially been increased by 2.5 times in the absence of West Greenland and Labrador fisheries (ICES-NASWG, 1993).

The United States joined with other North Atlantic nations in 1982 to form NASCO for the purpose of managing salmon through a cooperative program of conservation, restoration and enhancement of North Atlantic stocks. NASCO achieves its goals by controlling the exploitation by one member nation of Atlantic salmon that originated within the territory of another member nation. The United States' interest in NASCO stemmed from its desire to ensure that interception fisheries of U.S. origin fish did not compromise the long-term commitment by the states and federal government to rehabilitate and restore New England Atlantic salmon stocks. Over the past decade, only 90,000 wild 2SW Atlantic salmon (annual average) have returned to spawn in U.S. (3 percent) and Canadian (97 percent) rivers. Fishery managers believe that the annual number of returning spawners needed to sustain these stocks is 184,000 (ICES-NASWG, 1999).

In 1999, as in 1998, U.S. Atlantic salmon were not subjected to a commercial fishery during their marine migration. A minor interception fishery

was conducted off West Greenland, but it was limited to the needs for internal Greenland consumptive use only. On February 5, 1999, the Department of Fisheries and Oceans, Canada, announced adoption of the precautionary approach as evidenced by a continued closure of the commercial fishery for both Newfoundland and Labrador for an additional 3 years. (Further restrictions on Canadian recreational fisheries were also announced, including the requirement to only use barbless hooks for angling in Newfoundland and Labrador, and coordination with Watershed Management groups.)

In October 1987, the New England Fishery Management Council prepared a Fishery Management Plan (FMP) to establish U.S. management authority over all Atlantic salmon of U.S. origin pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The FMP was intended to safeguard U.S. Atlantic salmon, protect the U.S. investment in the State/Federal restoration program, and strengthen the U.S. position in international negotiations. The FMP prohibits possession of Atlantic salmon in the Exclusive Economic Zone (EEZ).

Starting in the 1980s, as runs decreased, the Maine Atlantic Sea Run Salmon Commission imposed increasingly restrictive regulations on the recreational harvesting of Atlantic salmon in Maine. The allowable annual harvest per fisherman was reduced by the State from ten salmon in the 1980s to one grilse in 1994. In 1995, regulations were promulgated to allow only catch and release fishing for Atlantic salmon in Maine, closing the last remaining recreational harvest opportunities for sea run Atlantic salmon in the United States. From the 1960s through the early 1980s, the average exploitation rate in Maine rivers has been estimated to range from approximately 20 percent to over 25 percent of the run (Beland, 1984; Baum, 1997). In retrospect, this level of harvest was likely too high, especially in light of the extensive intercept commercial harvest at that time. In 1993, the documented sport catch of sea-run Atlantic salmon in Maine was 659 fish, with 152 killed and 507 released (USASAC, 1994). The USASAC reported that in 1997 and 1998 there were 33 and 20 fish, respectively, caught and released within the range of the DPS. To date, 12 Atlantic salmon have been caught and released within the range of the DPS in 1999.

Atlantic salmon parr remain vulnerable to harvest by trout anglers, and mortality associated with this

activity has been documented. Recent indications are that poaching activity occurs at fairly low levels on Maine rivers. Recent low returns of wild adult salmon to Maine rivers highlight the importance of continuing assessment of any source of mortality that may pose a risk to the DPS.

Both commercial and recreational harvest of Atlantic salmon historically played a role in the decline of the Gulf of Maine DPS of Atlantic salmon. The Canadian commercial fishery in Newfoundland and Labrador is under a moratorium for the next 3 years, and the West Greenland commercial fishery will continue as an internal use only fishery through the 2000 fishing season. Continuation of the internal use fishery in Greenland poses a reduced but continuing threat to the Gulf of Maine DPS of Atlantic salmon. The best available scientific data support the advice of technical experts in Maine that no directed recreational catch and release fishery should be carried out given existing stock conditions. Continuation of the existing directed catch and release fishery poses a threat of mortality or injury to the Gulf of Maine DPS of Atlantic salmon. Recreational fishing targeting other species also has the potential to result in incidental catch of various life stages of Atlantic salmon that could result in their injury or death. These fisheries also pose a potential threat to Atlantic salmon. The one documented poaching event in 1998 indicates that poaching continues to pose a potential threat to Atlantic salmon. Continued enforcement efforts and adequate penalties are essential to minimize this threat.

(c) Disease or Predation

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild, though the threats of major loss due to disease are generally associated with salmon aquaculture. The level of threat from disease has remained relatively static until the last 3 years. Three recent events that have increased our concern for disease as a threat to the DPS are: (1) The appearance of ISA virus in 1996 on the North American continent within the range of possible exposure of migrant DPS salmon; (2) the discovery in 1998 of the retrovirus SSV within the DPS population; and (3) the new information available in 1999 on the potential impact of coldwater disease (CWD) on salmon.

Wild parr were taken from the Pleasant River, Maine, in 1995 (180), 1996 (80), and 1997 (164) and held in isolation at the North Attleboro National

Fish Hatchery and a private hatchery in Deblois, Maine, for the purposes of rearing the fish to sexual maturity, spawning them, and returning progeny back to the Pleasant River. Mortalities associated with tumors in the viscera (particularly the swimbladder) began to appear in the salmon at North Attleboro in 1997 and continued in 1998. Cornell University scientists identified the causative agent as a retrovirus named SSSV that had never been previously documented except once in Scotland in the 1970s. Virus-positive fish from North Attleboro were moved to a quarantine facility at the USGS BRD facility in Leetown, West Virginia, to obtain detailed information about the virus.

Pleasant River fish at the Deblois Hatchery were also found to be positive for the virus, though no disease or mortality occurred. Further testing of wild salmon held as broodstock at the Craig Brook NFH showed that the virus was present in carrier state in 8 individuals of over 500 tested. Some of these individuals had been in captivity for several years, and others were only recently captured and held in isolation. The implications are that the virus exists at some level in wild populations and has been present at least for several years. The virus has demonstrated its ability to cause lethal disease at least under conditions that existed at one hatchery and therefore must be considered as a potential threat. However, its presence in a carrier state in two other hatcheries, some for several years, without any clinical indication of disease, and the lack of any observation of symptoms in wild populations suggest that the threat of disease from SSSV is limited. Until future research or experience provides additional information, the threat associated with this virus remains uncertain.

The second virus that represents a relatively new threat to the DPS is the causative agent of ISA. This virus causes lethal disease in maturing salmon held in salt water. Discovered in 1984, it was known only in Norway prior to 1996, when it was diagnosed in aquaculture sea pens in New Brunswick, Canada. The following year it was found in Scotland. Since the completion of the 1999 Status Review, monitoring in the Magaguadavic River in New Brunswick by the Atlantic Salmon Federation has confirmed both aquaculture escapees and wild fish infected with the ISA virus. There is no known control of the disease except removal of fish held within 5 km of an infected site. An extensive survey of Maine aquaculture operations found no ISA virus present within the United States. The New

Brunswick Province has taken extensive actions to control the spread of the virus, but the affected Canadian aquaculture operations are in proximity to U.S. pen sites. Thus the virus does represent a potential threat if it becomes established in U.S. pens near the rivers and migration routes used by the Gulf of Maine DPS of Atlantic salmon.

CWD, caused by the bacterium *Flavobacterium psychrophilum*, has recently been found to be a potentially serious problem to Atlantic salmon in New England waters. New information from ongoing studies by the Biological Research Division (BRD) of the U. S. Geological Service (USGS) at their Leetown Science Center have shown that the pathogen induces pathology and subsequent mortality among juvenile Atlantic salmon and that the pathogen is vertically transmitted from carrier sea-run adults to offspring via the eggs.

Predation has always been a factor influencing salmon numbers, but under conditions of a healthy population, would not be expected to threaten the continued existence of that population. The threat of predation on the Gulf of Maine DPS of Atlantic salmon is significant today because of the very low numbers of adults returning to spawn and the dramatic increases in population levels of some predators. These include cormorants, striped bass, and several species of seals. Most rivers within the DPS range do not contain dams that delay and concentrate salmon smolts and make them more vulnerable to cormorant attacks. Also, the recovery of striped bass populations over the past decade is concentrated more in rivers south of the DPS range. Furthermore, cormorants and striped bass are transitory predators impacting migrant juveniles in the lower river and estuarine areas. Seals, however, have reached high population levels not reported before, and salmon remain vulnerable to seal predation through much of their range.

(d) *Inadequacy of Existing Regulatory Mechanisms*

A variety of State and Federal statutes and regulations seek to address potential threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO and many interagency agreements and State-Federal cooperative efforts. Implementation and enforcement of these laws and regulations could be strengthened to further protect Atlantic salmon. The appropriate State and Federal agencies have established coordination mechanisms and have joined with

private industries and landowners in partnerships for the protection of Atlantic salmon. These partnerships will be critical to the recovery of the species. Existing regulatory mechanisms either lack the capacity or have not been implemented adequately to decrease or remove the threats to wild Atlantic salmon. The discussion that follows will focus on those laws which are not sufficient to deal with threats, or, if adequate, are not being applied or enforced. Major threats continue to be poor marine survival, water withdrawals, recreational fishing mortality, disease, and aquaculture impacts, especially interaction with European strain and hybrid (European/North American) salmon.

(1) Water Withdrawals

Maine has made substantial progress in regulating water withdrawal for agricultural use. The Land and Water Resource Council and the Land Use Regulatory Commission (LURC) must approve requests for withdrawals for irrigation, and can curtail withdrawals if water levels go below what is considered necessary for the well being of the species. In 1999 the LURC ruled to limit the amount of water that could be drawn from the Pleasant, Narraguagus and Machias Rivers. The State Department of Environmental Protection is developing a rule to address withdrawals on a state-wide basis. At this point, water withdrawals in unorganized towns are not regulated.

(2) Recreational Fishing Mortality

Maine currently allows catch and release salmon fishing in the DPS rivers. The ASC can promulgate regulations governing salmon fishing, and in the past its predecessor, the Atlantic Salmon Authority, reduced the season by closing it in July and August when water temperatures are normally highest and the risk of mortality is higher. In 1998, the Maine Atlantic Salmon Technical Advisory Committee advised that there should be no directed catch and release fishery for Atlantic salmon. Despite that advice, the fishery remains open. However, regulations to close the directed fishery have been proposed recently.

(3) Disease

The European ISA virus has become established in North American aquaculture fish in proximity to Atlantic salmon in the DPS. Also, the occurrence of a heretofore unknown retrovirus, SSSV, is not yet specifically addressed by any regulations. These recent disease episodes have impacted the Services' river-specific stocking program in that

Pleasant River broodstock had to be destroyed.

(4) Aquaculture

The risks inherent in wild stocks interacting with aquaculture escapees have increased significantly from 2 years ago when the Services believed that certain restrictions on the importation and use of foreign salmon stocks were in place and enforced. The Maine State law (PL 1991 c381 sub section 2) restricts importing of fish and eggs but fails to restrict importing of European milt, thus enabling expansion of the use of hybrids between European and North American salmon in aquaculture. Also, permit holders have continued to use European strain or hybrids in violation of their U.S. Army Corps of Engineers permits, which were issued in reliance on applications which stated that no European strain or hybrids would be placed in cages.

(e) Other Natural or Manmade Factors Affecting Its Continued Existence

The Maine Atlantic salmon aquaculture industry is currently composed of 12 companies, at 33 sites with a total of 773 cages covering 800 leased acres of water. Farms are concentrated in Cobscook Bay near Eastport, Maine, but are located as far south as the Sheepscot River, although that site currently does not grow Atlantic salmon. The industry in Canada, just across the border, is approximately twice the size of the Maine industry.

Atlantic salmon that escape from farms and hatcheries pose a threat to native Atlantic salmon populations in coastal Maine rivers. Escapement and resultant interactions with native stocks are expected to increase given the continued operation of farms and growth of the industry under current practices. There is a potential for escaped farmed salmon to disrupt redds of wild salmon, compete with wild salmon for food and habitat, interbreed with wild salmon, transfer disease or parasites to wild salmon, and/or degrade benthic habitat (Clifford, 1997; Youngson *et al.*, 1993; Webb *et al.*, 1993; Windsor and Hutchinson, 1990; Saunders, 1991). A comparison study in Canada revealed that survival of wild post-smolts moving from Passamaquoddy Bay to the Bay of Fundy was inversely related to the density of aquaculture cages (DFO, 1999). Finally, there has been recent concern over potential interactions when wild adult salmon migrate past closely spaced cages, creating the potential for behavioral interactions, disease transfer or interactions with

predators (DFO, 1999; Crozier, 1993; Skaala and Hindar, 1997; Carr *et al.*, 1997; Lura and Saegrov, 1991).

Atlantic salmon that either escaped or were released from aquaculture facilities have been found in the St. Croix, Penobscot, Dennys, East Machias, and Narraguagus rivers in the United States. (Baum, 1991; USASAC, 1996, 1997). In 1994 and 1997, escaped farmed fish represented 89 percent and 100 percent, respectively, of the documented run for the Dennys River, and in 1995, 22 percent of the documented run for the Narraguagus River. Escaped farmed salmon have also been documented as an incidental capture in the recreational fishery, and observed in the Boyden, Hobart, and Pennamaquan Rivers. The first aquaculture escapee in the State of Maine was documented in 1990, and the first sexually mature escapee was documented in 1996. Escaped farmed fish are of great concern in Maine because even at low numbers they can represent a substantial portion of fish in some rivers. Also, populations at low levels are particularly vulnerable to genetic intrusion or other disturbance caused by escapees (DFO, 1999; Hutchings, 1991). Preliminary results from the 1999 wild smolt assessment project in the Pleasant River suggest that several outmigrating smolts were of hatchery origin based on fin condition (Kocik *et al.*, 1999, unpublished data).

Given current aquaculture practices, the Services have opposed the use of reproductively viable European strains (pure and hybrid) of Atlantic salmon within North America. This opposition is based on genetic studies that demonstrate that there are significant differences between North American and European Atlantic salmon (King *et al.* 1999), and the advice from geneticists that interbreeding among genetically divergent populations negatively impacts natural populations (Utter, 1993; Verspoor, 1997; Youngson and Verspoor, 1998). The introgression by non-North American Atlantic salmon stocks presents a substantial threat of disrupting the genetic integrity of North American stocks and threatens fitness through outbreeding depression.

Farm-raised Atlantic salmon can escape from both sea cages and freshwater hatcheries and enter rivers within the Gulf of Maine DPS range as sexually mature adults and precocious male parr. Available genetic data and visual observations indicate that aquaculture escapees may have successfully interbred with wild Atlantic salmon. Under current aquaculture practices, this problem will persist because the escapement of aquaculture salmon and their

interactions with wild stocks are expected to increase with the continued operation and growth of the industry in the State of Maine.

There is a significant potential for escaped aquaculture salmon to disrupt redds of wild salmon, compete with wild salmon for food and habitat, interbreed with wild salmon, and transfer disease or parasites to wild salmon. The threat of these interactions is considered critical, given the fact that wild salmon stocks within the DPS range are at low abundance levels, and are particularly vulnerable to disturbances caused by escaped aquaculture salmon.

Studies have characterized the potential permanent effect of salmon escapes from farms on the genetic differentiation among wild stocks. Atlantic salmon populations of sizes similar to those found within the Gulf of Maine DPS, are the most vulnerable to immigrations from aquaculture escapees. These immigration events may be one of the most significant ways in which aquaculture salmon affect the genetic structure of wild populations. While natural selection may be able to purge wild populations of maladaptive genetic traits, regularly occurring genetic interaction between aquaculture salmon and wild populations makes this considerably less likely. Thus, scientific literature indicates that interactions between wild and aquaculture salmon may lead to decreased numbers of wild Atlantic salmon, and in the extreme, to extirpation of the wild stock.

Comprehensive protective solutions to minimize the threat of interactions between wild and aquaculture salmon have not been implemented. In 1997 and 1998, the Services worked with industry and State representatives in an attempt to eliminate further importation of European stocks, remove pure European strain from marine cages, and phase out the holding of North American/European hybrids. These discussions were unsuccessful. In July of 1999 the Services initiated discussions directly with the Maine Department of Marine Resources (the State agency responsible for aquaculture industry regulation). These discussions were only partially successful.

Marine survival rates continue to be low for U.S. stocks of Atlantic salmon, and the subsequent low abundance of salmon impedes recovery of the DPS. Scientists have attributed natural mortality in the marine environment to sources that include stress, predation, starvation, disease and parasites, and abiotic factors. In addition, scientific

studies indicate that year-to-year variation in return rates of U.S. salmon stocks is generally synchronous with other North Atlantic stocks. This information suggests that the trend in return rates is the result of factors that occur when the stocks are in the North Atlantic, particularly the Labrador Sea. Scientists have concluded that a significant proportion of the variation in recruitment or return rate is attributed to post-smolt survival. However, the factors responsible for reduced post-smolt survival are not well understood.

Basis for Determination

Section 4(b)(1)(A) of the ESA (16 U.S.C. 1533(b)(1)(A)) states that determinations required by the ESA will be made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

The Gulf of Maine DPS of Atlantic salmon is discrete and significant and therefore satisfies the Services' criteria for distinctness as outlined in the Services' DPS policy. There was a dramatic decline in spawner abundance in the mid 1980s, and the number of returning adult Gulf of Maine DPS of Atlantic salmon remains low. Critically low adult returns make the DPS especially vulnerable and genetically susceptible to threats. Early juvenile abundance has increased due to fry and broodstock stocking, but based on results in the Narraguagus River, this increase does not directly translate into commensurate increases in abundance of smolts. Marine survival rates continue to be low for U.S. stocks of Atlantic salmon, and the low abundance of naturally spawning Atlantic salmon impedes recovery of the DPS. The Gulf of Maine DPS of Atlantic salmon has persisted in a unique setting in the United States, and its loss as the only naturally spawning stock in the United States would be a significant loss. The existence and genetic integrity of the DPS must be preserved so that the DPS can naturally adapt to changing future conditions in the freshwater and marine environment.

Under the first listing factor, present or threatened destruction, modification, or curtailment of habitat or range, the following threats to Atlantic salmon habitat within the DPS watersheds were

identified: (1) Water extraction; (2) sedimentation; (3) obstructions to passage caused by beaver and debris dams, poorly designed road crossings, and dams; (4) input of nutrients; (5) chronic exposure to insecticides, herbicides, fungicides, and pesticides; (6) elevated water temperatures from processing water discharges; and (7) removal of vegetation along streambanks.

Efforts are underway to better understand and balance the needs of Atlantic salmon and the water use needs of the agriculture industry. Until this process is completed, the threat of excessive or unregulated water withdrawal remains. Sedimentation from a variety of sources also warrants closer review as it may alter habitat and render habitat incapable of supporting optimum Atlantic salmon production, resulting in reduced survival of one or more age classes. Recent studies indicate that full freshwater production potential is not being achieved despite fry stocking efforts. These results suggest that a factor or factors within the rivers may be negatively impacting freshwater habitat for Atlantic salmon. Although it is difficult to isolate and evaluate the impact of individual threats to habitat, the available information indicates that cumulative impacts of these threats pose a significant threat to Atlantic salmon stocks.

Under the second listing factor, both commercial and recreational harvest of Atlantic salmon historically played an important role in the decline of the DPS of Atlantic salmon. Continuation of the internal use fishery in Greenland poses a reduced but continuing threat to Atlantic salmon in the DPS. Continuation of the existing directed catch and release fishery may cause mortality or injury to the Gulf of Maine DPS of Atlantic salmon. Recreational fishing targeting other species also may result in incidental catch of Atlantic salmon in various stages of their life cycle. Mortality from fishing increases the threat to Atlantic salmon survival.

The impact of predation and disease was examined under the third listing factor and was found to have increased since the 1995 Status Review. Predation has always been a factor influencing salmon numbers, but would not be expected to threaten the continued existence of a healthy population. The threat to the DPS of predation is significant today because of the very low numbers of adults returning to spawn and the dramatic increases in population levels of some predators known to prey on salmon. These include cormorants, sea birds, striped bass, and several species of seals.

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild, though the threats of major loss due to disease are generally associated with salmon aquaculture. Three recent events, occurring during the last 2 years, have increased the concern for disease as a threat to the DPS: (1) The appearance of ISA virus in 1996 on the North American continent within the range of the possible exposure of migrant DPS salmon; (2) the discovery in 1998 of the retrovirus SSSV within a DPS population; and (3) the new information available in 1999 on the potential impact of CWD on salmon. The nature of these three specific developments in terms of direct loss to the DPS from disease in the wild is extremely difficult to assess.

Observations to date suggest that direct mortality may not be the major threat to the DPS from these diseases. However, there is an indirect threat through the impact of these diseases on the river-specific fish culture program implemented on six rivers to enhance maintenance and recovery of these imperiled populations. The impacts of ISA, SSSV, and CWD appear to be magnified when fish are held in culture environments. Diseases significantly degrade the effectiveness of fish culture techniques as a recovery tool and strategy for stock enhancement. The level of threat to the perpetuation and recovery of the DPS from salmon disease has significantly increased in the past 2 years.

Under the fourth listing factor, the Services examined regulatory mechanisms for their ability to protect the Gulf of Maine DPS. A variety of State and Federal environmental statutes and regulations are in place to address potential threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO and many interagency agreements and State-Federal cooperative efforts. Implementation and enforcement of these laws and regulations must be strengthened to adequately protect Atlantic salmon.

Aquaculture practices were examined under the fifth listing factor, other natural or manmade factors affecting the continued existence of the DPS. Aquaculture Atlantic salmon escape during freshwater rearing, transport, or sea cage grow out and enter rivers within the Gulf of Maine DPS range. Available genetic data and visual observations indicate that aquaculture escapees may have successfully interbred with wild Atlantic salmon. Under current aquaculture practices, this problem will persist because the escape of aquaculture salmon, and their

interactions with wild stocks, is expected to increase with the continued growth of the aquaculture industry in the State of Maine. Escaped aquaculture salmon have been documented to disrupt redds of wild salmon, compete with wild salmon for food and habitat, interbreed with wild salmon, and transfer disease or parasites to wild salmon. This interaction is of grave concern, particularly when the escapees are not of North American origin. The expanding use of reproductively viable European strain of Atlantic salmon by the aquaculture industry has greatly increased the level of risk of negative consequences from introgression of aquaculture stock into wild populations. The scientific literature indicates that interactions between wild and aquaculture salmon in the DPS range may lead to decreased numbers of the Gulf of Maine DPS of Atlantic salmon, and in the extreme, to extirpation of the wild stock. There are no comprehensive protective solutions in place to minimize the threat of interactions between wild and aquaculture salmon. The threat created by these interactions is considered critical, given that the Gulf of Maine DPS of Atlantic salmon is at low abundance levels and is vulnerable to genetic introgression and habitat disturbances caused by escaped aquaculture salmon.

Under current circumstances, the Gulf of Maine DPS of Atlantic salmon is in danger of extinction. Atlantic salmon of the Gulf of Maine DPS exhibit critically low spawner abundance and poor marine survival. These two key recovery factors are further compromised by the increased presence of threats that have been documented. Currently these threats include artificially reduced water levels, diseases, recreational and commercial fisheries, sedimentation, and genetic intrusion by Atlantic salmon raised for aquaculture.

A second step in the review of the status of the species is to examine protective measures in place. We particularly highlight changes since the determination was made in December 1997 that listing was not warranted. These protective measures in combination with the species' status information are examined to determine if listing as threatened or endangered is warranted and if there is a need for an emergency listing. Efforts to Protect Maine Atlantic Salmon

Actions underway include the following:

(a) River-specific stock rehabilitation

There is agreement among scientists that additional research should be conducted to better understand the

processes or mechanisms responsible for reduced post-smolt survival, and such research is being pursued. There is also consensus that action necessary to ensure survival of salmon stocks and to rebuild stocks within the DPS includes hatchery propagation. The Atlantic salmon river-specific recovery program has been identified as an essential component of the strategy to rebuild salmon stocks in the DPS. This program has been designed and implemented to maintain the genetic diversity and distinctness of the DPS. Because the abundance of wild salmon stocks of the Gulf of Maine DPS is very low, hatchery propagation through a river-specific stocking program is considered an important tool to maximize the production of wild smolts with genetic traits necessary for survival of the species. The river-specific stocking program is a strategy consisting of removing juvenile wild salmon from a DPS river population, rearing those juveniles to sexual maturity in a hatchery, artificially spawning them, and returning the offspring to the same river of origin of the parental stock. This should greatly increase the effective population size of the parental generation contributing to a particular year class of juveniles, increase the size of that year class, and act to maintain the genetic integrity of that river population. The goal of the program is to ensure the immediate survival of and accelerate the long-term recovery of the DPS salmon of that river.

(b) Maine Conservation Plan

On April 23, 1999, the State of Maine responded to the Services' comments on the 1998 Annual Review of Conservation Plan implementation and provided amendments to the Conservation Plan and workplans prepared by each involved State agency. Responsibility for implementation of the Conservation Plan has recently been moved from the Land and Water Resources Council to the ASC. Many of the actions proposed or underway are discussed under other sections of this rule. Implementation of the Conservation Plan as a State initiative remains an important tool for recovery of the Gulf of Maine DPS of Atlantic salmon and its habitat.

(c) Narraguagus Study

NMFS and ASC have continued their intensive study of smolt production and outmigration in the Narraguagus River. As part of this study, the parr population is estimated and the outmigration of smolts is monitored by documenting the timing of migration, survival, length, weight and number of

smolts. This study has provided insights into overwinter survival from large parr to smolt and smolt migration out of the river and estuary. The results of this study will improve our ability to target protective measures.

(d) Project SHARE

Project SHARE is a private sector initiative designed to improve salmon habitat and consequently increase the likelihood of the species' survival. Project SHARE began with timber and agriculture interests in eastern Maine and has served as an excellent focal point to direct private conservation efforts on the rivers in the DPS range. Numerous projects and information exchange sessions have occurred as a result of Project SHARE, and the Watershed Councils forming for the five rivers in eastern Maine have been assisted in development by Project SHARE members.

(e) Water Use Subcommittee

The potential threat posed by water withdrawals to the suitability of habitat for Atlantic salmon has become more apparent since the completion of the Conservation Plan. During the past year, the Maine State Planning Office contracted a study to establish minimum flow levels within the Pleasant, Machias and Narraguagus Rivers and the levels needed for Atlantic salmon within those rivers. Steering Committees have been created to identify the current water users and to project future demands. Reports summarizing information obtained are in the process of being completed. The Plans will serve as the foundation for conditioning future permits for water withdrawal. The State Department of Environmental Conservation is currently drafting regulations that will allow it to regulate water withdrawals.

(f) Watershed Councils

Watershed Councils, created under the Conservation Plan, are active on all seven rivers. These Councils are designed to maintain focus on the rivers at local levels and be certain that activities that may affect salmon, habitat or water quality are well thought out. The Watershed Councils seek grants for specific projects, recommend habitat protection and/or improvements, discuss problems and recommend solutions. Significant acreages of habitat have been permanently protected on several of the rivers as a result of Council activity.

(g) Habitat Protection

Habitat protection efforts in the DPS rivers are continuing. Work is underway

to reduce livestock pollution in the Sheepscot River. Protection of acreage adjacent to the rivers in the DPS range is increasing. Champion International has imposed protective buffers along riparian zones on their lands along rivers in the DPS range and other streams and rivers. The State of Maine contracted a study to design a formula for determining the appropriate size buffer depending on site specific characteristics including slope and percent vegetative cover. Superfund sites are being cleaned up, obstructions to passage are being removed, best management practices have been developed for agriculture and forestry, and water withdrawals are being monitored more closely.

(h) Implementation of disease control measures

A number of State and Federal laws exist to reduce the threats to both wild and cultured fish from disease. Maine has recently adopted stringent fish health regulations (Chapter 2.03—A Salmonid Fish Health Regulations; Inland Fish and Wildlife Regulations), and the FWS monitors hatchery fish at Craig Brook and Green Lake with extreme care. Cultured fish are vaccinated against various diseases and screened continually.

(i) Regulations for Containment of Aquaculture Fish

The aquaculture industry in Maine adopted a Code of Practice for the Responsible Containment of Farmed Atlantic Salmon in Maine Waters. Partially in response to concerns voiced by the Services over existing aquaculture practices, the State of Maine indicated that it would promulgate regulations to implement the Code of Practice. The Services have had discussions with the State over the content of those regulations, but agreement has not been reached at this point, and the State has not yet promulgated draft regulations. In addition, weirs are now in place on two rivers (Dennys and Pleasant), and a third is being planned. These weirs should help reduce the likelihood that net pen escapees will reach the spawning grounds to breed with wild fish.

(j) Essential Fish Habitat

The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act included a requirement for delineation of essential fish habitat (EFH) for all managed species (16 U.S.C. 1853(a)(7)). EFH is the habitat that is necessary to the species for spawning, breeding, feeding,

or growth to maturity. Federal action agencies which fund, permit or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions on EFH and respond in writing to the NMFS' recommendations (16 U.S.C. 1855(b)(2)). In addition, NMFS is required to comment on any State agency activities that would impact EFH (16 U.S.C. 1855(b)(4)(A)). The regulations also direct the Fishery Management Councils to consider a second, more limited habitat designation, Habitat Areas of Particular Concern (HAPCs) (50 CFR 600.815(a)(9)). HAPCs are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPCs are not afforded any additional regulatory protection; however, Federal projects with potential adverse impacts to HAPCs will be more carefully scrutinized during the consultation process. The New England Fishery Management Council has designated the habitat of the Dennys, Machias, East Machias, Pleasant, Narraguagus, Ducktrap, Sheepscot, Kennebec, Penobscot, and St. Croix Rivers and Tunk Stream as HAPCs.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Section 4(b)(1)(A) of the ESA requires that determinations regarding whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by a state or foreign nation to protect such species (16 U.S.C. 1533(b)(1)(A)).

The Services propose to list this DPS of anadromous Atlantic salmon as endangered under the ESA. At present, the DPS is known to include populations of Atlantic salmon in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys Rivers and Cove Brook. Both the naturally reproducing populations of the Gulf of Maine DPS of Atlantic salmon and those river-specific hatchery populations cultured from them are included. In the future, DPS populations may be identified in additional rivers

based on ongoing stream surveys and continuing genetic analyses.

Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

In addition to the actions identified under Efforts to Protect Maine Atlantic Salmon, the following general conservation measures could be implemented to help conserve the species. This list does not constitute the Services' interpretation of the entire scope of a recovery plan under section 4(f) of the ESA.

(1) Ensure that water extractions and diversions for agriculture do not adversely affect Atlantic salmon habitat. Screen all water diversion intake structures available to downstream migrating Atlantic salmon.

(2) For Atlantic salmon aquaculture facilities located less than 20 km (12 mi) from the mouths of rivers known to contain DPS populations, use sterile fish, change broodstock origin, mark fish reared in net pens, and develop adequate fish containment such that interactions with wild fish will be prevented.

(3) Install and maintain weirs at the mouths of rivers to exclude escaped aquaculture fish.

(4) Delineate and protect Atlantic salmon habitat.

(5) Research sterilization of commercial stock, genetic monitoring of wild stocks, disease control strategies, predators, and impact of sedimentation on habitat.

(6) Increase law enforcement.

(7) Increase awareness about Atlantic salmon and measures that could be implemented to protect them and their habitat through education and outreach efforts.

Should the proposed listing be made final, protective regulations under the ESA would take effect and a recovery program would be implemented. The Services recognize that to be successful, protective regulations and recovery programs for Atlantic salmon will need to be developed in the context of conserving aquatic ecosystem health. The Services, the State of Maine, and the private sector must cooperate to conserve the listed Gulf of Maine DPS of Atlantic salmon and the ecosystems upon which it depends. To foster this

cooperation, the Conservation Plan, developed by the State with a group of stakeholders, could serve as a foundation for a recovery plan. The Services encourage non-Federal landowners to assess the impacts of their actions on Atlantic salmon. In particular, the Services acknowledge and fully support the ongoing efforts to involve stakeholders (industry representatives, landowner representatives, local and State governments and Federal biologists) through Project SHARE and local watershed councils.

Prohibitions and Protective Measures

This regulation applies all ESA section 9 (16 U.S.C. 1538) protective measures to prohibit taking, interstate commerce, and other prohibitions applicable to endangered species, with the exceptions provided under section 10 of the ESA (16 U.S.C. 1539). Section 9 of the ESA and implementing regulations (50 CFR 17.21) set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. The prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally.

Section 7(a)(4) of the ESA (16 U.S.C. 1536(a)(4)) requires that Federal agencies confer with the Services on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) (16 U.S.C. 1536(a)(2)) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Services. Consultations will be conducted on a river-specific basis pursuant to identification of river-specific recovery units within the DPS.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(A) and

(a)(1)(B)) provide the Services with authority to grant exceptions to the ESA's "taking" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. The Services have issued section 10(a)(1)(A) research/enhancement permits for other listed species for a number of activities.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or university research not receiving Federal authorization or funding, and the implementation of state fishing regulations.

Service Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, the Services published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

(a) Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, the Services will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector.

(b) Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Services will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Activities that the Services believe could result in violation of section 9 prohibitions against "take" of

the Gulf of Maine DPS of anadromous Atlantic salmon include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and poaching;

(2) The holding of reproductively viable non-North American strain or non-North American hybrid Atlantic salmon in freshwater hatcheries within the DPS range;

(3) The inability to contain farmed stock in marine cages or freshwater hatcheries such that they are found entering or existing in rivers within the DPS range;

(4) Failure to adopt and implement fish health practices that adequately protect against the introduction and spread of disease;

(5) Siting and/or operating aquaculture facilities in a manner that negatively impacts water quality and/or benthic habitat.

(6) Discharges (point and non-point sources) or dumping of toxic chemicals, silt, fertilizers, pesticides, heavy metals, oil, organic wastes or other pollutants into waters supporting the DPS;

(7) Blockage of migration routes;

(8) Destruction/alteration of the species' habitat (e.g., instream dredging, rock removal, channelization, riparian and in-river damage due to livestock, discharge of fill material, operation of heavy equipment within the stream channel, manipulation of river flow);

(9) Violations of discharge or water withdrawal permits that are protective of the DPS and its habitat;

(10) Pesticide or herbicide applications in violation of label restrictions; and

(11) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

The Services believe that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of Atlantic salmon acquired lawfully by permit issued by the Services pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; or

(2) Federally approved projects that involve activities such as silviculture, agriculture, road construction, dam construction and operation, discharge of fill material, siting of marine cages for aquaculture, stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is

conducted in accordance with any terms and conditions given by the Services in an incidental take statement in a biological opinion pursuant to section 7 of the ESA.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at that time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat. The Services have determined that it is prudent to designate critical habitat for the Gulf of Maine DPS of Atlantic salmon and will publish a proposed designation in a separate rule.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, the Services are soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Comments are encouraged on this proposal as well as on the 1999 Status Review. Specifically, the Services are soliciting information regarding: (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this DPS; (2) the location of any additional populations of the Gulf of Maine DPS of Atlantic salmon within the DPS range, including but not limited to Bond Brook, Togus Stream, Passagassawaukeag River, Kenduskeag Stream, Felts Brook, and the Pennamaquan River; (3) additional information concerning the range,

distribution, and population size of this DPS; (4) current or planned activities in the subject area and their possible impacts on this DPS; (5) additional efforts being made to protect native, naturally reproducing populations of Atlantic salmon; and (6) relationship of existing hatchery populations to natural populations of the DPS.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Services, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The FWS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. The notice for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. See NOAA Administrative Order 216-6.

Classification

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act is not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 12612 and are exempt from review under Executive Order 12866.

Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state/Federal interest, we summarize below the efforts of the Services to honor this trust with respect to the listing process for Atlantic salmon in Maine. Shortly after publication in September 1995 of the proposed rule to list the Gulf of Maine DPS of Atlantic salmon as threatened under the ESA, representatives from both Services offered to work with Maine as advisers while the State developed its Atlantic salmon conservation plan. That offer was accepted, and the two advisers spent hundreds of hours reviewing sections of the plan, discussing options, and suggesting possible improvements. Ultimately, the Services accepted the

Conservation Plan and withdrew the proposed rule.

The Services also were represented on several task forces in appointed to resolve problems associated with specific salmon-related issues such as aquaculture and recreational fishing. They were also instrumental in encouraging the formation of Project SHARE, a private sector initiative designed to focus on improving salmon habitat. That effort is continuing to garner support and gain strength.

Finally, the Services have recently been involved in negotiations with the Governor's office and the Commissioner of Marine Resources to resolve outstanding issues related to the impact of aquaculture fish on wild Atlantic salmon. Some of the issues have been resolved, while discussions are continuing in an effort to resolve remaining issues.

Authors

Authors of this document are Mary Colligan of the NMFS, Paul Nickerson of the FWS, and Dan Kimball of the FWS.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the U.S. Fish and Wildlife Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Salmon, Atlantic.	<i>Salmo salar</i>	U.S.A., Canada, Greenland, western Europe.	U.S.A., ME Gulf of Maine Atlantic Salmon Distinct Population Segment, which includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine.	E		NA	NA
*	*	*	*	*	*		*

And accordingly, the National Marine Fisheries Service proposes to amend part 224, subchapter C of Chapter II, title 50 of the Code of Federal Regulations, as set forth below.

PART 224-ENDANGERED MARINE AND ANADROMOUS SPECIES

4. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

5. In § 224.101, paragraph (a) is revised to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and Anadromous Fish.* Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscion macdonaldi*), Snake River sockeye salmon (*Oncorhynchus nerka*), Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*); Southern California steelhead (*Oncorhynchus mykiss*), including all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River, San Luis Obispo County, California (inclusive) to Malibu Creek, Los Angeles County, California (inclusive); Upper Columbia River steelhead (*Oncorhynchus mykiss*), including the Wells Hatchery stock and

all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States-Canada Border; Upper Columbia River spring-run chinook salmon (*Oncorhynchus tshawytscha*), including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny); Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*); Gulf of Maine Atlantic Salmon (*Salmo salar*) Distinct Population Segment, which includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix

River at the U.S.-Canada border (To date, the Services have determined that these populations are found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, Maine).

* * * * *

Dated: November 10, 1999.

Andrew A. Rosenberg,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

Dated: November 9, 1999.

Jamie Rappaport Clark,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 99-30014 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-22-P 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Santa Monica Mountains Hairstreak as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to emergency list the Santa Monica Mountains hairstreak (*Satyrium auretteum fumosum*) under the Endangered Species Act of 1973, as amended (Act). This butterfly only occurs in southern California. We find that the petition did not present substantial scientific or commercial information indicating that listing this subspecies may be warranted.

DATES: The finding announced in this notice was made on November 5, 1999.

ADDRESSES: Data, information, comments, or questions concerning this petition should be sent to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. The petition, finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, at the address above (telephone 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act, requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is based upon all information submitted with and referenced in the petition, and all other information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3)(B) of the Act requires us to promptly commence a review of the status of the species, and to disclose our findings within 12 months.

The processing of this petition finding conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is

processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under Listing Priority Guidance. The processing of this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

On January 8, 1999, we received a petition from the Urban Wildlands Group, the Lepidoptera Research Foundation, the California Oak Foundation, the Southwest Center for Biodiversity, Roger Kim, Lisa Bracamonte, Rudi Mattoni, Travis Longcore, Catherine Rich, John Emmel, and John Pasko (Urban Wildlands *et al.* 1999) requesting that we emergency list the Santa Monica Mountains hairstreak (*Satyrium auretteum fumosum*) as an endangered species under the Act, and that critical habitat be designated concurrent with listing. This petition dated January 2, 1999, specified endangered status primarily because of the butterfly's limited distribution and threats from urbanization and habitat fragmentation.

Emergency listing is not a petitionable action under the Act. However, our above-mentioned listing priority guidance requires that we screen petitions to list species for the need to emergency list them. Based on the information provided by the petitioners, we find that threats to the continued existence of the Santa Monica Mountains hairstreak are present but not immediate, and they do not individually or collectively pose a significant risk to the well being of the subspecies. Therefore, we feel that emergency listing the Santa Monica Mountains hairstreak is not justified at this time.

The Santa Monica Mountains hairstreak butterfly is a small brown butterfly with a wing span of 2.5–3.2 centimeters (cm) (1–1.25 inches (in)). The subspecies is a member of the Lycaenidae family. The taxon was first mentioned when Emmel and Emmel (1973) noted a population of the nut-brown hairstreak (*Satyrium auretteum spadix*) with darker undersides in the western Santa Monica Mountains. Emmel and Mattoni (1990) later named this taxon the Santa Monica Mountains

hairstreak (*Satyrium auretteum fumosum*), which they distinguished from the gold-hunter's hairstreak (*Satyrium auretteum auretteum*) and the nut-brown hairstreak, primarily by the darker brown color on the underside of the forewing and hindwing of both males and females, and described the adult's morphology, distinguishing features, distribution, phenology, and phylogenetic relationships.

Based upon limited rearing of a few larvae, young shoots of coast live oak (*Quercus agrifolia*) may be the sole host of the Santa Monica Mountain hairstreak (Pasko and Mattoni 1992). Adults spend most of their time perching on coast live oak and fly only when disturbed (Urban Wildlands *et al.* 1999). According to the petitioners, observation of the butterfly is difficult because the life cycle is completed in the oak canopy about 9–12 meters (m) (30–40 feet (ft)) above ground. Adults fly as a single brood from late April to June and have rarely been observed nectaring. When observed, the nectar source has always been California buckwheat (*Eriogonum fasciculatum*) (Urban Wildlands *et al.* 1999). Based on the information provided by the petitioners and other information available to us, it is unclear whether California buckwheat is critical to the life history of the Santa Monica Mountains hairstreak, or if other plants can provide adequate nectar sources. At the present time, the complete life history of the Santa Monica Mountains hairstreak is unknown. It is difficult to identify the precise habitat requirements of the subspecies without certainty of the species and quality of foodplant(s) required, potential micro-habitat requirements of adults, pupae, larvae and eggs, and other environmental factors necessary for all life stages of the butterfly.

The historic distribution of the Santa Monica Mountains hairstreak is not precisely known. The petitioners note that amateur butterfly collectors have extensively collected in the area and there is no indication that the Santa Monica Mountains hairstreak occurs beyond the western end of the Santa Monica Mountains in California. However, it is unlikely that collectors would have aggressively sought the Santa Monica Mountains hairstreak before 1973, when Emmel and Emmel first made reference to this subspecies or perhaps even before 1990, when the taxon was officially described in the scientific literature. The lack of historical collections cannot be used as empirical evidence of the narrowness of the taxon's historical or present distribution. The Santa Monica

Mountains hairstreak is, thus far, known only from five locations in the northern slopes and plateau of the western end of the Santa Monica Mountains in Ventura and Los Angeles Counties (Urban Wildlands *et al.* 1999; Pasko and Mattoni 1992).

There are no comprehensive surveys undertaken for the taxon. According to the petitioners, at one Los Angeles County location, Santa Monica Mountains hairstreak adults were observed in 1990, 1993 and 1994 in association with mature coast live oaks (Pasko and Mattoni 1992; Urban Wildlands *et al.* 1999). At another Los Angeles County location, on property owned by the National Park Service, larvae were found on seven of the coast live oaks examined (Pasko and Mattoni 1992; Urban Wildlands *et al.* 1999). Six adult male butterflies were sighted near this second location on May 17, 1997, and four adult males and two adult females were counted there on May 23, 1997, (Urban Wildlands *et al.* 1999). The petitioners assert that the population at a third location in Ventura County was not located and may be extirpated; however, it is unclear when the hairstreak was last observed at this location. Because of the imprecision of the data supplied by the petitioners, the exact locality of a single adult collected at the fourth location is unknown. Much of the area surrounding this location is within the boundaries of the Santa Monica Mountains National Recreation Area, administered by the National Park Service, but a variety of private in-holdings also occur within the recreation area. The petitioners assert that a fifth location also exists based upon the finding of one adult male butterfly collected on a site co-owned and managed by the Conejo Recreation and Parks District and Conejo Open Space Conservation Agency (COSCA). These data are the only information supplied by the petitioners with regard to the size and location of populations of the Santa Monica Mountains hairstreak.

The petitioners maintain that although amateur butterfly collectors frequent the Santa Monica Mountains, there are no records of the Santa Monica Mountains hairstreak in areas other than in the localities identified previously. However, there is an absence of documentation on the dates, number and frequency of collections, and names of collectors, and there are insufficient data to substantiate the claim that the Santa Monica Mountains hairstreak is limited to the locations outlined in the petition. Coast live oak and common buckwheat, the two species of plants on which the butterfly may depend, are

common throughout the Santa Monica Mountains (Tim Thomas, Service, pers. comm. 1999). Therefore, it is unclear, why the Santa Monica Mountains hairstreak would occur in such small numbers in a few localized areas when the two plant species most closely associated with the butterfly are widespread. Since the butterfly occurs high above the ground in the canopy of oaks, the subspecies is probably difficult to locate. Comprehensive surveys are needed to determine if the present range and habitat requirements of the taxon is as restricted as asserted in the petition.

The petitioners outlined factors threatening the subspecies, including urbanization; fragmentation and other natural and manmade factors; overutilization for commercial, recreational, scientific or educational purposes; and inadequacy of existing conservation mechanisms. Three of the five known localities of this butterfly occur on private land and are the most susceptible to habitat destruction and degradation. According to the petition, one of the Los Angeles County locations of the subspecies has been designated for a future high-priced housing development, and "most or all" of the 25 aforementioned coast live oaks will be removed. This development has been approved and approximately 12 to 22 of the oak trees will be removed (Scott Wolfe, City of Westlake Village, pers. comm. 1999). It is unclear if one or more of the four coast live oaks that the subspecies was found on will be removed, and what the impacts of coast live oak removal will be.

At another location in Ventura County, development took place in the form of numerous, privately owned homes. Any remaining habitat for the Santa Monica Mountains hairstreak in this area is susceptible to development and could also be degraded in the future (R. Sauvoget, National Park Service, pers. comm. 1999). If a population of the Santa Monica Mountains hairstreak does occur in the Santa Monica Mountains Recreation Area where a single adult was collected, this population could also be susceptible to development since there are a number of private in-holdings within the Recreation Area (R. Sauvoget, pers. comm. 1999).

The petitioners also identify habitat fragmentation by roads and highways, along with habitat degradation from littering, dumping and unlawful hunting as threats to the Santa Monica Mountains hairstreak at one location. Recreational and commercial activities, such as mountain biking, in-line skating, and jogging, were also cited by the petitioners, but there is no

explanation on how these activities would negatively affect the subspecies. Since most of this subspecies' life cycle appears to be spent within the canopy of coast live oak, it is unclear how these threats in the area surrounding the coast live oaks might affect the butterfly at any locality. It is conceivable that habitat fragmentation and degradation could decrease the proximity, quantity or quality of nectar sources, such as California buckwheat. However, at the present time, the role or importance of nectar sources in the life history of the Santa Monica Mountains hairstreak is unknown. Fragmentation of habitat could also lead to genetic isolation of populations of the taxon and increased susceptibility to catastrophic events, including fire. However, without adequate data on the habitat requirements and population structure of the Santa Monica Mountains hairstreak, the extent of potential threats of habitat fragmentation, modification or destruction cannot be adequately determined.

Butterflies are potentially subject to intense collection pressures. There is an international commercial trade in many butterfly species listed and proposed for listing under the Act, as well as other imperiled or rare butterflies (U.S. Department of Justice 1993, 1995; Williams 1996; Claireborne 1997; Hoekwater 1997; Chris Nagano, Service, pers. comm. 1999). At the present time, two known localities of the Santa Monica Mountains hairstreak are protected from collection. As property of the National Park Service, one location has regulations in place that make it illegal to collect animal or plant specimens. Because this location is consistently patrolled by rangers, these regulations are well-enforced (R. Sauvoget, pers. comm. 1999). Regulations at the site co-owned and managed by COSCA, prohibit the collection of animals and plants within the park, and this prohibition is well-enforced by park rangers (Mark Towne, COSCA, pers. comm. 1999). The three other currently known sites of the Santa Monica Mountains hairstreak have no protective measures to preclude collecting of the taxon.

Regulatory mechanisms currently in place are generally inadequate to protect the Santa Monica Mountains hairstreak. Federal agencies and private landholders are not legally required to consider and manage for this or other subspecies during project design and implementation. The Santa Monica Mountains hairstreak is not listed under the California Endangered Species Act. The California Environmental Quality Act and local regulations do not provide

specific protection measures to ensure the continued existence of the Santa Monica Mountains hairstreak (Urban Wildlands *et al.* 1999). Some city and county jurisdictions are attempting to provide for the protection of coast live oaks in areas where the Santa Monica Mountains hairstreak occurs through adoption of land ordinances. These ordinances require landowners to plant saplings as replacements for removed oak trees (Urban Wildlands *et al.* 1999). However, it is unknown whether the Santa Monica Mountains hairstreak would benefit from the planting of young oak trees, or if the subspecies is associated solely with older oak trees. Information on the life history or habitat requirements of the Santa Monica Mountains hairstreak is insufficient to determine the full effect of oak tree protection on the subspecies.

We have reviewed the petition, and carefully assessed the scientific and commercial information available from this petition and our own files regarding the past, present, and future threats faced by the Santa Monica Mountains hairstreak. Several factors may impact the Santa Monica Mountains hairstreak at the five known sites, but this butterfly was only recently discovered, and little is known of its life history requirements and potential distribution. Critical information needed includes documentation of historical collection records throughout the range of the taxon; surveys of the western Santa Monica Mountains devoted to searching for the butterfly; documentation and detailed descriptions of studies of

hostplant specificity of the butterfly; and analysis of nectar sources available to and used by the subspecies. The evidence the petitioners present indicates that the subspecies may be rare, but available information is insufficient to adequately determine if other populations exist beyond the currently described five locations. Without additional information on the life history, range, or population size of the taxon, we cannot evaluate the seriousness of the potential threats to the Santa Monica Mountains hairstreak that are identified in the petition. Because of the lack of adequate data on biological vulnerability and threats, we find that the petition does not present substantial information that listing the Santa Monica Mountains hairstreak may be warranted.

References Cited

- Claiborne, W. 1997. Authorities net butterfly poacher at National Park. Page A4. Washington Post. August 2, 1997.
- Emmel, T.C. and J.F. Emmel. 1973. The butterflies of Southern California. Natural History Museum of Los Angeles Scientific Publication no. 26.
- Emmel, J.F. and R.H.T. Mattoni. 1989. A new subspecies of *Satyrrium auretteorum* (Lycaenidae) from the Santa Monica Mountains of southern California. Journal of Research on the Lepidoptera 28(1-2):100-104.
- Hoekwater, J. 1997. Butterfly poaching for profit in Baxter State Park, Maine. Northeastern Naturalist 4:145-152.
- Pasko, J. and R. Mattoni. 1992. Notes on the Santa Monica Mountains hairstreak *Satyrrium auretteorum fumosum*, Emmel and Mattoni. Journal of Research on the Lepidoptera 31:287-292.
- U. S. Department of Justice. 1995. Prison for illegal smuggling of endangered and protected species. (press release). Milwaukee, Wisconsin.
- U. S. Department of Justice. 1993. United States of America v. Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell. Violation: Conspiracy to violate the wildlife laws of the United States, including the Endangered Species Act [16 U.S.C. 1538(a)(1)(E), (F) and (G), and 1540(b)(1)] and the Lacey Act [16 U.S.C. 3372(a)(1), 3373(a)(2)(A), sections 3373(d)(1)(B), and 3373(d)(2)] all in violation of Title 18 U.S.C. § 371, a felony (indictment). San Jose, California.
- Urban Wildlands Group, Lepidoptera Research Foundation, California Oaks Foundation, Southwest Center for Biodiversity, R. Kim, L. Bracamante, R. Mattoni, T. Longcore, C. Rich, J. Emmel, and J. Prasko. January 2, 1999. Petition to list the Santa Monica Mountains hairstreak (*Satyrrium auretteorum fumosum*) as endangered under the Endangered Species Act.
- Williams, T. 1996. The great butterfly bust. Audubon 98(2): 30-37.

Author

The primary author of this finding is Colleen Sculley, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99-29993 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-55-p

Notices

Federal Register

Vol. 64, No. 221

Wednesday, November 17, 1999

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Membership to the Forest Research Advisory Council.

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for Membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 6 vacancies on the Forestry Research Advisory Council.

DATES: Deadline for Advisory Council member nominations is December 14, 1999.

SUPPLEMENTARY INFORMATION: Section 1441 (c) of the Agriculture and Food Act of 1981 requires the establishment of the Forestry Research Advisory Council to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, *et seq.*), known as the McIntire-Stennis Act of 1962. The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95-307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note)). The Council is composed of 20 voting members from the following membership categories:

(1) Federal and State agencies concerned with developing and utilizing the Nation's forest resources, in particular committee membership, will include representation from the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;

(2) The forest industries;

(3) The forestry schools of the State-certified eligible institutions, and State agricultural experiment stations; and

(4) Volunteer public groups concerned with forests and related natural resources.

The Council membership is appointed with staggered terms of 1, 2, and 3 years. As a result of the staggered appointments, the terms of 6 members expired on August 15, 1999.

Nominations for a 3-year appointment for all of the 6 vacant positions are sought. Nominees will be carefully reviewed for their broad expertise, leadership and relevancy to a membership category. Nominations for one individual who fits several of the categories, or for more than one person who fits one category will be accepted. Please indicate the specific membership category for each nominee. Each nominee must fill out a form AD-755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below) and will be vetted before selection. Send nominee's name, resume, and the completed AD-755 to the Office of the Forestry Research Advisory Council, Room 817 Aerospace Center, USDA CSREES, Mail Stop 2210, 901 D St., SW., Washington, DC 20250 no later than December 14, 1999.

FOR FURTHER INFORMATION CONTACT: Catalino A. Blanche, Executive Secretary, Forestry Research Advisory Council at the above address. Telephone: 202-401-4190, Fax: 202-401-1706, or e-mail: cblanche@reeusda.gov.

Done at Washington, DC this 10th day of November 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education and Economics.

[FR Doc. 99-30011 Filed 11-16-99; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture, (USDA). The USDA PRBs provide fair and impartial review of Senior

Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, recertification and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, (202) 720-6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by section 4314(c)(4) of Title 5, U.S.C. The following membership lists represents a standing register, from which specific PRBs will be constituted.

ACKERMAN, KENNETH D.
ACORD, BOBBY R.
ADAMS, CHARLES R.
AHL, ALWYNELLE S.
ALDAYA, GEORGE W.
ALLEN, RICHARD D.
AMONTREE, THOMAS S.
ANAND, RAJEN S.
ANDERSON, MARGOT H.
ANDRE, PAMELA Q.
ARMY, THOMAS J.
ARNOLD, RICHARD W.
ARTHUR, JOHN B.
ASHWORTH, WARREN R.
ATIENZA, MARY E.
AXTELL, JEANNE O.
BAKER, JAMES R.
BANGE, GERALD A.
BANKS, DENISE A.
BARTUSKA, ANN M.
BAY, DONALD M.
BECK, RICHARD H.
BEECHER, DONNA D.
BELL, THEODORE O.
BENSEY, JR., ROGER L.
BERG, JOEL S.
BERNHARD, RONALD R.
BETSCHART, ANTOINETTE A.
BEYER, WALLY B.
BICKERTON, GEORGE E.
BILLY, THOMAS J.
BLACKBURN, WILBERT H.
BLACKWELL, JACK A.
BLUM, J.L.
BOSECKER, RAYMOND R.
BOSWORTH, DALE N.
BOTTUH, JOHN S.
BRALEY, GEORGE A.
BREEZE, ROGER
BROUHA, PAUL
BRYANT, ARTHUR R.

BSCHOR, DENNIS E.
BUISCH, WILLIAM W.
BUNTAIN, BONNIE J.
BURNS, DENVER P.
BURSE, SR., LUTHER
BURT, JOHN P.
CABLES, RICK D.
CAMPBELL, ARTHUR C.
CAREY, ANN E.
CAREY, PRISCILLA B.
CARPENTER, BARRY L.
CHAMBERS, JR., SAMUEL
CHAMBLISS, MARY T.
CHERRY, JOHN P.
CHILTON, BART H.
CIELO, ANGEL B.
CLARK, LAWRENCE E.
CLAYTON, KENNETH C.
COHEN, KENNETH E.
COLLINS, KEITH J.
COMANOR, JOAN M.
CONKLIN, NEILSON C.
CONRAD, VIRGIL L.
CONWAY, ROGER K.
CONWAY, THOMAS V.
COOKSIE, CAROLYN B.
COOPER, GEORGE E.
COPPEDGE, JAMES R.
COULTER, KYLE J.
CRAVEN, JACK L.
CRUZ, JOSE
DEDRICK, ALLEN R.
DEHAVEN, WILLIAM R.
DELGADO, LINDA A.
DERFLER, PHILIP S.
DEWHURST, STEPHEN B.
DIAZ-SOLTERO, HILDA
DOMBECK, MICHAEL P.
DONOGHUE, LINDA R.
DUNCAN III, JOHN P.
DUNKLE, RICHARD L.
DUNN, MICHAEL V.
EAV, BOV B.
EBBITT, JAMES R.
ELDER, ALFRED S.
ELIAS, THOMAS S.
ELLIS, JOANNE H.
ESTILL, ELIZABETH
FIGUEROA, ENRIQUE E.
FITZGERALD, EILEEN M.
FLEISCHMAN, JOYCE N.
FORSGREN II, HARVEY L.
FOWLER, JERRY L.
FRANCO, ROBERT
FRANKS, JR., WILLIAM J.
FRAZIER, GREGORY
FRITZ, RICHARD G.
FROST, ALBERTA C.
FURNISH, JAMES R.
GADT, LARRY O.
GALVIN, TIMOTHY J.
GARDNER, JR., WILLIAM E.
GELBURD, DIANE E.
GILLAM, BERTHA C.
GIPPERT, MICHAEL J.
GIPSON, CHESTER A.
GLAVIN, MARGARET A.
GLICKMAN, DANIEL R.
GOERL, VINCETTE L.

GOLDEN, JOHN
GONZALEZ, I. MILEY
GRAU, THOMAS L.
GRAY, ROSALIND D.
GRAYBEAL, NANCY
GREENE, FRANK C.
GRUENLOH-FIALA, PATRICIA K.
GRUNDEMAN, ARNOLD J.
GUGULIS, KATHERINE C.
GULDIN, RICHARD W.
HAGY III, WILLIAM F.
HALL, DAVID C.
HAMILTON, THOMAS E.
HARDY, JR., LEONARD
HARRINGTON, JR., RUBE
HARRIS, SHARRON L.
HARRIS, JR., DAVID H.
HARWOOD, TERRY A.
HATCHER, CHARLES F.
HAVLIK, WILLIAM J.
HAYES, PAULA F.
HEALY, PATRICIA E.
HEFFERAN, COLIEN J.
HELLICKSON-KEY, SANDRA
HENDERSON, KAREN W.
HENNEBERRY, THOMAS J.
HERNANDEZ, HUMBERTO
HEWINGS, ADRIANNA D.
HICKS, RONALD F.
HICKS, VICKI J.
HILL, RONALD W.
HOBBIE, MARY K.
HOBBS, ALMA C.
HOBBS, IRA L.
HOLBROOK, DAVID M.
HOLMAN, PREO D.
HORN, FLOYD P.
HORNER, WITHERS G.
HOUSE, CAROL C.
HUDNALL, JR., WILLIAM J.
HUMISTON, GLENDA
JACKSON, KEITH C.
JACKSON, RUTHIE F.
JACOBS, ROBERT T.
JAKUB, LAWRENCE M.
JANIK, PHILIP J.
JENNINGS, ALLEN L.
JOHNSON, PETER B.
JOHNSON, ALLAN S.
JOHNSON, JUDITH K.
JOHNSON, PHYLLIS E.
JORDAN, JOHN P.
JUNG, CHRISTINE M.
KAISER, JR., HAROLD F.
KAPLAN, DENNIS L.
KEARNEY, JAMES C.
KEEFFE, MARY A.
KEENEY, ROBERT C.
KEITH, RODERICK
KELLY, JAMES M.
KELLY, KEITH
KELLY, MICHAEL W.
KENNEDY, ANNE K.
KENNEDY, EILEEN T.
KING, ALEXANDER
KING, JANET C.
KING, R.A.
KING, JR., EDGAR G.
KNIPLING, EDWARD B.

KORCAK, RONALD F.
KRONENBERGER, JR., DONALD R.
KUHN, BETSEY A.
LASTER, DANNY B.
LAUGHLIN, CHARLES W.
LAVERTY, JR., ROBERT L.
LEE, WARREN M.
LEO, JOSEPH J.
LEONHARDT, BARBARA A.
LEWIS, DAVID N.
LEWIS, JR., ROBERT
LILJA, JANICE G.
LINDEN, RALPH A.
LITTLE, JAMES R.
LOHFINK, CYRUS G.
LONG, RICHARD D.
LUDWIG, WILLIAM E.
LUGO, ARIEL E.
LYONS, JAMES R.
MACIAS, CHERYL L.
MALONEY, KATHRYN P.
MANNING, GLORIA
MARGHEIM, GARY A.
MARTIN, CHRISTOPHER J.
MARTINEZ, WILDA H.
MATZ, DEBORAH
MAUPIN, GARY T.
MAUSBACH, MAURICE J.
MAZIE, SARA M.
McCLANAHAN, MELINDA L.
McCUTCHEON, JOHN W.
McDOUGLE, JANICE H.
McKEE, RICHARD M.
McLEAN, CHRISTOPHER A.
McMANUS, JR., EDGAR J.
MENGELING, WILLIAM L.
MERRIGAN, KATHLEEN A.
MEZAINIS, VALDIS E.
MILLS, THOMAS J.
MINA, MARK T.
MITCHELL, LAWRENCE W.
MOORE, EDDIE A.
MURRAY, PETER K.
MURRELL, KENNETH D.
NELSON, STEPHEN F.
NERVIG, ROBERT M.
NG, ALLEN
NORDSTROM, GARY R.
NOVAK, JON E.
OBERLANDER, HERBERT
OFFUTT, SUSAN E.
OHLER, BARRY A.
OLSEN, ERIC N.
ONEIL, BARBARA T.
ONSTAD, CHARLES A.
ORR, DAVID M.
ORTEGO, JOHN R.
OSGOOD, BARBARA T.
OTTO, RALPH A.
PARADIS, JULIA M.
PARHAM, GREGORY L.
PARRY, JR., RICHARD M.
PEER, WILBUR T.
PERRY, JOAN B.
POTTS, JANET S.
POWERS, JUDY M.
PRCHAL, ROBERT J.
PRUCHA, JOHN C.
PURCELL, ROBERT L.

PURCELL, ROBERTA D.
 PYTEL, CHRISTINE
 RAINS, MICHAEL T.
 RAWLS, CHARLES R.
 REED, ANNE F.
 REED, CRAIG A.
 REED, PEARLIE S.
 REILLY, JOSEPH T.
 REXROAD, JR., CAIRD E.
 REYNOLDS, JAMES R.
 RIEMENSCHNEIDER, ROBERT A.
 RIGGINS, JUDITH W.
 RISBRUDT, CHRISTOPHER D.
 ROCKEY, SARAH J.
 ROMINGER, RICHARD E.
 ROUSSOPOULOS, PETER J.
 RUNDLE, KATHLEEN A.
 SALWASSER, HAROLD J.
 SATTERFIELD, STEVEN E.
 SCARBROUGH, FRANK E.
 SCHIPPER, JR., ARTHUR L.
 SCHROEDER, JAMES W.
 SCHUMACHER, AUGUST
 SCHWALBE, CHARLES P.
 SEIBER, JAMES N.
 SELLS, DANNY D.
 SEXTON, THOMAS J.
 SEYBOLD, GREGORY S.
 SEYMOUR, CAROL M.
 SHACKELFORD, PARKS D.
 SHANDS, HENRY L.
 SHEIKH, PATRICIA R.
 SHIPMAN, DAVID R.
 SIDDIQUI, ISLAM A.
 SIMMONS, ROBERT M.
 SMITH, HORACE
 SMITH, KATHERINE R.
 SMITH, PETER F.
 SMITH, JR., WILLIAM C.
 SMULKSTYS, INGA P.
 SMYTHE, RICHARD V.
 SOMMERS, WILLIAM T.
 SPENCE, JOSEPH
 SPORY, GENE P.
 SPRINGER, ROBERT D.
 ST. JOHN, JUDITH B.
 STEEL, PATRICK M.
 STEELE, W.S.
 STENGER-CASTRO, FRANK W.
 STEWART, RONALD E.
 STOCKTON, JR., BLAINE D.
 STOKES, E.V.
 STOLFA, PATRICIA F.
 STOMMES, EILEEN S.
 SURINA, JOHN C.
 TANNER, STEVEN N.
 THOMAS, IRVING W.
 THOMPSON, CLYDE
 THOMPSON, JILL LONG
 THOMPSON, PAUL E.
 THOMPSON, ROBIN L.
 THOMPSON, SALLY
 THORNTON, SAMUEL E.
 TORGERSON, RANDALL E.
 TORRES, ALFONSO
 TOWNS, ELEANOR R.
 VAIL, KENNETH H.
 VALSING, D.C.
 VAN KLAVEREN, RICHARD W.

VERBLE, SEDELTA D.
 VIADERO, ROGER
 VILLANO, DAVID J.
 VOGEL, FREDERIC A.
 VOGEL, RONALD J.
 VONK, JEFFREY R.
 WACHS, LAWRENCE
 WACHSMUTH, INA K.
 WALKER, ELIJAH C.
 WALKER, LARRY A.
 WALSH, THOMAS M.
 WALTON, THOMAS E.
 WATKINS, DAYTON J.
 WATKINS, SHIRLEY R.
 WEBER, BARBARA C.
 WEBER, THOMAS A.
 WHILLOCK, CARL S.
 WHITE, JR., T.K.
 WHITING, ROBERT W.
 WHITMORE, CHARLES
 WILCOX, CAREN A.
 WILLIAMS, JOHN W.
 WILLIS, JOYCE C.
 WILSON, EDWARD M.
 WITT, TIMOTHY B.
 WOTEKI, CATHERINE E.
 WU, JEREMY S.
 YOUNG, JR., ROBERT W.
 ZELLERS, PHILLIP
 ZIRSCHKY, JOHN H.
 ZORN, FRANCES E.

Dated: November 8, 1999.

Dan Glickman,

Secretary.

[FR Doc. 99-30012 Filed 11-16-99; 8:45 am]

BILLING CODE 3410-96-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and
 Transportation Barriers Compliance
 Board.

ACTION: Notice of meeting; date change.

SUMMARY: The Architectural and
 Transportation Barriers Compliance
 Board (Access Board) established a
 Public Rights-of-Way Access Advisory
 Committee (Committee) to assist the
 Board in developing a proposed rule on
 accessibility guidelines for newly
 constructed and altered public rights-of-
 way covered by the Americans with
 Disabilities Act of 1990 and the
 Architectural Barriers Act of 1968. This
 document announces a change in the
 dates of the first meeting, which will be
 open to the public.

DATES: The first meeting of the
 Committee is scheduled for December 2
 and 3, 1999, beginning at 9 am and
 ending at 5 pm each day.

ADDRESSES: The meeting will be held in
 the 3rd floor training room at 1331 F
 Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scott Windley, Office of Technical and
 Information Services, Architectural and
 Transportation Barriers Compliance
 Board, 1331 F Street, NW., suite 1000,
 Washington, DC, 20004-1111.
 Telephone number (202) 272-5434
 extension 125 (Voice); (202) 272-5449
 (TTY). E-mail [windley@access-
 board.gov](mailto:windley@access-board.gov). This document is available in
 alternate formats (cassette tape, Braille,
 large print, or ASCII disk) upon request.
 This document is also available on the
 Board's Internet Site ([http://
 www.access-board.gov/notices/
 prowmtg.htm](http://www.access-board.gov/notices/prowmtg.htm)).

SUPPLEMENTARY INFORMATION: On

October 20, 1999, the Architectural and
 Transportation Barriers Compliance
 Board (Access Board) published a notice
 appointing members to a Public Rights-
 of-Way Access Advisory Committee
 (Committee) to provide
 recommendations for developing a
 proposed rule addressing accessibility
 guidelines for newly constructed and
 altered public rights-of-way covered by
 the Americans with Disabilities Act of
 1990 and the Architectural Barriers Act
 of 1968. 64 FR 56482 (October 20, 1999).

The first meeting of the committee
 was originally scheduled for November
 29 and 30, 1999. The Access Board is
 changing the date of the first meeting to
 accommodate committee members
 travel schedules.

Committee meetings will be open to
 the public and interested persons can
 attend the meetings and communicate
 their views. Members of the public will
 have an opportunity to address the
 Committee on issues of interest to them
 and the Committee. Members of groups
 or individuals who are not members of
 the Committee may also have the
 opportunity to participate with
 subcommittees of the Committee.
 Additionally, all interested persons will
 have the opportunity to comment when
 the proposed accessibility guidelines for
 public rights-of-way are issued in the
Federal Register by the Access Board.

Individuals who require sign language
 interpreters or real-time captioning
 systems should contact Scott Windley
 by November 22, 1999. Decisions with
 respect to future meetings will be made
 at the first meeting. Notices of future
 meetings will be published in the
Federal Register.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99-30061 Filed 11-16-99; 8:45 am]

BILLING CODE 8150-01-P

DEPARTMENT OF COMMERCE**Census Bureau**

[Docket Number 991105296-9296-01]

RIN Number 0607-XX47

Change in Report Series From Print Publication to Internet Access**AGENCY:** Census Bureau, Commerce.**ACTION:** Notice of publication program change.

SUMMARY: The Census Bureau will cease printed publication of the Monthly Wholesale Trade Report at the end of this calendar year. After the printed report providing data for December 1999 is issued in February 2000, this monthly report will be available only on the Internet at: <<http://www.census.gov/svsd/www/mwts.html>>.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carole A. Ambler, Chief, Service Sector Statistics Division, U.S. Census Bureau, Washington, DC 20233, telephone number: (301) 457-2668.

SUPPLEMENTARY INFORMATION: The Monthly Wholesale Trade Report provides current economic data of the merchant wholesale trade industry and presents both unadjusted and seasonally adjusted data on sales, inventories, and inventories/sales ratios.

The Census Bureau has determined that there is little, if any, need for the printed version of the Monthly Wholesale Trade Report. Few users want a delayed printed report when they can access it through the Internet the morning of the release. Some users have continued to receive the printed report only because they have not requested that their names be removed from our mailing list. In recent years, our mailing request for this publication has declined from about 750 users to about 80 users. We believe that switching to Internet access will not affect the report's users. We will, however, address the needs of customers adversely affected by this change.

Dated: November 9, 1999.

Kenneth Prewitt,*Director, Bureau of the Census.*

[FR Doc. 99-29927 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Bureau of Export Administration****Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting**

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 2, 1999, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda*Open Session*

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on policies under review.
5. Discussion of electronic submission of license applications and supporting documentation.
6. Discussion of draft regulation concerning Exporter of Record.
7. Discussion of encryption regulations.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: As. Lee Ann Carpenter, BXA MS:3876, 15th St. & Pennsylvania Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or

portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482-2583.

Dated: November 12, 1999.

Lee Ann Carpenter,*Committee Liaison Officer.*

[FR Doc. 99-30054 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-580-807]

Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part

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

ACTION: Notice of final results of antidumping duty administrative review and intent not to revoke in part

SUMMARY: On July 12, 1999, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (64 FR 37501). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made certain changes for the final results.

EFFECTIVE DATE: November 17, 1999.**FOR FURTHER INFORMATION CONTACT:**

Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4475 or (202) 482-5222.

Applicable Statute:

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

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1999, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping order on PET film from Korea. SKC Co., Ltd. and SKC America, Inc. (collectively SKC) submitted its case brief on August 11, 1998. E.I. DuPont de Nemours & Company and Mitsubishi Polyester Film, LLC (collectively Petitioners) submitted rebuttal comments on August 18, 1999. The Department has conducted this administrative review in accordance with section 751 of the Act.

Intent Not To Revoke

On June 30, 1998, SKC requested, pursuant to 19 CFR 351.222(b)(2), revocation of the order with respect to its sales of PET film from Korea. SKC certified that: (1) It sold the subject merchandise at not less than normal value (NV) for a period of at least three consecutive years, (2) in the future it will not sell the subject merchandise at less than NV, and (3) it agreed to its immediate reinstatement in the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

In this case SKC does not meet the first criterion required for revocation. In this segment of the proceeding the Department has found that SKC sold subject merchandise at less than NV. Since SKC has not met the first criterion for revocation, i.e., zero or *de minimis* margins for three consecutive reviews, the Department need not reach a conclusion with respect to the second and third criteria. Therefore, on this basis, we have determined not to revoke the order on PET film from Korea with respect to SKC.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip,

whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1997 through May 31, 1998. The Department has conducted this review in accordance with section 751 of the Act.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. The Department considers a "fluctuation" to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) (For an explanation of this method, see Policy Bulletin 96-1: Currency Conversions (61 FR 9434, March 8, 1996).)

Our analysis of dollar-Korean-won exchange rates show that the Korean won declined rapidly in November and December 1997. Specifically, the won declined more than 40 percent over this two month period. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during recent years, and it did not rebound significantly in a short time. As such, we determine that the decline in the won during November and December 1997 was of such magnitude that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated at that time, i.e., as having experienced only a momentary drop in value relative to the normal benchmark. Accordingly, the Department used

actual daily exchange rates exclusively in November and December 1997. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from the Republic of Korea, 64 FR 30664, 30670 (June 8, 1999).

We recognize that, following a large and precipitous decline in the value of a currency, a period may exist wherein it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop in November and December 1997. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume that rates were merely fluctuating. Following the precipitous drop in November and December, we continued to use only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely "fluctuating." (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as "fluctuating" or "normal" in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand, 64 FR 56759, 56763, October 21, 1999.

Applying this methodology in the instant case, we used daily rates from November 3, 1997 through January 13, 1998. We then resumed the use of our normal methodology, starting with a benchmark based on the average of the 20 reported daily rates from January 14, 1998. We used the normal 40-day benchmark from February 12, 1998 to the close of the review period.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed below.

Comment 1: Allocation of Scrap Costs

Consistent with previous administrative reviews of this case, SKC

objects to the Department's equal allocation of scrap costs to A-grade and B-grade film. SKC contends that its allocation methodology is reasonable and consistent with widely accepted accounting concepts. In support of its argument, SKC cites to the March 8, 1996 case brief filed in the second and third administrative reviews of this case. (See Appendix 1 of SKC's August 11, 1999 case brief.)

SKC states that allocating the cost of scrap film equally to A-grade and B-grade films improperly overstates the cost of B-grade films while understating the cost of A-grade films. SKC contends that its methodology of initially allocating costs equally among A-grade film, B-grade film, and scrap, and then reallocating the cost of scrap to the cost of A-grade film is consistent with accepted cost accounting methodologies.

SKC also asserts that its methodology is consistent with the Department's treatment of jointly produced products in numerous other antidumping proceedings, wherein the Department recognized that a pure quantitative, or physical measures approach to cost allocation is unreasonable where there is significant difference in the value of the jointly produced products.

SKC cites Elemental Sulphur from Canada 61 FR 8239, 8241-8243 (March 4, 1996) (Sulphur from Canada); Oil Country Tubular Goods from Argentina 60 FR 33539, 33547 (June 28, 1995) (OCTG from Argentina); Canned Pineapple Fruit from Thailand, (60 FR 29553, 29560) (June 5, 1995) (Pineapple from Thailand) in support of its position.

SKC maintains that it is the Department's well-established practice to calculate costs in accordance with a respondent's normal cost accounting system unless the system results in an unreasonable allocation of costs, and cites Pineapple from Thailand as support for this assertion. SKC states that its reported cost of manufacturing (COM) data were calculated in accordance with its normal and long-established management cost accounting system. SKC notes that in the first review of this case (covering the period November 30, 1990 through May 31, 1992), the Department allocated all costs associated with the production of scrap film to A-grade film. SKC contends that this methodology was upheld by the Court of International Trade (CIT). (See *E.I. DuPont de Nemours & Co., et al. v. United States*, 4 F. Supp. 2d 1248, 1254 (Ct. Int'l. Trade 1998) (DuPont).)

Finally, SKC argues that the Department's allocation methodology is

"no longer tenable" in light of the decision reached by the U.S. Court of Appeals for the Federal Circuit (the Federal Circuit) in *Thai Pineapple Public. Co., Ltd. et al. v. United States*, No. 97-1424,-1437 (Fed. Cir. July 28, 1999) (Thai Pineapple). SKC asserts that in Thai Pineapple the Court rejected the use of a weight based allocation methodology where that methodology was inconsistent with the company's own books and records, and where the cost allocation methodology used by the company was neither price-based nor circular. Based upon the foregoing, SKC concludes that the Department should allocate all scrap costs to A-grade film.

Petitioners argue that the Department should continue to allocate scrap costs equally between A-grade and B-grade film, as the Department has done in the second (June 1, 1992 through May 31, 1993), third (June 1, 1993 through May 31, 1994), fifth (June 1, 1994 through May 31, 1995), and sixth (June 1, 1995 through May 31, 1996) reviews of this case. Petitioners argue that allocating yield losses equally between A-grade and B-grade film is consistent with the Federal Circuit's ruling in *IPSCO v. United States*, 965 F. 2d. 1056 (Fed Cir. 1992) (IPSCO). Petitioners note that the circumstances of this case are indistinguishable from IPSCO since A-grade and B-grade films are also produced "simultaneously in a single production process."

Petitioners further contend that in accepting SKC's reported costs for the first review, the Department predicated its acceptance upon the understanding that SKC had equally assigned costs to A- and B-grade films. Petitioners note that SKC's allocation methodology assigns all scrap cost to A-grade film.

Finally, petitioners assert that the facts in this case are distinguishable from those in Thai Pineapple. Petitioners contend that A-grade and B-grade film have identical production inputs, whereas in Thai Pineapple the production process differs for the various pineapple products involved. Because SKC's allocation methodology does not allocate scrap costs equally to A-grade and B-grade film, Petitioners assert that the Department should continue to reject SKC's allocation methodology.

Department's Position

We agree with Petitioners and disagree with SKC. As we explained in the final results of previous reviews of this order, we have determined that A-grade and B-grade PET film have identical production costs. Accordingly, we continue to rely on an equal cost methodology for both grades of PET film

in these final results. (See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Final Results of Review and Notice of Revocation in Part 61 FR 35177, 33182-83 (July 5, 1996) (Second and Third Reviews); Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Final Results of Review and Notice of Revocation in Part 61 FR 58374, 58375-76, (November 14, 1996) (Fourth Review), Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Final Results of Review 62 FR 38064, 38065-66 (Fifth Review) and Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Final Results of Review 63 FR 37334, 37335-36 (Sixth Review). Moreover, as noted in the final results of the second through sixth reviews, the CIT has also ruled that our allocation of SKC's production costs between A-grade and B-grade film is reasonable. (See *E.I. DuPont de Nemours & Co., Inc. et al. v. United States*, 932 F. Supp. 296 (CIT 1996).)

As Petitioners have indicated, our acceptance of SKC's allocation of scrap costs in the first review of this case was based upon our understanding that SKC had properly allocated the costs of A-grade and B-grade film. In that review we did not verify SKC's cost data. We determined that no verification was necessary because SKC was verified in the original investigation. Based upon the evidence existing in the record during the proceeding, we accepted SKC's allocation methodology because we were satisfied that SKC had calculated actual costs consistent with the Federal Circuit's ruling in IPSCO. (See Polyethylene Terphthalate Film, Sheet and Strip from the Republic of Korea, 60 FR 42835, 42839-40 (August 17, 1995).)

During the second and third administrative reviews, however, we carefully examined SKC's allocation methodology and conducted a thorough verification of SKC's accounting records. We determined that the allocation methodology employed by SKC fails to capture the actual production costs of A-grade and B-grade film. Based upon this determination, we have consistently required SKC to allocate yield losses equally between A- and B-grade film since the second review of this case. Further, we have determined that A-grade and B-grade film undergo an identical production process that involves an equal amount of material and fabrication expenses. The only difference in the resulting A- and B-grade film is that at the end of the manufacturing process a quality inspection is performed during which

some of the film is classified as high quality A-grade product while other film is classified as lower quality B-grade film (see Fourth Review at 61 FR 58375).

We continue to reject SKC's argument that DuPont affirmed its accounting methodology. DuPont does not require the Department to accept an allocation methodology that does not accurately capture the actual cost of A-grade and B-grade film. In DuPont the CIT concluded that the Department's acceptance of SKC's calculations was supported by substantial evidence. The Court further concluded that the calculations properly reflected SKC's actual costs of production. The CIT, however, did not affirm SKC's allocation methodology. It merely accepted the allocations resulting from the methodology because the record evidence indicated that those allocations reflected actual production costs as required by IPSCO.

In contrast, in the five previous reviews of this case, the Department has determined that SKC's allocation methodology fails to capture the actual cost of A-grade and B-grade film. We continue to maintain that SKC's reliance on Sulphur from Canada, Pineapple from Thailand, and OCTG from Argentina is misplaced. In Sulphur from Canada, the Department accepted respondent's treatment of sulphur as a by-product of natural gas production and its consequent assignment of all production costs to natural gas production and none to sulphur production in its normal records. (See Sulphur from Canada 61 FR at 8240-44 (comments 2 & 3).) The Department, instead, accounted only for the further processing costs of sulphur that respondent incurred after the sulphur gas was removed from the well. When accepting respondent's methodology, the Department conducted a relative value analysis of the sulphur and found that sulphur was an "insignificant" by-product of natural gas operations. (*Id.* At 8241.) The Department noted that Husky did not have the option of disposing of or selling sulphur gas in the state it is recovered from the well, because it is a poisonous substance and the respondent was required by law to process it to a safe form before disposing of it. (*Id.* at 8244.)

Likewise in OCTG from Argentina, respondent's production process produced two grades of pipe: primary and secondary. (See OCTG from Argentina, 60 FR at 33547.) However, because the secondary pipe was of such an inferior quality that it could not be sold for normal OCTG applications, the Department determined that the relative

value of secondary pipe was "insignificant" compared to OCTG and primary pipe. *Id.* Therefore, the Department allocated all common production costs to the primary pipe and subtracted the revenue received from the small amount of sales of secondary pipe from the total cost of manufacture of the primary pipe. See *Id.*

In the instant case, A-grade and B-grade films are produced in the same production process, with the only difference between A-grade and B-grade films being a different end-quality categorization. B-grade film is commercially saleable as a form of PET film. Thus, unlike the situations in Sulphur from Canada and OCTG from Argentina, B-grade film is not an "insignificant" by-product of PET film production.

Further, Pineapple from Thailand, may be distinguished from the instant case because Pineapple from Thailand concerned the appropriate cost methodology for products manufactured in a joint production process where the primary raw material, pineapple fruit, is split apart, with different parts of the raw material going through different production processes to produce canned pineapple fruit and other pineapple products, e.g., pineapple juice. (See Pineapple from Thailand, 60 FR at 29560-61.) A joint production process occurs when "two or more products result simultaneously from the use of one raw material as production takes place." (See Management Accountants Handbook, Keeler *et al.*, Fourth Edition at 11:1.) A joint production process produces two distinct products and the essential point of a joint production process is that "the raw material, labor, and overhead costs prior to the initial split-off can be allocated to the final product only in some arbitrary, although necessary manner." *Id.* The identification of different grades of merchandise does not transform the manufacturing process into a joint production process which would require the allocation of costs. In this case, since production records clearly identify the amount of yield losses for each specific type of PET film, our allocation of yield losses to the films bearing those losses is reasonable, not arbitrary. (See Fourth Review, 61 FR at 58575-76.)

It is the Department's practice to calculate costs in accordance with a respondent's management accounting system where that system reconciles to the respondent's normal financial and cost accounting records and results in a reasonable allocation of costs. (See Sixth Review, 63 FR at 37334.) Management accounting deals with providing

information that managers inside an organization will use. Managerial accounting reports typically provide more detailed information about product costs, revenue and profits. They are used to identify problems, objectives, or goals, and possible alternatives. In order to respond to the Department's questionnaires, SKC officials devised a management accounting methodology for allocating costs incurred in the film and chip production cost centers to individual products produced during the period of review. SKC adopted this cost accounting system to reflect a management goal (i.e., to respond to the Department.) Under this system, SKC assigns the yield loss from the production of A- and B-grade films exclusively to the A-grade films. This methodology helps management to focus on the film types with low yields. However, notwithstanding SKC's management's concern that it accurately portray the cost of its A-grade products, this managerial accounting methodology is not appropriate for reporting the actual costs of A- and B-grade products. As previously noted, A-grade and B-grade films undergo an identical production process. B-grade film is made using the same materials, on the same equipment, at the same time as the A-grade film.

Because A-grade and B-grade film are made from identical production inputs, SKC's reliance on Thai Pineapple is misplaced. As the Federal Circuit noted, the production process "is entirely different for the various pineapple products produced." (See Thai Pineapple at 8.) In contrast, A- and B-grade PET films are, as in the IPSCO case, produced from an identical production process. Further, contrary to SKC's argument, the Federal Circuit's ruling in Thai Pineapple does not require the Department to revise its methodology in this case. In Thai Pineapple, the Federal Circuit upheld Commerce's acceptance of the allocation methodology in the foreign producer's normal books and records because that methodology reasonably reflected the foreign producer's cost of production. See Thai Pineapple at 12-14. The Federal Circuit stated:

To the extent that the records of [the foreign producer] reasonably reflect the costs of production, Commerce may rely upon them. See NTN Beaning Corp., 74 F. 3d at 1206. Conversely, if the records are not reasonably reflective of cost, Commerce may appropriately deviate from them. See Thai Pineapple at 13.

In this case, as explained above, the Department has found the accounting methodology employed by SKC in its

books does *not* reflect the actual costs of A- and B-grade products. Because A- and B-grade films undergo an identical production process using the same production inputs, the Department's allocation of scrap cost equally to A- and B-grade film is appropriate, and is consistent with the Federal Circuit's ruling in *Thai Pineapple*.

Comment 2: CEP Profit

SKC asserts that the Department failed to account for imputed credit and domestic inventory carrying costs in its calculation of total profit in the CEP profit calculation. SKC contends that all imputed expenses should be included in U.S. selling expenses because (1) SKC has already offset the interest expense that the Department used in the calculation of total U.S. costs for these imputed expenses and (2) adjustments for these expenses are not otherwise reflected in the total costs that are deducted from total revenue to derive CEP profit.

Petitioners agree with SKC that the Department incorrectly calculated CEP profit but disagree with SKC as to the nature of the Department's error. Petitioners claim that as a result of SKC's specific categorization of revenues and costs, SKC has excluded the portion of CV financing expense which reflects imputed credit and inventory carrying costs included in U.S. expenses. (These items are revenue amounts in the calculation of CEP.) Therefore, Petitioners argue, SKC's total expenses are categorically different than its U.S. expenses, and SKC's total expenses are understated by mixing elements of revenue and cost. Petitioners assert that the Department should (1) recalculate SKC's finance expense without adjustments for accounts receivable and finished goods inventory, and with no adjustment for certain interest income items, (2) exclude "refunded customs duties" from SKC's aggregate cost of sales, and (3) calculate U.S. expenses for purposes of calculating CEP profit as the sum of U.S. movement expenses, direct and indirect U.S. selling expenses, and U.S. further manufacturing cost.

Department's Position

We have adhered to our established practice and used the actual revenues and expenses listed in SKC's audited financial statements to calculate CEP profit. Also, consistent with established practice, we have excluded imputed interest expenses from the calculation of the U.S. selling expenses as used in our CEP profit calculation and have employed the actual interest expenses incurred by SKC in accordance with

section 772(f)(2)(D) of the Act. Because our revised calculation of interest expense includes no offset for imputed expenses, SKC's argument that imputed expenses should be included in the calculation of CEP profit is moot.

In determining a company's costs for COP and CV purposes, we include an amount for interest expense. As with other cost elements, this cost is calculated on an annual basis. (See *Certain Stainless Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47882 (September 11, 1996).) In these final results, we have removed SKC's claimed deductions for imputed credit and inventory carrying cost from its reported interest expense calculation. This is consistent with our practice of using the same interest expense rate for both COP and CV, and basing that calculation upon the actual expenses shown on the financial statements. (See *Notice of Final Determination at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30333 (June 14, 1996).)

We disagree with petitioners that the interest income used as an offset to interest expense should be disallowed. This interest income is short-term in nature and is an allowable offset to total interest expenses. Also, we do not accept petitioners' argument that SKC should not be allowed to adjust its cost of sales for "refunded customs duties." The refunded duties are reflected in the cost of goods sold in SKC's financial statement. These refunded duties, however, are not a part of the model specific cost of manufacture to which the interest rate is applied. (Refunded duties are included as an adjustment to the sales price in the anti-dumping calculation.) Thus, in order to compute the interest expense rate on the same basis to which it is being applied, it is reasonable to add the refunded duties back to the cost of sales in the calculation of the interest expense rate.

Finally, we disagree with Petitioners' claim that movement charges should be included in the U.S. expenses used to calculate CEP profit. Unlike the statutory provision that defines the "total expenses" to be used in calculating CEP profit, Congress explicitly identified the expenses that constituted total U.S. expenses in section 772(f)(2)(B) of the Act. Section 772(f)(2)(B) of the Act provides that total U.S. expenses used to compute CEP profit are limited to those appearing under section 772(d) (1) and (2) of the statute. Movement expenses do not appear under either one of those subsections, but rather are described under section 772(c)(2)(A) of the

Statute. (See ITA Policy Bulletin 97.1, September 4, 1997 (CEP Policy Bulletin).) Therefore, in accordance with section 772(f)(2)(B) of the Act, we have *not* included movement expenses in our calculation of the total U.S. selling expenses used to allocate CEP profit.

Comment 3: U.S. Indirect Selling Expenses and CEP Profit

SKC contends that the Department should include the U.S. indirect selling expenses incurred in the home market in its calculation of CEP profit. SKC notes that the Department's CEP Policy Bulletin does not distinguish "activities in the United States from other U.S. selling activities" in calculating total profit. The Petitioners did not comment on this matter.

Department's Position

We agree with SKC. Consistent with our established practice, we have not distinguished activities in the United States from other U.S. selling activities in our calculation of total profit that is then allocated to U.S. expenses. We have revised our calculations accordingly.

Comment 4: Indirect Selling Expenses for Further Manufactured Sales

At the onset of verification, SKC submitted a corrected indirect selling expense rate for further manufactured sales. SKC contends that in its preliminary results, the Department erroneously applied the revised indirect selling expense rate to all U.S. sales rather than to the U.S. further manufactured sales to which this calculation was limited. The Petitioner did not comment in this matter.

Department's Position

We agree with SKC. We have revised our computer program and applied SKC's revised indirect selling expenses only to further manufactured sales.

Comment 5: U.S. Interest Revenue

SKC contends that the Department erroneously set interest expense to zero for certain U.S. sales to Anacom on which SKC earned interest revenue. Petitioners did not comment on this matter.

Department's Position

We agree with SKC. In these final results we have revised our computer program and adjusted for the interest expense that SKC incurred on all of its sales to Anacom.

Final Results of Review

As a result of our analysis of the comments received, we determine that a

margin of 0.69 percent exists for SKC for the period June 1, 1997 through May 31, 1998.

The U.S. Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. We have calculated an importer specific assessment value for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit for SKC shall be 0.69 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5 percent the "all others" rate established in the LTFV investigation.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with section 751(a)(1) of the Act.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Dated: November 9, 1999.

[FR Doc. 99-30041 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-822-801, A-447-801, A-451-801, A-485-601, A-821-801, A-842-801, A-843-801, A-823-801, A-844-801]

Continuation of Antidumping Duty Orders: Solid Urea From Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

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

ACTION: Notice of continuation of antidumping orders: solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

SUMMARY: On September 3, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and the antidumping duty order on solid urea from Romania would be likely to lead to continuation or recurrence of dumping (64 FR 4835 (September 3, 1999) and 64 FR 48360 (September 3, 1999), respectively). On November 4, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 60225 (November 4, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia,

Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-5050 or (202) 482-1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 9970 and 64 FR 10020, respectively) of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked (*see Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan*, 64 FR 48358 (September 3, 1999), and *Final Results of Expedited Sunset Review: Solid Urea from Romania*, 64 FR 48360 (September 3, 1999)).

On November 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Solid Urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan*, 64 FR 60225 (November 4, 1999), and USITC Pub. 3248, Investigations Nos. 731-TA-339 and 340-A-I (Review) October 1999).

Scope

The merchandise subject to these antidumping duty orders is solid urea. This merchandise was previously subject to an antidumping duty order on solid urea from the Union of Soviet Socialist Republics ("U.S.S.R."). However, with the dissolution of the U.S.S.R., the order was subsequently

transferred to all 15 republics (57 FR 28828, June 29, 1992). This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States item number 3201.10.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than October 2004.

Dated: November 10, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-30042 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-831-801]

Revocation of Antidumping Duty Order: Solid Urea From Armenia

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

ACTION: Revocation of antidumping duty order: solid urea from Armenia.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the International Trade Commission ("the Commission") determined that revocation of the antidumping duty order on solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 60225

(November 4, 1999)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(e)(4), the Department of Commerce ("the Department") is publishing notice of the revocation of the antidumping duty order on solid urea from Armenia. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050 or (202) 482-1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 9970 and 64 FR 10020, respectively) of the antidumping duty order on solid urea from Armenia pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked (*see Final Results of Expedited Sunset Review: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan*, 64 FR 48357 (September 3, 1999)).

On November 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on solid urea from Armenia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Solid Urea From Armenia, Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan*, 64 FR 60225 (November 4, 1999), and USITC Pub. 3248, Inv. Nos. 731-TA-339 and 340-A-1 (Review) (October 1999)).

Scope

The merchandise subject to this antidumping duty order is solid urea. This merchandise was previously subject to an antidumping duty order on solid urea from the Union of Soviet Socialist Republics ("U.S.S.R"). However, with the dissolution of the

U.S.S.R., the order was subsequently transferred to all 15 republics (57 FR 28828, June 29, 1992). This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States, item number 3201.10.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of this determination by the Commission that revocation of this antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the antidumping duty order on solid urea from Armenia. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 10, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-30043 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980911236-9246-02]
RIN 0693-ZA 22

Announcing Draft Federal Information Processing Standard (FIPS) 140-2, Security Requirements for Cryptographic Modules, and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice announces Draft Federal Information Processing Standard 140-2, Security Requirements for Cryptographic Modules, for public review and comment. The draft

standard, designated "Draft FIPS 140-2," is proposed to supersede FIPS 140-1.

FIPS 140-1, first published in 1994, specified that it be reviewed within five years. In 1998, NIST solicited public comments on reaffirming the standard. The comments received by NIST supported maintaining the standard. The comments also supported updating the standard due to advances in technology. The proposed revision (Draft FIPS 140-2) is now available for public review and comment.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential that consideration is given to the needs and views of the public, users, the information technology industry, and Federal, State and local government organizations. The purpose of this notice is to solicit such views.

DATES: Comments must be received on or before February 15, 2000.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Comments on Draft FIPS 140-2, 100 Bureau Drive—Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930.

Electronic comments may also be sent to: "Proposed140-2@nist.gov."

Copies of the current FIPS 140-1 and its proposed replacement, Draft FIPS 140-2, are available from the Computer Security Division, Information Technology Laboratory, 100 Bureau Drive—Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930. They are also available electronically at: <http://csrc.nist.gov/fips/>. Comments received in response to this notice will be published electronically at <http://csrc.nist.gov/cryptval/>.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Snouffer, Computer Security Division, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930, telephone (301) 975-4436.

SUPPLEMENTARY INFORMATION: FIPS 140-1, Security Requirements for Cryptographic Modules, first issued in 1994, identifies requirements for four security levels for cryptographic modules to provide for a wide spectrum of data sensitivity (e.g., low value administrative data, million dollar funds transfers, and life protecting data), and a diversity of application environments. Over 60 modules have been tested by accredited private-sector laboratories and validated to-date as conforming to this standard. The

standard provided that it be reviewed within five years to consider its continued usefulness and whether new or revised requirements should be added.

A notice was published in the **Federal Register** (Volume 63, Number 205) on October 23, 1998, soliciting public comments on reaffirming the standard. The comments (available at <http://csrc.nist.gov/cryptval/>) supported reaffirmation of the standard, but suggested technical modifications to address advances in technology since the standard was originally issued. Using these comments, NIST prepared by Draft FIPS 140-2.

Authority: NIST's activities to develop computer security standards to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104-106), the Computer Security of 1987 (Pub. L. 100-235), and Appendix III to Office of Management and Budget Circular A-130.

Dated: November 11, 1999.

Karen H. Brown,

Deputy Director, National Institute of Standards and Technology.

[FR Doc. 99-30051 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-CN-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 7, 1999 from 8:15 a.m. to 5:30 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national

policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; a presentation by the Manufacturing Extension Partnership Advisory Board Chair; a presentation by one of the Visiting Committee members on the Future of E-Business; an indepth review of the Manufacturing Engineering Laboratory; and an indepth review of the Materials Science and Engineering Laboratory. Discussions scheduled to begin at 8:15 a.m. and to end at 9:15 a.m. on December 7, 1999, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership will be closed.

DATES: The meeting will convene December 7, 1999, at 8:15 a.m. and will adjourn at 5:30 p.m. on December 7, 1999.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899-1004, telephone number (301) 975-4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 10, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99-30050 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, December 2, 1999, from 8:30 a.m. to 3:30 p.m. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to give an overview of the 1999 Baldrige Cycle; report from the Judges' Panel; review the program status and plans for 2000; discuss plans/issues and development of Overseers' recommendations; and present recommendations to the Director of NIST.

DATES: The meeting will convene December 2, 1999, at 8:30 a.m. and adjourn at 3:30 p.m. on December 2, 1999.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

Dated: November 10, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99-30049 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshop

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

ACTION: Notice of workshop.

SUMMARY: NMFS will present a workshop on the year 2000 permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea and Aleutian Islands pollock fishery under the American Fisheries Act (AFA).

DATES: The public workshop will be held on Monday, November 29, 1999, 8:30 a.m. - 5:00 p.m.

ADDRESSES: The workshop will be held at the NMFS Alaska Fisheries Science Center, Building 9, Auditorium, 7600 Sand Point Way, NE., Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS is considering implementing permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea pollock fishery under the AFA through an emergency rule. The emergency rule would provide participants in the Bering Sea pollock fishery with the opportunity to apply for permits to participate in the fishery prior to its scheduled start on January 20. This action would be necessary to comply with the implementation deadline specified in the AFA.

NMFS is conducting a November 29, 1999, workshop for interested industry members to provide guidance on the AFA permit application process for the year 2000 BSAI pollock fishery. This guidance has been requested by industry given the anticipated short time period between publication of an emergency rule, submission of industry applications in response to an emergency rule, and agency issuance of applicable permits prior to the start of the year 2000 Bering Sea pollock fishery scheduled for January 20, 2000.

Special Accommodations

This workshop will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sue Salveson at

907-586-7228 at least 7 working days prior to the meeting date.

Dated: November 10, 1999.

Bruce C. Morehead,

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

[FR Doc. 99-30010 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of import limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 433 is being increased for special shift, reducing the limit for Category 633 to account for the special shift added.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 18, 1999, you are directed to adjust the limits for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Adjusted twelve-month limit ¹
433	26,281 dozen.
633	150,770 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-29947 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 8, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustras.gov>. For

information on embargoes and quota reopenings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC). In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits. Some limits are being reduced for carryforward applied to 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 8, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group 218-220, 225-227, 313-326, 611-O ¹ , 613/614/615/617, 619 and 620, as a group.	146,200,755 square meters equivalent.

Category	Twelve-month restraint limit
Sublevels within the group	
218	8,388,281 square meters.
219	40,636,560 square meters.
220	40,636,560 square meters.
225	40,636,560 square meters.
226	40,636,560 square meters.
227	40,636,560 square meters.
313	48,465,622 square meters.
314	58,307,808 square meters.
315	40,636,560 square meters.
317	40,636,560 square meters.
326	7,858,195 square meters.
611-O	4,714,917 square meters.
613/614/615/617	46,646,248 square meters.
619	6,286,557 square meters.
620	7,858,195 square meters.
Other specific limits	
200	353,729 kilograms.
237	475,941 dozen.
300/301	3,751,697 kilograms.
331/631	2,575,860 dozen pairs.
333/334/335/835	295,398 dozen of which not more than 177,239 dozen shall be in Category 333 and not more than 177,239 dozen shall be in Category 835.
336/636	573,519 dozen.
338/339	1,343,404 dozen.
340/640	1,656,224 dozen.
341/641	2,146,528 dozen of which not more than 765,775 dozen shall be in Category 341.
342/642/842	514,140 dozen.
345	197,156 dozen.
347/348	569,337 dozen.
350/650	185,419 dozen.
351/651	319,026 dozen.
363	4,997,811 numbers.
435	15,891 dozen.
438-W ²	13,004 dozen.
442	19,365 dozen.
445/446	30,738 dozen.
604	1,645,035 kilograms.
634/635	1,001,848 dozen.
638/639	590,163 dozen.
645/646	451,392 dozen.
647/648	2,124,203 dozen of which not more than 1,486,940 dozen shall be in Category 647-K ³ and not more than 1,486,940 dozen shall be in Category 648-K ⁴ .

Category	Twelve-month restraint limit
Group II 201, 222–224, 239pt. ⁵ , 332, 352, 359pt. ⁶ , 360–362, 369pt. ⁷ , 400–431, 433, 434, 436, 438–O ⁸ , 440, 443, 444, 447, 448, 459pt. ⁹ , 464, 469pt. ¹⁰ , 600– 603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. ¹¹ , 666, 669pt. ¹² , 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. ¹³ , as a group.	45,309,145 square meters equivalent.

¹Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085

²Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

³Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

⁴Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

⁵Category 239pt.: only HTS number 6209.20.5040 (diapers).

⁶Category 359pt.: all HTS numbers except 6406.99.1550.

⁷Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

⁸Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

⁹Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

¹⁰Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

¹¹Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

¹²Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

¹³Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see the November 3, 1998 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29946 Filed 11–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 64069, published on November 18, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 17, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit ¹
341	1,041,884 dozen.
342/642	242,385 dozen.
363	7,741,604 numbers.
369–S ²	1,012,099 kilograms.

¹The limits have not been adjusted to account for any imports exported after December 31, 1998.

²Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29951 Filed 11–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1999.
FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustras.gov>. For information on embargoes and quota reopenings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 369-D is being increased because special shift is being undone, decreasing the limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53880, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period

which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 17, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
352/652	1,668,180 dozen.
369-D ²	205,356 kilograms.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

² Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99-29950 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustras.gov>. For information on embargoes and quota reopenings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in

Turkey and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits. The limits for certain categories have been reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2000 through December 31, 2000, in excess of the following levels of restraint:

Category	Restraint limit	Category	Restraint limit	Category	Restraint limit
Fabric Group 219, 313–O ¹ , 314–O ² , 315–O ³ , 317–O ⁴ , 326–O ⁵ , 617, 625/626/627/628/629, as a group.	207,775,049 square meters of which not more than 47,480,835 square meters shall be in Category 219; not more than 58,032,131 square meters shall be in Category 313–O; not more than 33,764,149 square meters shall be in Category 314–O; not more than 45,370,578 square meters shall be in Category 315–O; not more than 47,480,835 square meters shall be in Category 317–O; not more than 5,275,647 square meters shall be in Category 326–O, and not more than 31,653,892 square meters shall be in Category 617.	342/642 347/348 350 351/651 352/652 361 369–S ¹⁰ 410/624 448 604 611	1,104,390 dozen. 6,008,629 dozen of which not more than 2,090,062 dozen shall be in Categories 347–T/348–T ⁹ . 591,784 dozen. 946,162 dozen. 3,426,550 dozen. 1,989,592 numbers. 2,056,859 kilograms. 1,135,918 square meters of which not more than 748,116 square meters shall be in Category 410. 38,977 dozen. 2,512,927 kilograms. 62,865,561 square meters.	⁹ Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050. ¹⁰ Category 369–S: only HTS number 6307.10.2005.	
Sublevel in Fabric Group 625/626/627/628/629	21,374,292 square meters of which not more than 8,077,791 square meters shall be in Category 625; not more than 8,549,716 square meters shall be in Category 626; not more than 8,549,716 square meters shall be in Category 627; not more than 8,549,716 square meters shall be in Category 628; and not more than 8,549,716 square meters shall be in Category 629.	¹ Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032. ² Category 314–O: all HTS numbers except 5209.51.6015. ³ Category 315–O: all HTS numbers except 5208.52.4055. ⁴ Category 317–O: all HTS numbers except 5208.59.2085. ⁵ Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015. ⁶ Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070. ⁷ Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060. ⁸ Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.			
Limits not in a group 200 300/301 335 336/636 338/339/638/639	2,003,400 kilograms. 9,754,412 kilograms. 421,166 dozen. 992,079 dozen. 5,836,134 dozen of which not more than 5,252,520 dozen shall be in Categories 338–S/339–S/638–S/639–S ⁶ .	340/640 341/641	1,755,288 dozen of which not more than 499,226 dozen shall be in Categories 340–Y/640–Y ⁷ . 1,733,429 dozen of which not more than 606,700 dozen shall be in Categories 341–Y/641–Y ⁸ .		

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29948 Filed 11–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–29948 Filed 11–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustras.gov>. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60308, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on November 17, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
338/339	805,254 dozen of which not more than 513,893 dozen shall be in Categories 338-S/339-S ² .
340/640	454,507 dozen.
363	7,826,323 numbers.
647/648	446,714 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1998.

² Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99-29949 Filed 11-16-99; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Activities Inventory Reform (FAIR) Act of 1998, Pub. L. 105-270

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense has issued interim final guidelines and model procedures to implement section 3 of the Federal Activities Inventory Reform Act of 1998.

ADDRESSES: Address written requests for guidelines and model procedures to Department of Defense FAIR Act Information Office, 2000 Corporate Ridge, McLean, VA 22102-7805, Attn: Ms. Lauren Corbett (LMI).

FOR FURTHER INFORMATION CONTACT: Ms. Lauren Corbett, telephone (703) 917-7431.

SUPPLEMENTARY INFORMATION: The Federal Activities Inventory Reform Act of 1998, or the FAIR Act, requires each Executive agency, including the Department of Defense, to compile a list of commercial activities within the agency that are performed by the government, and to make that list available to the public. Section 3 of the FAIR Act allows interested parties to challenge the contents of the list and to appeal an adverse decision on that challenge to a higher level official within the agency. The guidelines and model procedures issued by the Department of Defense provide information to subordinate organizations within the Department on developing and implementing procedures for this process. Written requests for the guidelines and model procedures will be accepted on or about

the time the Office of Management and Budget (OMB) announces in the **Federal Register** the availability of the Department of Defense FAIR Act inventory. The guidelines and model procedures are currently in effect, but the Department of Defense will accept comments on them from the public for 60 calendar days from the date of the OMB notice. Persons submitting comments should address them to the address listed in this notice.

The model procedures and other information regarding Department of Defense compliance with the FAIR Act may be found by accessing the worldwide web at <http://gravity.lmi.org/dodfair>. This website will be available to the public on or about the time OMB announces in the **Federal Register** the availability of the Department of Defense FAIR Act inventory.

Dated: November 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-29974 Filed 11-16-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

AGENCY: Defense Intelligence Agency Joint Military Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of public law 94-409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday, 10 January 2000, 0800 to 1700; and Tuesday, 11 January 2000, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340-5100 (202/231-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence college.

Dated: November 10, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-29973 Filed 11-16-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF EDUCATION

Department of Labor

Office of School-to-Work Opportunities; Advisory Council for School-To-Work Opportunities; Notice of Open Meeting

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and act as advocates for implementing the School-to-Work framework on behalf of their stakeholders.

Time and Place: The Advisory Council for School-to-Work Opportunities will have an open meeting on Thursday, December 2, 1999 from 1:30 p.m. to 5:30 p.m. and on Friday, December 3, 1999 from 9:00 a.m. to 12:00 p.m. The meeting will be held at the Crowne Plaza Downtown Hotel, Phoenix, Arizona.

Agenda: The agenda for the meeting on Thursday, December 2, from 1:30-1:45 p.m. will be opening remarks by the Chairman of the Counsel, Governor John McKernan. Following the opening, the Council will meet with the State Directors for School-to-Work to engage in a review of the School-to-Work Initiative. On Friday, December 3, the Council will meet to discuss issues related to sustainability of the School-to-Work initiative and to develop recommendations for consideration by the Departments of Education and Labor.

Public Participation: The meetings on Thursday, December 2, and Friday, December 3, will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO),

listed below, at least 7 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT:

Stephanie J. Powers, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW., Room 210, Washington, DC 20024, 202/401-6222. (this is not a toll free number.)

Signed at Washington, DC, this 10th day of November, 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor, U.S. Department of Labor.

Robert D. Muller,

Acting Assistant Secretary for Vocational and Adult Education, U.S. Department of Education.

[FR Doc. 99-29972 Filed 11-16-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Direct Distribution

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Direct Distribution.

SUMMARY: The Department is providing notice of a proposed "direct distribution" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy. This notice is being issued under the authority of section 54 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The proposed transfer involves the shipment of test samples of nine (9) mixed oxide (MOX) fuel pins containing 119 grams of plutonium as a direct distribution described in Section 54(d) of the Atomic Energy Act to the Chalk River Laboratories of Atomic Energy of Canada, Ltd., for irradiation in the Chalk River NRU Reactor and subsequent Post Irradiation Examination (PIE). This experimental shipment is part of the PARALLEX (parallel experiment) program being conducted by Atomic Energy of Canada, Ltd., and funded by the Department of Energy.

In accordance with section 54 of the Atomic Energy Act of 1954, as amended, we have determined that this transfer will not be inimical to the common defense and security.

This transfer will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 9, 1999.

Trisha Dedik,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99-29976 Filed 11-16-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

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), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 2, 1999, 6 pm-9:30 pm.

ADDRESSES: Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420-7855; fax (303) 420-7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Conversation with Len Ackland, author of the book "Making a Real Killing: Rocky Flats and the Nuclear West."

2. End-of-year reception and opportunity for informal discussion with Board members and regulators.

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five 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. Each individual wishing to make public comment will

be provided a maximum of five minutes to present their comments.

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 at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420-7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC, on November 12, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99-29995 Filed 11-16-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 1, 1999: 6 p.m.-9 p.m.

ADDRESSES: Embassy Suites, Tropicana Room, 4315 Swenson Street, Las Vegas, NV 89119.

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:

- Committee Reports
- SSAB Administrative and Business Reports

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on November 12, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99-29996 Filed 11-16-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy, National Petroleum Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).
Date and Time: Wednesday, December 15, 1999, 9 AM.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-5), Washington, DC 20585, Telephone: 202/586-3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

TENTATIVE AGENDA:

- Call to order and introductory remarks by Joe B. Foster, Chair of the NPC.
- Remarks by the Honorable T. J. Glauthier, Deputy Secretary of Energy.
- Consideration of the proposed final report of the NPC Committee on Natural Gas.
- Progress report of the NPC Committee on Refining.
- Progress Report of the NPC Committee on Critical Infrastructure Protection.
- Administrative matters.

- Discussion of any other business properly brought before the NPC.
- Public comment (10-minute rule).
- Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 12, 1999.

Rachel M. Samuel,

Acting Deputy Committee Advisory Management Officer.

[FR Doc. 99-29994 Filed 11-16-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or

reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response $\times$ proposed frequency of response per year $\times$ estimated number of likely respondents).

DATES: Comments must be filed on or before December 17, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI-70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 426-1116, FAX (202) 426-1083, or e-mail at Jay.Casselberry@eia.doe.gov.

SUPPLEMENTARY INFORMATION:

The energy information collections submitted to OMB for review were:

1. EIA-800-804, 807, 810-814, 816, 817, 819M, and 820, "Petroleum Supply Reporting System".

2. Energy Information Administration; 1905-0165; Extension with change; Mandatory.

3. EIA's Petroleum Supply Reporting System (PSRS) collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.

This request is to: (1) change the expiration date from November 30, 2000, to January 31, 2001 to allow for completion of all PSRS data collection for calendar year 2000 and (2) to change the collection frequency for Form EIA-820 from biennial to annual.

4. Business or other for-profit; Federal government; State government.

5. 55,813 hours (1.137 hours per response $\times$ 18.76 responses per year $\times$ 2616 respondents).

STATUTORY AUTHORITY: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13).

Issued in Washington, D.C., November 10, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99-29977 Filed 11-16-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00-22-000]

Colorado Interstate Gas Company; Notice of Application

November 10, 1999.

Take notice that on November 5, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed, in Docket No. CP00-22-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain facilities in Moore County, Texas, as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>. Call (202) 208-2222 for assistance.

Specifically, CIG proposes to abandon and remove all seven transmission system compressor units, totaling 4,760 horsepower, at its Bivins Compressor Station. The compressor building and other appurtenant facilities will also be removed. CIG requests that an order permitting and approving the proposed abandonment be issued on or before June 1, 2000, which will allow CIG to remove the facilities in early summer 2000.

CIG states that the Bivins transmission system compression has not been used since the end of December 1996, when declining volumes in the Panhandle Field resulted in the shifting of the processing of gas in the area of the Bivins Compressor Station to a more efficient facility and the shut down and removal of the processing facilities adjacent to the Bivins site. CIG explains that gas

gathered near the Bivins Compressor Station is not pipeline quality and without processing could not be received into CIG's transmission system. CIG states that, therefore, it does not anticipate any need for the transmission compressor facilities in the future. CIG also states that the proposed abandonment and removal of facilities will have no effect on any existing CIG customer.

Any questions regarding this application should be directed to James R. West, Manager of Certificates, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520-4679.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission on its own review of the matter will determine whether granting permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29942 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. CP00-6-000, CP00-7-000, and CP00-8-000]

Gulfstream Natural Gas System, L.L.C.; Notice of Resource Agency Meeting

November 10, 1999.

On November 18, 1999, staff of the Office of Pipeline Regulation will meet with the Florida Department of Environmental Protection, members of the Regulatory Coordination Team and Tampa Bay Focus Group, and representatives of Gulfstream Natural Gas System to discuss agency concerns, coordination logistics, and the Federal process for the Gulfstream Project in the above referenced dockets.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29941 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER99-4415-000 and EL00-7-000]

Illinois Power Company; Notice of Initiation of Proceeding and Refund Effective Date

November 12, 1999.

Take notice that on November 10, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL00-7-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00-7-000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29981 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP00-21-000]

Reliant Energy Gas Transmission Company; Notice of Application for Abandonment Authorization

November 10, 1999.

Take notice that on November 4, 1999, Reliant Energy Gas Transmission

Company (Reliant), a Delaware corporation, whose main office is located at 1111 Louisiana Street, Houston, Texas 77210, filed in the referenced docket pursuant to section 7(b) of the Natural Gas Act ("NGA") and Part 157 of the Federal Energy Regulatory Commission's (the Commission) Regulations thereunder (18 CFR 157.7 and 157.18), an application for authority required for Reliant to effect the abandonment of certain facilities located in Caddo Parish, Louisiana.

Specifically, Reliant proposes to abandon a 1.5 mile segment of Line R, two delivery points, and one receipt point. Reliant proposes to transfer by sale, at net book value, to Reliant Energy Field Services Corp. (REFS) this segment of Line R, an 8-inch lateral line, and certain related facilities all as more fully set forth in the Application on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.us/online/rims.htm> (call 202-208-2222). Reliant seeks determination that once conveyed to REFS, these facilities will be gathering facilities exempt from the Commission's jurisdiction.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Reliant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29980 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests**

November 10, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-11787-000.

c. *Date filed:* July 9, 1999.

d. *Applicant:* Town of Stuyvesant Falls.

e. *Name of Project:* Stuyvesant Falls Project.

f. *Location:* On the Kinderhook Creek, near the Town of Stuyvesant, Columbia County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul V. Nolan, 5515 North 17th Street, Arlington, Virginia 22205.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219-2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application*: Project 11689-000; date filed: February 23, 1999; due date: July 12, 1999.

l. *Description of Project*: The proposed project would consist of the following existing features: (1) a 13-foot-high, 240-foot-long masonry gravity dam; (2) a 46 acre reservoir with minimal storage; (3) two 2,860-foot-long, 7.5-foot-diameter steel penstocks; (4) a 25-foot-diameter surge tank; (5) a powerhouse containing a generating unit with a proposed rehabilitated total capacity of 5.2 MW and an estimated average annual generation of 14.0 GWh; and (6) appurtenant facilities.

m. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219-1371. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (Call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to

take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29943 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

November 10, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: P-11819-000.

c. *Date filed*: September 27, 1999.

d. *Applicant*: Universal Electric Power Corporation.

e. *Name of Project*: Chouteau L&D Hydroelectric Project.

f. *Location*: On the Verdigris River, near the town of Okay, Wagoner County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115.

i. *FERC Contact*: Susan Tseng (202) 219-2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Comment date*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would utilize the existing U.S. Army Corps of Engineers' Chouteau L&D, and would consist of: (1) 2 new 80-foot-long, 48-inch-diameter steel penstocks; (2) a new 60-foot-wide, 30-foot-high powerhouse downstream of the dam containing 2 generating units having a total installed capacity of 900 kilowatts; (3) a new exhaust apron; (4) a new 0.23-mile-long, 14.7-kV transmission line, and (5) appurtenant facilities.

The proposed average annual generation is estimated to be 5 gigawatt hours. The cost of the studies under the permit will not exceed \$500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/>

rims.htm (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allow an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29944 Filed 11-16-99 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions to Intervene and Protests

November 10, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-11825-000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Newt Graham L&D Hydroelectric Project.

f. *Location:* On the Verdigris River, near the town of Inola, Wagoner County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535-7115.

i. *FERC Contact:* Susan Tseng (202) 219-2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Comment Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Newt Graham L&D, and would consist of: (1) 2 new 80-foot-long, 48-inch-diameter steel penstocks; (2) a new 60-foot-long, 30-foot-wide, 30-foot-high powerhouse downstream of the dam containing 2 generating units having a total installed capacity of 900 kilowatts; (3) a new exhaust apron; (4) a new 0.19-mile-long, 14.7-kV transmission line; and (5) appurtenant facilities.

The proposed average annual generation is estimated to be 5 gigawatt hours. The cost of the studies under the permit will not exceed \$500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. *Locations of the application.* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-2371. The application may be

viewed on <http://www.fed.rs/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-29945 Filed 11-16-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6476-6]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held December 7-9, 1999, at the Wyndham Hotel, 1400 M Street, NW, Washington, D.C. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, December 7, 1999, Work Group meetings only; plenary sessions Wednesday, December 8 and Thursday, December 9, 1999.

ADDRESSES: Wyndham Hotel, 1400 M Street, NW, Washington, D.C. 20005; 202-429-1700.

Agenda Items: The meetings of the CHPAC are open to the public. The Science and Research Work Group, the Economics Work Group, the Regulatory Process Work Group, and the Outreach and Communications Work Group will meet from 9:30 a.m. to 5:00 p.m. on Tuesday, December 7, 1999. The plenary CHPAC will meet on Wednesday, December 8 from 9:00 a.m. to 5:30 p.m. with a public comment period at 5:00 p.m. and on Thursday, December 9, 1999, from 8:30 a.m. to 12:00 noon.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include discussion of economics recommendations and reports from the other Work Groups.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260-7778, goode.paula@epa.gov.

Dated: November 9, 1999.

Paula R. Goode,

Designated Federal Officer, Children's Health Protection Advisory Committee.

[FR Doc. 99-30024 Filed 11-16-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6476-7]

City of Key West No Discharge Zone Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 Regional Administrator concurs with the

determinations of the State of Florida that adequate and reasonably available pumpout facilities exist around the waters (out to 600 feet from shore) of the Island of Key West. A petition was received from the State of Florida requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal of sewage from all vessels are reasonably available for the waters around the City of Key West to qualify as a No Discharge Zone (NDZ). This action is taken under section 312(f)(3) of the Clean Water Act.

This determination was published in the **Federal Register** on August 25, 1999 (64 FR 46390), and comments were received through September 24, 1999. EPA Region 4 received 27 comment letters (19 in favor, 8 opposed) concerning this NDZ designation. Six of the opposition letters state that insufficient pumpout facilities exist. EPA and the State of Florida found the following facilities available for pumping out vessel holding tanks in the City of Key West area. Their address, telephone number, hours of operation and draft are as follows:

A. Galleon Marina; 619 Front Street, Key West, Florida 33040; 305-292-1292; 8 a.m.-6 p.m. 7 days/week; 45' draft.

B. Historic Seaport at Key West Bight; 201 William Street, Key West, Florida 33040; 305-293-8309; 7 a.m.-7 p.m. (summer) 7 a.m.-5 p.m. (winter) 7 days/week; 12' draft.

C. Key West Conch Harbor; 951 Caroline Street, Key West, Florida 33040; 305-294-2933; 6 a.m.-Sunset 7 days/week; 10' draft.

D. Garrison Bight Marina; Garrison Bight Causeway, Key West, Florida 33040; 305-292-8167; 24 hours/day 7 days/week; 7' draft; mobile pumpout barge operated 8 a.m.-5 p.m. Monday through Saturday; 1' draft.

E. Sunset Marina; 5555 College Road, Stock Island, Key West, Florida 33040; 305-296-7101; 7 a.m.-8 p.m. daily; 6.5' draft.

Additional pumpout facilities are being installed at several other marinas within city limits. The facilities at A & B Marina are scheduled for completion by September 1, 1999. The Key West Yacht Club is currently seeking permits for a pumpout facility. The Historic Seaport at Key West Bight has budgeted funds for installation of dockside pumpouts for charterboats within the next fiscal year. Therefore EPA Region

4 continues to concur with the State of Florida that adequate and reasonably available pump out facilities exist for NDZ designation. Other points in opposition included the efficiency of the city sewer system, the effectiveness of Type I and Type II MSDs, and the relative contribution of MSD effluent to the overall ecosystem. The effluent discharge from Type I and Type II MSDs contain elevated levels of nutrients and a variety of disinfectants which can degrade water quality and adversely impact the coral reef ecosystem. The City of Key West is currently in the process of upgrading its sewage treatment facility to advanced wastewater treatment (AWT) and deep well injection. This will result in the removal of all nutrients and other pollutants from surface waters.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

[FR Doc. 99-30023 Filed 11-16-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 8, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A-804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0546.

Title: Definition of markets for purposes of the Cable Television Mandatory Broadcast Signal Carriage Rules, section 76.59.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 150.

Estimated Time Per Response: 4-40 hours.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 1,680 hours.

Total Annual Costs: \$721,500.

Needs and Uses: On May 26, 1999, the Commission released an Order on Reconsideration and Second Report and Order in the Matter of Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules. Among other things, this rulemaking established final rules for procedures for refining the market modification process by adopting a standardized evidence approach to the market modification process. The Commission sets forth specific information submission requirements for the market modification process, as detailed in amended Section 76.59.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-29924 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 8, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0750.

Title: Section 73.673 Public information initiatives regarding educational and Informational programming for children.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit and individuals or households.

Number of Respondents: 1,225 commercial television stations.

Estimated Time per Response: 1 minute per program for broadcasters and 5 minutes per program for publishers of program guides.

Frequency of Response: Third Party Disclosure.

Total Annual Burden: 38,219 hours.

Total Annual Cost: \$0.

Needs and Uses: Section 73.673 implements the Children's Television Act of 1990 (CTA). The Rule requires that commercial TV broadcasters identify programs specifically designed to educate and inform children at the beginning of those programs. It also requires that licensees provide information identifying such programs and the age groups for which they are intended to publishers of program guides. These requirements provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. The CTA requires the Commission to review each television license renewal application to ensure that the licensee has served the educational and information needs of children through the licensee's overall programming, as well as programming specifically designed to serve these needs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-29925 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A-804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0466.

Title: Section 74.1283 Station Identification.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 650 FM translator stations.

Estimated Time per Response: 10 minutes per notice.

Total Annual Burden: 108 hours.

Total Annual Cost: \$0.

Needs and Uses: Section 74.1283(c)(1) requires an FM translator station whose station identification is made by the primary station to furnish current information of the translator's call letters and location (name, address and telephone number of the licensee or service representative). This information is to be kept in the primary station's files. This information is used by the primary station licensee and/or FCC staff in field investigations to contact the translator licensee in the event of malfunction of the translator.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-30045 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0249.

Title: Section 74.781 Station Record.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 7,100 low power television, TV translator and TV booster stations.

Estimated Time per Response: 45 minutes—1 hour per station.

Frequency of Response:

Recordkeeping.

Annual Burden: 5,503 hours.

Annual Costs: \$639,000.

Needs and Uses: Section 74.781 requires licensees of low power television, TV translator and TV booster stations to maintain adequate station records. These records shall include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents. They should also include any observed or otherwise known extinguishment or improper functioning of a tower light. The records are used by FCC staff in field investigations to assure that reasonable measures are taken to maintain proper station operation and to ensure compliance with the Commission's rules. These records are also available for public inspection.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-30046 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that

does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 17, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0584.

Title: Administration of U.S. Certified Accounting Authorities in the Maritime and Maritime Mobile-Satellite Radio Services.

Form No.: FCC Forms 44 and 45.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, individuals or households.

Number of Respondents: 25 respondents; 50 total annual responses. *Estimated Time Per Response:* 3 hours.

Frequency of Response: Semi-annual and annual reporting requirements.

Total Annual Burden: 150 hours.

Total Annual Cost: 0.

Needs and Uses: Title 47, Part 3 established final rules related to the administration of accounting authorities. The rules are required to ensure adherence to international settlement procedures. The collection requirement will provide information necessary to determine whether an applicant is qualified to act as an accounting authority.

On July 13, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 98-96, which stated that a proposal was adopted to withdraw the

Commission as a nation-wide clearinghouse for settling accounts for maritime mobile, maritime satellite, aircraft and handheld terminal radio services. The function will be phased out over a three-year period and turn over the collection to private accounting authorities.

The information will be used by the Commission to determine the eligibility of applicants for certification as accounting authorities, to create internal studies of settlement activities and ensure compliance, and to identify accounting authorities to the International Telecommunications Union for disclosure in their List of Ship Stations Report.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-30044 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2371]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

November 9, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY-A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed by December 2, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Implementation of the Telecommunications Act of 1996 (CC Docket No. 96-115)

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended (CC Docket No. 96-149)

Number of Petitions Filed: 1.

Subject:

Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91-221)

Television Satellite Stations Review of Policy and Rules (MM Docket No. 87-8)

Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (MM Docket No. 94-150)

Review of the Commission's Regulations and Policies Affecting Investing in the Broadcast Industry (MM Docket No. 92-51)

Reexamination of the Commission's Cross-Interest Policy (MM Docket No. 87-154)

Number of Petitions Filed: 18.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-29975 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1289-DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA-1289-DR), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT:

Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania is hereby amended to include Public Assistance for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 1, 1999:

McKean County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99-30015 Filed 11-16-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202-010979-034.

Title: Caribbean Shipowners Association.

Parties: Bernuth Lines, Ltd., Caribbean General Maritime Ltd. (CAGEMA), Interline Connection, NV., Seaboard Marine, Ltd., Tecmarine Lines, Inc., Crowley American Transport, Inc., Kent Line International Limited., SeaFreight Line, Ltd., Tropical Shipping & Construction Co., Ltd., King Ocean Services, S.A. A.P. Moller-Maersk Line., NPR, Inc. d/b/a Navieras.

Synopsis: The proposed amendment clarifies the Agreement's authority provisions and restates the Agreement.

Dated: November 12, 1999.

By order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99-30052 Filed 11-16-99; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 99-22]

Tampa Bay International Terminals, Inc. v. Coler Ocean Independent Lines Company; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Tampa Bay International Terminals, Inc. ("Complainant") against Coler Ocean Independent Lines Company ("Respondent") was served on November 12, 1999. Complainant alleges that Respondent is a non-vessel operating common carrier that violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(a)(1),

by representing that it is an ocean common carrier and contracting with Complainant for the provision of marine terminal services on the calls of the M/V STAR OF PUERTO RICO, and refusing to remit charges due for such services.

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 presiding 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 November 13, 2000, and the final decision of the Commission shall be issued by March 13, 2001.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99-30053 Filed 11-16-99; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

[Docket No. R-1032]

Settlement-day Finality for Automated Clearing House Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has decided to make the settlement for ACH credit transactions processed by the Federal Reserve final when posted, which is currently 8:30 a.m. eastern time on the day of settlement. The Board considered a number of risk control measures and has decided to require prefunding for any ACH credit originations that settle through the Federal Reserve account of a depository institution that is being monitored in real time. The Board believes that settlement-day finality for ACH credit transactions will reduce risk to receiving depository financial institutions (RDFIs) and receivers and that the prefunding requirement will permit the Reserve Banks to manage their settlement risk as effectively as

they do for other services with similar finality characteristics. The changes will be implemented by the Reserve Banks in early 2001 to permit time for necessary software modifications. A specific implementation date will be announced three months in advance of the effective date.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Retail Payments (202/452-2660); Myriam Y. Payne, Manager, Payment Systems Risk (202/452-3219); or Jeffrey S. H. Yeganeh, Senior Financial Services Analyst (202/728-5801), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only*, contact Diane Jenkins, Telecommunications Device for the Deaf (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

In December 1998, in response to renewed calls from the banking industry to reduce the interbank settlement risk by improving the finality of ACH credit transactions, the Board requested comment on the benefits and drawbacks of making settlement for ACH credit transactions processed by the Federal Reserve Banks final when posted, which is currently 8:30 a.m. eastern time on the day of settlement (63 FR 70132, December 18, 1998). The Reserve Bank's uniform ACH operating circular gives the Reserve Banks the right to reverse settlement for credit transactions until 8:30 a.m. eastern time on the business day following the settlement day (Reserve Bank Operating Circular 4, Section 11.2). Specifically, a Reserve Bank can reverse settlement if it does not receive actually and finally collected funds from the originating depository financial institution (ODFI) by 8:30 a.m. eastern time on the business day following the settlement day. The Reserve Bank's current ACH risk control measures include ex post monitoring of daylight overdraft trends, requiring an ODFI at imminent risk of failure to prefund the value of the ACH credit transactions it originates, and reversing ACH credit transactions if an ODFI is unable to settle for those transactions. Under these risk control measures, the Reserve Banks have never incurred a financial loss due to the failure of an ODFI to settle for its ACH credit transactions.

The Board noted, however, that it did not believe that current risk control measures provided Reserve Banks with adequate protection from settlement risk if settlement were to become final before

the Reserve Banks knew whether depository institutions could fund the payments. Moreover, because the ACH is a value-dated mechanism and transactions could be processed two days before settlement, a simple balance check of an institution's settlement account at the time that a transaction is processed would be ineffective in managing risk. While an institution's available account balance may be sufficient to settle for its ACH credit originations at the time they are processed, those funds may be unavailable at the time of settlement.¹

Further, the Board noted that if the Reserve Banks were to provide settlement-day finality for ACH credit transactions, they should adopt risk control measures commensurate with those used in connection with other Federal Reserve services with similar finality characteristics, such as the Fedwire funds transfer service and the enhanced net settlement service. The Board believed that the adoption of commensurate risk controls would be critical to preventing the creation of incentives for monitored institutions to move payments from Fedwire to the ACH to avoid risk management controls. Specifically, the funds transfer and enhanced net settlement services, which provide final and irrevocable settlement at the time a transaction is credited to the depository institution's account, use real-time account balance monitoring to manage settlement risk. Reserve Banks apply real-time monitoring to a depository institution when they believe that additional controls over the institution's account activity are appropriate. For example, Reserve Banks apply real-time monitoring to institutions in weak financial condition or to institutions with chronic overdrafts in excess of what the Reserve Banks determine is prudent.² When a depository institution is monitored in real time, Reserve Banks control their risk exposure by rejecting or delaying certain payment transactions with immediate finality if the institution's account balance would be exceeded.³

¹ An institution's available balance includes its Federal Reserve account balance plus any available intraday credit.

² The majority of depository institutions currently being monitored in real time are being monitored for reasons other than financial condition.

³ Most depository institutions, however, are not monitored in real time. The account activity of an institution that is not monitored in real time is monitored for compliance with the daylight overdraft transaction posting rules on an ex post basis. As a result, Reserve Banks are able to control their credit risk exposure by monitoring the account balances of a selected group of depository institutions in real time, thereby restricting those

Continued

Thus, for institutions monitored in real time, a funds transfer or enhanced net settlement entry will not be processed unless the institution's available account balance is sufficient to fund the debit entry. The Board believed that a prefunding requirement for depository institutions being monitored in real time would enable Reserve Banks to manage their settlement risk using risk control measures that are commensurate with those used in services with similar finality characteristics.

Summary of Comments

The Board received twenty-nine comment letters in response to its December 1998 request for comment. The following table shows the number of comments by the category of commenter:

Category of commenter	Number of responses
Banks and bank holding companies	11
Associations representing depository institutions	9
Federal Reserve Banks	5
Corporate credit unions	2
Associations representing corporations	1
Government agencies	1
Total	29

Twenty-seven commenters supported and two commenters opposed settlement-day finality for ACH credit transactions processed by the Reserve Banks. Further, nine commenters specifically supported and three commenters opposed the use of prefunding, as outlined in the December 1998 request for comment, as a risk control measure. Twenty-one commenters cited the reduced risk to RDFIs and receivers as a benefit of settlement-day finality for ACH credit transactions. Additionally, five commenters believed that settlement-day finality would increase confidence in the ACH, facilitate product innovation, be consistent with settlement finality offered by private-sector ACH operators, and be consistent with the National Automated Clearing House Association's (NACHA) rules for consumer entries and marketplace practices for corporate entries.⁴ Eight

institutions' access to Federal Reserve intraday credit.

⁴ NACHA Operating Rules Section 4.4.1 requires an RDFI to make funds from credit entries available for cash withdrawal on the settlement day. Further, for credit entries to a consumer's account that are made available to the RDFI by 5:00 p.m. local time on the day before the settlement day, the RDFI must make the funds available for cash withdrawal by opening of business on the settlement day.

commenters believed that the overall attractiveness of the ACH would increase and five commenters noted that the creditworthiness of the ACH would improve as a result of prefunding.

Several commenters noted, however, that the risk of credit transactions not settling on the intended settlement day, the potential difficulty of prefunding transactions deposited shortly before the 3:00 a.m. deposit deadline, and the liquidity drain on ODFIs (or their correspondents) that are required to prefund represent potential drawbacks of settlement-day finality with prefunding as a risk control measure. Seven commenters suggested that ODFIs that are required to prefund might have to alter their funding practices, which may put them at a competitive disadvantage in providing origination services. Further, nine commenters believed that if ACH credit transactions were rejected or delayed due to the prefunding requirement, the public's confidence in the ACH would be undermined.

Six commenters believed that prefunding for an ODFI that settles its ACH transactions through a correspondent should be based on the ODFI's risk profile and not that of the correspondent. These commenters believed that, because the ODFI is ultimately obligated to settle for the transactions and because a correspondent would not be permitted to revoke the settlement designation for transactions that had already been processed, prefunding should be based on the ODFI's financial condition. These commenters also stated that requiring prefunding based on the correspondent's risk profile would result in the disclosure of information regarding the financial condition of the correspondent. Three commenters, however, believed that prefunding should be based on the risk profile of the correspondent because the correspondent settles for the transactions and that the correspondent should manage its risk by monitoring the creditworthiness of the ODFIs to whom it provides services.

The commenters were asked about alternative risk control measures that the Reserve Banks could use to manage their risk. Six commenters suggested that the Reserve Banks collateralize the ACH credit originations of ODFIs monitored in real time. These commenters believed that, through the use of collateral, the Reserve Banks could grant settlement-day finality with little risk of loss that might result from the failure of an ODFI. Also, one commenter supported the use of the Reserve Banks' enhanced net settlement

service and one commenter supported the use of origination caps for ODFIs monitored in real time.

Some commenters indicated that if the Reserve Banks granted settlement-day finality for ACH credit transactions, settlement finality would no longer be a consideration in the choice of ACH operator. Other commenters suggested that settlement-day finality was not a major factor in the choice of ACH operator. Six commenters believed that settlement-day finality would result in an increase in the use of the ACH for various reasons, including reduction in risk, ACH product innovation (such as cross-border ACH services), and a shift of volume from other payment mechanisms, such as check and Fedwire funds transfer. A few commenters believed that settlement-day finality would not have a major influence on ACH volume.

Requiring Prefunding To Manage the Reserve Banks' Settlement Risk

After carefully considering the comments received, the Board has decided to make the settlement for ACH credit transactions processed by the Reserve Banks final when posted, which is currently 8:30 a.m. on the settlement day. Further, the Board has decided to require prefunding for any ACH credit originations that settle through a settlement account that is being monitored in real time. The Board believes that this prefunding requirement will permit the Reserve Banks to manage their settlement risk as effectively as they do for other services with similar finality characteristics. Prior to the implementation of settlement-day finality and prefunding, the Reserve Banks will have to modify their software and revise their ACH operating circular. To permit time to make the required changes, settlement-day finality for ACH credit transactions will be implemented in early 2001. A specific implementation date will be announced three months in advance of the effective date.

Under prefunding, if an ODFI's settlement account is being monitored in real time, the Reserve Banks would process the transactions only after the settlement account has been debited. On the settlement day, the Reserve Banks would credit the RDFI's settlement account with final funds.⁵ If the available balance in the ODFI's

⁵ The Reserve Banks will not provide as-of adjustments to compensate institutions for the float generated through the prefunding requirement. The Board expects that ODFIs will modify their operations to minimize the costs associated with prefunding by depositing ACH credit transactions closer to the deposit deadline.

settlement account were not sufficient to fund the transactions, the transactions would generally not be processed until the settlement account was funded. Most ODFI settlement accounts are not monitored in real time, however. In these cases, ACH credit originations would not be prefunded and the incoming files would be processed as they are today. If an institution that settles an ODFI's ACH transactions fails unexpectedly, the Reserve Banks would reserve the right to reverse the ACH credit transactions that have not yet settled and would send reversal files to RDFIs for those transactions. Reserve Banks, however, would not reverse transactions that had already settled, as the settlement would have been final.

The Board has decided to use prefunding to manage risk for several reasons. First, the Board believes that the prefunding of ACH credit transactions that settle through accounts that are monitored in real time would establish risk control measures for the Reserve Banks' ACH service that are commensurate with those used in the Fedwire funds transfer and enhanced net settlement services. The adoption of commensurate risk controls should discourage monitored institutions from moving payments from Fedwire to the ACH to avoid risk management controls. Second, the Board identified concerns with the alternate risk control measures suggested by the commenters.

Specifically, commenters suggested the use of collateral, the use of the enhanced net settlement service, and the use of origination caps as risk control measures. The use of collateral as a risk control measure is inconsistent with the Board's payments system risk policy that restricts the use of collateral for intraday extensions of central bank credit to overdrafts resulting from book-entry securities transfers and certain other special situations. As the Board, over time, reviews its payments system risk policy, it will examine the appropriateness of the policy's restrictions on the use of collateral. The Board, however, believes that it would be inappropriate to modify its payments system risk policy solely for the purpose of granting settlement-day finality for ACH credit transactions when other viable options are available. The suggestion that the Reserve Banks use the enhanced net settlement service to settle ACH transactions they process does not take into account other risk controls that private settlement arrangements typically employ to facilitate a smooth settlement process. For example, while Reserve Banks make ACH services available to all

institutions regardless of financial condition, private-sector ACH operators typically manage their risk by using membership criteria to exclude financially troubled institutions from participation in their private ACH exchange. The use of membership criteria enables private-sector ACH operators to help ensure that the net settlement for their ACH exchanges takes place without difficulty and in a timely fashion. Finally, the use of origination caps, as a risk control measure, would not protect the Reserve Banks from the risk of financial loss should there be insufficient funds in the account where ACH credit originations are designated to settle.

The Board recognizes a number of drawbacks associated with prefunding as a risk control measure but does not believe that they are of sufficient magnitude to prevent the adoption of settlement-day finality for ACH credit transactions using prefunding to control risk. The Board agrees with commenters that if ACH credit transactions are delayed or do not settle on the intended settlement day, then the public's confidence in the ACH could be undermined. While short-term disruptions may occur if settlements are delayed or do not settle on the intended settlement day, the Board believes that, in the long term, market forces should result in fewer delayed settlements as originators more closely monitor the condition of their ODFIs and ODFIs more closely monitor the condition of their correspondents. The Board also recognizes that it may be difficult for an institution being monitored in real time to prefund gross ACH transactions, particularly near the 3:00 a.m. deposit deadline. This situation will likely necessitate changes in operational or funding practices at these institutions as they will have to ensure that they have sufficient funds in their settlement accounts to fund their ACH gross originations.

Finally, the Board has decided that, in cases where an ODFI uses a correspondent to settle for its ACH transactions, the prefunding requirement should be based on whether the correspondent's account is being monitored in real time. While an ODFI is ultimately responsible for settling its ACH transactions, some ODFIs do not have account relationships with the Federal Reserve and designate a correspondent settlement account to settle their ACH transactions. When an ODFI's ACH credit transactions settle through a correspondent, the potential for insufficient funds in the correspondent's account at the time of

settlement is a function of the risk profile of the correspondent. Thus, the risk profile of the correspondent is critical in the management of the Reserve Bank's settlement risk. If the correspondent is being monitored in real time, the Reserve Banks would require the correspondent to prefund the ODFI's ACH credit transactions. If the correspondent is not being monitored in real time, the Reserve Banks would not require prefunding for ACH credit transactions that settle through the correspondent.

Competitive Impact Analysis

In assessing the competitive impact of granting settlement-day finality for ACH credit transactions processed by the Reserve Banks, the Board considers whether there will be a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving from such legal differences.⁶

Although the Federal Reserve's ACH service does not derive its dominant market position from legal differences, the fact that the Federal Reserve maintains accounts directly or indirectly for all depository institutions to settle may make it easier for some institutions to use the Federal Reserve's services. The enhanced net settlement service was designed, in part, to offset that potential advantage by making it easier for a private-sector entity to function settlement entries to depository institutions nationwide. As was discussed above, the enhanced net settlement service checks the available account balance of depository institutions that are being monitored in real time and debits the accounts of institutions in a net debit position if sufficient funds are available; otherwise, the settlement is delayed until funding situation is resolved. If the Reserve Banks were to improve the settlement finality for the ACH transactions they process without implementing similar risk controls, competitive questions might be raised. The Board, however, believes that the expanded use of prefunding provides risk controls commensurate with those of the enhanced settlement service.

While private-sector operators that use the Fedwire-based or enhanced net settlement service will be able to offer settlement-day finality for the ACH credit transactions they process, they typically do not require prefunding from participants with higher risk profiles. As

⁶ The Federal Reserve in the Payments System, FRRS 7-145.2

discussed above, private-sector ACH operators manage their settlement risk by limiting their services to those institutions that meet their admission criteria. Nevertheless, private-sector ACH operators could require prefunding from their participants as an additional risk control measure, if they chose to do so. Thus, the Board does not believe that settlement-day finality for ACH credit transactions processed by the Federal Reserve and conditioned on the expanded use of prefunding would adversely affect competition in the provision of interbank ACH services.

By order of the Board of Governors of the Federal Reserve System, November 10, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-29991 Filed 11-16-99; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 991 0240]

Precision Castparts Corp., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 10, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Matthew Reilly, FTC/H-374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-2574 or 326-2350.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following

Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 10, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") and Decision & Order from Precision Castparts Corp. ("PCC") and Wyman-Gordon Company ("Wyman-Gordon") designed to remedy the anticompetitive effects resulting from PCC's acquisition of all of the voting securities of Wyman-Gordon. Under the terms of the Consent Agreement, PCC and Wyman-Gordon will be required to divest the following assets that are involved in the development, manufacture and sale of titanium, stainless steel and nickel-based superalloy aerospace investment cast components: (1) Wyman-Gordon's titanium foundry located in Albany, Oregon; and (2) Wyman-Gordon's Large Cast Parts foundry located in Groton, Connecticut.

The proposed Consent Agreement and Decision & Order have been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the proposed Decision & Order.

Pursuant to a May 17, 1999 cash tender offer, PCC agreed to acquire 100% of the voting securities of Wyman-Gordon for approximately \$721 million. The proposed Complaint alleges that this agreement violates section 5 of the FTC Act, as amended, 15 U.S.C. 18, and the acquisition of Wyman-Gordon by PCC, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 45, and Section 5 of the FTC Act, as amended, 15 U.S.C. 18, in the markets for titanium, large stainless steel, and large nickel-based superalloy aerospace investment cast structural components.

Investment casting is a method of manufacturing metal components whereby a wax model of the metal component is dipped into a ceramic slurry which dries to form a ceramic shell. The wax is then melted out using a special furnace, leaving a cavity within the ceramic shell into which molten metal is poured. Once the metal cools, the ceramic shell removed, producing dimensionally precise metal components. Aerospace investment cast structural components are components that are used primarily in aerospace jet engine and aerospace airframe applications and are manufactured using a variety of metal alloys, including titanium, stainless steel, and nickel-based superalloy. PCC and Wyman-Gordon are two of the world's leading suppliers of titanium, stainless steel, and nickel-based superalloy aerospace investment cast structural components. While each of these metals, and others including aluminum, can be used in many aerospace applications, for a particular application, one metal is typically far superior to the alternatives based on cost, weight, and strength considerations. Therefore, based on design specifications and performance characteristics, a component produced from a particular metal is not a reasonable competitive alternative for an investment cast aerospace structural component manufactured using a different metal.

Metal aerospace structural components can also be produced utilizing other methods of manufacturing, such as forging and fabrication. While these other methods of manufacturing are alternatives to investment casting, the investment casting process provides the most cost-effective method of producing the required components for those aerospace applications where investment castings are currently used. In view of this cost distinction, other methods of manufacturing are not

reasonable competitive alternatives for the production of titanium, stainless steel, and nickel-based superalloy aerospace investment cast structural components.

Titanium, large stainless steel, and large nickel-based superalloy investment cast structural aerospace components are each relevant markets. The worldwide market for titanium aerospace investment cast structural components is highly concentrated, and the proposed acquisition would substantially increase concentration in the market. PCC and Wyman-Gordon are two of only four viable suppliers of titanium aerospace investment cast structural components, and one of the remaining two competitors is significantly smaller than the other three.

The worldwide market for large (greater than 24 inches in diameter) stainless steel aerospace investment cast structural components is also highly concentrated, and the acquisition would substantially increase concentration in this market. PCC and Wyman-Gordon are two of only six viable suppliers of large stainless steel aerospace investment cast structural components.

The worldwide market for large (greater than 24 inches in diameter) nickel-based superalloy aerospace investment cast structural components is also highly concentrated, and the acquisition would substantially increase concentration in this market. PCC and Wyman-Gordon are two of only four viable suppliers of large nickel-based superalloy aerospace investment cast structural components.

By eliminating competition between PCC and Wyman-Gordon in these highly concentrated markets, the proposed acquisition would have allowed PCC to unilaterally exercise market power, and would have enhanced the likelihood of coordinated interaction among the remaining firms in these markets, thereby increasing the likelihood that: (1) consumers of titanium, large stainless steel, and large nickel-based superalloy aerospace investment cast components would be forced to pay higher prices; and (2) innovation in these markets would decrease.

It is unlikely that the competition eliminated by the proposed acquisition would have been replaced by new entrants into the relevant markets within two years due to the substantial barriers to entry into the markets at issue. A new entrant into these markets would need to undertake the difficult, expensive, and time-consuming process of developing a new product. Moreover, a new entrant would likely have to purchase a new facility, as well as

specialized investment casting equipment. A new entrant would also have to undertake the arduous task of developing the required engineering and process expertise. In addition, because of the critical nature of aerospace investment cast structural components, a new entrant would have to obtain customer and other third-party certifications and approvals before it could begin to manufacture and sell aerospace investment cast components. Finally, customers of aerospace investment cast structural components are generally reluctant to contract with suppliers that have not developed a proven reputation for quality and reliability. For these reasons, new entry into the market would in all likelihood not occur in time to deter or counteract the anticompetitive effects resulting from the acquisition.

The proposed Consent Agreement and Decision & Order effectively remedy the acquisition's anticompetitive effects in the market for titanium aerospace investment cast structural components by requiring PCC and Wyman-Gordon to divest Wyman-Gordon's titanium foundry in Albany, Oregon to a Commission-approved acquirer. Pursuant to the Consent Agreement and Decision & Order, PCC and Wyman-Gordon are required to divest the Albany titanium foundry no later than six (6) months from the date the Commission accepts the Consent Agreement and Decision & Order for public comment. In the event that PCC and Wyman-Gordon fail to divest the assets within the required time, the Commission may appoint a trustee to divest the assets. Wyman-Gordon only recently acquired control of the Albany titanium foundry and had not yet integrated the foundry into its castings operation and business. As a result, the Commission did not require that PCC and Wyman-Gordon divest Wyman-Gordon's Albany titanium foundry to a purchaser identified and approved by the Commission prior to the consummation of the Wyman-Gordon acquisition.

The proposed Consent Agreement and Decision & Order effectively remedy the acquisition's anticompetitive effects in the markets for large stainless steel and large nickel-based superalloy aerospace investment cast structural components by requiring PCC and Wyman-Gordon to divest the Wyman-Gordon's Large Cast parts ("LCP") foundry in Groton, Connecticut to Doncasters plc, a leading international manufacturer of aerospace investment cast components. Pursuant to the Consent Agreement and Decision & Order, PCC and Wyman-Gordon are required to divest the Groton LCP

foundry to Doncasters no later than 16 business days from the date the Commission accepts the Consent Agreement and Decision & Order for public comment. In the event PCC and Wyman-Gordon fail to divest the Groton LCP foundry to Doncasters within the required time, the Consent Agreement contains a "crown jewel" provision that allows the Commission to appoint a trustee to divest both Wyman-Gordon's LCP and Small Cast parts ("SCP") foundries located in Groton, Connecticut, to an acquirer approved by the Commission.

The proposed Consent Agreement and Decision & Order require PCC and Wyman-Gordon to assist the acquirers of the divested assets so that they can compete effectively in the markets for titanium, large stainless steel, and large nickel-based superalloy aerospace investment cast components. PCC and Wyman-Gordon must provide sufficient technical assistance and advice to the acquirers in order that they may begin manufacturing and selling titanium, stainless steel, and nickel-based superalloy aerospace investment cast components. Further, at the request of a customer of titanium, stainless steel, or nickel-based superalloy aerospace investment cast components at any time during the next year, PCC and Wyman-Gordon must transfer to the Albany titanium facility, the Groton LCP foundry, or both the Groton LCP and SCP foundries, as applicable, all tooling and manufacturing know-how associated with producing a particular component identified by the customer. PCC and Wyman-Gordon must also pay (a) all costs reasonably incurred in the delivery of such tooling and manufacturing know-how; (b) fifty (50) percent of the costs reasonably incurred in conforming such tooling to substantially the same quality employed or achieved by Wyman-Gordon; and (c) fifty (50) percent of the costs related to receiving any certifications or approvals from the customer that may be required as a result of the transfer of the assets.

To ensure that the acquirers of the divested assets have the opportunity to retain all the key employees currently involved in Wyman-Gordon's titanium, large stainless steel and large nickel-based superalloy aerospace casting businesses, the Consent Agreement and Decision & Order require that PCC and Wyman-Gordon provide financial incentives to these individuals, including a bonus for certain employees for accepting employment with the acquirer. Further, the Consent Agreement and Decision & Order require PCC and Wyman-Gordon to provide to the Commission a report of

compliance with the divestiture provisions of the Decision & Order within thirty (30) days following the date the Decision & Order becomes final, and every thirty (30) days until PCC and Wyman-Gordon have completed the divestitures. Finally, an Order to Hold Separate issued by the Commission requires that the Albany titanium foundry, and if necessary the Groton LCP and Groton SCP, be operated independently of PCC and Wyman-Gordon until the divestitures are completed.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and Decision & Order, and it is not intended to constitute an official interpretation of the Consent Agreement and Decision & Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 99-29997 Filed 11-16-99; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P-4064]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting an exemption from the premarket notification requirements for vascular tunnelers. FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments by December 17, 1999.

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

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94-295)), as amended by the Safe Medical Devices Act of 1990 (Public Law 101-629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105-115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of

FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142). In the **Federal Register** of November 3, 1998 (63 FR 59222), FDA published a final rule codifying those exemptions.

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the World Wide Web (WWW) on the CDRH home page at <http://www.fda.gov/cdrh> or by facsimile through CDRH Facts-on-Demand at 1-800-899-0381 or 301-827-0111. Specify "159" when prompted for the document shelf number.

III. Petitions

On September 14, 1999, FDA received a petition from IMPRA, Inc., requesting an exemption from premarket notification for vascular tunnelers. Vascular tunnelers are currently classified under 21 CFR 870.3460 as an accessory.

IV. Comments

Interested persons may, on or before December 17, 1999, submit to the

Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petitions and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1999.

Linda S. Kahan,

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

[FR Doc. 99-29916 Filed 11-16-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-0048]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Hospital Conditions of Participation—42 CFR 482.12, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62 and 482.66;

Form No.: HCFA-R-48;

Use: Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42

CFR part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals.

Frequency: Annually;

Affected Public: Business or other for profit, Not for profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 1,500;

Total Annual Responses: 1,500;

Total Annual Hours Requested: 53,163.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 4, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-29937 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-2744]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: End Stage Renal Disease Medical Information System ESRD Facility Survey;

Form No.: HCFA-2744 (0938-0447);

Use: The ESRD Facility Survey form is completed annually by Medicare approved providers of dialysis and transplant services. The HCFA-2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients.

Frequency: Annually;

Affected Public: Business or other for-profit and Not-for-profit institutions;

Number of Respondents: 3,761;

Total Annual Responses: 3,761;

Total Annual Hours Requested: 30,088.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 9, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-30027 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [HCFA-R-30]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in the Hospice Care Regulation, 42 CFR 418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96 and 418.100;

Form No.: HCFA-R-30;

Use: These Information Collection Requirements establish standards for hospices who wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedures, and delineate conditions that hospices must meet to be approved for participation in Medicare.

Frequency: On occasion;

Affected Public: Business or other for-profit and Not-for-profit institutions;

Number of Respondents: 2,275;

Total Annual Responses: 2,275;

Total Annual Hours Requested: 6,042,834.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 1, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-30028 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [HCFA-0043]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Application for Health Insurance Benefits Under Medicare For Individuals With Chronic Renal Disease and Supporting Regulations in 42 CFR 406.13;

Form No.: HCFA-0043 (OMB# 0938-0080);

Use: This form is used as a standard method of eliciting information necessary to determine entitlement to

Medicare under the end stage renal disease provision of the law. This form was developed to satisfy the requirements of law and regulations and provide a form for eligible individuals to apply for Medicare entitlement;

Frequency: Other; one time only;

Affected Public: Individuals or Households, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 60,000;

Total Annual Responses: 60,000;

Total Annual Hours: 26,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 8, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-30029 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [HCFA-2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any

of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: End Stage Renal Disease Death Notification;

Form No.: HCFA-2746;

Use: The form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions and Federal Government;

Number of Respondents: 3,761;

Total Annual Responses: 52,654;

Total Annual Hours Requested: 2,049.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willingham, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 9, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-30030 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [HCFA-R-72]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in 42 CFR 473.18, 473.34, 473.36, and 473.42, PRO Reconsiderations and Appeals;

Form No.: HCFA-R-72 (OMB# 0938-0443);

Use: These requirements contain procedures for PROs to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute.;

Frequency: On occasion;

Affected Public: Individuals or Households, Business or other for-profit;

Number of Respondents: 53;

Total Annual Responses: 15,670;

Total Annual Hours: 3,578.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports

Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 25, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-29933 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [Document Identifier: HCFA-718/721]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Business Proposal Formats for Utilization and Quality Control Peer Review Organizations (PROs);

Form No.: HCFA-718-721 (OMB #0938-0579);

Use: The information collected on these forms by current Peer Review Organizations (PROs) and other bidders will provide HCFA with the necessary information to evaluate their contract proposals. This information will satisfy

the need for meaningful, consistent, and verifiable data. With this data, HCFA will be able to compare the costs reported by the PROs on the cost reports to the proposed costs noted on the business proposal forms;

Frequency: Other: Tri-Annually;

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 20;

Total Annual Responses: 20;

Total Annual Hours: 535.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 25, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99-29934 Filed 11-16-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will

continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, City, State	Effective date
PROGRAM-RELATED CONVICTIONS	
BARRON, JEWEL A	11/18/1999
COLUMBUS, OH	
BORKOWSKI, MELISSA L	11/18/1999
CLIFTON PARK, NY	
BRASWELL, BETTY REID	11/18/1999
GOLDSBORO, NC	
DAY, CLYDE V	11/18/1999
LOUISVILLE, KY	
EARLY, TAMA JO	11/18/1999
DALLAS, TX	
FIZER, ELAINE T	11/18/1999
NEW ORLEANS, LA	
GLENN, NELSON	11/18/1999
LOUISVILLE, KY	
GLENN, ANTHONY	11/18/1999
LOUISVILLE, KY	
GODSHALL, CARL G	11/18/1999
WESTERVILLE, OH	
GREENE, THEODORE C	11/18/1999
HORN LAKE, MS	
HANKS, NANCY A	11/18/1999
BREESE, IL	
JONES, HERMAN W	11/18/1999
ST PETERSBURG, FL	
LINEBERGER, MARILYN	11/18/1999
LITHONIA, GA	
MATLIN, BRIAN	11/18/1999
MIAMI, FL	
MAYER, ELEN H	11/18/1999
NORTHRIDGE, CA	
MAYER, KERRY A	11/18/1999
NORTHRIDGE, CA	
MCCOLLUM, ROGER DALE ...	11/18/1999
DUDLEY, NC	
MENDEZ, MIGUEL	11/18/1999
CORAL GABLES, FL	
NATIONAL PUBLIC TRANS- PORT, INC	11/18/1999
COLUMBUS, OH	
NGU, FON J	11/18/1999
COLUMBUS, OH	
OBINWA, SAMSON A	11/18/1999
FT LAUDERDALE, FL	
ODA, DONNA J	11/18/1999
FAIRBORN, OH	
VANZITTER, PETER E	11/18/1999
LAKEWOOD, CA	

FELONY CONVICTION FOR HEALTH CARE FRAUD

P & B DISTRIBUTORS, INC	11/18/1999
OREGON CITY, OR	

FELONY CONTROL SUBSTANCE CONVICTION

MURCIA, ELIZABETH R	11/18/1999

Subject, City, State	Effective date
INDIAN SPRINGS, OH	
PATIENT ABUSE/NEGLECT CONVICTIONS	
BARNES, BARBARA E	11/18/1999
PRENTISS, MS	
CLERK, WILLIE	11/18/1999
PICKENS, MS	
COATES, AUSTIN CLYDE	11/18/1999
CONWAY, AR	
DAVIS, LINDA CROWLEY	11/18/1999
MAGEE, MS	
FIELDS, FELICIA S	11/18/1999
JACKSON, MS	
FLOYD, LISA	11/18/1999
MOUNT OLIVE, MS	
FRANKLIN, JERMAINE R	11/18/1999
LEVELLAND, TX	
HOLDEN, JOYCE EVETTE	11/18/1999
SHREVEPORT, LA	
JACKSON, DALE T	11/18/1999
DEVERS, TX	
KATIC, SANJA	11/18/1999
PHOENIX, AZ	
KOROMA, THIA	11/18/1999
DORCHESTER, MA	
MCCONNELL, CHARLOTTE A	11/18/1999
CINCINNATI, OH	
MCKINNEY, SHIRLEY M	11/18/1999
WOODRUFF, SC	
NOEL, ANNETTE	11/18/1999
BRUSH, CO	
PIPKINS, CAROL H	11/18/1999
TIMMONSVILLE, SC	
SIPP, LAKESHA A	11/18/1999
MOSS POINT, MS	
WILLIS, AMANDA	11/18/1999
ALBUQUERQUE, NM	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ALLEN, CARLITHA MARTEZ ..	11/18/1999
HAWTHORNE, CA	
ANDRES, CHARLES W	11/18/1999
BRAINERD, MN	
BEBERG, TAMARA A	11/18/1999
STILLWATER, MN	
BETO, BEVERLY Y	11/18/1999
ST PAUL, MN	
CALVO, ARTURO	11/18/1999
MIAMI, FL	
CANO, FELIX F	11/18/1999
CERES, CA	
COLE, DEVERAUX	
LYNNETTE	11/18/1999
MARSHALL, TX	
DAVIS, VERNELL	11/18/1999
DENVER, CO	
EDSTROM, CHERYL A	11/18/1999
SPRING PARK, MN	
EICKHOFF, ROBERT E	11/18/1999
FT MYERS, FL	
ENRIGHT, DENNIS W	11/18/1999
LOUISVILLE, KY	
FELDL, ANNA L	11/18/1999
POQUOSON, VA	
FLEMING, KAREN R	11/18/1999
EVERGREEN, CO	
GALL, CAROLYN S	11/18/1999
LANSING, MI	
GOLD, PHILIP	11/18/1999

Subject, City, State	Effective date	Subject, City, State	Effective date
JASPER, AL GRAND BLANC APOTHE- CARY, INC	11/18/1999	AMHERST, NY	
GRAND BLANC, MI		OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
HARRIS, SHELBY E	11/18/1999	AFTER HOURS PHARMACY ..	11/18/1999
PUEBLO, CO		JASPER, AL	
HARRIS, CHERYL L	11/18/1999	ANCILLARY AFFILIATED	
MAPLE GROVE, MN		HEALTH	11/18/1999
HEIFNER, SUSAN E	11/18/1999	ELM GROVE, WI	
APPLE VALLEY, MN		ANCILLARY HOME HEALTH	
JONES, ELAINE W	11/18/1999	CARE	11/18/1999
CHARLES CITY, VA		ELM GROVE, WI	
JOY, LOWELL W	11/18/1999	EXPRESS NUTRITION SERV- ICES	11/18/1999
ANN ARBOR, MI		LEXINGTON, KY	
KAHNKE, KENDRA K	11/18/1999	FMN MANAGEMENT SERV- ICES, INC	11/18/1999
PILLAGER, MN		ELM GROVE, WI	
KOHLER, KRISTINE A	11/18/1999	GUARANTY HEALTH CARE, INC	11/18/1999
W BLOOMFIELD, MI		MIAMI, FL	
LATIMER, WILLIAM EUGENE	11/18/1999	PATIENT CARE MGMT RE- SOURCES	11/18/1999
JACKSONVILLE, FL		ELM GROVE, WI	
LATTA, ANGELA PAIGE	11/18/1999	RIBBON HEALTH CARE, INC	11/18/1999
AMARILLO, TX		MIAMI, FL	
LOCKYER, WILLIAM A	11/18/1999	UNISCRIP PHARMA- CEUTICAL	11/18/1999
PLYMOUTH, CA		ST PETERSBURG, FL	
LUCAS, RHONDA L	11/18/1999		
SARNIA, ONTARIO,		DEFAULT ON HEAL LOAN	
MACNUTT, LAMAR A	11/18/1999	ELLIS, MARK S	11/18/1999
CLEARWATER, FL		MIAMI, FL	
MAGALLON, JOHNNY V	11/18/1999	GOSS, SAMUEL R	10/06/1999
LOS ALAMITOS, CA		SHAKER HGTS, OH	
MAINES, SANDRA LEE	11/18/1999	JAMES, GARY D	11/18/1999
MARION, TX		CADIZ, KY	
MARTIN, SCHERYL K	11/18/1999	OLIVERIO, SALVATORE L	11/18/1999
HAMPTON, VA		DOYLESTOWN, OH	
MCGRATH PERKINS, WENDY			
JEAN	11/18/1999		
PUEBLO, CO			
MCMILLAN, PATTIE LYNN	11/18/1999		
SAN ANTONIO, TX			
MOULDS, CRYSTLE M	11/18/1999		
CHATTANOOGA, TN			
NUZUM, KRISTIE L	11/18/1999		
INVERNESS, FL			
ORTIZ, MERLIN	11/18/1999		
LANEXA, VA			
POWERS, PATRICIA ANN	11/18/1999		
CONROE, TX			
QUINTANA, VINCENT J	11/18/1999		
PUEBLO, CO			
RIGHETTI, GERALD L	11/18/1999		
SOLEDAD, CA			
ROLLINS, BARBARA ELLEN ..	11/18/1999		
ARLINGTON, TX			
SZCZESNIEWSKI, ANNE			
MARIE FOWL	11/18/1999		
CHARLOTTESVILLE, VA			
THOMAS, DIANA M	11/18/1999		
MOBILE, AL			
TOBACCO, DOROTHY ANNE	11/18/1999		
HOLLYWOOD, FL			
TRUJILLO, MANUEL	11/18/1999		
DENVER, CO			
TSAI, DAVID CHANG-CHUR ...	11/18/1999		
SAN DIEGO, CA			
WHETSELL, FAYE CRAFT	11/18/1999		
FAYETTEVILLE, NC			
FRAUD/KICKBACKS			
WEISS, RICHARD L	02/16/1999		

pursuant to the National Environmental Policy Act and its implementing regulations.

DATES: The Service will be open to written comments through January 1, 2000.

ADDRESSES: Address comments and requests for more information to: Mr. Lou Bridges, Project Coordinator, Research Management Consultants, Inc., 1746 Cole Blvd., Bldg. 21, Suite 300, Golden, CO 80401.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to gather information necessary to prepare a CCP and other environmental documents for Hagerman National Wildlife Refuge, Sherman, Texas; Washita and Optima National Wildlife Refuges, Butler, Oklahoma; Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma. The Service is furnishing this notice in compliance with Service CCP policy: (1) to advise other agencies and the public of our intentions, and (2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

Additional opportunities for written comments will be provided during the draft review process. If necessary, the Service will solicit information from the public via open houses, meetings, and workshops. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the current status of the project as well as the time and place of any meetings to be conducted.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500-1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans for 3 National Wildlife Refuges in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and other environmental documents for certain National Wildlife Refuges listed in the **SUPPLEMENTARY INFORMATION** section

Service policies and procedures for compliance with those regulations.

The Service anticipates that draft CCP documents and any associated NEPA documents will be available by June, 1999.

Dated: October 27, 1999.

Bryan Arroyo,

Acting, Regional Director.

[FR Doc. 99-29622 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK990-2000-5101-NH-FL07-262F]

Proposed Information Collection— Trans-Alaska Pipeline System Employee Concerns Program Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval to collect information from employees of the Trans-Alaska Pipeline System (TAPS) concerning operation of the employee concerns program. This information would allow the Joint Pipeline Office to monitor and assess how the employee concerns program is working.

DATES: BLM must receive comments on the proposed information collection by January 18, 2000, to assure its consideration of them.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C Street, NW, Room 401LS, Washington, DC 20240.

Send comments via Internet to: WoComment@blm.gov. Please include "ECP survey" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

BLM will make comments available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rob McWhorter, 907/271-3664. To get a copy of the proposed survey, contact Carole Smith, BLM clearance officer at 202/425-5127.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a) BLM must provide 60-day notice in the **Federal Register** concerning a proposed

collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 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. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

The Trans-Alaska Pipeline System (TAPS) is the Nation's largest crude oil pipeline. It runs 800 miles through pristine Alaska lands, delivering about 1.1 million barrels of North Slope crude oil to tankers in Valdez, Alaska, each day. This quantity represents about eight percent of total U.S. oil consumption. Most of this product is used to supply petroleum needs on the West coast.

The TAPS is operated for seven oil shippers by Alyeska Pipeline Service Company, a company of about 850 employees, which also utilizes the services of about 1,350 contractor employees. Alyeska's operation of the pipeline is subject to oversight by the Joint Pipeline Office (JPO), which comprises a number of Federal and State of Alaska agencies whose interests are affected by the pipeline. The Bureau of Land Management provides the majority of funding for the JPO.

Testimony at Congressional hearings in 1992, 1993 and 1994 indicated that the contractors who operate the Trans-Alaska Pipeline System (TAPS) maintained a repressive, retaliatory atmosphere to discourage workers from raising concerns about operation of the pipeline. Due to the serious impact on the U.S. economy and on the Alaskan environment that a major TAPS failure would have, Congress believes that the pipeline operator should be more responsive to employee concerns. Congress asked Alyeska to take steps to change the culture of the pipeline work environment and asked JPO to monitor and report on progress.

This information collection, the Employee Concerns Program (ECP)

survey, will be given annually to the approximately 2,200 employees and supervisors employed by Alyeska and other TAPS contractors. Responses to the survey are voluntary and confidential

The survey consists of a series of statements to which the respondent indicates his or her level of agreement or disagreement. The survey contains 35 statements divided into four parts. Part one, containing 14 statements, asks for employee perceptions of the employee concerns program. Part two, containing 15 statements, asks about perceived management support for the program. Part three, containing five statements, is for supervisors and asks them about their knowledge of the ECP and participation in training about the ECP. The fourth part asks about the respondent's affiliation and work location.

This survey is JPO's only comprehensive, non-anecdotal means of gathering opinions from Alyeska and other contractors' employees and supervisors about how well the Employee Concerns Program is working. JPO will use the results, over time, to measure, compare, and report on employee satisfaction with the ECP. This is the most effective way to assess whether and how much the repressive culture is changing.

BLM estimates that the public reporting burden for the information collected averages 15 minutes per response. The respondents are employees of the trans-Alaska pipeline system. The frequency of response is once per year. The maximum possible number of responses per year is estimated to total 2,200. The estimated total annual burden on new respondents is about 550 hours. BLM specifically requests your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. Responses to this notice will also become a matter of public record.

Dated: November 9, 1999.

Carole Smith,

Bureau of Land Management, Clearance Officer.

[FR Doc. 99-30034 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-055-99-7122-00-8600]

Nevada Temporary Closure of Certain Public Lands Management by the Bureau of Land Management, Las Vegas District**AGENCY:** Bureau of Land Management, Department of Interior.**ACTION:** Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1999 BEST in the DESERT TERRIBLE'S TOWN "250" off road desert race.**SUMMARY:** The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 BEST in the DESERT TERRIBLE'S TOWN "250" off road desert Race and to comply with provisions of the U.S. and Wildlife Service Speed Based Off-Highway Vehicle Events (1-5-98-F-053)

DATES: From 6:00 am December 3, 1999 through 9:00 pm December 4, 1999 Pacific Standard Time.

Closure Area: As described below, an area within T.12 S. to T.21 S. R. 46 E. to R. 55 E.

1. The closure is from the California, Nevada border on the west side, Nevada Test Site boundary on the east. Town of Beatty on the north, Clark County line on the south. Exceptions to the closure area: State Route 160, US 95.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetation material.

e. Possess and or consume any alcoholic beverage unless the person(s) has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or to Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM road and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT:

Dave Wolf, Recreation Manager or Ron Crayton, BLM Ranger, BLM Las Vegas District 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647-5000.

Dated: November 2, 1999.

Michael F. Dwyer,*District Manager.*

[FR Doc. 99-29931 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[MT-960-1150-00]

District Advisory Council Meeting**AGENCY:** Bureau of Land Management, North Dakota Field Office, Interior.**ACTION:** Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held January 10 and 11, 2000, at the Holiday Inn, Spearfish, South Dakota. The session will convene at 8 a.m. on January 10th and resume at 8 a.m. on the 11th. Agenda items will include an update on the South Dakota Land Exchange, City of Sturgis's proposal for Fort Meade, management of Off-Highway Vehicles on public lands, Northern Great Plains EIS subcommittee report, status of the Figure 4 Ranch, and a report on Schnell Recreation Area signage and tourism.

The meeting is open to the public and a public comment period is set for 8 a.m. on January 11th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT:

Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225-9148.

Dated: November 5, 1999.

Michael Nash,*Acting Field Office Manager.*

[FR Doc. 99-30035 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1420-BJ] ES-50554, Group 161, Minnesota

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 27, Township 142 North, Range 41 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 21, 1999.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 21, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: November 3, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99-29932 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-924-1430-ET; MTM 924, MTM 27963, and MTM 83069]

Cancellation of Proposed Withdrawals; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels three withdrawal applications affecting 2,051.95 acres of National Forest System lands for charcoal kilns and research natural areas. The segregative effect of the applications was previously terminated and the lands were opened to surface entry and mining, subject to other segregations of record. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: November 17, 1999.

FOR FURTHER INFORMATION CONTACT:

Sandra Ward, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107-6800, 406-896-5052.

SUPPLEMENTARY INFORMATION: Notices of Proposed Withdrawal were published in

the **Federal Register** December 1, 1966 (31 FR 15098), April 18, 1974, (39 FR 13902), and June 16, 1994 (59 FR 30951). This action will terminate the proposed withdrawals. The lands are described as follows:

Principal Meridian, Montana*Beaverhead National Forest*

(a) *Trapper Creek Charcoal Kilns Area* (MTM 924).

T. 3 S., R. 10 W.,
Sec. 6, W $\frac{1}{2}$ of lot 1.

Canyon Creek Charcoal Kilns Area (MTM 924).

T. 2 S., R. 10 W.,
Sec. 8, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Cottonwood Creek Research Natural Area (MTM 27963).

T. 10 S., R. 3 W.,
Sec. 10, S $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 11, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 14, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 15, N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$,
NE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{2}$.

(b) *Cave Mountain Research Natural Area* (MTM 83069).

T. 10 S., R. 1 W.,
Sec. 31, lots 3 and 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 32, NE $\frac{1}{4}$, W $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and
W $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 11 S., R. 1 W.,
Sec. 5, W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$;
Sec. 6, N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$.

The areas described aggregate 2,051.95 acres in Beaverhead and Madison Counties.

The segregative effect associated with the applications in paragraph (a) terminated October 20, 1991, in accordance with the notice published as FR Doc. 91-21383 in the **Federal Register** (56FR44099) dated September 6, 1991.

The segregative effect associated with the applications in paragraph (b) terminated June 15, 1996, in accordance with the notice published as FR Doc. 96-10324 in **Federal Register** (61 FR 18619-20) dated April 26, 1996.

Dated: November 5, 1999.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 99-30033 Filed 11-16-99; 8:45 am]

BILLING CODE 4310-DN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-425]

Certain Amino Fluoro Ketone Compounds; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 12, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Prototek, Inc. of Dublin, California, and Enzyme Systems Products, Inc. of Livermore, California. A supplement to the complaint was filed on November 1, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain amino fluoro ketone compounds by reason of infringement of claims 1-6 of U.S. Letters Patent 4,518,528, claim 1 of U.S. Letters Patent 5,210,272, and claim 1 of U.S. Letters Patent 5,344,939. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

FOR FURTHER INFORMATION CONTACT:

Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 8, 1999, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as

amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain amino fluoro ketone compounds by reason of infringement of claims 1–6 of U.S. Letters Patent 4,518,528, claim 1 of U.S. Letters Patent 5,210,272, or claim 1 of U.S. Letters Patent 5,344,939, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Prototek, Inc., 6501 Sierra Lane, Dublin, California 94568

Enzyme System Products, Inc., 486 Lindbergh Avenue, Livermore, California 94550

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Bachem AG, Hauptstrasse 144, CH–4416 Bubendorf, Switzerland

Bachem California, Inc., 3132 Kashiwa Street, Torrance, California 90505

Bachem Bioscience, Inc., 3700 Horizon Dr., King of Prussia, Pennsylvania 19406

(c) Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–29918 Filed 11–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–474 and 475 (Review)]

Chrome-Plated Lug Nuts From China And Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on chrome-plated lug nuts from China and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 41949, August 2, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Staff report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on February 28, 2000, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before March 2, 2000, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an

¹ Commissioner Koplan and Commissioner Askey dissenting.

² The Commission has found the response submitted by Consolidated International Auto to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by March 2, 2000. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determinations

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-29960 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-469 (Review)]

Electroluminescent Flat Panel Displays From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on electroluminescent flat panel displays from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on electroluminescent flat panel displays from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general

application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1999, the Commission determined¹ that the domestic interested party group response to its notice of institution (64 FR 41951, Aug. 2, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.² Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 29, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to

section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,³ and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before March 3, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by March 3, 2000. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-29957 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

¹ Vice Chairman Miller is not participating in this five-year review.

² Commissioner Koplan dissenting.

³ The Commission has found the response submitted by Planar Systems, Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION**[Investigation No. 731-TA-527 (Review)]****Extruded Rubber Thread From Malaysia****AGENCY:** United States International Trade Commission.**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on extruded rubber thread from Malaysia.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on extruded rubber thread from Malaysia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined that it should proceed to a full review in the subject five-year

review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 41954, August 2, 1999) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,*Secretary.*

[FR Doc. 99-29955 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P**INTERNATIONAL TRADE COMMISSION****[Investigations Nos. 303-TA-21 (Review) and 731-TA-451, 461, and 519 (Review)]****Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela****AGENCY:** United States International Trade Commission.**ACTION:** Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders and suspended investigations on gray portland cement and cement clinker from Japan, Mexico, and Venezuela.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on gray portland cement and cement clinker from Japan and Mexico and termination of the suspension agreement on gray portland cement and cement clinker from Venezuela would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through

E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.**FOR FURTHER INFORMATION CONTACT:**

Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined¹ that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group responses to its notice of institution (64 FR 41958, August 2, 1999) were adequate with respect to each review, and that the respondent interested party group responses were adequate with respect to Mexico and Venezuela, but inadequate with respect to Japan. The Commission also found that other circumstances warranted conducting a full review with respect to Japan. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,*Secretary.*

[FR Doc. 99-29956 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

¹ Chairman Bragg is not participating in these five-year reviews.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-383 Advisory Opinion Proceeding]

Certain Hardware Logic Emulation Systems and Components Thereof, Notice of Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in connection with the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT:

Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3152. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The above-captioned investigation was instituted on March 8, 1996, based on a complaint by Quickturn Design Systems, Inc. ("Quickturn"). The respondents named in the investigation were Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta"). The products at issue were certain hardware logic emulation systems used in the semiconductor industry to debug and test electronic circuit designs for semiconductor devices.

On July 31, 1997, the presiding administrative law judge ("ALJ") issued his final initial determination ("ID") finding that Mentor and Meta had violated section 337 by infringing certain claims of U.S. Letters Patent 5,329,470, 5,036,473, 5,448,496, and 5,109,353, all owned by Quickturn. On October 2, 1997, the Commission determined not to review the ALJ's final ID, and on December 3, 1997, issued a limited exclusion order prohibiting the importation of respondents' emulators and components thereof found to infringe one or more of the patent claims in controversy. The Commission also issued a cease and desist order prohibiting, *inter alia*, the electronic importation and transmission of infringing hardware emulation software.

On August 20, 1999 Mentor and Meta (hereinafter collectively "Mentor") filed

a petition with the Commission requesting issuance of an advisory opinion pursuant to Commission rule 210.79(a) (19 CFR 210.79). Mentor contends that remote access from the United States of Meta's hardware logic emulation systems housed in "design verification centers" located outside the United States, would not infringe Quickturn's patents and, therefore, would not be covered by the Commission's limited exclusion order and/or the cease and desist order. On

September 1, 1999, Quickturn moved for leave to respond to Mentor's petition for an advisory opinion (Motion Docket No. 383-149C), and attached a response to Mentor's petition. On September 28, 1999, Mentor moved for leave to reply to Quickturn's response to Mentor's petition for an advisory opinion (Motion Docket No. 383-150C), and attached a reply to Quickturn's response to Mentor's petition.

The Commission granted both motions for leave to file and instituted an advisory opinion proceeding. The advisory opinion proceeding was certified to the presiding ALJ with instructions to issue an IAO within nine months of the date of publication of this notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.79(a), 19 CFR 210.79(a).

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-29961 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-309-A-B (Review) and 731-TA-528 (Review)]

Magnesium From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on magnesium from Canada.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on magnesium from Canada would be

likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT:

George Deyman (202-205-3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 41961, August 2, 1999) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-29959 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-539-C, E, and F (Review)]

Uranium From Russia, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty order and suspended investigations on uranium from Russia, Ukraine, and Uzbekistan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on uranium from Ukraine and termination of the suspension agreements on uranium from Russia and Uzbekistan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special

assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.

The Commission found that the domestic interested party group responses to its notice of institution (64 FR 41965, August 2, 1999) were adequate with respect to each review, and that the respondent interested party group responses were adequate with respect to Russia and Uzbekistan but inadequate with respect to Ukraine. The Commission also found that other circumstances warranted conducting a full review with respect to Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 10, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-29958 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 19, 1999 at 11 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-811 (Final)(DRAMs of One Megabit and Above from Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on December 2, 1999.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 12, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-30176 Filed 11-15-99; 3:39 pm]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Privacy Act of 1974; Establishment of New Systems of Records, Revision of Existing Systems of Records

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed establishment of new Privacy Act systems of records and revision of existing systems of records.

SUMMARY: Pursuant to 5 U.S.C. 552a(e)(4) of the Privacy Act of 1974, the U.S. International Trade Commission (Commission) proposes to (1) revise the existing system of records entitled "Office of Inspector General Investigative Files (General)" to amend retention and disposal procedures; (2) revise the existing system of records entitled "Office of Inspector General Investigative Files (Criminal)" to amend retention and disposal procedures; (3) revise the existing system of records entitled "Security Records" to clarify the purpose; (4) revise the existing system of records entitled "Parking Records" to include information about mass transit subsidy applications; and (5) establish a new system of records entitled "Computer Access Records."

DATES: Comments must be received no later than December 27, 1999. The proposed addition and revisions to the Commission's systems of records will become effective on that date unless otherwise published in the **Federal Register**.

ADDRESSES: Written comments should be directed to the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Tina Potuto, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202-205-3116. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This notice proposes revision of the system

of records designated as ITC-3 (Office of Inspector General Investigative Files (General)), revision of the system of records designated as ITC-4 (Office of Inspector General Investigative Files (Criminal)), revision of the system of records designated as ITC-6 (Security Access Records), revision of the system of records designated as ITC-9 (Parking Records), and establishment of a new Privacy Act system of records designated as ITC-12 (Computer Access Records). ITC-3 and ITC-4 will be amended to reflect changes in retention and disposal authority of Inspector General records. Retention and Disposal provisions of these two systems currently reference National Archives and Records Administration's General Records Schedule 22 which has been withdrawn. The ITC-6 records will be amended to further explain the Commission's purpose for maintaining these records. The amendment includes a reference to the fact that the Commission may use the collected information to verify time and attendance records of its employees. The Commission is contemplating issuing a policy limiting the use of these records for this purpose. The ITC-9 records will be amended to include information about mass transit subsidies. These records will be used to allocate and control parking spaces and mass transit subsidies, assist in creating car and van pools, and insure that employees qualify for subsidies. The ITC-12 records, generated by the Commission's computer systems and firewall gateway server software, record computer usage such as the Internet sites viewed from each Commission computer and the Internet protocol addresses of persons who are not employed by the Commission who visit the Commission's World Wide Web sites. These records will be used to monitor compliance with applicable law, regulations, and Commission policies by employees, contractors, and others who use Commission computers. These records also will be used to trace persons responsible for any unauthorized intrusion, if any, into the Commission's computer systems. Additionally, the Commission will use the information in these records for statistical and analytical purposes.

Pursuant to the Privacy Act of 1974, these revisions and additions to the Commission's systems of records will be reported to the Office of Management and Budget, the Chair of the Committee on Government Reform of the House of Representatives, and the Chair of the Committee on Governmental Affairs of the Senate.

ITC-3

The RETENTION AND DISPOSAL section of this system of records as published in 62 FR 23485, 23491 (April 30, 1997), is revised to read as follows:

RETENTION AND DISPOSAL:

These records will be maintained permanently until disposition authority is granted by the National Archives and Records Administration. Records will be disposed of in a secure manner.

ITC-4

The RETENTION AND DISPOSAL section of this system of records as published in 62 FR 23485, 23491 (April 30, 1997), is revised to read as follows:

RETENTION AND DISPOSAL:

These records will be maintained permanently until disposition authority is granted by the National Archives and Records Administration. Records will be disposed of in a secure manner.

ITC-6

The PURPOSE section of this system of records as published at 62 FR 23485, 23491 (April 30, 1997), is revised to read as follows:

PURPOSE(S):

These records are used to permit tracking of individual movements in circumstances such as when there has been a security breach or theft, to monitor access to restricted areas, to keep track of all visitors to the Commission or those individuals who do not have Commission identification cards, and to verify time and attendance records of Commission employees to the extent permitted by applicable law and except as prohibited by Commission policy.

ITC-9

SYSTEM NAME:

Parking and Mass Transit Subsidy Records.

SYSTEM LOCATION:

Office of Facilities Management, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees and other authorized individuals who participate in the Commission mass transit and car pool subsidy programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to name, office room number, office phone number, agency, home address, automobile type and license number, length of government

service, social security number, and type of transportation used for commuting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 19 U.S.C. 1331(a)(1)(A)(iii); 40 U.S.C. 491; 41 CFR 101-20.1, *et seq.*; 5 U.S.C. 7905.

PURPOSE(S):

To allocate and control agency-subsidized parking spaces and mass transit subsidies, to assist in creating car pools, and to insure that employees qualify for subsidized parking spaces or mass transit subsidies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses A, B, C, E, F, G, H, I, K, and L apply to this system (See, Privacy Act of 1974; Establishment of New Systems of records; Revision of Systems of Records; Deletion of a System of Records (Appendix A—General Routine Uses Applicable to More Than One System of Records), 62 FR 23485, 23495-96 (April 30, 1997)). Relevant information in this system may be disclosed as necessary to other Federal agencies or Federal contractors with statutory authority to assist in the collection of Commission debts.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f) to "consumer reporting agencies" as defined in 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper in file folders and on computer media.

RETRIEVABILITY:

These records are retrieved by applicant name or, in the case of parking records, space assignment.

SAFEGUARDS:

These records are maintained in a building with restricted public access. The records in this system are in a limited access area within the building. Access is limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Parking and Mass Transit Subsidy Records normally will be maintained for 2 years. Records will be disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Facilities Management,
Office of Facilities Management, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire
whether this system of records contains
information about them should contact
the Privacy Act Officer, Office of the
Director of Administration, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

Individuals must furnish the
following information for their records
to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for
employees);
4. Dates of employment (if
applicable);
5. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access
to their records should contact the
Privacy Act Officer, Office of the
Director of Administration, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

Individuals must furnish the
following information for their records
to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for
employees);
4. Dates of employment (if
applicable);
5. Signature.

Individuals requesting access must
comply with the Commission's Privacy
Act regulations on verification of
identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request
amendment of their records should
contact the Privacy Act Officer, Office of
the Director of Administration, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

Individuals must furnish the
following information for their records
to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for
employees);
4. Dates of employment (if
applicable);
5. Signature.

Individuals requesting amendment
must comply with the Commission's
Privacy Act regulations on verification
of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information is obtained from the
individual to whom the records pertain.

ITC-12**SYSTEM NAME:**

Computer Access Records.

SYSTEM LOCATION:

Office of Information Services, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former Commission
employees and all contractors, sub-
contractors, consultants, and other
individuals who use Commission
computers or visit the Commission's
World Wide Web sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to a computer
user's access to Commission computers,
including such information as the
identification of the computer assigned
to a particular user, Internet sites
visited, dates, and time. Also, the
Internet protocol addresses of all
machines that access the Commission's
World Wide Web sites.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the
system includes the following with any
revisions or amendments: 19 U.S.C.
1331(a)(1)(A)(iii).

PURPOSE(S):

These records are used to permit
tracking of individual computer access
to prevent improper use of agency
equipment. These records also are used
as a tool for investigation in the event
of an unauthorized intrusion into the
Commission's computer systems.
Additionally, these records are used for
statistical analysis of computer usage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses A, B, C, E, F, G,
H, I, J, K, and L apply to this system
(See, Privacy Act of 1974; Establishment
of New Systems of Records; Revision of
Systems of Records; Deletion of a
System of Records (Appendix A—
General Routine Uses Applicable to
More Than One System of Records), 62
FR 23485, 23495-96 (April 30, 1997)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

The Computer Access Records are
maintained on electronic tape and
magnetic disk or other data storage
media.

RETRIEVABILITY:

The Internet access records are
retrieved by computer address, which is
associated with the name of the person
to whom the computer is assigned. The
Internet protocol address records are
retrieved by searching for the address on
the electronic tape or magnetic disk or
other data storage media.

SAFEGUARDS:

The records are maintained in a
secure location with access limited to
persons whose official duties require
access.

RETENTION AND DISPOSAL:

Until the National Archives and
Records Administration develops
guidance for disposal of electronic
records, the Computer Access Records
generally will be retained for up to 3
months for tracking and investigation
purposes and for up to 5 years for
analysis purposes. Records will be
disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Information
Services, U.S. International Trade
Commission, 500 E Street, SW,
Washington, DC 20436.

NOTIFICATION OF PROCEDURE:

Individuals wishing to inquire
whether this system of records contains
information about them should contact
the Privacy Act Officer, Office of the
Director of Administration, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

Individuals must furnish the
following information for their records
to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for
employees);
4. Dates of employment (if
applicable);
5. Signature

RECORD ACCESS PROCEDURE:

Individuals wishing to request access
to their records should contact the
Privacy Act Officer, Office of the
Director of Administration, U.S.
International Trade Commission, 500 E
Street, SW, Washington, DC 20436.

Individuals must furnish the
following information for their records
to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for
employees);
4. Dates of employment (if
applicable);
5. Signature

Individuals requesting access must
comply with the Commission's Privacy

Act regulations on verification of identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security Number (for employees);
4. Dates of employment (if applicable);
5. Signature

Individuals requesting amendment must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information in this system comes from the Commission's computer systems and firewall gateway server software.

By order of the Commission.

Issued: November 9, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-29919 Filed 11-16-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, without change, of a previously approved collection for which approval has expired.

Requirements: Data collection Application for the Juvenile Accountability Incentive Block Grant (JAIBG) Program.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on March 25, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until December 17, 1999. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rodney Albert, Deputy Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Requirements: Data Collection Application for the Juvenile Accountability Incentive Block Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* New collection; Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State. Public Law 105-119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for other Purposes (Appropriations Act) appropriated \$250,000,000 for the Juvenile Accountability Incentive Block Grants (JAIBG) described in Title III of H.R. 3, as passed by the House of Representatives on May 8, 1997.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Fifty-six (56) respondents will complete a 1-hour follow-up information form for each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the information form will range from one (1) to 75 hours based on the number of units of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530, or via facsimile at (202) 514-1534.

Dated: November 10, 1999.

Brenda E. Dyer,
Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99-29962 Filed 11-16-99; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR**Employment and Training Administration****Solicitation for Migrant Child Labor Demonstration Grants**

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA) for piloting innovative ways to discourage child labor in the agricultural industry.

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces a Solicitation for Grant Applications (SGA) to develop and pilot three to four demonstrations nationally that offer improved educational and alternative work experience opportunities for migrant farmworker youth. These demonstrations are designed to reduce incentives for migrant farmworker youth to perform agricultural work under any one or combination of the following conditions:

- In situations that may lead to child labor violations of agriculture workplace rules such as those of the Fair Labor Standards Act (FLSA), or
- during the scheduled school session, or
- in lieu of summer school attendance needed to complete a grade advancement.

DATES: Applications for grant awards will be accepted commencing November 17, 1999. The closing date for receipt of applications shall be January 31, 2000 by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications shall be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ann Newman, Reference: SGA/DFA-100; 200 Constitution Avenue, NW, Room S-4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fax questions to Ann Newman, Division of Federal Assistance at (202) 219-8739. This is not a toll-free number. All inquiries sent via fax should include the SGA number (DFA-100) and a contact name, fax and phone number. This solicitation will also be published on

the Internet on the Employment and Training Administration's Home Page at <http://doleta.gov>. Award notifications will also be published on this Homepage.

1. Hand-Delivered Proposals

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time on January 31, 2000, the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

2. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

(2) Was sent to the U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 4 p.m. at the place of mailing two working days prior to the date specified for proposals. The term "working days" excludes weekends and U.S. Federal holidays. The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

3. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

4. Funding Availability and Period of Performance

The Department of Labor expects to make approximately 3-4 awards, with a

total investment of approximately \$5,000,000. The period of performance will be for 12 months from the date the grant is awarded. At the Government's discretion and based upon availability of funding, it is possible that the project may be extended for up to two option years of funding.

5. Submission of Proposals

In accordance with the requirements above, applicants must also submit four (4) copies of their proposal, with original signatures. The proposal must have the following information:

(1) The proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A). All copies of the (SF) 424 must have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities is not eligible for the receipt of federal funds constituting an award, grant, or loan. The grant proposal text is limited to 30 double-spaced, single-side, numbered 8½" x 11" pages, in 12-point type and having margins measuring at least one inch (Page numbers may be placed within the margin space.) This includes attachments. Applications that do not meet these requirements will not be considered.

(2) A certification prepared within the last six months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The Certification should be obtained as follows:

(a) For incorporated organizations, a certification from a Certified Public Accountant; or

(b) for a public agency, a certification by its Chief Fiscal Officer;

(3) A statement indicating the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(4) The applicant's employer identification number (EIN) issued by the Internal Revenue Service;

(5) Applications from a Consortium of organizations must include a copy of the Consortium agreement and must identify the consortium which will act as the administrative entity for the project. The agreement must include stated arrangements for administrative

and financial responsibility that are acceptable to the Grant Officer.

(6) Budget Information Sheet (Appendix "B") with a narrative description of each line item.

SUPPLEMENTARY INFORMATION:

Background

Lifestyle that limits occupational horizons and disrupts educational achievement—It is generally accepted that agricultural employment earns its workers the lowest wages among the major low-skilled occupations. While it does provide this labor group with seasonal employment, farmwork has the deleterious characteristic of preserving the working family in a working poverty status and tends to establish a pattern of farmwork to the exclusion of most other possibilities. The desire or initiative to learn other trades or job skills is easily defeated by the compelling need to generate family income by farmwork. Agricultural practices often subject workers to working conditions involving exposure to agricultural pesticides and fertilizers. The health hazards associated with exposure to these compounds may not be comprehended fully by most youth. Young people are generally less prepared intellectually and emotionally to accept warnings about long-term health risks associated with external exposures to commonly used agricultural chemicals. Consequently, they are prone to view precautionary instructions as an inconvenience and to be trusting and unquestioning of the authority of growers and bosses who may direct them to prematurely enter a field following a recent pesticide application. The continuing demographics shift of farmworkers to a population that has become increasingly foreign born and Hispanic over the past two decades, increases the risks associated with agricultural pesticide use for the farmworker families working in the United States. Why, language barriers?

Consequently, migrant farmworker children of all ages, perform farm labor work which exposes them to harsh and dangerous working conditions which may breach the spirit, if not violate the letter, of child labor laws and EPA/OSHA standards.

Part I. Authority

Introduction

The Omnibus Consolidated Appropriations Act for the 1999 fiscal year appropriated \$5 million for demonstration programs to develop alternatives to agricultural labor for migrant farmworker youth. The

Department seeks the development, piloting and evaluation of three to four demonstrations nationally for reducing child labor in migrant agricultural streams through the cooperative participation of state and local organizations.

When traveling with their families in the migration stream, migrant farmworker youth often assist the adult members of their family and when they reach legal working age they actively participate by working side-by-side with adults. The experiences growing up in a migrant farmworker family provide little exposure to alternative opportunities that may expand the young person's outlook for the possibility of a different life and improved standard of living. As a result, they may not learn as early as their peers about the range of occupational options available to them and they may fail to develop an appreciation of their potential for capitalizing on the connection that exists between good jobs and educational achievement. Migrant farmworker youth also perform farmwork during scheduled school sessions or in lieu of summer school attendance that is needed for completing a grade advancement. This practice establishes a pattern of reduced primary school participation that leads to reduced high school completion for the children of farmworkers. The Department seeks to support the development of innovative approaches for reversing the movement from the classrooms to the fields without harming the family income.

The Department will consider demonstrations utilizing a comprehensive approach that addresses all of the following conditions faced by farmworker youth who are members of a migrant farmworker family dependent on farmwork for a majority of its income:

- the incidence of agricultural labor performed by secondary school age workers, age 12–17
- the low levels of secondary school attendance
- the low levels of secondary educational achievement
- agricultural work that may be illegal or detrimental to educational achievement
- the need for sustaining family income requirements

Demonstration proposals must describe how the pilot project is anticipated to make a substantial reduction to the level of farmwork performed by the migrant youth served.

Project approaches may include: parental participation, child care, continued classroom participation

during either or both the regular school year and summer school, to facilitate completion of academic courses required for grade promotion, non-agricultural work experience or other approaches for reducing the incidence of farmwork by migrant youth.

A. Eligible Applicants

Current recipient of JTPA Section 402 or WIA 167 funds; public, private, or non-profit organization may apply for these grants either individually or as a consortium of eligible applicants. Each proposal must contain provision for participation by appropriate education agencies.

B. Government's Requirements

ETA seeks to test the efficacy of using Case Management in an interdisciplinary environment that provides working-age migrant children alternative work and educational opportunities while working in the migrant stream and without detriment to the income expectations of their family. The pilots will test the use of Case Management to sustain a comprehensive approach to serving 12 to 17 year-old migrant youth that includes all of the following components:

- Case Managers working with youth and their families,
- arrangements appropriate for ensuring uninterrupted educational participation that include provision for tutorial assistance,
- alternative employment in community service work experience,
- provision for child care,
- communications support between case managers, the farmworker youth, and other personnel as appropriate to the proposed design,
- coordination with appropriate educational institutions, and
- establishment of arrangements with the appropriate agencies throughout the migrant stream for developing a dependable network of supportive services available to the project for use by the Case Managers.

Addressing Remote Contact Issues

To support continued participation and enrollment in education and work experience or combined education and work experience activities, the design must contain specific mechanisms for maintaining participant access to the Case Manager. This must be achieved through personal contact. Personal contact may be accomplished by establishing a network of qualified representatives made available to the Case Managers by appropriate partnering organizations such as

farmworker grantee organizations. To supplement the system of personal contacts, applicants may propose use of other remote means such as computerized communication technologies which may be adapted to support such aspects of the proposed design as Case Management communications and tracking, the educational component and the transfer of information on participants' status.

The Alternative Employment Component

With respect to the alternative employment component, the arrangements must support work alternatives for the participants during periods when they would normally be engaged in agriculture. Such work experience arrangements will help provide an income through the controlled environment of a structured work experience program. The design should promote exposure to a sample of the career alternatives potentially available. Applicants may propose other, less conventional activities that may be complementary to the formal educational process.

The Educational Component

With respect to the educational component, the design must be one that supports sustained educational participation leading to completion of a specific scheduled secondary education requirement. This must be addressed by the cooperative participation of the family's home-base local school system, a State level secondary entity, or a charter school or other nonsectarian institution credentialed as a secondary education institution.

Target Population

Youth, age 12 to 17 who are established working members of migrant farmworker families and who accompany their families on the migration. (Family members are those persons living together who are related by marriage, blood or adoption.)

Funding Context

Section 167 of the Workforce Investment Act of 1998. The Migrant and Seasonal Farmworkers (MSFWs) program provides services to meet the employment and training MSFWs through such public and private nonprofit organizations determined by the Secretary to have an understanding of the problems of MSFWs. This familiarity may be variously demonstrated by an organization's familiarity with the area to be served, its demonstrated understanding of the problems of eligible MSFWs, and its

demonstrated capability to administer effectively a diversified employability development program for MSFWs.

Consortium Arrangements

Consortium of cooperating eligible applicants may apply. An acceptable consortium arrangement is one made of two or more signatory eligible applicants, supported by a Consortium Working Agreement between all the cooperating parties under the proposed design. The agreement must designate one of the consortium's members as the responsible administrative agency under the grant.

Specific Migrant Youth Problems

Demonstrations must be developed to address problems faced by farmworker youth, age 12–17, who are members of migrant families and who face limited opportunities due to conditions that may be attributed to the family's dependence on employment in farmwork, and especially due to the family's migrations during the agricultural season. Examples of such problems experienced by farmworker youth are:

- a record of substandard or declining school attendance
- being required to repeat at least a year at grade 5 or higher
- having a work history exclusively consisting of farmwork performed in the company of their families
- having a family which does not speak English at home
- possessing other documented conditions proposed by the applicant.

Projected Benefits of This Migrant Child Labor Initiative

It is anticipated that program participation will result in improved outcomes for youth participants and their families in (e.g., youth educational goals, school participation, promotion and dropout rates, family and participant employment and income, parental expectations for children, etc.).

Pilot outcome information will be used to identify further options to decrease child labor in agriculture and increase academic retention and achievements for migrant farmworker youth.

Part II. Grant Proposal

All grant proposals accepted for consideration must be prepared in accordance with the requirements set forth in Sections (1) to (3) below.

Section (1)—Proposed Pilot Demonstration

A. Demographics of Selected Migrant Stream

An understanding of the area economy and its influence on the problems and conditions faced by MSFWs working within that economy is important to formulating an effective service strategy. Identify and describe the geographic area (i.e. migrant stream) where the design is proposed to be tested. The description should include relevant factors about the agricultural community, crops and migrant farmworker demographics for the migrant stream. A complete statement would include a brief discussion of the problems of eligible migrant farmworker families working in the selected area that either contribute to intensive farmwork labor conditions, or interfere with secondary education achievement.

B. Problems Faced by Migrant Youth Population of the Selected Migration Area

Describe the conditions that are faced by MSFW youth over the course of a year in the specific geographic area proposed to be served. The discussion must show how the condition contributes to the pattern of low school attendance and success. Examples of specific conditions proposed to be addressed are:

- Family group situations wherein farmworkers bring their children to assist them with their work at farm locations. This condition occurs more often at farms where pay is determined on a piece rate basis.
- Seasonality of work and migration that disrupts education
- Strenuousness of farmwork—stoop labor, long hours, low wages
- Living conditions experienced in a migratory lifestyle—housing facilities, transportation, etc.
- Problems unique to farmwork families working the selected migrant stream that adversely affect the educational achievement of their children and limit the youths' access to recreational activities and alternative forms of work opportunities (other than the manual farmwork that may defines their lifestyle) for their children in the 12 to 17 age range.

C. Design Proposed To Be Piloted

(1) Provide a brief, single paragraph summary of the proposed demonstration objective. Follow the summary with an explanatory statement on how the objective is proposed to be achieved. Include each of the following in the discussion as appropriate:

- Problem(s) affecting migrant youth that the proposed design would address
- Number of youth to be served by the project

- Characteristics of those to be enrolled
- Case Management techniques to be used

- Work Experience Component
- Education Component
- Provisions and system for maintaining contact with participants during the family's migration and for maintaining connections with the home community.

- Follow-up during the off-season
- Provision for family involvement
- Collaborations with appropriate organizations such as participating MSFW programs, school systems, One-Stop Centers, State Rural Development Councils, grower groups, etc.

- Results to be achieved
- Portability of records
- Other areas appropriate to the proposed design

(2) Strategic Plan: Describe the proposed strategic plan by addressing all the following:

(a) Case Management Strategy—Describe the proposed case management system and techniques that are proposed to be employed. To be acceptable, the plan must include a strategy for maintaining communications during migrations. Identify the local resources—including those located in the migrant stream remote from the home-base for the operation—that will be developed for use by the Case Managers. Identify the responsible party and describe how the person will approach the development of the necessary arrangements with local representatives.

(b) Work Component—Describe the proposed work experience component in detail. Include a description of the proposed strategy for securing alternative work experience arrangements along the migration stream.

(c) Educational Component—Describe the proposed educational component in detail. Describe how you propose to maintain contact with participants during their migration. Include how you propose to arrange for continued support from the home based school. If your proposed strategy will rely on use of schools in other communities and states for classroom instruction leading to academic credit, describe how you will secure support from the other school systems. If you propose to test the use of virtual classroom technologies during the migration period, describe the level of personal contact you propose and explain how

you will provide for it. Also, describe how the personal contact will ensure that the technology is accessed, understood and utilized by the participants.

(d) Combinations Of Work and Education—Where alternative work arrangements and educational arrangements are proposed in combination, describe the planned combination and identify the merits of the combination proposed for testing.

(e) Retention During Migration—Describe the arrangements proposed for retaining participation during the migration within the area proposed for the demonstration. (Build into the description, answers to such questions as, "What means will be employed to return participation and what persons and organizations will be responsible for doing what?")

(f) Provision For Adult Family Member Involvement—Describe the proposed role of parental participation and how you will promote and support their involvement.

(3) The proposed design must have measurable results. Describe the goals of the project and how the impact of the design will be measured. For example, the following indices are offered for consideration:

- reduced hours working in agriculture
- development of educational goals by the participating youth
- parental goals for their children that are outside agriculture
- school participation and drop-out rates for participants
- sustaining individual and family employment and income

Duration: Proposals must incorporate a strategy for demonstrating the complete execution of the proposed design during a single agricultural season.

Rating Basis—For Section (1)

60 points based on:

(a) The relative merits of the conceptual design proposed and described in part (C)(1) at incorporating broad geographic coverage, innovation and reliance on diverse and cooperating resources to work under a Case Management strategy towards achieving the goals proposed in (C)(3), (25 points);

(b) Provision inherent to the strategic design described in part (C)(2) for ensuring consistency and integrity with the conceptual design throughout the demonstration, (25 points); and

(c) How well the design relates to the problems faced by farmworker children age 12 to 17 that are described in part (B). (10 points)

Section (2)—Commitments From Other Partners Including State and Local Education Agencies

In this section, applicants must describe the commitments to this project from State Education agencies, local public schools in the home base of the students, local public schools in the migrant stream, social service agencies, grower representatives and other partners such as technology firms. In particular, ETA is looking for commitment of researchers, social services and other resources that are substantially above the current service level available to migrant youth. In addressing the criteria below, each applicant should demonstrate its potential to arrange for adequate coverage for the entire geographic area of the migrant stream. Evidence of provisional commitments will be accepted and may be included with the proposal. Where a consortium arrangement is proposed, the educational agency partner(s) must be included as member(s) of the agreement.

Each applicant must:

- Show how it has developed appropriate arrangements with associate organizations within the migrant stream that are critical to the success of the pilot,
- show how educational agencies and agencies capable of providing work experience alternatives will participate in the demonstration
- show how it will ensure cooperation with the local Migrant Education program (funded by the US Department of Education) and with the College Assistance Migrant Program.

Rating Basis for Section (2)

The rating will be based on the applicant's demonstration of its ability to develop effective working partnership agreements with representatives of the required community resources pertinent to the proposed pilot. Total weight for Section (2) is 20 points.

Section (3)—Administration and Staff Capacity To Perform Pilot

This section describes the applicant's capacity to operate the project including its organizational structure and staffing patterns.

The applicant must:

- Demonstrate its understanding of the problems of migrant farmworker families through its statement in section 1(A); and
- Demonstrate its knowledge of the migrant stream area proposed for the pilot demonstration through its statement in section 1(B).

Applicants must provide statements and information in this section to

ensure the piloting of the proposed strategy will be effectively carried out. An applicant must:

(A) Demonstrate its capacity to work effectively with the growers, the workforce investment agencies, the community organizations critical to the proposed design and the educational agencies needed;

(B) identify the management staff and their qualifications for conducting the pilot,

(C) provide the proposed standards for the maximum and average case-load levels and the minimum qualifications for those to be hired as Case Managers.

(D) when appropriate, demonstrate its knowledge of the regional practices of growers regarding:

(1) Employment of adult farmworkers
(2) housing for farmworkers and farmworker families

(3) farmworker transportation, and

(4) employment of farmworker youth under age 18;

(E) describe administrative and program management processes which include the fiscal management systems and the program management systems needed to measure results; and

(F) for proposed consortium arrangements, provide the proposed Consortium agreement identifying the member of the consortium responsible for administering the demonstration, i.e., coordinating the overall responsibility for managing the pilot and accounting for the proper use of

funds. The answers to items (B) and (E) must be specifically addressed to the consortium partner designated as the administering member. Consortium agreements must include all the critical members required for administering the strategic plan, such as MSFW grantees, state and local school systems, organizations representing growers, state rural development councils, etc.

Rating Basis for Section (3)

The rating of section (3) will be based on the proposer's knowledge of farmworker issues and its organizational strength. The weight for section (3) is 20 points.

Part III. Proposal Review and Process

A careful evaluation of applications will be made by a technical review panel which will evaluate the applications against the criteria identified in Part II—Grant Proposal. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the applicant. In situations without discussions, an award will be based on the applicant's signature on the (SF) 424, which constitutes a binding offer. The Grant Officer will make final award decisions based upon what is in the best interest of the Government. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information

when deemed necessary to make a selection.

Part IV. Reporting Requirements

Once grant awards are made, the following reports and documents will be required:

Quarterly Financial Reports

The awardee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report, Standard Form (SF) 269, until such time as all funds have been expended or the period of availability has expired.

Progress Reports

The awardee must submit quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report will provide a detailed account of activities undertaken during each quarter.

Final Report

A draft final report which summarizes project activities and results of the demonstration shall be submitted no later than 30 days prior to the expiration date of the grant.

Signed at Washington, DC, this 10th day of November, 1999.

Janice E. Perry,

Grant/Contracting Officer.

BILLING CODE 4510-30-p

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction		Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier			
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier			
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, State and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code):		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 			7. TYPE OF APPLICANT: (enter appropriate letter in box) A. State B. County C. Municipa D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____		
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____			9. NAME OF FEDERAL AGENCY:		
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):					
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____			
b. Applicant	\$.00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372			
c. State	\$.00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
d. Local	\$.00				
e. Other	\$.00				
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
g. TOTAL	\$.00	☐ Yes If "Yes," attach an explanation. ☐ No			
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.					
a. Typed Name of Authorized Representative		b. Title		c. Telephone number	
d. Signature of Authorized Representative				e. Date Signed	

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APPENDIX "B"**PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

MISSISSIPPI RIVER COMMISSION**Sunshine Act Meeting****AGENCY HOLDING THE MEETING:**

Mississippi River Commission.

TIME AND DATE: Begin at 2:00 p.m. and adjourn by 4:00 p.m., December 6, 1999.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation but not for participation.

MATTER TO BE CONSIDERED: The Commission will consider the Reelfoot Lake, Tennessee and Kentucky, Final Feasibility Report.

CONTRACT PERSON FOR MORE

INFORMATION: Mr. Stephen Gambrell, telephone 601-634-5766.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99-30158 Filed 11-15-99; 3:11 pm]

BILLING CODE 3710-GX-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**National Endowment for the Arts; Combined Arts Advisory Panel**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Museum/Visual Arts section (Heritage & Preservation category), to the National Council on the Arts will be held from December 13-15, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 1:30 p.m. to 3 p.m. on December 15th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on December 13th, from 9 a.m. to 7 p.m. on December 14th, and from 9 a.m. to 1:30 p.m. and 3 p.m. to 4:45 p.m. on December 15th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if

time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: November 10, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99-29968 Filed 11-16-99; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**National Endowment for the Arts; Fellowships Advisory Panel**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Folk & Traditional Arts section (National Heritage Fellowships category), to the National Council on the Arts will be held on December 1-3, 1999 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC. 20506. The Meeting will be held from 9 a.m. to 8:30 p.m. on December 1st, from 8:30 a.m. to 7:30 p.m. on December 2nd, and from 8:30 a.m. to 5:30 p.m. on December 3rd.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information will reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC. 20506, or call (202) 682-5691.

Dated: November 10, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99-29969 Filed 11-16-99; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL SCIENCE FOUNDATION**Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting**

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189)

Date/Time: November 30-December 1, 1999; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 530, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306-1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biochemical Engineering/Biotechnology CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4), and (6) of the Government in the Sunshine Act.

Dated: November 12, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99-29999 Filed 11-16-99; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting**

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science

Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication (1210).

Date/Time: December 7–8, 1999; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 855, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bernice Anderson, Program Director, Research, Evaluation and Communication (REC), National Science Foundation, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. (703) 306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Systemic Initiatives and Rural Systemic Initiatives Evaluative Studies Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidence nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4), and (6) of the Government in the Sunshine Act.

Dated: November 12, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29998 Filed 11–16–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice.

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 2–4, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64105).

Thursday, December 2, 1999

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:15 A.M.: Proposed Final Amendment to 10 CFR 50.55a Regarding Elimination of the 120-Month ISI and IST Programs Update Requirement (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, American Society of Mechanical Engineers (ASME), and Nuclear Energy Institute (NEI) regarding the proposed final amendment to 10 CFR 50.55a associated with

the elimination of the requirement for updating the inservice inspection (ISI) and inservice testing (IST) programs every 120 months, as well as a proposed Commission paper related to this matter.

10:30 A.M.–12:00 Noon: Low-Power and Shutdown Operations Risk Insights Report (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its contractors regarding the low-power and shutdown operations risk insights report, as well as a proposed Commission paper related to this matter.

1:00 P.M.–2:30 P.M.: License Renewal Application for Calvert Cliffs Nuclear Power Plant and the Associated Safety Evaluation Report (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Baltimore Gas and Electric Company's application for renewal of Calvert Cliffs Units 1 and 2 licenses and the associated NRC staff's Safety Evaluation Report.

2:45 P.M.–3:45 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

3:45 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, December 3, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Resolution of Generic Safety Issue (GSI)—190 and GSI—166 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its contractors regarding the proposed resolution of GSI—190, "Fatigue Evaluation of Metal Components for 60-Year Plant Life," and GSI—166, "Adequacy of Fatigue Life of Metal Components."

10:15 A.M.–11:45 A.M.: A Technique for Human Event Analysis (ATHEANA) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ATHEANA process, use of the ATHEANA to evaluate selected operational events, and related matters.

1:45 A.M.–12:00 Noon: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee regarding the industry initiative to address the effects of water hammer in low-pressure fluid systems and the NRC staff's effort to develop code review guideline documentation.

1:30 P.M.–2:00 P.M.: NRC Safety Research Program Report to the Commission (Open)—The Committee will discuss the proposed final report to the Commission on the NRC Safety Research Program and related matters.

2:00 P.M.–2:30 P.M.: Report of the Planning and Procedures Subcommittee (Open)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business.

2:30 P.M.–2:45 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

2:45 P.M.–3:00 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3:00 P.M.–3:30 P.M.: Election of Officers for CY–2000 (Open)—The Committee will elect a Chairman and Vice Chairman to the ACRS and a Member-at-Large to the Planning and Procedures Subcommittee for CY–2000.

3:30 P.M.–4:30 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

4:30 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Saturday, December 4, 1999

8:30 A.M.–2:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

2:00 P.M.–2:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been

canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415-7364), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: November 10, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99-29992 Filed 11-16-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 23, 1999, through November 5, 1999. The last biweekly notice was published on November 3, 1999 (64 FR 59796).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 Administration 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 6D22, 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 a hearing and petitions for leave to intervene is discussed below.

By December 17, 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 electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room). 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 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the

proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: October 21, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Harris Nuclear Plant (HNP) to implement selected improvements described in NRC Generic Letter (GL) 93-05, "Line-Item Technical Specifications To Reduce Surveillance Requirements For Testing During Power Operation," dated September 27, 1993. Specifically, HNP proposes to modify the following TS to be consistent with GL 93-05: (1) TS 4.1.3.1.2—Change the frequency of the control rod movement test to quarterly; (2) TS 4.6.4.1—Change the frequency of the Hydrogen Monitor analog channel operational test to quarterly; (3) TS 4.3.3.1 (Table 4.3-3)—Change the Radiation Digital Channel Operational Test to quarterly; (4) TS 4.4.6.2.2.b.—Change the time for remaining in cold shutdown without leak testing the Reactor Coolant System Pressure Isolation Valves to 7 days; (5) TS 4.4.3.2—Change the testing of the capacity of pressurizer heaters to once per 18 months; (6) TS 4.6.4.2.a.—Change the Hydrogen Recombiner functional test to once per 18 months; and (7) TS 4.7.1.2.1.a.—Change frequency of testing Auxiliary Feedwater Pumps to quarterly.

Basis for proposed no significant hazards consideration determination:

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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no systems being modified as a result of this change. Additionally, the way in which equipment is tested is not affected by this change. Reducing surveillance intervals for TS components (such as control rod testing) may reduce the probability of an accident (rod drop accident) by reducing actions that could cause an accident to occur (rod movement).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No system, structure, or component is being modified as a result of this change. Additionally, there are no changes to the way equipment is operated as a result of this change. Operating parameters are not being modified as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

These proposed changes are in accordance with NRC Generic Letter 93-05, dated September 27, 1993 and NUREG-1366, dated December 1992. These changes pertain to testing requirements for TS equipment which help ensure operability requirements are met. This change does not modify the required safety function or operating parameters for equipment described in HNP TS.

Therefore, 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Kahtan Jabbour, Acting.

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 15, 1999.

Description of amendment request:

The amendments would revise Section 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," of the Technical Specifications. Section 5.5.7 currently specifies that inspections be done according to Regulatory Position c.4.b of Regulatory Guide 1.14, Revision 1, such that an in-place ultrasonic volumetric examination of the areas of higher stress concentration at the bore and keyway be performed at approximately 3-year intervals. The licensee proposed to revise this to require a qualified in-place ultrasonic examination over the volume from the inner bore of the flywheel to the circle of one half the outer radius, or a surface examination (magnetic particle and/or penetration testing) of exposed surfaces defined by the volume of the disassembled flywheel. The licensee stated that the technical basis has been set forth in Westinghouse Topical Report WCAP-14535A, and cited similar amendments already granted to other nuclear plants.

Basis for proposed no significant hazards consideration determination: 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:

First Standard

Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. There are no accident probabilities or consequences impacted by this LAR [license amendment request]. As discussed in Attachment 3 [the licensee's description of the proposed amendment], following a reduction in the scope and frequency of the examinations currently required by the applicable Technical Specifications and Regulatory Guide 1.14, Revision I, an adequate inservice inspection program will continue to be maintained for the reactor coolant pump flywheels. Since the integrity of the flywheels will continue to be ensured, these components will continue to be available to fulfill their existing design function during pump coastdown flow transients. Additionally, there is no more risk that the flywheels will become a source of missile generation. Consequently, there is no significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes contained in this LAR only reduce the existing inspection requirements for the reactor coolant pump flywheels. This LAR proposes no changes to the plants' design, equipment, or method of operation at either McGuire or Catawba

Nuclear Station. Furthermore, the reduction in the inspection requirements for the flywheels has been generically approved by the NRC and is justified by WCAP-14535A. Therefore, since implementation of this LAR results in no actual impact upon either of the Duke nuclear plants, and since the integrity of the flywheels will continue to be ensured at an acceptable level, no new or different kinds of accidents are being created.

Third Standard

Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. As discussed in WCAP-14535A, a reduction in the frequency for performing the inservice inspections currently done in accordance with Regulatory Guide 1.14, Revision I, will not preclude the ability to accurately demonstrate the integrity of the reactor coolant pump flywheels. This LAR creates no additional threat to the integrity of the fission product barriers from the standpoint of missile generation or otherwise. Therefore, implementation of the changes proposed in this LAR does not impact the assumption of the integrity of the flywheels, the fission product barriers, or any other accident analyses assumptions. Consequently, no margin of safety will be significantly impacted by this LAR.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 15, 1999.

Description of amendment request:

The amendments would revise Section 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," of the Technical Specifications. Section 5.5.7 currently specifies that inspections be done according to Regulatory Position c.4.b of Regulatory Guide 1.14, Revision 1, such that an in-place ultrasonic volumetric examination of the areas of higher stress

concentration at the bore and keyway be performed at approximately 3-year intervals. The licensee proposed to revise this to require a qualified in-place ultrasonic examination over the volume from the inner bore of the flywheel to the circle of one half the outer radius, or a surface examination (magnetic particle and/or penetration testing) of exposed surfaces defined by the volume of the disassembled flywheel. The licensee stated that the technical basis has been set forth in Westinghouse Topical Report WCAP-14535A, and cited similar amendments already granted to other nuclear plants.

Basis for proposed no significant hazards consideration determination: 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:

First Standard

Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. There are no accident probabilities or consequences impacted by this LAR [license amendment request]. As discussed in Attachment 3 [the licensee's description of the proposed amendment], following a reduction in the scope and frequency of the examinations currently required by the applicable Technical Specifications and Regulatory Guide 1.14, Revision I, an adequate inservice inspection program will continue to be maintained for the reactor coolant pump flywheels. Since the integrity of the flywheels will continue to be ensured, these components will continue to be available to fulfill their existing design function during pump coastdown flow transients. Additionally, there is no more risk that the flywheels will become a source of missile generation. Consequently, there is no significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes contained in this LAR only reduce the existing inspection requirements for the reactor coolant pump flywheels. This LAR proposes no changes to the plants' design, equipment, or method of operation at either McGuire or Catawba Nuclear Station. Furthermore, the reduction in the inspection requirements for the flywheels has been generically approved by the NRC and is justified by WCAP-14535A. Therefore, since implementation of this LAR results in no actual impact upon either of the Duke nuclear plants, and since the integrity of the flywheels will continue to be ensured at an acceptable level, no new or different kinds of accidents are being created.

Third Standard

Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. As discussed in WCAP-14535A, a reduction in the frequency for performing the inservice inspections currently done in accordance with Regulatory Guide 1.14, Revision I, will not preclude the ability to accurately demonstrate the integrity of the reactor coolant pump flywheels. This LAR creates no additional threat to the integrity of the fission product barriers from the standpoint of missile generation or otherwise. Therefore, implementation of the changes proposed in this LAR does not impact the assumption of the integrity of the flywheels, the fission product barriers, or any other accident analyses assumptions. Consequently, no margin of safety will be significantly impacted by this LAR.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: September 29, 1999.

Description of amendment request: The proposed amendments would revise the Containment Inservice Inspection (ISI) Program Technical Specifications (TS) 5.5.2, "Containment Leakage Testing Program," and TS 5.5.7, "Pre-Stressed Concrete Containment Tendon Surveillance Program." The proposed amendments would permit the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI, Subsection IWL visual examinations to be performed in lieu of concrete and post-tensioning system general visual examinations required by 10 CFR 50, Appendix J and Regulatory Guide 1.163 between Type A tests. In addition, the amendment would permit general visual examinations of the concrete and post-tensioning system that can be performed

with a unit in operation to be performed prior to the beginning of a refueling outage during which a Type A test is scheduled.

Basis for proposed no significant hazards consideration determination: 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:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no significant effect on accident probabilities or consequences. The containment is not an accident initiating system or structure; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The containment serves an important function to mitigate consequences of postulated accidents previously evaluated and the examination frequencies proposed in this amendment will not result in a reduction in the capacity of the containment to meet its intended function. The requested flexibility in scheduling containment visual examinations has no significant impact on the validity of the examinations or of containment structural integrity.

Additionally, the change to Technical Specification 5.5.7 and the planned revision to Selected Licensee Commitment 16.6.2 described in this amendment application reflect the adoption of an ASME Section XI, Subsection IWE and IWL Inservice Inspection Program as required by 10 CFR 50 Section 55a(g)(4). Implementation of this program will not result in a reduction in the capacity of the containment to meet its intended function.

Therefore, the probability or consequences of an accident previously evaluated will not be increased by approval of the requested changes.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

No. Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant that would introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the containment functions primarily as an accident mitigator.

C. Involve a significant reduction in a margin of safety?

No. Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation, including the performance of the containment. This component is already

capable of performing as intended, and its function is verified by visual examination, post-tensioning system examinations, and leakage rate testing.

The examination requirements of ASME XI, Subsection IWL, are essentially identical to those contained in Regulatory Guide 1.35, Rev. 3, and are more rigorous than those required by 10 CFR 50, Appendix J and Regulatory Guide 1.163. Previous visual examinations of containment concrete and post-tensioning system surfaces have not revealed any indications of abnormal degradation of the containment. The five-year frequency for IWL examinations is adequate in lieu of the general visual examination frequency specified in Regulatory Guide 1.163 for containment concrete and post-tensioning system examinations.

The ability of the containment to perform its design function will not be impaired by the implementation of this amendment at Oconee Nuclear Station. Consequently, no safety margins will be impacted.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: June 17, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.4.9.1 and associated figures to extend the applicability of the heatup and cooldown curve pressure and temperature limits from 10 effective full power years (EFPY) to 15 EFPY. The proposed changes include new heatup and cooldown curves developed in accordance with the methodology provided in Regulatory Guide 1.99, Revision 2, and Code Case N-640. The applicability of TS Section 3.4.9.3, Overpressure Protection Systems, is also updated to 15 EFPY, and the maximum allowable power operated relief valve (PORV) setpoints for the over pressure protection system are revised. Revisions to the TS Bases are also made.

Basis for proposed no significant hazards consideration determination: 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 or consequences of an accident previously evaluated?

The proposed heatup and cooldown curves have been revised by changing the applicability from 10 effective full power years (EFPY) to 15 EFPY. The curves have been developed in accordance with the methodology provided in Regulatory Guide 1.99, Revision 2 and Code Case N-640. The proposed heatup and cooldown curves define limits that still ensure the prevention of nonductile failure for the reactor vessel. The design basis events that were protected against have not changed; therefore, the probability of an accident is not increased.

The overpressure protection system (OPPS) has been revised such that the applicability has changed from 10 EFPY to 15 EFPY. This system protects the Reactor Coolant System (RCS) at low temperatures so that the integrity of the Reactor Coolant Pressure Boundary (RCPB) is not compromised by violating the pressure/temperature (P/T) limits. These changes were determined in accordance with the methodologies set forth in the regulations to provide an adequate margin of safety to ensure the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events. The lower limit on pressure during the design basis OPPS mass injection and heat addition transients is established based on operational consideration for the RCP number one seal limit which requires a nominal differential pressure across the seal faces for proper film-rising performance. As part of the OPPS setpoint evaluation, margin to the RCP number one seal limit is evaluated.

This limit corresponds to a differential pressure across the seal of 200 psid, which corresponds to the gage pressures. The pressure undershoot below the PORV setpoint during a design basis mass injection or heat addition event can exceed 100 psi. Therefore, with the PORV setpoints developed for the 15 EFPY heatup and cooldown curves, there is the potential for RCS pressure to violate the RCP number one seal limit at the lowest RCS temperatures.

Undershoot below the PORV setpoint can be significantly higher if both PORVs actuate during an OPPS event, and it is anticipated that the pump seal limit would be exceeded. However, staggering the setpoints minimizes the likelihood that both PORVs will actuate simultaneously during credible OPPS events. Similarly, WCAP 14040-NP-A indicates that when there is insufficient range between the upper and lower pressure limits to select PORV setpoints that provide protection against violating both limits, then the setpoint selection that provides protection against the upper limit violation takes precedence. WCAP-4040-NP, Revision 1 was approved by the NRC by letter dated October 16, 1995, which was incorporated in Revision 2 of the approved WCAP issued in January 1996.

Modification of the heatup and cooldown curves and OPPS setpoints does not alter any assumptions previously made in the radiological consequence evaluations nor affect mitigation of the radiological

consequences of an accident described in the Updated Final Safety Analysis Report (UFSAR). Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed heatup and cooldown curves applicable for the first 15 EFPY were generated using approved methodology and Code Case N-640. Generating these curves with Code Case N-640 reduced the excess conservatism that exists in the current curves and results in an increase in the safety of the plant, as the likelihood of RCP seal failures and/or fuel problems will decrease. The change does not cause the initiation of any accident nor create any new single failure.

The modification of the OPPS setpoints ensures that the RCPB integrity is protected at low temperatures. The new setpoints were selected using conservative assumptions to ensure that sufficient margin is available to prevent violation of the P/T limits due to anticipated mass and heat input transients. The modification of the setpoints does not change, degrade, or prevent the safe response of the RCS to accident scenarios, as described in UFSAR Chapter 15. The proposed change does not cause the initiation of any accident nor create any new credible single failure.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The new P/T curves define the limits for ensuring prevention of nonductile failure for the reactor vessel, and does not significantly reduce the margin of safety for the plant. The methodology provided in Code Case N-640 removed some of the excess conservatism from the current Appendix G analysis. However, this improved overall plant safety by expanding the operating window relative to the RCP seal requirements. The probability of damaging the RCP seals is reduced. Therefore, the margin of safety is not significantly reduced.

The OPPS setpoints will continue to ensure the RCS pressure boundary will be protected from pressure transients. They were generated using the proposed heatup and cooldown curves as input. The OPPS setpoints include additional margin by including instrument uncertainties not included in the current setpoints. Therefore, the margin of safety is not significantly reduced.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: July 15, 1999.

Description of amendment request: The license amendment request (LAR) proposes to revise the Technical Specifications frequency for the Quench and Recirculation Spray Systems nozzle air flow test from 5 years to 10 years. This LAR also includes a revision to correct the terminology used in an action requirement as well as miscellaneous editorial and format changes.

Basis for proposed no significant hazards consideration determination: 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 or consequences of an accident previously evaluated?

The proposed extension of the testing frequency of the Quench Spray and Recirculation Spray Systems' nozzles to ten years does not change the way these systems are operated or their operability requirements. The proposed change to the surveillance frequency of safety equipment has no impact on the probability of an accident occurrence nor can it create a new or different type of accident. NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," dated December 1992, and Generic Letter 93-05, "Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993, concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval for nozzle testing. The results of the above NRC study were evaluated by Duquesne Light Company and found to be applicable to Beaver Valley Power Station (BVPS) Unit 1 and 2. Since the Quench Spray and Recirculation Spray Systems are maintained dry, there is no additional mechanism that could cause blockage of the spray nozzles. Thus, the nozzles in these spray systems are expected to remain operable during the ten year surveillance interval to mitigate the consequence of an accident previously evaluated. No obstructed or clogged spray systems' nozzles have been observed during the five year frequency surveillance tests at either BVPS Unit 1 or Unit 2 to date. Testing of the spray systems' nozzles at the proposed reduced frequency will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated.

This license amendment also revises the Action criteria in the BVPS Unit 1 and 2 Axial Flux Difference [AFD] technical

specification to correct the terminology referring to the Core Operating Limits Report (COLR) limits. The proposed change incorporates the terminology (acceptable operation limits) used in the corresponding Action condition of the ISTS [Improved Standard Technical Specifications]. The proposed change does not alter the AFD limits specified in the COLR and the AFD specification continues to assure plant operation within those limits. With AFD within the acceptable operation limits specified in the COLR, the resulting axial power distribution remains within the initial conditions assumed in the safety analyses. Therefore, these changes will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed reduced frequency testing of the Quench Spray and Recirculation Spray Systems' nozzles does not change the way the spray systems are operated. The reduced frequency of testing the spray nozzles does not change the plant operation or system readiness. The reduced frequency testing of the Quench Spray and Recirculation Spray Systems' nozzles does not generate any new accident precursors. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed changes in surveillance frequency of the spray systems' nozzles.

This license amendment also revises the Action criteria in the BVPS Unit 1 and 2 Axial Flux Difference technical specification to correct the terminology referring to the Core Operating Limits Report (COLR) limits. This addresses an incorrect use of terminology and the revision does not involve a technical intent change. Therefore, the possibility of a new or different kind of accident previously evaluated is not created by the proposed terminology correction.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of systems, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time.

Reduced testing of the Quench Spray and Recirculation Spray Systems' nozzles does not change the way these spray systems are operated or these spray systems' operability requirements. Generic Letter 93-05 and NUREG-1366 concluded that the corrosion of stainless steel piping is negligible during the extended surveillance interval for nozzle testing. The results of the above NRC study were evaluated by Duquesne Light Company and found to be applicable to BVPS Unit 1 and 2. Since the Quench Spray and Recirculation Spray Systems are maintained dry, there is no additional mechanism that could cause blockage of these spray systems'

nozzles. Thus, the proposed reduced testing frequency is adequate to ensure spray nozzle operability. The surveillance requirements do not affect the margin of safety in that the operability requirements of the Quench Spray and Recirculation Spray Systems remain unaltered. The existing safety analyses remain bounding. Therefore, the margin of safety is not adversely affected.

This license amendment also revises the Action criteria in the BVPS Unit 1 and 2 Axial Flux Difference technical specification to correct the terminology referring to the Core Operating Limits Report (COLR) limits. This addresses an incorrect use of terminology and the revision does not involve a technical intent change. The operating criteria on Axial Flux Difference are not altered from their intended requirements. Therefore, the margin of safety is not adversely affected by the proposed terminology correction.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson
Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: July 20, 1999

Description of amendment request:

The licensee amendment request proposes to relocate the following Technical Specifications items to the Licensing Requirements Manual: In-core Detectors (Unit 1 and 2), Chlorine Detection System (Unit 1 and 2), Turbine Over-speed Protection (Unit 2 only), Crane Travel Spent Fuel Storage Pool Building (Unit 1 and 2).

In addition to the relocation, certain editorial and format changes are proposed. Also, it is proposed that certain information on the Remote Shutdown Panel Monitoring Instrumentation be moved to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: 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 or consequences of an accident previously evaluated?

Consistent with the guidance provided in Generic Letter (GL) 95-10 and the content of the Improved Standard Technical Specifications (ISTS) contained in NUREG-1431, Rev. 1, this license amendment request (LAR) proposes the relocation of the following TS to the Licensing Requirements Manual (LRM):

3/4.3.3.2 Incore Detectors (Unit 1 and 2)

3/4.3.3.7 Chlorine Detection System (Unit 1 and 2)

3/4.3.4 Turbine Overspeed Protection (Unit 2 only)

In order to completely relocate the chlorine detection system requirements from the Technical Specifications (TS), portions of the Unit 1 Specifications 3/4.7.7, Control Room Habitability Systems and 3/4.9.15, Control Room Emergency Habitability Systems, as well as the Unit 2 Specification, 3/4.7.7, Control Room Emergency Air Cleanup and Pressurization System are proposed to be revised to reflect the removal of the chlorine detection system from the TS. The applicable surveillance requirements, and modes of applicability from these specifications are proposed to be relocated to the LRM along with the associated chlorine detection system TS. In addition, new actions have been added to the chlorine detection system specifications to integrate the new requirements.

In addition to the TS identified for relocation by the NRC in GL 95-10, this LAR proposes the relocation of another TS that does not meet the criteria of 10 CFR 50.36 and is not included in the ISTS. The additional TS proposed to be relocated to the LRM is 3/4.9.7 Crane Travel Spent Fuel Storage Pool Building (Unit 1 and 2).

This LAR also proposes that the TS Bases section associated with each of the TS listed above be relocated to the LRM as well. The appropriate TS pages (i.e., LCO, Bases, Table of Contents, etc.) are revised to reflect the removal of these Specifications and Bases from the TS.

The TS and bases discussed above and proposed for relocation will be moved into the BVPS LRM. The Unit 1 and Unit 2 LRM are appendices of the associated unit UFSAR. As part of the UFSAR any changes made to the LRM must be in accordance with the provisions of 10 CFR 50.59.

In addition to the relocation of the above listed TS, this LAR includes the removal of the "Measurement Range" information from the Unit 1 and 2 TS Table 3.3-9, Remote Shutdown Panel Monitoring Instrumentation. This design information is being moved from the TS to an applicable Updated Final Safety Analysis Report (UFSAR) section. The removal of this detail from the TS is consistent with the level of detail in the corresponding ISTS Specification. As part of the UFSAR any changes made to the measurement range information must be in accordance with the provisions of 10 CFR 50.59.

LAR 1A-251/2A-121 includes two Bases enhancements. Additional information is being added to the reactor trip system instrumentation Bases to discuss diverse and anticipatory protection features not credited in the accident analyses. The reactor trip system instrumentation Bases is also revised

to more clearly describe the source and intermediate range neutron flux protection features required during shutdown modes.

The proposed changes include the addition of license numbers to some of the TS pages contained in this LAR. In addition, this LAR contains changes that update the format of the affected TS pages and make editorial corrections. These changes are administrative in nature and do not impact the technical content of the affected TS pages.

The proposed changes regarding the relocation of information from the TS in this LAR follow the guidance provided in Generic Letter 95-10, the NRC "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" (58 FR 39132) dated July 22, 1993, and are consistent with the content of the ISTS. In addition, the proposed location for this information (UFSAR and LRM) ensures that future changes to the relocated requirements will be in accordance with the provisions of 10 CFR 50.59 and that NRC review and approval will be requested should a change to this information involve an unreviewed safety question.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because no changes are being made to any accident initiator. No analyzed accident scenario is being changed. The initiating conditions and assumptions for accidents described in the UFSAR remain as previously analyzed. The failure of any of the systems or components affected by this LAR, except for turbine overspeed protection, is not an accident initiating event. Due to the low likelihood of equipment damage or failure resulting from turbine missiles generated by a turbine overspeed event, assumptions related to the turbine overspeed protection system are not part of an initial condition of a design basis accident or transient.

The proposed amendment also does not involve a significant increase in the consequences of an accident previously evaluated. The amendment does not reduce the current requirements for the systems and components proposed for relocation. The amendment only requests that the requirements be retained in a more appropriate document. The systems and components proposed for relocation in this amendment perform no active role in mitigating a design basis accident described in the UFSAR. The systems or components proposed for relocation are not part of the initial conditions assumed in a safety analysis for a design basis accident described in the UFSAR. In addition, the affected systems and components do not function to actuate any protective equipment, nor are they part of the primary success path assumed in the safety analyses to mitigate any design basis accident described in the UFSAR.

The bases enhancements included in this LAR are administrative in nature and serve only to provide additional descriptive information. These changes do not impact plant safety.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not involve any physical changes to the plant or the modes of plant operation defined in Appendix A of the operating license. The proposed amendment does not involve the addition or modification of plant equipment nor does it alter the design or operation of any plant systems.

Moving specifications to the LRM or design information to the UFSAR will not change the physical plant or the modes of plant operation. Whether these specifications are located in the TS or the LRM has no effect on any previously evaluated accident. The relocation of TS information does not involve a change in the configuration of equipment nor does it alter the design or operation of plant systems.

Expanding the Bases for both units to discuss additional information regarding the protective functions not credited in the safety analysis or the neutron flux trip functions required in shutdown modes provides additional information to enhance the awareness of the protective instrumentation functions. The proposed bases changes do not result in any adjustments or physical alteration to the affected protective instrumentation functions. The Reactor Protection System will continue to function as currently designed and assumed in the accident analyses.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety depends on the maintenance of specific operating parameters and systems within design requirements and safety analysis assumptions.

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of systems, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time, and sufficient instrumentation and control capability is available for monitoring and maintaining the unit status.

The relocation of TS requirements and information to the LRM or UFSAR does not reduce the requirements for the affected systems and components to be maintained operable and function within design requirements. The relocation of TS requirements and information to the LRM and UFSAR will allow changes to this information to be made in accordance with the provisions of 10 CFR 50.59 and continues to ensure that NRC review and approval will be requested should a change to this information involve an unreviewed safety question.

Expanding the Bases for both units to discuss additional information regarding the

protective functions not credited in the safety analysis or the neutron flux trip functions required in shutdown modes provides additional information to enhance the awareness of the protective instrumentation functions. The addition of descriptive text to the TS bases does not affect the TS requirements for the affected equipment to be maintained operable and function within the applicable design requirements. The Reactor Protection System will continue to function as currently designed and assumed in the accident analyses.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: September 20, 1999.

Description of amendment request: The proposed amendments would revise the standard to which the control room ventilation charcoal and Supplementary Leak Collection and Release System (SLCRS) charcoal must be laboratory tested as specified in: Beaver Valley Power Station, Unit No. 1 (BVPS-1), Technical Specification (TS) 4.7.7.1.1.c.2 for the Control Room Emergency Habitability Systems; BVPS-1 TS 4.7.8.1.b.3 for the SLCRS; Beaver Valley Power Station, Unit No. 2 (BVPS-2), TS 4.7.7.1.d for the Control Room Emergency Air Cleanup and Pressurization System; and BVPS-2 TS 4.7.8.1.b.3 for the SLCRS. NRC Generic Letter 99-02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999, requested licensees to revise their TS criteria associated with laboratory testing of ventilation charcoal to a valid test protocol, which included American Society for Testing Materials (ASTM) D3803-1989. This license amendment request revises the charcoal laboratory standard to follow ASTM D3803-1989 for each BVPS Unit.

This license amendment request also: (1) Revises the minimum amount of output in kilowatts needed for the control room emergency ventilation system heaters at each BVPS Unit; (2)

revises BVPS-1 SLCRS surveillance testing criteria to be consistent with American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) N510-1980, the BVPS-1 control room ventilation testing, and the BVPS-2 SLCRS/control room ventilation testing; and (3) makes minor typographical corrections and editorial changes.

Basis for proposed no significant hazards consideration determination: 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 or consequences of an accident previously evaluated?

The proposed changes to the surveillance requirements for the laboratory testing of ventilation system charcoal are consistent with Generic Letter 99-02. The proposed change will adopt ASTM D3803-1989 as the laboratory testing standard for performing the surveillance associated with the Control Room emergency ventilation and the SLCRS charcoal filters at each BVPS Unit. Thus this proposed change will not involve a significant increase in the probability or consequences of a previously evaluated accident since this standard provides the assurance for continuing to comply with the current BVPS Unit 1 and Unit 2 licensing basis as it relates to the dose limits of GDC 19 and 10 CFR Part 100.

The change in the control room emergency ventilation system heater minimum output at both BVPS Units does not change the system ability to meet its design bases. The change in the BVPS Unit 1 SLCRS testing frequency for adsorber/filter in-place testing and the adsorber laboratory testing does not change the SLCRS system's ability to meet its design bases. The change in the BVPS Unit 1 SLCRS testing frequency for SLCRS air flow distribution testing does not change the SLCRS system's ability to meet its design bases. Therefore, these changes will not increase the probability of occurrence of a postulated accident or the consequences of an accident previously evaluated since these systems' ability to operate as required remains unchanged.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed license amendment to the control room emergency ventilation system and SLCRS at both BVPS Units does not change the way the system is operated. The proposed changes only involve changes to the surveillance testing. These testing modifications do not alter these systems' ability to perform their design bases. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident since the control room emergency ventilation system and SLCRS will continue to operate in accordance with their previous design bases.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of system, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time.

The proposed license amendment to the control room emergency ventilation system and SLCRS at both BVPS Units does not change the way the system is operated. The proposed changes only involve changes to the surveillance testing. These testing modifications do not alter these systems' ability to perform their design bases. The existing safety analyses remain bounding. Therefore, the margin of safety is not adversely affected.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: September 22, 1999.

Description of amendment request: The proposed amendment would allow a one-time only extension to the surveillance interval of Technical Specification Surveillance 4.7.12.d for functional testing of snubbers. The proposed extension would be limited to the end of the 8th refueling outage or November 30, 2000, whichever occurs sooner.

Basis for proposed no significant hazards consideration determination: 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 or consequences of an accident previously evaluated?

The proposed change is for a one-time extension to the surveillance interval for functional testing of snubbers specified in Technical Specification (TS) 4.7.12.d. The proposed change involves revising the calendar time allowed between functional

tests and would result in a maximum surveillance interval extension of approximately 6.5 months.

The proposed change continues to adequately limit plant operation between required snubber surveillances by ensuring the required surveillances are performed by November 30, 2000. Therefore, the proposed change continues to limit snubber wear due to vibration and elevated temperatures. The elevated temperatures and vibration experienced during plant operation are the primary contributors to snubber wear.

In addition, snubber-testing experience has shown that the historical failure rate of snubbers is low. There have been seven refueling outages since Unit 2's startup in 1987. Only during the first refueling outage, 2R01, did the snubber functional test sample plan identify any inoperable snubbers. In that outage, seven snubbers tested inoperable. All failed due to damage sustained during original construction and startup activities. Since 2R01, no inoperable snubbers were found by sample plan functional testing performed during each surveillance interval. Also, the latest visual inspections performed on the Unit 2 snubbers (during 2R07) revealed no evidence of damage or potential problems with any snubber.

Due to the low incidence of snubber functional test failures resulting from sample plan testing and the limited plant operating time between tests, the possibility of a snubber failure resulting from this one-time surveillance extension is low. No changes are being made to any accident initiator. No analyzed accident scenario is being changed. The initiating conditions and assumptions of previously analyzed accidents remain unchanged. Therefore, the proposed change does not involve a significant increase in the probability of a previously evaluated accident.

This change does not involve a physical change to the plant and does not affect the acceptance criteria specified in the TS for snubber functional testing, nor does this change reduce the remedial actions required for inoperable snubbers. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not involve any physical changes to the plant or the modes of plant operation defined in Appendix A of the operating license. The proposed amendment does not involve the addition or modification of plant equipment nor does it alter the design or operation of any plant systems. The one-time surveillance interval extension proposed by this change will not reduce the capability of the snubbers to perform their design function.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety depends on the maintenance of specific operating parameters

and systems within design requirements and safety analysis assumptions.

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not affect the ability of systems, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time, and sufficient instrumentation and control capability is available for monitoring and maintaining the unit status.

The proposed change is for a one-time extension to the surveillance interval for functional testing of snubbers specified in Technical Specification 4.7.12.d. The proposed change continues to adequately limit plant operation between required snubber surveillances by ensuring the required surveillances are performed by November 30, 2000. Therefore, the proposed change continues to limit snubber wear due to vibration and elevated temperatures. The elevated temperatures and vibration experienced during plant operation are the primary contributors to snubber wear.

In addition, snubber-testing experience has shown that the historical failure rate of snubbers is low. There have been seven refueling outages since Unit 2's startup in 1987. Only during the first refueling outage, 2R01, did the snubber functional test sample plan identify any inoperable snubbers. In that outage, seven snubbers tested inoperable. All failed due to damage sustained during original construction and startup activities. Since 2R01, no inoperable snubbers were found by sample plan functional testing performed during each surveillance interval. Also, the latest visual inspections performed on the Unit 2 snubbers (during 2R07) revealed no evidence of damage or potential problems with any snubber.

This change does not involve a physical change to the plant and does not affect the acceptance criteria specified in the TS for snubber functional testing, nor does this change reduce the remedial actions required for inoperable snubbers. The snubbers and systems supported by the snubbers will continue to be available to perform their intended safety functions during the requested extension period.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 30, 1999.

Description of amendment request: The request proposes changes to the Technical Specifications (TSs) and the operating license to extend operation of the station from its licensed power of 2894 megawatts thermal (MWt) to the uprated power level of 3039 MWt, an increase of 5 percent. The proposed changes are to (1) extend the definition of rated thermal power in TS Section 1.1 and the operating license to 3039 MWt; (2) reduce the thermal power safety limit of TSs 1.4, 2.1.1.1, 3.2.1, 3.2.2, 3.2.3, 3.3.1.1, 3.4.3, and 3.7.5; (3) increase the reactor steam dome pressure in TS Table 3.1.4-1, TS 3.4.12, and SR 3.5.3.3; (4) increase the control rod drive charging water header pressure in TSs 3.1.5, 3.9.5, and 3.10.8; (5) increase the standby liquid control (SLC) system Boron-10 enrichment and concentration criteria in TS 3.1.7; (6) increase the surveillance test discharge pressure for the SLC pump in surveillance requirement (SR) 3.1.7.7; (7) increase the allowable value of the reactor vessel steam dome pressure—high scram setpoint in TS Table 3.3.1.1-1; (8) increase the allowable value for the anticipated transient without scram—reactor pressure trip reactor steam dome pressure—high setpoint in SR 3.3.4.2.4; (9) revise the safety, relief, and low low set function of the main steam safety/relief valves (SRVs) in SRs 3.3.6.4.3 and 3.4.4.1; (10) increase the upper and lower bounds on reactor pressure for the purposes of performing reactor core isolation cooling pump flow rate surveillance at high pressure in SR 3.5.3.3; (11) increase the main steam line flow—high reactor isolation trip in TS Table 3.3.6.1-1; (12) reduce the thermal power limits for single loop operation in TS 3.4.1; (13) increase the upper and lower bounds on reactor pressure for the purposes of performing pressure isolation valve surveillance at high pressure in SR 3.4.6.1; and (14) revise the reactor coolant system pressure/temperature limits in TS 3.4.11 (including replacing TS Figure 3.4.11-1 with figures for 14 and 32 effective full power years of operation). Item (9) includes increasing the main steam SRV setpoint tolerance from +0%, -2% to [plus or minus] 3% in SR 3.4.4.1.

Basis for proposed no significant hazards consideration determination: 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) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The increase in power level discussed herein will not significantly increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of Design Basis Accidents occurring is not affected by the increased power level, as the regulatory criteria established for plant equipment (ASME [American Society of Mechanical Engineers] Code, IEEE [Institute of Electrical and Electronic Engineers] standards, NEMA [National Equipment Manufacturers Association] standards, Reg[ulatory] Guide criteria, etc.) will still be complied with at the uprated power level. An evaluation of the BWR [boiling water reactor] probabilistic risk assessments concludes that the calculated core damage frequencies will not significantly change due to [the] power uprate. Scram setpoints (equipment settings that initiate automatic plant shutdowns) will be established such that there is no significant increase in scram frequency due to [the] uprate. No new challenges to safety-related equipment will result from [the] power uprate.

The changes in consequences of hypothetical accidents which would occur from 102% of the uprated power, compared to those previously evaluated from [greater than or equal to] 102% of the original power, are in all cases insignificant, because the accident evaluations from [the] power uprate to 105% of original power ([approximately] 106% of original steam) flow will not result in exceeding the NRC-approved acceptance [criteria] limits. The spectrum of hypothetical accidents and transients has been investigated, and are shown to meet the plant's currently licensed regulatory criteria. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Critical Power Ratio (SLMCPR) are still met at the uprated power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in NEDO-24011, "GESTAR II". Challenges to fuel or ECCS [emergency core cooling system] performance are evaluated, and shown to still meet the criteria of 10 CFR 50.46 and Appendix K [to 10 CFR 50], (Section 4.3 above, and Regulatory Guide 1.70 and USAR [Updated Safety Analysis Report] Section 6.3).

Challenges to the containment have been evaluated, and the containment and its associated cooling systems will continue to meet 10 CFR 50 Appendix A [General Design Criteria] Criterion 38, Long Term Cooling, and Criterion 50, Containment.

Radiological release events (accidents) have been evaluated, and shown to meet the guidelines of 10 CFR 100 (Regulatory Guide 1.70 & USAR Chapter 15).

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

As summarized below, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Equipment that could be affected by [the] power uprate has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations defined in Regulatory Guide 1.70 have been evaluated and no new or different kind of accident has been identified. [The power] Uprate uses already developed technology, and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria to include NRC approved codes, standards, and methods. GE [General Electric] has designed BWRs of higher power levels than the uprated power of any of the currently operating BWR fleet and no new power dependent accidents have been identified.

The Technical Specification changes needed to implement [the] power uprate require some small adjustments, but no change to the plant's physical configuration. All changes have been evaluated, and are acceptable.

(3) Will the change involve a significant reduction in a margin of safety?

The calculated loads on all affected structures, systems and components will remain within their design allowables for all design basis event categories. No NRC acceptance criteria will be exceeded. Only some design and operational margins are affected by [the] power uprate. The margins of safety originally designed into the plant are not affected by [the] power uprate. Because the plant configuration and reactions to transients and hypothetical accidents will not result in exceeding the presently approved NRC acceptance limits, [the] power uprate can not involve a significant reduction in a 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(c) are satisfied for the power uprate.

Although not required for the power uprate, the licensee also requested a change to technical specifications to increase the main steam SRV setpoint tolerance from +0%, -2% to [plus or minus] 3%. However, the licensee's no significant hazards consideration for the power uprate does not expressly address the change to the SRV setpoint tolerance. Therefore, the NRC staff's review of this change is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The main steam SRV's safety function lift setpoints are tested in accordance with ASME Code requirements and the licensee's inservice testing program. The setpoint tolerance determines whether

the SRV passes or fails the surveillance requirement and if additional valves are to be tested. Notwithstanding the results of the safety function lift setpoint test, if the measured value is outside a tolerance of [plus or minus] 1%, the valve is reset to within [plus or minus] 1% of the design lift setpoint. Therefore, the change to the SRV setpoint tolerance does not affect the performance of any structure, system, or component in the plant and does not affect the operation of the plant. Accordingly, the change will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The setpoint tolerance change does not alter the function of the valves' over-pressure protection features, and the release of steam/water through the SRVs is addressed in previously evaluated accident analysis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will the changes involve a significant reduction in a margin of safety?

The change only affects whether a SRV passes or fails its safety function surveillance requirement, as well as the total number of valves to be tested. Regardless the outcome of these tests, all valves tested will be returned to within [plus or minus] 1% of the design lift setpoint. The 2% nominal "as-left" tolerance span is effectively the same tolerance span as specified in the current technical specifications. As a result, there is no significant reduction in a margin of safety.

Therefore, based on its review, it appears that the three standards of 10 CFR 50.92(c) are satisfied, and the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm. *Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

Date of amendment request: March 3, 1999.

Description of amendment request: Entergy Operations, Inc. (licensee) has proposed to revise Final Safety Analysis Report (FSAR) Section 9.5.4.1, "Diesel Generator Fuel Oil Storage and Transfer Systems." The revision will change this section of the FSAR to explicitly list the

Waterford Steam Electric Station, Unit 3 (Waterford 3) deviations from the guidance described in American National Standards Institute (ANSI) N195-1976, "Fuel Oil Storage System for Standby Diesel Generator." The licensee determined that these proposed changes require Nuclear Regulatory Commission staff approval prior to implementation.

Basis for proposed no significant hazards consideration determination: 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Waterford 3 FSAR to match the current design of the Waterford 3 fuel oil storage and transfer system. The change effectively requests deviations from portions of ANSI N195-1976. None of these changes significantly increases the probability of an accident because the Emergency Diesel Generator (EDG) fuel oil system is not an initiator of any analyzed event. There are no accidents analyzed in the Final Safety Analysis Report (FSAR) that are initiated by the systems or components affected by these changes.

The deviation from ANSI N195-1976, which allows less than the ANSI Standard recommended volume to be stored in the existing EDG Fuel Oil Storage Tanks (FOSTs) A and B, will not significantly increase the consequences of an accident. Waterford 3 contains at least seven days of fuel oil in each FOST. Although the Waterford 3 FOSTs do not contain a 10% margin, there are numerous diesel fuel oil vendors nearby from which to obtain fuel oil. Waterford 3 also has the capability to transport EDG fuel oil from vendors by tanker truck, train, or barge. This situation ensures that Waterford 3 will have fuel oil readily available when there is a need for replenishment. Waterford 3 does not store the additional amount of fuel oil required for testing. A previous Technical Specification (TS) Amendment addressed the Waterford 3 FOSTs not containing enough fuel oil for testing. However, an exception to this requirement was previously approved in TS Amendment 92.

The request for deviation from the ANSI N195-1976 requirement for the feed tank suction to be from above the bottom, will not increase the consequences of any accident. Previous operating experience at Waterford 3 has shown that since initial startup there have not been any water or filter blockage problems attributed to the bottom suction from the feed tank. The fuel oil in each feed tank is replenished every 31 days during the EDG monthly Surveillance Requirement (SR). Blockage problems are further minimized because testing the FOSTs for particulates is performed with a more conservative filter size than installed on the EDG engine (0.8

microns versus 5 microns). Also, TS Surveillances require water and sediment content to be verified and if water is present, for it to be removed.

The request for deviation from the ANSI N195-1976 requirement for the feed tank overflow to discharge to the FOST will not increase the consequences of any accident. The feed tank is equipped with design features to ensure fuel oil is not depleted due to over-filling the feed tank. The feed tank contains a high level switch that stops the transfer pump upon indication of high level and a high level alarm that alerts the Control Room of high level in the tank. A failure of both the feed tank high level switch and high level alarm occurring simultaneously is very remote. These measures will not prevent the loss of some fuel oil; however, two failures would have to occur to prevent the Control Room from being notified. Even if one EDG FOST were depleted because of the above failures, the other EDG FOST would be available to ensure seven days of fuel oil for one EDG.

The request for deviation from the ANSI N195-1976 requirement to have one pressure indicator located in the discharge of the fuel oil transfer pump will not increase the consequences of any accident. A pressure indicator on the discharge of the transfer pump could indicate performance degradation of the pump; however, the Waterford 3 transfer pumps are designed for automatic operation. If a failure of the transfer pump occurred, indication would appear in the Control Room via the alarm for low feed tank level. The alarm for low feed tank level is adequate to alert the Control Room of a transfer pump malfunction. If a transfer pump were to malfunction, the other transfer pump would be available to deliver fuel oil to operate one EDG for at least seven days. ASME Section XI testing is performed on the transfer pump once per quarter (temporary pressure instrumentation is installed on the discharge of the pump to measure pump differential pressure) to verify that pump performance has not degraded. In addition, the transfer pumps are functionally tested every month during routine testing of the EDGs.

The requested deviations from ANSI N195-1976 do not affect the consequences of an accident because none of the requested deviations will prevent the EDG from having seven days of fuel oil available (without multiple failures). Therefore, the EDG fuel oil system will perform as required to provide sufficient fuel oil to the EDG to mitigate the consequences of design basis accidents.

Therefore, based on all the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed change revises the Waterford 3 FSAR to match the current design of the Waterford 3 fuel oil storage and transfer system. This change is a change to a

commitment, and has no [a]ffect on the current diesel fuel oil storage system or how it is operated, nor does it [a]ffect any other safety systems or components, or the way the plant is operated. The change does not affect any accident analysis assumptions (including a loss of offsite power) or accident analysis conclusions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change revises the Waterford 3 FSAR to match the current design of the Waterford 3 fuel oil storage system. Although Waterford 3 deviates from certain ANSI N195-1976 requirements, these deviations do not result in any changes to the fuel oil storage system or accident analyses. The deviations do not affect the ability of any safety systems required to protect the multiple barriers. No accident mitigations are affected by the change because the amount of available fuel oil has not changed. As a result, the proposed deviations will not cause a significant decrease in the margin of safety or prevent Waterford 3 from safely shutting down. The result of using Probabilistic Safety Assessment techniques conclude that increasing the fuel oil storage capacity at Waterford 3 to comply with the ANSI requirements has no risk significance. The specific [a]ffects of the deviations on the margin of safety are addressed below.

The current TS for stored EDG fuel oil ensures there is sufficient fuel oil to operate one EDG for seven days assuming the worst case single active or passive failure. Fuel oil is readily available due to the number of vendors in the vicinity of Waterford 3. Waterford 3 is also capable of replenishing EDG fuel oil via tanker truck, train, or barge. Therefore, this change does not affect the supply of EDG fuel oil being maintained at Waterford 3. This supply of fuel oil is sufficient to power the ESF systems required to mitigate design basis accidents. A previous TS Amendment addressed the Waterford 3 FOSTs not containing enough fuel oil for testing.

The current feed tank design with the suction from the bottom instead of on the side as required by ANSI N195-1976 will not significantly decrease the margin of safety. Waterford 3 has not experienced particulate or water accumulation in the feed tanks. The fuel oil in the tank is essentially turned-over every 31 days during the EDG monthly SR, and TS Surveillances ensure water and sediment content are verified. Additionally, particulate testing is performed on the EDG FOSTs using a test filter with a smaller micron size than is on the engine. This will assure the EDG engine is not subject to failures due to particulate or water accumulation in the feed tanks.

The request for deviation from the ANSI N195-1976 requirement for the feed tank overflow to discharge to the FOST will not significantly decrease the margin of safety. The feed tank is equipped with two safety measures that would have to fail in order to

allow a loss of EDG fuel oil due to over-filling a feed tank. A failure of these safety measures (high level switch to stop the transfer pump and a high level alarm in the feed tank) occurring simultaneously is very remote.

The request for deviation from ANSI N195-1976 to have one pressure indicator located at the discharge of the fuel oil transfer pump will not significantly decrease the margin of safety. A pressure indicator on the discharge of the transfer pump could indicate performance degradation of the pump. If a failure of the transfer pump occurred, indication would appear in the Control Room via the alarm for low feed tank level. The alarm for low feed tank level is adequate to alert the control room of a transfer pump malfunction. However, if the transfer pump were to malfunction, the other transfer pump would be available to deliver fuel oil to operate one EDG for at least seven days. ASME Section XI testing is performed on the transfer pump once per quarter (temporary pressure instrumentation is installed on the discharge of the pump to measure pump differential pressure) to verify that pump performance has not degraded. In addition, the transfer pumps are functionally tested every month during routine testing of the EDGs.

Therefore, based on all the above, the proposed changes will not involve a significant reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005-3502.

NRC Section Chief: Robert A. Gramm.

PECO Energy Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 27, 1999.

Description of amendment request: The proposed change to the Technical Specifications (TSs), if approved, will clarify several administrative requirements, delete redundant requirements, and correct typographical errors. These revisions affect TS Sections 3.8.3.1, 3.8.3.2, 6.2.2, 6.5.1.2, 6.8.2, 6.9.1.5, and 6.9.1.6.

Basis for proposed no significant hazards consideration determination: 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. The proposed TS changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The changes are administrative in nature and do not impact the operation, physical configuration, or function of plant equipment or systems. The changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events. Therefore, these changes do not increase the probability of occurrence or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and do not alter plant configuration, require that new equipment be installed, alter assumptions made about accidents previously evaluated, or impact the operation or function of plant equipment. Therefore, these changes do not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and do not involve any physical changes to plant structures, systems, or components (SSCs), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis. Therefore, these changes do not involve any reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 1, 1999.

Description of amendment request: The proposed amendments would revise the minimum fuel oil level for the diesel generator day tanks in Surveillance Requirement 3.8.1.3 and would change the acceptable fuel oil

level storage band in Required Action Statement B of Limiting Condition for Operation 3.8.3.

Basis for proposed no significant hazards consideration determination: 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The diesel generators are designed to supply power to the emergency systems needed to mitigate the consequences of design basis accidents such as LOCA/LOSP [loss-of-coolant accident/loss-of-offsite power]. They (the diesel generators) do not function to prevent accidents. Reducing the level requirement in the day tanks and raising the level requirement in the fuel oil storage tanks will therefore not increase the probability of occurrence of a LOCA/LOSP event. Furthermore, this proposed change does not affect any other system or piece of equipment designed to prevent the occurrence of any other design basis accident or transient. Therefore, reducing the required level in the day tanks and raising the level in the fuel oil storage tanks will not increase the probability of occurrence of any previously evaluated accident or transient.

The consequences of previously evaluated events will not be significantly increased because, with the 500-gallon day tank requirement and the increased storage tank supply, ample fuel will be available to supply the diesel generators for the duration of a LOCA/LOSP event or a station blackout event. Therefore, the consequences of an accident previously evaluated are not increased by this modification.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Lowering TS SR 3.8.1.3 from [greater than or equal to] 900 gallons to [greater than or equal to] 500 gallons and raising TS SR 3.8.3.1 from [greater than or equal to] 33,000 gallons to [greater than or equal to] 33,320 gallons will have no impact on the normal or emergency operation of the diesel generator and its support systems. For example, diesel generator transfer pumps and supply tank transfer pumps will continue to perform as necessary to insure an adequate supply in the respective tanks for accident mitigation.

As a result, since no new unanalyzed modes of operation are introduced, the possibility of a new or different type of accident, from any previously evaluated is not introduced.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The Bases for TS SR 3.8.1.3 states that the day tank must carry enough fuel oil to provide for one hour of operation, plus a 10 percent margin. This requirement is based on ANSI N195-1976 (Section 6.1).

The present 900-gallon requirement in the present Technical Specifications provides for 3.5 hours of continuous operation. Reducing

the volume requirement to 500 gallons will continue to provide ample margin above the 1-hour requirement. In fact, 500 gallons in the day tank provides for 1.89 hours of continuous operation.

The Bases for TS SR 3.8.3.1 states that the fuel in the storage tanks (33,000 gallons) alone is sufficient to account for seven days of continuous operation. This is true for 33,000 gallons of usable fuel. However, each storage tank contains approximately 1,438 gallons of unusable fuel. Additionally, part of the current design bases for the emergency diesel generators is the ability to run four of the five diesels continuously for seven days at a load of 3250 kW. With 500 gallons in each of the four diesel's day tanks and 33,320 gallons in each of the five storage tanks, the system is capable of running continuously for 7 days. Ample onsite fuel capacity remains to operate the diesels continuously for a longer period than required to replenish the supply from outside sources. For the above reasons, the margin of safety is not significantly reduced.

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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: October 15, 1999.

Description of amendment request: The proposed amendment would change the Safety Limit Minimum Critical Power Ratios (SLMCPR) in Technical Specification (TS) 2.1.1.2 to reflect results of a cycle-specific calculation performed for Unit 1 Operating Cycle 19. The calculation was done using the new NRC-approved methodology for determining SLMCPRs.

Basis for proposed no significant hazards consideration determination: 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. The proposed Technical Specification changes do not involve a significant increase in the probability of an accident previously evaluated.

The derivation of the revised SLMCPRs for Plant Hatch Unit 1 Cycle 19 for incorporation

into the TS, and their use to determine cycle-specific thermal limits, have been performed using NRC-approved methods and procedures. The procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the lower value for SLMCPRs. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a revised method of analysis for the Unit 1 Cycle 19 core reload. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia.

Date of amendment request: October 15, 1999.

Description of amendment request:

The proposed amendment would change the Safety Limit Minimum Critical Power Ratios (SLMCPR) in Technical Specification (TS) 2.1.1.2 to reflect results of a cycle-specific calculation performed for Unit 2 Operating Cycle 16. The calculation was performed using the new NRC-approved methodology for determining SLMCPRs.

Basis for proposed no significant hazards consideration determination:

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. The proposed Technical Specification changes do not involve a significant increase in the probability of an accident previously evaluated.

The derivation of the revised SLMCPRs for Plant Hatch Unit 2 Cycle 16 for incorporation into the TS, and their use to determine cycle-specific thermal limits, have been performed using NRC-approved methods and procedures. The procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the lower value for SLMCPRs. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a revised method of analysis for the Unit 2 Cycle 16 core reload. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new

SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than 99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS changes do not involve a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 18, 1999.

Description of amendment request:

The proposed amendment would revise the activated charcoal testing methodology in accordance with the guidance provided in NRC Generic Letter 99-02, "Laboratory Testing of Nuclear Grade Activated Charcoal."

Basis for proposed no significant hazards consideration determination:

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. Will the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The Standby Gas Treatment (SBGT) system is used to support mitigation of the consequences of postulated accidents. The SBGT system is not considered an initiator of any analyzed accident. There is no change in function or operation of the system. The proposed change only revises the charcoal laboratory testing protocol to a more current standard that is more reliable, accurate and conservative. The change in relative humidity proposed is likewise in accordance with accepted guidance and reflective of the Vermont Yankee system configuration, which utilizes heaters to reduce the incoming humidity. The change in iodide removal efficiency is also more conservative.

Thus, the probability or consequences of previously analyzed accidents is not significantly increased.

2. Will the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

This change does not affect the design or mode of operation of any plant system, structure or component. No physical alteration of plant structures, systems or components is involved and no new or different equipment will be installed. The proposed change only modifies the laboratory testing protocol and acceptance criteria to a more currently accepted standard.

Thus, the proposed change does not create the possibility of a new or different [kind of] accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes in laboratory test protocol do not adversely affect the operation of any systems, structures or components. In fact, adopting the newer test standard will provide greater assurance that the charcoal will perform its intended function of accident consequence mitigation.

Thus, the proposed change does not significantly reduce a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 21, 1999.

Description of amendment request: The proposed amendment makes editorial and administrative changes to the Technical Specifications (TSs) by correcting two administrative errors and changing the designation of a TS-referenced figure. These changes do not materially change the meaning or application of any TS requirement.

Basis for proposed no significant hazards consideration determination: 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. Will the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative or editorial in nature and do not involve any physical changes to the plant. The administrative changes do not materially affect any existing technical requirement and do not reduce the actions that are currently

taken to ensure operability of plant structures, systems or components.

The changes correct past administrative errors and change a reference in the Technical Specifications and do not revise the methods of plant operation which could increase the probability or consequences of previously evaluated accidents. No new modes of operation are introduced by the proposed changes such that a previously evaluated accident is more likely to occur or more adverse consequences would result.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

These changes are administrative in nature and do not affect the operation of any systems or components, nor do they involve any potential initiating events that would create any new or different kind of accident. There are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and maintained.

The changes do not affect assumptions contained in plant safety analyses or the physical design and/or modes of plant operation. Consequently, no new failure mode is introduced due to the administrative changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for Vermont Yankee.

3. Will the proposed changes involve a significant reduction in a margin of safety?

There are no changes being made to the Technical Specification safety limits or safety system settings. The operating limits and functional capabilities of systems, structures, and components are unchanged as a result of these administrative changes. These proposed changes do not affect any equipment involved in potential initiating events or safety limits. There is no change to the basis for any Technical Specification that is related to the establishment of, or the maintenance of, a nuclear safety margin.

Therefore, the proposed change does not involve a significant reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037-1128.

NRC Section Chief: James W. Clifford.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 5, 1999.

Description of amendment request: The proposed amendments would make changes to the Technical Specifications (TSs) that are necessary to eliminate inconsistencies in the TSs pertaining to decay heat removal requirements (TSs 15.3.1.A.3, 15.3.3.A, and 15.3.3.C). An additional change to the requirements in TS 15.3.1.A.4 for pressurizer safety valve operability is also proposed to provide appropriate coordination with low temperature overpressure protection requirements. Bases revisions are provided consistent with the proposed amendments and to administratively correct references related to accumulator operability in the Bases for TS 15.3.3.

Basis for proposed no significant hazards consideration determination: 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. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications 15.3.1.A.3, 15.3.3.A.3 and 15.3.3.C are all interrelated in that they each provide direction for required decay heat removal capability, either directly or indirectly by providing requirements for both support and supported systems. TS 15.3.1.A.3 provides requirements for the operation of the reactor coolant system loops, steam generators, reactor coolant pumps and residual heat removal loops as necessary to support decay heat removal from a shutdown unit. TS 15.3.3.A provides requirements for operation of the high head safety injection and low head residual heat removal system. Specifically, TS 15.3.3.A.3 provides requirements for inoperability of the residual heat removal system which accounts for the dual purpose of injection and decay heat removal. TS 15.3.3.C.2 provides requirements for operation of the Component Cooling Water System, a primary support system for both Residual Heat Removal System and Reactor Coolant Pump operation. The proposed Specifications require redundancy of decay heat removal and require placing the plant in a safe condition, maximizing the availability of decay heat removal methods when redundancy is lost. Appropriate allowances and actions are required to ensure uniform mixing of boron for reactivity control with the unit shutdown and provide for appropriate allowances to facilitate surveillance testing, and refueling operations. The time limits placed on all actions are consistent with safe operations, industry and NRC guidance. Therefore the probability of a

loss of shutdown cooling or loss of subcooling; or a loss of shutdown reactivity control is minimized.

Amendments are also proposed to provide for coordination of Pressurizer Safety Valve and Pressurizer Power Operated Relief Valve operability requirements to ensure redundant overpressure protection is provided for all operating conditions. Proposed actions for inoperability of Pressurizer Safety Valves minimizes the time in that condition. Operation of the valves is not changed. Thus, the probability of a loss of coolant due to inadvertent opening of the valves is not increased. In addition, overpressure protection is maintained under all conditions such that the probability of an overpressure due to an analyzed event is not increased.

The proposed changes do not affect potential leakage paths for radiation to the environment, or of key safety barriers, and ensure appropriate system and function redundancy is maintained. Therefore the consequences of an accident previously evaluated will not increase.

Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments do not alter the operation or method of function of the Residual Heat Removal System, Component Cooling Water System, Pressurizer Safety Valves, or Power Operated Relief Valves. The amendments provide for consistency of decay heat removal and pressure relief requirements within the Specifications providing assurance these functions can be maintained during all required plant conditions. Operations are not altered in any way that could introduce a new accident initiator not previously considered in the PBNP Safety Analyses. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments cannot create the possibility of a new or different kind of accident than any previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant reduction in a margin of safety.

The proposed amendments ensure redundancy of the decay heat removal and overpressure protection over the complete range of operating conditions. Limitations are provided to ensure timely action to restore the functions to an operable condition consistent with their importance to safety. Appropriate allowances and actions are required to ensure uniform mixing of boron for reactivity control with the unit shutdown and provide for appropriate allowances to facilitate surveillance testing, and refueling operations consistent with overall safety. The functions or method of function of the systems or components affected are not being altered. Therefore, operation of the Point Beach Nuclear Plant in accordance with the

proposed amendments cannot result in a significant reduction in a 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1999.

Description of amendment request: The request proposes to revise Technical Specification (TS) 3.4.10, Pressurizer Safety Valves (PSV), of the improved Technical Specifications issued March 31, 1999. The proposed revision is to reduce the safety valve set pressure in Limiting Condition for Operation (LCO) 3.4.10, and increase the setpoint tolerance in Surveillance Requirement (SR) 3.4.10.1. The PSV setpoint and setpoint tolerance is proposed to be changed from 2485 psig plus or minus 1% to 2460 psig plus or minus 2% in the LCO. The tolerance of plus or minus 1% in the SR is for resetting the setpoint after testing, if this is needed. The licensee also submitted the Bases pages for TS 3.4.10, which show modifications to reflect the changes to the TSs.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Any evaluations performed on an overpressure transient conservatively assume the upper limit of the pressurizer safety valve (PSV) tolerance as the pressure to which the reactor coolant system (RCS) is subjected. The proposed change to the lower tolerance limit of the pressure set point means that an overpressure transient may be terminated at a pressure that is lower than assumed in the analysis. It has also been determined that the design transients are not adversely affected because the limiting transients are not sensitive to the pressure tolerance decrease. Therefore, the primary system pressure boundary is not challenged by the PSV lower tolerance limit change. The change in the

upper limit of the PSV tolerance does not challenge the upper limit of the overpressure protection. The maximum opening set pressure is not changed, and therefore, does not impact analyses performed for overpressure transients. Although the lower PSV set point would result in a lower qualified valve flow rate, the slightly lower valve flow rate would be more than compensated for by the reduced valve opening pressure. The change to the PSV set point and set point tolerance does not change the conclusions of the existing thermal hydraulic analysis for the pressurizer safety and relief system. The design function of the valves is not being changed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the USAR [Wolf Creek Updated Safety Analysis Report].

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would allow the PSV minimum actuation pressure to be as low as 2411 psig. The pressurizer power-operated relief valve (PORV) actuation set point is 2335 psig. Therefore, the margin between the PORV and PSV actuation set points could be as low as 76 psi, which is a reduction of 49 psi from the current 125 psi margin. Even with the 30 psi pressure control uncertainty, the actuation set point margin of 76 psi is considered adequate and the PORVs are expected to continue to actuate before the PSVs during Condition 1 transients. As such, the proposed change will not have any adverse effect on the control systems. Except for the reduced lower set point, the design and operation of the PSVs are not being changed. The maximum opening pressure is not being changed. The only effect of this change would be that the PSVs could open at a lower pressure, but still above the PORV actuation set point. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The PSVs provide, in conjunction with the reactor protection system, overpressure protection for the RCS. The PSVs are designed to prevent the system pressure from exceeding the system safety limit, 2735 psig, which is 110% of the design pressure. The change in the upper limit of the PSV tolerance from plus or minus 1% to plus or minus 2% with a reduction in the nominal set point from 2485 psig to 2460 psig does not challenge the upper limit of the overpressure protection. The maximum opening pressure set point is not changed, and therefore, does not impact analyses performed for overpressure transients. The change to PSV set point and set point tolerance does not change the conclusions of the existing thermal hydraulic analysis for the pressurizer safety and relief system. For all non-LOCA [non-loss of coolant accident] events the analyses support the change in PSV set point and set point tolerance from 2485 psig plus or minus 1% to 2460 psig plus or minus 2%. The change in the PSV set

point and set point tolerance also has no effect on the Reactor Protection or Engineered Safety Features Systems trip set points. Thus, the proposed change does not involve a significant reduction in any 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(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company, Docket No. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: September 23, 1999, as supplemented October 11, 1999.

Brief description of amendment request: 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.

Date of publication of individual notice in Federal Register: October 26, 1999 (64 FR 57665).

Expiration date of individual notice: November 26, 1999.

Indiana Michigan Power Company, Docket No. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: October 1, 1999.

Brief description of amendment request: The proposed amendments involve the resolution of an unreviewed safety question related to certain small-break loss-of-coolant accident scenarios for which there may not be sufficient containment recirculation sump water inventory to support continued operation of the emergency core cooling system and containment spray system pumps during and following switchover to cold leg recirculation. Resolution of this issue consists of a combination of physical plant modifications, new analyses of containment recirculation sump inventory, and resultant changes to the accident analyses to ensure sufficient water inventory in the containment recirculation sump. In addition, the licensee proposes to change the Technical Specifications dealing with the refueling water storage tank inventory and temperature, the required amount of ice in each ice basket in the containment, and the delay to start the containment air recirculation/ hydrogen skimmer fans.

Date of publication of individual notice in Federal Register: October 29, 1999 (64 FR 58458).

Expiration date of individual notice: November 29, 1999.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance

with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 21, 1999, as supplemented October 15, 1999.

Brief description of amendment: The amendment allows for a one-time extension of the reactor protection system and engineered safety features actuation system instruments.

Date of issuance: October 29, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes October 14, 1999 (64 FR 55777). The October 15, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 28, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated October 29, 1999.

Attorney for licensee: Mr. Brent L. Brandenburg, Assistant General Counsel, Consolidated Edison Company of New York, Inc., 4 Irving Place—1822, New York, NY 10003.

NRC Section Chief: Sheri Peterson.

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 4, 1999.

Brief description of amendments: The amendments revise the TS (Appendix A of the Catawba operating licenses) to: (1) modify Section 3.3.2 regarding the Nuclear Service Water System, and (2) Section 5.3.1 regarding operating personnel qualifications.

Date of issuance: November 2, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: Unit 1-181; Unit 2-173.

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 8, 1999 (64 FR 48861).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1999.

No significant hazards consideration comments received: No

FirstEnergy Nuclear Operating Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: October 22, 1997.

Brief description of amendment: This amendment approves a proposed modification that changes the Perry facility as described in the Updated Safety Analysis Report. The change incorporates temperature control valves and associated bypass lines around the Emergency Closed Cooling system heat exchangers. These features are designed to ensure operability of the Control Complex Chilled Water System under post-accident load conditions, without the need for compensatory measures.

Date of issuance: October 29, 1999.

Effective date: October 29, 1999.

Amendment No.: 107.

Facility Operating License No. NPF-58: This amendment authorizes the revision of the Updated Safety Analysis Report.

Date of initial notice in Federal Register: November 5, 1997 (62 FR 59922).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1999.

No significant hazards consideration comments received: No

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 18, 1999, as supplemented by letter dated September 22, 1999.

Brief description of amendments: The amendments revised Surveillance Requirements (SR) 3.8.1.3 and 3.8.1.13 to reduce the loading requirements for the emergency diesel generators (EDGs). Revised SR 3.8.1.3 requires the EDGs be loaded and operated for [greater than or equal to] 60 minutes at a load [greater than or equal to] 6500 kW and [less than or equal to] 7000 kW at least every 31 days. Revised SR 3.8.1.13 requires the EDGs to be loaded [greater than or equal to] 6900kW and [less than or equal to] 7700 kW and operated as close as practicable to 3390 kVA for 2 hours. For the remaining hours of the test, the EDGs would be loaded [greater than or equal to] 6500 kW and [less than or equal to] 7000 kW and operated as close as practicable to 3390 kVA.

Date of issuance: October 25, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1-109; Unit 2-87.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 11, 1999 (64 FR 43780) The supplemental letter dated September 22, 1999, provided clarifying information that did not change the scope of the May 18, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1999.

No significant hazards consideration comments received: No

Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: April 28, 1999.

Brief Description of amendments: These amendments revise TS Section 3.4.A.4 for Units 1 and 2. The changes relax the minimum volume requirement

for the refueling water Chemical Addition Tank (CAT) from 4200 gallons to 3930 gallons. A minor administrative change is also being made to TS Table 4.1-2B to correct an earlier printing error and to delete a reference which no longer applies.

Date of issuance: November 1, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 222 and 222.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments change the Technical Specifications.

Date of initial notice in Federal Register: September 8, 1999 (64 FR 48869).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 1999.

No significant hazards consideration comments received: No

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a

reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 17, 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 electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room). 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 a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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).

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 26, 1999, as supplemented October 15, 1999.

Brief description of amendment: The amendment allows for a one-time extension of system functional tests. The test intervals are extended for 37 months to coincide with the next refueling outage scheduled to commence on June 3, 2000.

Date of issuance: October 29, 1999.

Effective date: As of the date of issuance to be implemented upon receipt.

Amendment No.: 204.
Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: Yes, October 22 and 24, 1999, *Peekskill Evening Star*.

The October 15, 1999, letter provided clarifying information that did not change the initial proposed no

significant hazards consideration. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 28, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated October 29, 1999.

Attorney for licensee: Mr. Brent L. Brandenburg, Assistant General Counsel, Consolidated Edison Company of New York, Inc., 4 Irving Place—1822, New York, NY 10003 NRC Section Chief: Sheri Peterson.

Dated at Rockville, Maryland, this 9th day of November 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,
Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.
[FR Doc. 99-29846 Filed 11-16-99; 8:45 am]
BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and

Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of September 1, 1999, of three rescission proposals and three deferrals contained in three special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, February 1, 1999, and August 2, 1999.

Rescissions (Attachments A and C)

As of September 1, 1999, three rescission proposals totaling \$35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1999, \$347 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

- 63 FR 63949, Tuesday, November 17, 1998
- 64 FR 6721, Wednesday, February 10, 1999
- 64 FR 43785, Wednesday, August 11, 1999

Jacob J. Lew,
Director.

ATTACHMENT A—STATUS OF FY 1999 RESCISSIONS
[In Millions of Dollars]

	Budgetary resources
Rescissions proposed by the President	35.0
Rejected by the Congress	
Amounts rescinded by Pub. L. 106-31, the FY 1999 Emergency Supplemental Appropriations and Rescissions Act	- 16.8
Pending before the Congress for more than 45 days (available for obligation)	- 18.2
.....	
Currently before the Congress for less than 45 days	

ATTACHMENT B—STATUS OF FY 1999 DEFERRALS
[In Millions of Dollars]

	Budgetary resources
Deferrals proposed by the President	1,753.0
Routine Executive releases through August 1999	- 1,405.7
(OMB/Agency releases of \$1,647.3 million, partially offset by a cumulative positive adjustment of \$241.6 million)	

ATTACHMENT B—STATUS OF FY 1999 DEFERRALS—Continued
[In Millions of Dollars]

	Budgetary resources
Overtaken by the Congress	
Currently before the Congress	347.3

BILLING CODE 3110-01-P

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of September 30, 1999
 (Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress		Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
		Less than 45 days	More than 45 days					
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management Management of Lands and Resources.....	R99-1		6,800	2-1-99	*		6,800	P.L. 106-31
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs Unanticipated Needs for Natural Disasters.....	R99-2		10,000	2-1-99	*		10,000	P.L. 106-31
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance Foreign Military Financing Loan Program Account.....	R99-3		18,240	2-1-99	*			
TOTAL, RESCISSIONS.....			35,040				16,800	

* No funds were withheld.

ATTACHMENT D
Status of FY 1999 Deferrals - As of September 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Message	Releases(-)		Congressional Action	Cumulative Adjustments	Amount Deferred as of 9-1-99
		Original Request	Subsequent Change (+)		Cumulative OMB/Agency	Congressionally Required			
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund.....	D99-1	82,858	17,724	10-22-98					
			72,276	2-1-99					
				8-2-99	92,724			92,724	172,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance Economic Support Fund.....	D99-2	84,777	1,310,376	10-22-98					
				2-1-99	1,384,653			83,606	94,107
Agency for International Development International Disaster Assistance.....	D99-3	185,000		2-1-99	169,900			65,260	80,360
TOTAL, DEFERRALS.....		352,635	1,400,376		1,647,276			241,590	347,325

DEPARTMENT OF STATE

[Public Notice 3160]

Bureau of Educational and Cultural Affairs; NIS Community College Partnerships Program: Request for Proposals

ACTION: Notice.

SUMMARY: The Office of Global Educational Programs of the United States Department of State's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited community colleges offering the two-year Associate's degree and meeting the provisions described in IRS regulation 26 CFR 1.501 may apply to pursue institutional or departmental objectives in international partnerships with counterpart institutions from Russia or Ukraine for the purpose of supporting, through teaching, scholarship, and professional outreach from the partner institutions, the transition of the New Independent States to democratic systems based on market economies, as well as the purpose of strengthening mutual understanding and cooperation between the United States and the New Independent States. Eligible fields are education, continuing education or educational administration; the social, political or economic sciences; business/accounting/trade; or journalism/communications. Within these fields, themes of special interest may be described in additional detail in the section on "Country Eligibility." Community colleges interested in working with partner institutions in the NIS outside of Russia and Ukraine are eligible to apply through the NIS College and University Partnerships Program, described separately in this announcement.

The NIS Community College Partnerships Program is designed to encourage community colleges to share with their educational partners in the NIS their practical experience in designing and implementing programs which provide targeted training in professional fields; provide outreach and services to surrounding communities; and provide education to underserved populations.

In general, underlying the specific objectives of projects funded by this program should be the goal of fostering freedom and democracy through a deepened mutual understanding of fundamental issues and practical applications in the encouragement of civil society, economic growth and prosperity, or the free flow of information. Creative, innovative

strategies to address these underlying concerns in the pursuit of clearly defined institutional goals are encouraged. The extension of understanding about these issues through outreach from academic institutions to larger communities of citizens and practitioners is encouraged, particularly by linking educational programs in the NIS to the communities which they serve.

In addition to the NIS Community College Partnerships Program, the Bureau also supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program, which was described in a previous announcement dated September 16, 1999 with a deadline of January 19, 2000. The Bureau supports institutional linkages in higher education with partners worldwide through the College and University Affiliations Program; the College and University Affiliations Program was described in a previous announcement dated May 18, 1999 with a deadline of November 15, 1999. Applicants interested in either of these two programs should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619-5289. In addition, the United States Agency for International Development (USAID) supports the Sustaining Partnerships into the Next Century (SPAN) program, which supports organizational and institutional partnerships, including university partnerships, in the Russian Federation. Applicants interested in USAID's SPAN program should contact the International Research and Exchanges Board (IREX) at (202) 628-8188 (E-mail: irex@irex.org).

In the NIS Community College Partnerships Program, partner institutions may pursue specific institutional goals with support from the Bureau of Educational and Cultural Affairs through exchanges of teachers and administrators for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The Bureau's support may be used to defray the costs of the exchange visits as well as the costs of their administration at any partner institution up to a maximum of 20 percent of the total grant, including administrative salaries but excluding indirect costs. Although grants under this program will be issued to eligible U.S. community colleges, adequate provision for the administrative costs of the project at all

partner institutions is encouraged. Administrative salary support may be included for project directors and administrative assistants within the 20 percent maximum that may be allocated to administrative costs. (See the section of the POGI on "Allowable costs".) Students may participate in the project, but not with the Bureau's support for the costs of their visits. With the Bureau's support, institutions may reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). While the benefits of the project to each of the participating institutions may differ significantly in nature and scope, proposals should outline well-reasoned strategies leading to specific, demonstrable changes (for example, new courses, new research or teaching capacities or methodologies, new programs or revised curricula) that are anticipated for each participating department or for the institution as a whole as a result of the project. The strategy for achieving project goals may include exchange visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. However, visits of one semester or more for participants from each of the institutional partners are encouraged. Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of these visits to the sending as well as the receiving sides should be clearly explained in terms of their contributions to the departmental or institutional objectives which the project is designed to achieve.

In addition to demonstrating the capacity of each participating institution to contribute to its partner(s), proposals should also explain how this cooperation will enable each of the institutions to address its own needs. Accordingly, applicants are encouraged to describe the needs as well as the capabilities of each participating department as well as the broader social and educational needs which the partner institutions attempt to serve. Effective proposals will explain the anticipated cooperation in ways that demonstrate that the institutions

proposed for participation in the partnership clearly understand one another and are committed to support one another in project implementation. If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement concurrent projects and cooperation.

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities.

To provide adequate time to meet institutional goals, the program awards grants for periods of approximately three years. The maximum award in the FY2000 competition will be \$200,000. Requests for amounts smaller than the maximum are eligible. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000. Grants are subject to the availability of funds for Fiscal Year 2000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFP, which can be obtained by following the instructions given in the section below entitled "For Further Information." The "Project Objectives, Goals, and Implementation" (hereafter, POGI) and the "Proposal Submission Instructions" (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFP requirements and the guidelines appearing in the POGI and PSI may be

excluded from consideration due to technical ineligibility.

Announcement Title and Number

All communications with the Bureau concerning this RFP should refer to the NIS Community College Partnerships Program and reference number ECA/A/S/U-00-08.

Deadline for Proposals

All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Wednesday, March 15, 2000. Faxed documents will not be accepted at any time, nor will documents postmarked on Wednesday, March 15, 2000 but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about August 15, 2000.

Duration: Approximately August 15, 2000–August 14, 2003.

FOR FURTHER INFORMATION CONTACT:

United States Department of State, Bureau of Educational and Cultural Affairs, Office of Global Educational Programs, Humphrey Fellowships and Institutional Linkages Branch, State Annex 44 (ECA/A/S/U) room 349, 301 4th Street, SW, Washington, DC 20547, fax: (202) 401-1433 to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Bureau Program Officer Jonathan Cebra (telephone: 202-619-4126, e-mail: jcebra@usia.gov) on all inquiries and correspondence.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Cultural and Educational Affairs, Ref.: ECA/A/S/

U-00-08, Program Management Staff, ECA/EX/PM, Room 336, 301 4th Street, SW., Washington, DC 20547

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to public affairs sections at U.S. embassies overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at <http://www.itpolicy.gsa.gov>.

SUPPLEMENTARY INFORMATION:

Guidelines

The NIS Community College Partnerships Program is limited to the following academic fields:

- (1) Business/accounting/trade;
- (2) Education/continuing education/educational administration;
- (3) Journalism/communications; and
- (4) Social, political, or economic sciences.

Proposals must focus on curriculum, faculty, and staff development at the NIS partner institution(s) in one or more of these eligible disciplines.

Administrative reform at the foreign partner should also be a project component. Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once during the grant period, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with program office staff in Washington, DC.

U.S. Partner and Participant Eligibility

In the United States, participation in the program is open to accredited community colleges offering the two-year Associate's degree. Applications from consortia of community colleges are eligible. Secondary U.S. partners

may include relevant non-governmental organizations, non-profit service or professional organizations, or other institutions of higher education. If a lead U.S. institution in a consortium is responsible for submitting an application on behalf of a consortium, the application must document the lead school's stated authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution(s) who are traveling under Bureau grant funds must be faculty or staff from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participant Eligibility

In other countries, participation is open to recognized institutions of post-secondary education, including pedagogical institutes and universities, technical institutes and universities, and vocational training schools. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty or staff of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J-1 visa.

Foreign partners from the following countries are eligible:

Russia—Proposals for partnerships with institutions located in Moscow or St. Petersburg should clearly indicate how those partnerships will have impact on other regions. Proposals which designate a partner institution in the Sakhalin Region are encouraged.

Ukraine—proposals for partnerships with institutions located in the Kharkiv region are encouraged;

Partnerships including a secondary foreign partner from a non-NIS country are eligible to participate in a project funded by this program; however, with the exception of Central European partners as noted below, the Bureau will not cover overseas non-NIS partner institution costs.

Central European Partners

The Bureau encourages proposals which build upon established collaboration between U.S. institutions and partners in Central and Eastern Europe in order to support faculty and curriculum development in the NIS and to promote regional cooperation. Within the context of this partnership agreement and under the guidance of the U.S. partner institution, funds may

be budgeted for the exchange of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (applicants planning to submit proposals for trilateral partnerships with a partner from Central or Eastern Europe are encouraged to contact the program office).

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by Bureau officers as well as by other State Department officers in Washington, DC and overseas. All eligible proposals will be forwarded to the appropriate U.S. Embassy officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. Funding decisions will be made at the discretion of the Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

State Department officers in Washington, DC and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. Quality and Clarity of Program Objectives

Proposed programs should outline clearly formulated objectives for each participating institution that will also contribute to the transition of the New Independent States to market economies and democracies and to a deepened mutual understanding of fundamental issues and practical applications in the themes eligible for consideration in this competition.

2. Program Planning

Proposals should include appropriate and feasible project plans and a detailed schedule which should include a well-reasoned combination of useful and appropriate teaching, faculty development, curriculum development, and outreach. The various activities should be clearly related to project objectives, but need not be equally emphasized within the proposal.

Proposals should clearly demonstrate how the partnership will meet the program's objectives and plan.

3. Impact of Program Objectives

Proposal objectives should have sustainable consequences for the participating institutions and the societies and communities which these institutions serve.

4. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity by outlining relevant aspects of the institutional profile of each participating institution together with the relevancy of issues of diversity to program objectives and implementation.

5. Institutional Capacity and Commitment

Proposals should demonstrate commitment of institutional resources adequate and appropriate to achieve program goals. Proposals should demonstrate significant understanding at each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives. Relevant factors include: the financial and political stability of partner institutions and the availability of a critical mass of faculty willing and able to participate. Preference will be given to proposals which include multiple quarter- or semester-length stays. Proposals should provide evidence of relevant and successful prior interactions between institutions and an indication of collaborative program planning. The Bureau will consider the past performance of prior grant recipients and all reviewers will consider the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, and experience relative to the goals and activities of the project plan (e.g. language skills).

6. Project Evaluation

Proposals should include a plan and methodology for evaluating the project's degree of success in meeting program objectives. The plan should include an updated assessment of the current status of each department at the time of program inception; on-going formative evaluation to allow for prompt corrective action; and summative evaluation of the degree of achievement of project objectives together with

recommendations for further activities and projects to build upon project achievements.

7. Cost-Effectiveness

Administrative costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities and as a reflection of their commitment to cooperation with one another in pursuing project objectives.

Ineligibility

A proposal will be deemed technically ineligible if:

- (1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;
- (2) It is not received by the deadline;
- (3) It is not submitted by the U.S. partner;
- (4) One of the partner institutions is ineligible;
- (5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;
- (6) The amount requested of the Bureau request exceeds \$200,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 5, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 99-30048 Filed 11-16-99; 8:45 am]

BILLING CODE 4710-11-P

DEPARTMENT OF STATE

[Public Notice 3159]

Bureau of Educational and Cultural Affairs; Public Policy Partnership for the Institute of Public Administration at Moscow State University Project (PPP): Request for Proposals

ACTION: Notice.

SUMMARY: The Office of Global Educational Programs of the United States Department of State's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assist the Institute of Public Administration of Moscow State University in developing graduate programs in the field of public policy.

Program Information

Overview

This project is designed to assist the Institute of Public Administration (IPA) at Moscow State University in developing its capacity to deliver a graduate program in Public Policy that meets high international standards for instruction and research in this field. The primary goal of this project is to promote development of a curriculum of policy-relevant, theoretically sophisticated, empirical approaches designed to promote an open, accountable, efficient and responsive public sector. The grantee organization will be expected to assist the Institute of Public Administration through a comprehensive program of exchange and support activities which will foster lasting institutional and individual ties. The project will award up to \$500,000 for up to a two year period to defray the costs of two-way faculty exchange and of limited student exchange, with an allowance for educational materials (including support for distance learning projects) and with provision for some aspects of project administration. There is also the possibility of a renewal grant of up to \$500,000 for up to a two year period pending positive program review and the availability of funding.

Objectives

The overall objective of this project is to enable the Institute of Public Administration at Moscow State University to equip its graduate program in Public Policy to support emergent democratic institutions in Russia by preparing future leaders to analyze and resolve public policy issues within a democratic framework in the context of

a market-based open economy. This overall objective should be supported through the following program components: assistance with curriculum and materials development for the graduate curriculum in Public Policy; assistance with the development of continuing education and distance learning programs; assistance with the development of a sustainable graduate student exchange program; development of outreach programs; and support for research.

Background

IPA holds independent status within Moscow State University. IPA has approximately 200 junior and senior faculty, approximately half of whom speak English. There are currently 11 departments at IPA: Legal Bases of Management; Managerial Technologies; Management Sociology; Economic Theory and Policy; Political History; Russian State History; Philosophy and Methodology of Science; Philosophy for Humanities Faculties; Political Economy; Political Sociology; and Personnel Management. In addition IPA has two research laboratories for Science Organization and Management and for Social-Economic Processes Management. Applicants should contact IPA to learn more about their program and to consult with them about program priorities necessary for developing a graduate program in Public Policy.

Participants

The project is designed for the following Russian participants: faculty, administrators, staff and students at the Institute of Public Administration at Moscow State University. In addition, participants include U.S. faculty, administrators and staff, and other qualified professionals with appropriate Public Policy expertise. Although applicant organizations do not need to obtain a letter of commitment from the Institute of Public Administration, they are encouraged to consult with IPA about options for defining their potential collaboration.

Logistics

The grantee organization will be responsible for most arrangements associated with this program. These include providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, and preparing any necessary support material.

Visa/Insurance/Tax Requirements

Programs must comply with J-1 visa regulations including those pertaining to insurance. Please refer to Solicitation Package for further information. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Organizations with less than four years of experience in conducting international exchange programs are ineligible for this grant competition.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed \$500,000. There must be a summary budget as well as a break-down reflecting the program and administrative budgets, and detailed budgets for each of the two years of the grant. The total administrative costs funded by the Bureau may not exceed 20% of the total request. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFP should reference the above title and number ECA/A/S/U-00-07.

FOR FURTHER INFORMATION, CONTACT: The Office of Global Educational Programs, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 4th Street, SW., Washington, D.C. 20547, telephone: (202) 619-4126, fax: (202) 401-1433, internet jcebra@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Program Officer Jonathan Cebra on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Contact Information for the Institute of Public Administration at Moscow State University

Applicants are strongly encouraged to consult with the Institute of Public Administration and Social Science at Moscow State University. More detailed information about IPA can be obtained from their web site at the Institute web site at: <http://www.ipa-ss.msu.ru>. The designated contact person for IPA is Deputy Director Aleksey Barabashov, who may be reached by e-mail at barabash@ipa-ss.msu.ru.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on *Wednesday, March 15, 2000*. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Approximate program dates: Grants should begin on or about June 15, 2000.

Duration: June 15, 2000–June 14, 2002.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U-00-07, Grants Management Staff, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the public affairs section of the U.S. Embassy in Moscow for its review, with the goal of reducing the time it takes to get posts' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the

diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at <http://www.itpolicy.gsa.gov>.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be forwarded to independent reviewers and to Bureau and U.S. Embassy officers for advisory review.

An independent review panel of professional, scholarly, or educational experts with appropriate regional and thematic knowledge will provide recommendations and assessments for consideration by The Bureau. The Bureau will consider for funding only those proposals which are recommended for further consideration by the independent review panel.

Proposals will also be reviewed by Bureau officers as well as by other State Department officers in Washington, D.C. and overseas. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. Funding decisions will be made at the discretion of the Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

Independent reviewers and State Department officers in Washington, DC, and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. Quality of the Program Idea

Proposals should exhibit originality, substance, precision and resourcefulness. Proposals should have reasonable and feasible project objectives which are clearly relevant to the Public Policy Partnership for the Institute of Public Administration at Moscow State University Project objectives and to the overall Bureau mission. Proposals should describe the projected benefits for all participating institutions as well as for wider communities of educators and professionals in Russia and the U.S.

2. Program Planning

Proposals should include appropriate and feasible project plans and a detailed schedule which should include a well-reasoned combination of useful and appropriate mentoring, teaching, faculty and/or staff development, curriculum development (including distance learning), graduate student exchange and outreach. The various activities should be clearly related to project objectives, but need not be equally emphasized within the proposal. Proposals should clearly demonstrate how the partnership will meet the project's objectives and plan.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. The Bureau seeks institutional and geographic diversity of U.S. and overseas institutions (applications are encouraged from institutions with diverse student enrollments and institutions from under-represented areas). The Bureau also encourages proposals which address diversity concerns in program content.

4. Institutional Capacity and Commitment

Proposals should demonstrate institutional resources adequate and appropriate to achieve program goals. Relevant factors include: The match between partner departments and schools; and availability of sufficient numbers of faculty and/or administrators willing and able to participate. Proposals should meet or exceed suggested Bureau minimum faculty exchange levels. Proposals should provide evidence of strong institutional commitment by all participating institutions and an indication of collaborative program planning. Proposals should demonstrate promise of sustainability and long-term impact which will be reflected in a plan for continued, non-U.S. government support and follow-on activities.

5. Institutions' Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Office of Contracts. The Bureau will consider the past performance of prior recipients and all reviewers will consider the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, and experience relative to the goals and activities of the project plan.

6. Project Evaluation

Proposals should include an effective evaluation plan which defines and articulates a list of anticipated outcomes related to the project goals and activities and procedures for final evaluation as well as for on-going monitoring and mid-term corrective action. Proposals should describe specific intermediate objectives to be achieved.

7. Cost-Effectiveness

The overhead and administrative components of the proposal, including

salaries, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct-funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any State Department representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal State Department procedures.

Dated: November 5, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 99-30047 Filed 11-16-99; 8:45 am]

BILLING CODE 4710-11-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket OST-99-5670

Joint Application of Southern Air Transport, Inc., and Southern Air, Inc., for Approval of Transfer of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99-11-6).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Southern Air, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and foreign charter air transportation of property and mail, subject to conditions, (2) canceling the certificate and exemption authority currently held by Southern Air Transport, Inc., and (3) denying the joint application filed by Southern Air Transport, Inc., and Southern Air, Inc., for transfer of certificate authority.

Responses

Objections and answers to objections should be filed in Docket OST-99-5670 and addressed to the Department of Transportation Dockets (SVC124, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: November 10, 1999.

A. Bradley Mims,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99-29954 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending November 5, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412

and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-99-6429.

Date Filed: November 1, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 CAN-EUR 0051 dated 22 October 1999.

Canada-Europe Expedited Resolution 002cc.

Intended effective date: 1 December 1999.

Docket Number: OST-99-6430.

Date Filed: November 1, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 CAN-EUR 0053 dated 29 October 1999.

Canada-Europe Passenger Resolution 002.

Intended effective date: 1 January 2000.

Docket Number: OST-99-6434.

Date Filed: November 2, 1999.

Parties: Members of the International Air Transport Association.

Subject:

CAC/26/Meet/005/99 dated May 10, 1999.

Cargo Agency Conference Resos 801c (r1) & 807 (r2).

Minutes—CAC/26/Meet/004/99 dated May 7, 1999.

Intended effective date: 1 July 1999/1 January 2000.

Docket Number: OST-99-6463.

Date Filed: November 5, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC COMP 0525 dated 5 November 1999.

Mail Vote 045—Resolution 010o.

TC2/12/23/123 Special Passenger Amending Resolution from Mozambique

Intended effective date: 1 December 1999.

Docket Number: OST-99-6464.

Date Filed: November 5, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 ME-AFR 0040 dated 5 November 1999.

Mail Vote 043—Resolution 010m from Zimbabwe to Middle East.

Intended effective date: 15 November 1999.

Docket Number: OST-99-6465.

Date Filed: November 5, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR-AFR 0094 dated 05 November 1999.

Mail Vote 044—Resolution 010n from Zimbabwe to Europe.

Intended effective date: 15 November 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99-30060 Filed 11-16-99; 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 November 5, 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-99-6323.

Date Filed: November 2, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 16, 1999.

Description: Application of Polar Air Cargo, Inc. ("Polar") pursuant to 49 U.S.C. 41102 and subpart Q, applies for a certificate of public convenience and necessity to authorize it to provide scheduled foreign air transportation of property and mail between any point or points in the United States via intermediate points to a point or points in the People's Republic of China and to points beyond with full traffic rights. Polar also requests designation as the fourth U.S. carrier and the allocation of six weekly frequencies to enable Polar to commence service, as of April 1, 2001, over the routings described in the application.

Docket Number: OST-99-6323.

Date Filed: November 2, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 16, 1999.

Description: Application of Delta Air Lines, Inc. ("Delta") pursuant to 49 U.S.C. 41102 and 41108, and Subpart Q, applies for a certificate of public convenience and necessity to provide

scheduled foreign air transportation of persons, property and mail between the United States and the People's Republic of China. Delta is seeking the fourth U.S. carrier designation to serve China, and requests an allocation of ten frequencies to operate its proposed services, commencing April 1, 2001.

Docket Number: OST-99-6323.

Date Filed: November 2, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 16, 1999.

Description: Supplement to the Application of American Airlines, Inc. pursuant to the Department's Notice served on October 12, 1999, which consolidated its application in OST-99-5871. American is seeking a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between points in the United States, on the one hand, Shanghai, Guangzhou, Beijing, and two additional points in the People's Republic of China to be selected by the United States, on the other. American is also seeking the allocation of 10 weekly U.S.-China frequencies, which it will use to operate seven weekly nonstop roundtrips between Chicago and Shanghai, and three nonstop roundtrips between Chicago and Beijing.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99-30059 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.1419-1, Certification of Transport Category Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.1419-1, "Certification of Transport Category Airplanes for Flight in Icing Conditions." That advisory circular provides guidance for certification of airframe ice protection systems on transport category airplanes. While this is the primary focus of the AC, the guidance also supplements similar guidance provided in other AC's concerning icing requirements for other parts of the airplane.

DATES: Advisory Circular 25.1419-1 was issued on August 18, 1999, by the Acting Manager of the Transport

Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

HOW TO OBTAIN COPIES: A copy of AC 25.1419-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785; or at the following Internet address: www.faa.gov/avr/air/airhome.htm.

Issued in Renton, Washington, on November 4, 1999.

Donald L. Rigg,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 99-30001 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-35]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 7, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. ___, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 267-7271 or Terry Stubblefield (202) 267-7624 Office of Rulemaking (AMR-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25559.

Petitioner: Aerospace Industries Association of America, Inc.

Section of the FAR Affected: 14 CFR 21.182(a) and 45.11(a).

Description of Relief Sought: To allow AIA aircraft manufacturers to continue to manufacture aircraft for use in operations conducted under 14 CFR part 121 or aircraft intended to be used for commuter operations under 14 CFR part 135 (as defined in 14 CFR part 119) and for export without installing an identification plate during the production phase on the exterior of those aircraft. AIA also requests an amendment to the existing exemption to include those aircraft certificated under 14 CFR part 25 and manufactured for use in operations under 14 CFR part 91 and 14 CFR part 129.

Docket No.: 29541.

Petitioner: Drake & Drake, Inc.

Section of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To permit Drake's pilots to update the Northstar global positioning system unit in its Beechcraft Super King Air 200 aircraft operated under 14 CFR part 135.

Docket No.: 29672.

Petitioner: Corpac Canada, Ltd. d.b.a. Corporate Express Business & Charter Airline.

Section of the FAR Affected: 14 CFR 129.18(b).

Description of Relief Sought: To permit Corporate Express & Charter to conduct unscheduled, charter operations in the United States west of longitude 92° W. between latitude 40° N. and latitude 49° N., without

approved Traffic Alert and Collision Avoidance Systems installed in its British Aerospace Jetstream 31 airplanes.

Dispositions of Petitions

Docket No.: 26919.

Petitioner: Kalamazoo Aviation History Museum.

Section of the FAR Affected: 14 CFR 45.25 and 45.29.

Description of Relief Sought/Disposition: To permit Kalamazoo Aviation History Museum to operate its Fort Tri-motor, Model No. 5-AT-C (Registration No. N8419; Serial No. 58) with 3-inch-high nationality and registration marks located on each side of the fuselage under the leading edge of horizontal stabilizer.

GRANT, 9/22/99, Exemption No. 5519C.

Docket No.: 27205.

Petitioner: Federal Express Corporation.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit part 135 certificate holders that lease aircraft from FedEx to operate those aircraft under part 135 without TSO-C112 (Mode S) transponders installed.

GRANT, 8/24/99, Exemption No. 5711E.

Docket No.: 27911.

Petitioner: Líder Táxi Aéreo S. A.

Section of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/Disposition: To permit Líder Táxi Aéreo to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standard organization, for the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

GRANT, 8/27/99, Exemption No. 6999.

Docket No.: 28590.

Petitioner: Human Flight, Inc.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/Disposition: To permit Human Flight, Inc., employees, representatives, and other volunteer test jumpers under Human Flight's direction and control and Human flight certified tandem instructors to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). In addition, PICs of aircraft involved in

these operations are granted an exemption from § 105.43(a) to allow such persons to make these parachute jumps.

GRANT, 9/10/99, Exemption No. 6650B.

Docket No.: 28940.

Petitioner: Polar Air Cargo.

Section of the FAR Affected: 14 CFR 121.470 and 121.471(a)(3).

Description of Relief Sought/Disposition: To permit Polar Air Cargo to schedule pilots to fly up to 34 hours in 7 days in connection with flight segments of international operations conducted within the continental United States.

Denial, 8/31/99, Exemption No. 6970.

Docket No.: 29259.

Petitioner: Continental Airlines, Inc.

Section of the FAR Affected: 14 CFR 119.67(c)(1).

Description of Relief Sought/Disposition: To permit Mr. Mark James Moran to serve as the Director of Maintenance at Continental without holding a mechanic certificate with airframe and powerplant (A&P) ratings.

DENIAL, 9/10/99, Exemption No. 6984.

Docket No.: 29276.

Petitioner: Excelaire Services, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit Excelaire pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

DENIAL, 9/2/99, Exemption No. 6966.

Docket No.: 29327.

Petitioner: Jetways, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit Jetways pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

DENIAL, 9/2/99, Exemption No. 6968.

Docket No.: 29368.

Petitioner: North American Air Charter, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit North American Air Charter pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

DENIAL, 9/2/99, Exemption No. 6969.

Docket No.: 29374.

Petitioner: Chaparral, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/

Disposition: To permit Chaparral pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

DENIAL, 9/2/99, *Exemption No.* 6967.

Docket No.: 29574.

Petitioner: Central Air Flight Training, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Central Air to conduct local sightseeing flights at Columbiana County Airport, for a Wings-N-Wheels charity event on either September 12 or 19, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/8/99, *Exemption No.* 6976.

Docket No.: 29611.

Petitioner: Kent State University Flying Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit the Kent State University Flying Club and the Kent State University Intercollegiate Flight Team to conduct local sightseeing flights for Community Aviation Day on September 12, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/10/99, *Exemption No.* 6983.

Docket No.: 29634.

Petitioner: Petaluma Area Pilots Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit PAPA to conduct local sightseeing flights at Petaluma Municipal Airport, for PAPA's "Penny-A-Pound" charitable event in September 1999 and Father's Day weekend in June 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, *Exemption No.* 6981.

Docket No.: 29635.

Petitioner: Experimental Aircraft Association, Chapter 944.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit EAA Chapter 944 to conduct local flights for the Mid

Missouri Wings and Things on September 5, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/3/99, *Exemption No.* 6972.

Docket No.: 29689.

Petitioner: Kansas Pilots Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit KPA to conduct local sightseeing flights at Manhattan Regional Airport, for a charity airlift event on September 11, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/8/99, *Exemption No.* 6975.

Docket No.: 29692.

Petitioner: South Carolina Helicopters, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit SCHI to conduct local sightseeing flights in Augusta, Georgia, for the Boshiers Fly-In in late September 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, *Exemption No.* 6982.

Docket No.: 29692.

Petitioner: Alexy, Fred H.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Mr. Fred H. Alexy to conduct local sightseeing flights for an annual American Red Cross fundraising event, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, *Exemption No.* 6980.

Docket No.: 29700.

Petitioner: Sioux Air, Inc., and Chapter 291 of the Experimental Aircraft Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Sioux Air and EAA Chapter 291 to conduct local sightseeing flights at Martin Airfield for the annual "Tommy Martin Memorial Fly-In Breakfast" on September 12, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/8/99, *Exemption No.* 6974
Docket No.: 29704.

Petitioner: Monterey Bay Chapter of the International Organization of the Ninety-Nines, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To allow the Monterey Bay 99s to conduct local sightseeing flights at Salinas Airport, and Watsonville Airport, for "Nickel-A-Pound" charity airlifts on September 12, 1999, and October 16, 1999, respectively, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, *Exemption No.* 6979.

Docket No.: 29706.

Petitioner: American Airlines, Inc.

Section of the FAR Affected: 14 CFR 121 section V.A.1.

Description of Relief Sought/

Disposition: To allow each employee performing safety-sensitive functions for Reno Air, Inc., to perform safety-sensitive functions as employees of American without being subject to a pre-employment drug test.

GRANT, 8/27/99, *Exemption No.* 6960.

Docket No.: 29715

Petitioner: East Hill Flying Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit East Hill to conduct local sightseeing flights for pancake breakfasts on September 12, 1999, and May 14, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, *Exemption No.* 6977.

Docket No.: 29726.

Petitioner: Aramco Associated, Inc.

Section of the FAR Affected: 14 CFR 91 SFAR 82.

Description of Relief Sought/

Disposition: To permit Aramco Associated, Inc. and its pilots in command to conduct a flight within the territory and airspace of Sudan.

GRANT, 9/3/99, *Exemption No.* 6973.

Docket No.: 29730.

Petitioner: Chapter 613 of the Experimental Aircraft Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121

Description of Relief Sought/

Disposition: To permit EAA Chapter 613 to conduct local sightseeing flights at the Shelburne, Vermont, airport for an

airport appreciation day on September 4, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/3/99, Exemption No. 6971.

Docket No.: 29731.

Petitioner: Gold Beach Airport Activity Day Committee.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit GBAADC to conduct local sightseeing flights at Gold Beach Municipal Airport for the Gold Beach Airport Activity Day/Fly-In and Pancake Breakfast on September 11, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/9/99, Exemption No. 6978.

[FR Doc. 99-30006 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 7, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-

200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 267-7271 or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29703.

Petitioner: Aeroquip-Vickers Limited.

Sections of the FAR Affected: 14 CFR 145.49.

Description of Relief Sought/

Disposition: To permit Vickers, an Federal Aviation Administration (FAA)-certificated foreign repair station with a limited accessory rating, to contract the maintenance of certain hydraulic system components to the original equipment manufacturers, which are not FAA-certificated repair stations.

Dispositions of Petitions

Docket No.: 27430.

Petitioner: Midwest Flying Service, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/

Disposition: To permit MFS to conduct operations under part 135 without a TSO-C112 (Mode S) transponder installed in each of its aircraft.

Grant, 9/29/99, Exemption No. 5757C.

Docket No.: 28053.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.401(c), 121.433(c)(1)(iii) and 121.441 (a)(1) and (b)(1).

Description of Relief Sought/

Disposition: To permit FedEx to combine recurrent flight and ground training and proficiency checks for FedEx's pilots in command, seconds in

command, and flight engineers in a single annual training and proficiency evaluation program.

Grant, 9/29/99, Exemption No. 6152C.

Docket No.: 29297.

Petitioner: Aviation Charter, Inc.

Sections of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/

Disposition: To permit ACI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6986.

Docket No.: 29305.

Petitioner: Wayfarer Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/

Disposition: To permit Wayfarer pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6987.

Docket No.: 29353.

Petitioner: The Air Group, Inc.

Sections of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/

Disposition: To permit AGI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6985.

Docket No.: 29536.

Petitioner: Astral Aviation d.b.a.

Skyway Airlines.

Sections of the FAR Affected: 14 CFR 121.409(d).

Description of Relief Sought/

Disposition: To allow Skyway to use the EMB-145 flight simulator as a temporary substitute for that required by 121.409(d) to conduct low-altitude windshear training.

Grant, 9/23/99, Exemption No. 7001.

Docket No.: 29719.

Petitioner: Experimental Aircraft Association Chapter 1047 and the Tar River Composite of the Civil Air Patrol.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit EAA chapter 1047 and the Tar River Composite CAP to conduct local sightseeing flights at the Wilson Industrial Air Center, for their annual open house on September 18, 1999, and an open house event at the Rocky Mount/Wilson Airport in Rocky Mount, NC, on October 23, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/17/99, Exemption No. 6998.

Docket No.: 29720.

Petitioner: Jets Booster Club and Crossville Flying Association.
Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Crossville Flying Association to conduct local sightseeing flights at Crossville Memorial Airport for a BBQ Fly-in sponsored by the Jets Booster Club on September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/24/99, Exemption No. 7008.

Docket No.: 29735.

Petitioner: North Valley Pilots Association.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit NVPA to conduct local sightseeing flights at Chico Municipal Airport for the Chico Air Fair on September 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/24/99, Exemption No. 7007.

Docket No.: 29751.

Petitioner: United Way of Northwestern Illinois, Inc. and Freeport Pilots Association.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit FPA to conduct local sightseeing flights at Freeport Albertus Airport, for the United Way campaign kickoff hosted by the United Way on September 18, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/17/99, Exemption No. 6996.

Docket No.: 29762.

Petitioner: MN Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit MN Aviation to conduct local sightseeing flights for a local attraction at an airport in Albert Lea, MN, on September 17, 18, 19, and 20, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/17/99, Exemption No. 6995.

Docket No.: 29764.

Petitioner: Miracle Ride, Inc.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Miracle Ride, Inc., to conduct local sightseeing flights for a local attraction at an airport near Greenfield, IN, on September 18, and 19, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/17/99, Exemption No. 7000.

Docket No.: 29779.

Petitioner: Fullerton Chapter of the Ninety-Nines, Inc.

Sections of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/

Disposition: To permit Fullerton Chapter of The Ninety-Nines, Inc., to conduct local sightseeing flights at its annual fundraising event on October 2, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse.

Grant, 10/1/99, Exemption No. 7012.

[FR Doc. 99-30007 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-37]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket

number involved and must be received on or before December 7, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 267-7271 or Terry Stubblefield (202) 267-7624 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on November 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29661.

Petitioner: Experimental Aircraft Association, Small Aircraft Manufacturers Association and National Association of Flight Instructors.

Section of the FAR Affected: 14 CFR 91.319(a)(2).

Description of Relief Sought: To permit the owner of an aircraft with a special airworthiness certificate to be compensated for the use of the aircraft in transition training conducted by authorized flight instructors.

[FR Doc. 99-30008 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-38]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 7, 1999.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267-7271 or Vanessa Wilkins (202) 267-8029 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 12, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29382.

Petitioner: Emerson Electric Company, Section of the FAR Affected: 14 CFR 43.7(b).

Description of Relief Sought: To permit Emerson crewmembers to perform weekly checks on its Dassault Mystère-Falcon 20-5 aircraft and return that aircraft to service without the crewmember holding a mechanic certificate. The weekly check would

consist of checking tire inflation pressure and hydraulic reservoir fluid levels.

[FR Doc. 99-30009 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Communications/Surveillance Operational Implementation Team (C/SOIT) Hosted Forum on the Operational Implementation of Satellite Communications and Data Link Technologies for Aviation Applications in the National Airspace System (NAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA C/SOIT will be hosting a 3-day public forum to discuss the FAA's Controller-Pilot Data Link Communication (CPDLC) program. Formal presentation will be provided followed by a question and answer session. Working group sessions will be held to discuss acceptable programs and requirements for CPDLC Training and approval and operational implementation of CDPLC and High Frequency Data Link (HFDL). Those who plan to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the **FOR FURTHER INFORMATION CONTACT** listed.

DATES: January 11-13, 2000, 8:30 a.m.-5:00 p.m.

ADDRESSES: Holiday Inn Rosslyn WestPark Hotel, 1900 Fort Myer Drive, Arlington, VA, Telephone (703) 807-2000.

FOR FURTHER INFORMATION CONTACT: Registration and submission of suggested discussion topics may be made to Ms. Dottie Wilkins, telephone (202) 484-2535, fax (202) 484-1510 or email at dottie.ctr.wilkins@faa.gov.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent this meeting by December 10, 1999. Names, affiliations addresses, telephone and facsimile numbers should be sent to the **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 9, 1999.

Donald W. Streeter,
C/SOIT Co-Chairman.

[FR Doc. 99-30002 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held December 8, 1999, starting at 9:00 a.m. The meeting will be held at FAA Air Traffic Control System Command Center, 13600 EDS Drive, Herndon, VA, Suite 100, (703) 904-4400.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review/Approval of Summary of the Previous Meeting; (4) Review Working Group meeting schedule; (5) Brief out of Working Group 1; (6) Brief out of Working Group 2; (7) Commercial Space Launch Activity Briefing; (8) ATA Airspace Lab Tour; (9) Set Agenda for Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC 20036; (202) 833-9339 (phone), (202) 833-9434 (fax), or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 8, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 99-30003 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196; Night Vision Goggles (NVG) Appliances & Equipment

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)-165 meeting to be held December 9-10, 1999, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

This new Special Committee 196(SC-196) has been established to develop the operational concepts, Minimum

Operational Performance Standards (MOPS) and training guidelines for night vision goggles. The increased use of the night vision goggles and the related equipment currently in the design phase necessitates developing performance standards for the goggles. The Federal Aviation Administration would use the MOPS as a basis for issuing a Technical Standard Order for night vision goggles. The proposed Term of Reference for the committee, RTCA Paper No. 276-99/PMC-065, has been developed and will be reviewed at this meeting.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Agenda Overview; (3) RTCA Functional Overview; (4) Review of FAA Night Vision Goggles (NVG) Policy and Certifications; (5) NVG History; (6) Parallel Efforts; (7) Current/Future users; (8) Industry Speaks; (9) SC-196 Terms of Reference Overview; (10) Identify Goals, Develop Work Program and Examine Milestones; (11) Announce Workgroup leaders—Assign Tasks and Workgroups; (12) Workgroup Breakout Sessions; (13) Other Business; (14) Establish Agenda for Next Meeting; (15) Date and Place of Next Meeting; (16) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 11, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99-30004 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)-165 meeting to be held December 10, 1999, starting at 9:00 a.m. The

meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036. (This plenary meeting will follow a meeting of SC-165 Working Group (WG)-3, Minimum Aviation System Performance Standards, on December 7-9.)

The agenda will include: (1) Welcome and Introductions; (2) Review Summary of the Previous Meetings; (3) Overview of Related Activities: a. AEEC 741 and 761 Characteristics; b. EUROCAE Working Group 55; c. AMS(R)S Spectrum Issues; d. AMCP WG-A on AMSS; e. Industry, Users, Government; (4) Review of SEC-165 Working Group Activities: a. WG-1, AMSS Avionics Equipment Minimum Operational Performance Standards; b. WG-3, AMSS System/Service Performance Criteria; (5) Other Business; (6) Date and Place of Next Meeting; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 10, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99-30005 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA-99-6495]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (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 a currently approved collection. The ICR describes 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 July 8, 1999, [FR 64 pages 36957].

DATES: Comments must be submitted on or before December 17, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT:

Sylvia L. Barney, Office of Administration, Office of Management Planning, (202) 366-6680.

SUPPLEMENTARY INFORMATION:

Title: Control of Alcohol Misuse in Transit Operations (OMB Number: 2132-0557).

Abstract: The Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102-143, October 28, 1991, now codified in relevant part as 49 U.S.C. Section 5331) requires any recipient of Federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e)(4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR part 654, "Prevention of Alcohol Misuse in Transit Operations," effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' alcohol testing program, such as the number and type of tests given, number of positive test results, and the kinds of safety-sensitive functions the employees perform. FTA uses these data to ensure compliance with the rule, to assess the misuse of alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of alcohol among safety-sensitive transit employees and making transit safer for the public.

Estimated Total Annual Burden: 27,097 hours.

ADDRESS: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention: FTA 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: November 4, 1999.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 99-29452 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6478; Notice 1]

Advanced Bus Industries, LLC; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

We are asking your views on the application by Advanced Bus Industries, LLC, of Columbus, Ohio, ("ABI") for a temporary exemption for its MSV small bus from the requirement of Motor Vehicle Safety Standard No. 105 *Hydraulic and Electric Brake Systems* that a service brake system be provided on all wheels. ABI has applied on the basis that it "is otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles." 49 CFR 555.6(d).

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by us about the merits of the application. The discussion that follows is based on information contained in ABI's application.

ABI's Reasons Why it Needs a Temporary Exemption

Paragraph S5.1 of Standard No. 105 requires motor vehicles to which the standard applies to be equipped with a service brake system acting on all wheels. ABI has applied on behalf of its "MSV Test and Development Vehicle," a small bus with a GVWR of 13,500 pounds.

ABI describes the configuration of the MSV by saying that the four-wheel independent-suspension support is augmented by a small-wheeled tag axle. The tag axle is located behind the two rear-independent suspension wheels. The four independent-suspension wheels are fitted with hydraulic-caliper disc brakes but the two small wheels of the tag axle are not fitted with brakes.

ABI asks to be excused from providing brakes for the wheels of the tag axle.

The MSV was originally developed without the tag axle, but pre-production changes increased the gross weight on the two rear wheels beyond the rated load capacity of the rear tires. ABI has added a Dexter tag axle to support the additional weight.

The standard-equipment brakes operate with a low displacement of hydraulic fluid at a pressure of approximately 1,600 psi. The vehicle is equipped with an antilock braking system (ABS). However, "there is no commercially-available tag axle with a braking system that is compatible with the vehicle's main service brake system." Absent an exemption, ABI will not be able to sell the production version of the MSV. While any exemption provided is in effect, ABI intends "to develop a new higher-capacity, rear wheel suspension system that will eliminate the need for the tag axle", and does not anticipate selling more than 75 vehicles for any 12-month period that the exemption is in effect.

ABI's Reasons Why the Overall Level of Safety of the MSV Is at Least Equal to That of a Complying Motor Vehicle

Although the MSV does not contain any safety features other than those required by the Federal motor vehicle safety standards, ABI argues that it otherwise exceeds the requirements of Standard No. 105 "and easily complies with brake-in-turn (stability and control) standards expected to be proposed by NHTSA in the near future."

The company has tested the MSV service brake system to the requirements of Standard No. 105, and enclosed a copy of the test report with its petition. The report stated that "even without brakes on the tag axle, the vehicle was still able to meet all of the performance requirements of FMVSS 105 by a significant margin." (Test No. RAI-ABI-01, Radlinski & Associates, Inc., August 1999, p. 2). The report also concluded that the results demonstrated "that the tag axle, which only carries 1,500 lb (11 percent of the total weight), does not really need brakes in order for the vehicle to provide safe stopping performance as defined by the requirements of the standard" (id., p. 2).

ABI's Reasons Why an Exemption Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

ABI argued that an exemption would be in the public interest and consistent with traffic safety objectives because granting the exemption "will permit public-transit use of the advanced

features of the MSV bus while fulfilling the letter, and the intent, of the FMVSS standards." These advanced features are "significantly improved ride and handling characteristics compared to existing small buses and the MSV's stainless steel frame and FRP body will be more durable than conventionally-constructed buses in this class." In addition, the company believes that test report shows that the braking performance, even without brakes on the tag axle, significantly exceeds the requirements of Standard No. 105.

How To Comment on ABI's Application

If you would like to comment on ABI's petition, please send two copies of your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document.

Comments may also be submitted electronically by logging onto the Docket Management System website at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the docket in Room PL-401, both before and after that date, between 10 a.m. and 5 p.m., or by accessing the docket at its website.

When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: December 17, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: November 10, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99-29953 Filed 11-16-99; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Voucher for Payment of Awards

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Voucher for Payment of Awards."

DATES: Written comments should be received on or before January 18, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Siegel, Judgment Fund Branch, Room 6D39, 3700 East West Highway, Hyattsville, Maryland 20782, (202) 874-8664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Voucher for Payment of Awards.
OMB Number: 1510-0037.

Form Number: TFS 5135.

Abstract: Awards certified to Treasury are paid annually as funds are received from foreign Governments. Vouchers are mailed to awardholders showing payments due. Awardholders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as basis for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: November 12, 1999.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 99-30040 Filed 11-16-99; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Rate Determination Agreement (Gaming Industry)

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 the Tip Rate Determination Agreement (Gaming Industry).

DATES: Written comments should be received on or before January 18, 2000 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 information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545-1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires

employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Average Time Per Respondent: 4 hr., 40 min.

Estimated Total Annual Burden Hours: 4,367.

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: November 4, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99-29921 Filed 11-16-99; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request For Form A**

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 A, Qualifications & Availability Form.

DATES: Written comments should be received on or before January 18, 2000 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) should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualifications & Availability Form.

OMB Number: To be assigned later.

Form Number: Form A.

Abstract: Form A is used by external applicants applying for clerical and technical positions with the Internal Revenue Service. Applicants will complete information relating to their address, job preference, veteran's preference and a series of occupational questions, knowledge and skills along with background information.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals.

Estimated Number of Respondents: 90,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 45,000.

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: November 8, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99-29922 Filed 11-16-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[EE-147-87]

Proposed Collection; Comment Request For Regulation Project

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 an existing final regulation, EE-147-87 (TD 8376), Qualified Separate Lines of

Business (§§ 1.414(r)-3, 1.414(r)-4, and 1.414(r)-6).

DATES: Written comments should be received on or before January 18, 2000 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 regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Separate Lines of Business.

OMB Number: 1545-1221.

Regulation Project Number: EE-147-87.

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 253.

Estimated Time Per Respondent: 3 hours, 27 minutes.

Estimated Total Annual Burden Hours: 899.

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: November 8, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99-29923 Filed 11-16-99; 8:45 am]

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Food and Drug Administration

Wednesday
November 17, 1999

Part II

**Department of
Health and Human
Services**

Food and Drug Administration

21 CFR Part 101

**Food Labeling: Trans Fatty Acids in
Nutrition Labeling, Nutrient Content
Claims, and Health Claims; Proposed
Rule**

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**
Food and Drug Administration
21 CFR Part 101
[Docket No. 94P-0036]
RIN 0910-AB66
**Food Labeling: Trans Fatty Acids in
Nutrition Labeling, Nutrient Content
Claims, and Health Claims**
AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations on nutrition labeling to require that the amount of *trans* fatty acids present in a food, including dietary supplements, be included in the amount and percent Daily Value (%DV) declared for saturated fatty acids. FDA is proposing that when *trans* fatty acids are present, the declaration of saturated fatty acids shall bear a symbol that refers to a footnote at the bottom of the nutrition label that states the number of grams of *trans* fatty acids present in a serving of the product. FDA also is proposing that, wherever saturated fat limits are placed on nutrient content claims, health claims, or disclosure and disqualifying levels, the amount of *trans* fatty acids be limited as well. In addition, the agency is proposing to define the nutrient content claim for “*trans* fat free.” This proposal responds, in part, to a citizen petition on *trans* fatty acids in food labeling from the Center for Science in the Public Interest (CSPI). This action also is being taken to prevent misleading claims and to provide information to assist consumers in maintaining healthy dietary practices.

DATES: Written comments on the proposed rule should be submitted by February 15, 2000. See section XI of this document for the proposed effective date of a final rule based on this document. Written comments on the information collection requirements should be submitted by December 17, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5587.

SUPPLEMENTARY INFORMATION:
I. Background
A. Nutrition Labeling

In the **Federal Register** of July 19, 1990 (55 FR 29847), FDA published a proposed rule entitled “Food Labeling; Mandatory Status of Nutrition Labeling and Nutrient Content Revision” (hereinafter referred to as “the July 19, 1990, proposal”) to amend its food labeling regulations to require nutrition labeling on most food products that are meaningful sources of nutrients. Among other things, FDA proposed to revise the list of nutrients and food components that must be included in nutrition labeling by adding to that list saturated fatty acids, cholesterol, dietary fiber, and calories from fat.

During the comment period for the July 19, 1990 proposal, Congress passed, and the President signed into law, the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101-535). Section 403(q) (21 U.S.C. 343(q)) of the Federal Food, Drug, and Cosmetic Act (the act), which was added by the 1990 amendments, specifies, in part, that certain nutrients and food components are to be included in nutrition labeling. Section 403(q)(2)(A) and (q)(2)(B) of the act state that the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) can, by regulation, add or delete nutrients to be included in the food label or labeling if he or she finds such action necessary to assist consumers in maintaining healthy dietary practices. In response to this provision, in the **Federal Register** of November 27, 1991 (56 FR 60366), FDA published a proposed rule entitled “Food Labeling; Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision” (hereinafter referred to as “the November 27, 1991, proposal”) to modify the July 19, 1990, proposal. In the November 27, 1991, proposal, the agency proposed to require that foods bear nutrition labeling listing certain nutrients and the amount of those nutrients in a serving of the food.

In the November 27, 1991 (56 FR 60366 at 60371) proposal, FDA also

addressed the conditions under which other nutrients could voluntarily be included in nutrition labeling. FDA did not propose to include *trans* fatty acids (throughout this preamble FDA has used the terms “*trans* fatty acids” and “*trans* fat” interchangeably; likewise, for the terms “saturated fatty acids” and “saturated fat”) among the nutrients that could voluntarily be listed on the nutrition label, but requested comments on this position.

In the **Federal Register** of January 6, 1993 (58 FR 2079), FDA issued a final rule entitled “Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label” (hereinafter referred to as “the nutrition labeling final rule”) that prescribes how nutrition labeling is to be provided on the foods that are regulated by the agency. The new regulations required the declaration of total fat and of saturated fat, with the declaration of monounsaturated fat and polyunsaturated fat (both defined as the *cis* isomers only) required only when claims are made about fatty acids and cholesterol. Based on its review of the comments, the agency stated that it was premature to require the presence of *trans* fatty acids on the nutrition label because of a lack of consensus on the dietary implications of *trans* fatty acids intake. However, the agency acknowledged that it might be necessary to revisit the labeling of *trans* fatty acids in the future (58 FR 2079 at 2090 to 2092).

B. Nutrient Content Claims

Section 403(r)(1)(A) of the act, which also was added by the 1990 amendments, provides that a product is misbranded if it bears a claim on its label or labeling that either expressly or implicitly characterizes the level of any nutrient of the type required to be declared as part of nutrition labeling, unless such claim has been specifically defined by regulation under section 403(r)(2)(A) of the act (or the product is otherwise exempted under the act). In response to this provision, FDA published two proposed rules in the **Federal Register** of November 27, 1991 (56 FR 60421 and 56 FR 60478). The first document entitled “Food Labeling; Nutrient Content Claims, General Principles, Petitions, Definition of Terms,” covered general principles for nutrient content claims and proposed, in part, to define certain nutrient content claims, to provide for their use on food labels, and to establish procedures for the submission and review of petitions regarding the use of specific nutrient content claims. In the other document entitled “Food

Labeling: Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (hereinafter referred to as the "fat, fatty acid, and cholesterol proposed rule"), the agency proposed definitions for fat, fatty acid, and cholesterol nutrient content claims, but not for "saturated fat free."

A number of comments in response to the fat, fatty acid, and cholesterol proposed rule strongly recommended that FDA define the term "saturated fat free." In the **Federal Register** of January 6, 1993 (58 FR 2302 at 2419), FDA issued a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food," (hereinafter referred to as the "nutrient content claims final rule") (58 FR 2302 at 2419), that defined "saturated fat free" to mean that the food contains less than 0.5 gram (g) of saturated fat per reference amount customarily consumed ("reference amount") and that the level of *trans* fatty acids in the food does not exceed 1 percent of the total fat in the food (§ 101.62(c)(1)(i) (21 CFR 101.62(c)(1)(i))). FDA included the latter criterion because scientific evidence suggested that *trans* fatty acids act in a similar manner to saturated fat with respect to raising serum cholesterol and, therefore, should be present at insignificant levels when claims are made about saturated fats. The agency stated that it would be misleading for products that were labeled "saturated fat free" to contain measurable amounts of *trans* fatty acids because consumers would expect such products to be "free" of other components that significantly raise serum cholesterol. The agency stated that 1 percent was the appropriate threshold because analytical methods for measuring *trans* fatty acids below that level were not reliable (58 FR 2302 at 2332).

Technical comments that FDA received after publication of the nutrient content claims final rule objected to the 1 percent criterion for *trans* fatty acids in the definition of "saturated fat free." A comment pointed out that a cookie containing 1.5 g of total fat would be allowed to have only 0.015 g of *trans* fatty acids, an amount that could not be accurately measured (58 FR 44020 at 44027). These comments persuaded FDA to revise the *trans* fatty acids criterion for the definition of "saturated fat free" in § 101.62(c)(1)(i) to require that a food contain less than 0.5 g *trans* fatty acids per reference amount and per labeled serving to be eligible to bear the claim. The agency selected this amount

because of the reliable limit of detection of *trans* fatty acids and because it corresponds to the amount of saturated fat and total fat selected for the claims "saturated fat free" and "fat free," respectively. FDA incorporated this change in technical amendments to the nutrient content claims final rule that it published in the **Federal Register** on August 18, 1993 (58 FR 44020 at 44032).

C. Disqualification/Disclosure Levels

The 1990 amendments addressed health claims by amending the act to specify, in part, that a food is misbranded if it bears a claim that expressly or by implication characterizes the relationship of any nutrient that is of the type required in section 403(q)(1) or (q)(2) of the act to be in the label or labeling of the food to a disease or health-related condition unless the claim meets the requirements of a regulation authorizing its use. Section 403(r)(3)(A)(ii) of the act provides that a health claim may only be made for a food that does not contain, as determined by regulation, a nutrient in an amount that increases to persons in the general population the risk of a disease or health-related condition that is diet related. FDA describes these levels as "disqualifying" levels.

In the case of certain nutrient content claims, section 403(r)(2)(B) of the act, as amended, requires that the label or labeling of any food that contains a nutrient at a level that increases to persons in the general population the risk of a disease or health-related condition that is diet related shall contain, prominently and in immediate proximity to such claim, the following statement: "See nutrition information for _____ content." The blank shall identify the nutrient associated with the increased risk of disease or health-related condition. FDA refers to these levels as "disclosure levels."

FDA established disqualifying levels in § 101.14(a)(5) (21 CFR 101.14(a)(5)) for fat, saturated fat, cholesterol, and sodium in the health claims final rule (58 FR 2478, January 6, 1993). It also established disclosure levels for these nutrients in § 101.13(h) (21 CFR 101.13(h)) in the nutrient content claims final rule (58 FR 2302). The nutrient levels are the same for both disqualification and disclosure. During that rulemaking, the agency did not consider disqualifying or disclosure levels for *trans* fatty acids due to the inconclusiveness of scientific evidence concerning their impact on public health.

II. The Petition From the Center for Science in the Public Interest (CSPI)

CSPI submitted a citizen petition dated February 14, 1994, which was assigned FDA Docket No. 94P-0036/CP1. In the petition, CSPI stated that an increasing body of evidence suggests that dietary *trans* fatty acids raise blood cholesterol levels, thereby increasing the risk of coronary heart disease (CHD). The petitioner argued that the food labeling rules issued to implement the 1990 amendments do not adequately reflect the effect of dietary *trans* fatty acids on CHD. The petitioner stated that consumers expect the number of grams of saturated fat listed on the nutrition label to represent all the "heart-unhealthy" fat in the product, and that, in many foods, the number of grams of saturated fat underestimates the total amount of "heart-unhealthy" fats because *trans* fatty acids are not included in the declared value. The petition included examples of products in which the declared amount of saturated fat accounted for only half of the "heart-unhealthy" fat. Accordingly, CSPI requested that FDA amend the definition of saturated fatty acids in § 101.9(c)(2)(i) (21 CFR 101.9(c)(2)(i)) to include *trans* fatty acids so that the declaration of saturated fat on the nutrition label would provide consumers with complete information on all "heart-unhealthy" fatty acids.

CSPI also requested that all saturated fat claims in § 101.62(c) be based on the combined level of saturated and *trans* fatty acids. The petitioner requested that these claims be prohibited unless the levels of saturated and *trans* fat combined meet FDA's saturated fat criteria for such claims. The petitioner contended that consumers may assume that the level of saturated fat allowed for these claims includes all of the "heart-unhealthy" fat in a product. The petitioner stated that the level allowed should include *trans* fatty acids because of the substantial and growing amount of evidence demonstrating that *trans* fatty acids increase the risk of CHD.

Further, the petitioner maintained that without a limit on the *trans* fatty acid content in foods with the previously mentioned claims, manufacturers could replace saturated fat with *trans* fatty acids. To support its position, the petitioner provided numerous product labels bearing nutrient content claims for the content of saturated fat or cholesterol. These products appear to contain *trans* fatty acids (calculated by subtracting the sum of saturated, polyunsaturated, and monounsaturated fat from total fat) in

higher amounts than saturated fatty acids.

The petitioner stated that FDA has already taken a positive step in this area by imposing a 0.5 g limit on *trans* fat allowed in foods that have the claim "saturated fat free." However, the petitioner requested that the criteria for saturated fat of 0.5 g should refer to the level of saturated and *trans* fat combined. The petitioner pointed out that without this change, the level of "heart-unhealthy" fat can be almost 1.0 g, which is the limit for "low" in saturates. The petitioner stated that consumers expect foods that have the claim "saturated fat free" to be free of components that significantly raise serum cholesterol. Thus, it would be misleading for such products to contain significant amounts of "heart-unhealthy" fat.

With respect to "low in saturated fat," this claim is currently defined in § 101.62(c)(2)(i) as 1 g or less of saturated fat per reference amount and 15 percent or less of calories from saturated fat. The petitioner requested that this definition should read "1 g or less total of saturated fatty acids and *trans* fatty acids combined per reference amount customarily consumed and not more than 15 percent of calories from saturated fatty acids and *trans* fatty acids combined."

Similarly, the petitioner requested that the definition for "reduced saturated fat" in § 101.62(c)(4)(i) of at least a 25 percent reduction in saturated fat should be amended to be a 25 percent reduction in saturated and *trans* fat combined.

The petitioner also requested that all saturated fat claims for meal products and main dishes (i.e., "saturated fat free" in § 101.62(c)(1)(i), "low in saturated fat" in § 101.62(c)(3)(i), and "reduced saturated fat" in § 101.62(c)(5)(i)) be amended to reflect the combined level of saturated and *trans* fatty acids. The petitioner made a similar request regarding "lean" and "extra lean" claims (§ 101.62(e)).

In addition, the petitioner requested that the saturated fat threshold on all cholesterol claims for foods, meal products, and main dishes (i.e., "cholesterol free" (§ 101.62(d)(1)(i)(C) and (d)(1)(ii)(C)), "low cholesterol" (§ 101.62(d)(2)(i)(B), (d)(2)(ii)(B), (d)(2)(iii)(B), (d)(2)(iv)(B), and (d)(3)), and "reduced cholesterol" (§ 101.62(d)(4)(i)(B), (d)(4)(ii)(B), (d)(5)(i)(B), and (d)(5)(ii)(B))) be amended to reflect the combined level of saturated and *trans* fatty acids.

CSPI also requested that the disqualification and disclosure levels for health and nutrient content claims

be amended to reflect combined levels of saturated fat and *trans* fatty acids. For example, CSPI requested that the disqualifying nutrient level for health claims in § 101.14(a)(5) and the disclosure level for nutrient content claims in § 101.13(h)(1) be changed from 4 g saturated fat to 4 g of saturated and *trans* fatty acids combined.

Further, CSPI requested that FDA limit "vegetable oil" claims (e.g., "made with vegetable oil," "cooked in 100 percent vegetable oil") to foods that are low in both saturated and *trans* fatty acids. Finally, the petitioner requested that FDA require that "partially hydrogenated" fat be listed on food labels as "partially saturated" fat.

On July 13, 1998, CSPI amended its petition in a way that would maintain the definition of saturated fat in § 101.9(c)(2)(i), yet provide consumers with information on the *trans* fatty acid content of the food. The amended petition continued to request that the number of grams of *trans* fatty acids in a food be added to the number declared for saturated fatty acids. However, in its amendment, the petitioner suggested two methods that would alert the consumer to the presence of *trans* fatty acids. In the first method, an asterisk would be used after "Saturated fat" when *trans* fatty acids are present. The asterisk would refer to an asterisk at the bottom of the nutrition label followed by a footnote explaining that the declaration of saturated fatty acids "Contains _____ g of *trans* fat." Alternatively, CSPI suggested that the terminology on the nutrition label be changed from "Saturated fat" to "Saturated + *trans* fat."

The agency's tentative response to the petition and to the comments on the petition follows.

III. Statutory Authority

FDA is proposing to amend its regulations governing nutrient content claims and nutrition labeling to include provisions on *trans* fatty acids. FDA is proposing to take these actions under sections 201(n) 403(a)(1), 403(q), 403(r), and 701(a) of the act (21 U.S.C. 321(n), 343(a)(1), 343(q), 343(r), and 371(a)). Under section 201(n) of the act, labeling is misleading if it fails to reveal facts that are material in the light of representations made in the labeling or that are material with respect to the consequences that may result from the use of the food under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual. Section 403(a)(1) of the act prohibits labeling that is false or misleading. Section 403(q) of the act allows the Secretary, in section

403(q)(2)(A) of the act, to require by regulation nutrition information about nutrients other than those specified in section 403(q)(1) of the act to assist consumers in maintaining healthy dietary practices. Under section 403(r) of the act, a food is misbranded if its labeling uses terms that have not been defined by regulation issued under section 403(r)(2)(A)(i) to characterize the level of any nutrient in a food, or if, in violation of section 403(r)(2)(A)(iv), cholesterol levels are not specified in immediate proximity to saturated fat claims. In addition, under section 403(r)(2)(A)(vi) of the act, the Secretary by regulation may prohibit a claim about the level of a nutrient because it is misleading in light of the level of another nutrient in the food. Section 403(r)(2)(B) of the act requires that the labeling of any food bearing a nutrient content claim that contains a nutrient at a level that increases to persons in the general population the risk of a disease or health-related condition that is diet related must contain, prominently and in immediate proximity to such nutrient content claim, a disclosure statement specified by that section of the act. Moreover, section 403(r)(3)(A)(ii) of the act provides that FDA establish by regulation disqualifying levels for health claims to ensure that health claims cannot be made for products that contain nutrients in amounts that increase to persons in the general population the risk of a disease or health-related condition that is diet related. Finally, section 701(a) of the act gives the Secretary the authority to issue regulations for the efficient enforcement of the act.

IV. *Trans* Fatty Acids

A. Definitions

1. Fats

Fats are energy-yielding nutrients that are found in most foods. Dietary fats are composed of fatty acids and glycerol. Dietary fatty acids consist of carbon chains of various lengths and a terminal carboxyl group. The carbon atoms in these chains are connected by single or double bonds. Hydrogen atoms are attached to the noncarboxyl carbons.

2. Fatty Acid Nomenclature

A saturated fatty acid has no double bonds between the carbon atoms in the chain. Therefore, a maximum number of hydrogens (i.e., 2) are attached to each carbon atom, except for the end carbons, and "saturate" the carbon chain. An "unsaturated" fatty acid may contain one or more double bonds between carbon atoms and, therefore, two fewer hydrogen atoms per double bond. A

fatty acid with a single double bond is called a "monounsaturated fatty acid." A fatty acid with two or more double bonds is called a "polyunsaturated fatty acid."

Fatty acids are identified by the number of carbons and the number of the carbon-carbon double bonds. For example, stearic acid, a saturated fatty acid, has 18 carbons and no double bonds. The shorthand notation for this fatty acid is "C18:0." Some examples of other saturated fatty acids are lauric (C12:0), myristic (C14:0), and palmitic (C16:0) acids. The most common dietary monounsaturated fatty acid is oleic acid, C18:1, which has 18 carbons and one double bond. The most common dietary polyunsaturated fatty acid is linoleic acid, C18:2, which has 18 carbons and 2 double bonds.

3. *Cis* and *Trans* Isomers

Most naturally-occurring dietary unsaturated fatty acids are in a "*cis*" configuration, i.e., the two hydrogen bonds attached to two carbons are on the same side of the molecule at the double bond which gives the molecule a "bend" at the site of the double bond. These bent molecules cannot pack easily together, so fats of these molecules are more often in a liquid form. In a "*trans*" configuration, the hydrogen atoms attached to the carbon atoms at a double bond are not on the same side of the double bond ("*trans*" means "across" in Latin). This arrangement of hydrogen atoms stabilizes the molecule in a relatively straight contour. *Trans* isomers are primarily the result of the hydrogenation process. One common *trans* fatty acid is monounsaturated *trans*-C18:1.

4. Hydrogenation

Chemical hydrogenation is the process by which hydrogen atoms are added to unsaturated sites on the carbon chains of fatty acids in the presence of catalysts, thereby reducing the number of double bonds. "Partial hydrogenation" describes an incomplete saturation of the double bonds, in which some double bonds remain but may be moved in their positions on the carbon chain and changed from a *cis* to *trans* configuration or isomer.

Hydrogenation increases the melting point, shelf life, and flavor stability of unsaturated fatty acids. Through hydrogenation, oils (i.e., fats in liquid form), such as soybean, safflower, and cottonseed oil, which are rich in unsaturated fatty acids, are converted to semi-solids and solids that are useful in margarines and vegetable shortenings.

Hydrogenation also occurs in the digestive tract of ruminant animals and results in some *trans* isomers in the fat components of dairy and meat products from these animals. These isomers usually make up only a small percent of the total fatty acids of such products.

The partial hydrogenation process was developed in the 1930's and has been in widespread commercial use since the 1940's. Dietary fats containing hydrogenated fatty acids, such as those used in margarine, have gradually displaced animal fats, such as butter and lard (Refs. 1 and 2). About two-thirds of the dietary fat consumed in the 1940's was of animal origin. The balance was reversed by the 1960's, with two-thirds coming from fats of vegetable origin. This trend resulted in a decrease in the intake of saturated fat and an increase in the intake of polyunsaturated and *trans* fatty acids (Ref. 1).

B. Review of the Science

In support of its petition, CSPI cited a number of scientific publications that related consumption of *trans* fatty acids to increased risk of CHD, as well as statements by government and professional bodies about *trans* fatty acids. FDA has reviewed both the scientific evidence cited in the petition and available human study evidence published since receipt of the petition. There are two recent reviews of findings from animal studies on the effects of feeding animals *trans* fatty acids (Refs. 1 and 3). These reviews indicate that results from animal feeding studies do not parallel findings from human intervention and epidemiological studies. Although the results from the animal and human studies differ, FDA considers the findings from human studies more directly relevant and, as explained below, persuasive evidence with which to evaluate the influence of *trans* fatty acid consumption on CHD in humans.

1. Reviews by the Federal Government and the National Academy of Sciences (NAS)

A review of reports published by the Federal Government and the NAS between the late 1980's and the present time on dietary *trans* fatty acids shows that conclusions and recommendations are evolving as results from significant new studies become available. For example, a report by the Surgeon General in 1988 (Ref. 2) concluded that *trans* fatty acids appeared to be neutral in their effects on serum lipids predictive of CHD risk. Based on a limited number of animal and observational studies, the Food and

Nutrition Board of the NAS concluded in 1989 that *trans* fatty acids appeared to have no deleterious health effects (Ref. 4).

More recently, the 1993 publication from the National Cholesterol Education Program (NCEP) entitled "Second Report of the Expert Panel on Detection, Evaluation and Treatment of High Blood Cholesterol in Adults" (Ref. 5) stated:

Recent research indicates that *trans* fatty acids raise LDL-cholesterol levels nearly as much as do cholesterol-raising saturated fatty acids. *Trans* fatty acids account for about 3 percent of total calories in the American diet; this amount causes a definite increase in LDL-cholesterol levels, but of course less than the more abundant cholesterol-raising saturated fatty acids. Improvements in food technology in the future may reduce the *trans* fatty acid content of the American diet. In the meantime patients with high cholesterol should limit their intake of foods high in *trans* fatty acids such as hydrogenated shortenings, some margarines and foods containing these fats.

The fourth edition of Dietary Guidelines for Americans (Ref. 6), a joint 1995 publication from the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services (DHHS), stated:

Partially hydrogenated vegetable oils, such as those used in many margarines and shortenings, contain a particular form of unsaturated fat known as *trans*-fatty acids that may raise blood cholesterol levels, although not as much as saturated fat.

2. Published Human Research Studies

FDA previously reviewed studies on *trans* fatty acids in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60371) proposal on nutrition labeling and in its 1993 final rule for a health claim for dietary saturated fat and cholesterol and CHD (58 FR 2739 at 2744). The latter document included a review of studies considered in that health claim evaluation. As a result of its review, the agency concluded that the available scientific evidence was insufficient to make a policy decision regarding dietary *trans* fatty acids and risk of CHD, noting that the "low fat" eligibility requirement gave little room for products to contain high levels of *trans* fatty acids. The agency has focused its current review on studies cited in the petitioner's submission plus recent studies in humans identified by a supplemental literature search.

To target its review of the available evidence on *trans* fatty acids and CHD risk, the agency focused on the physiological measures that were identified as valid predictors of increased risk for CHD, which were published in the *Second Report of the Expert Panel on Detection, Evaluation, and Treatment of High Cholesterol in*

Adults (Ref. 5). That Expert Panel identified a high blood cholesterol level in adults as a major risk factor for CHD. In particular, that study reported that a direct relationship had been demonstrated between serum low-density lipoprotein cholesterol (LDL-C) concentrations and rate of CHD.

Intervention studies had shown that lowering plasma LDL-C by dietary means and drug therapy can reduce this risk, and recommendations for dietary interventions were made relative to their effect on serum LDL-C concentrations.

Based on the findings of the NCEP Expert Panel (Ref. 5), FDA has concluded that an examination of the effects of *trans* fatty acids on serum LDL-C would provide the strongest evidence, and should be the primary criterion, to evaluate whether *trans* fatty acids influence the risk of CHD. The agency also compiled changes in serum total and high density lipoprotein cholesterol (HDL-C) and serum lipoproteins to present a more complete picture of serum lipid changes.

FDA reviewed findings from intervention and observational studies to evaluate the evidence that dietary *trans* fatty acids influence blood lipid levels in humans and increase their risk of CHD. In the present review, FDA gave greater weight to results from dietary intervention studies because of the ability of intervention studies to provide evidence for a cause-effect relationship (Ref. 4). FDA regarded results from observational (epidemiologic) studies, which can identify associations between dietary intake and risk of CHD but which do not provide direct evidence for cause and effect (Ref. 4), as indirect evidence for a relationship between *trans* fatty acids intake and risk of CHD. Because "repeated and consistent findings of an association between certain dietary factors and diseases are likely to be real and indicative of a cause-effect relationship" (Ref. 4), FDA heavily weighted the consistency of results among studies.

Results of the intervention and observational studies are shown in Tables 1 and 2 of Appendix A of this document, respectively. A summary of the effects of *trans* fatty acids on serum LDL-C, shown in the dietary intervention studies detailed in Table 1 of Appendix A is presented in Table 3 of Appendix A.

a. *Intervention studies.* Controlled dietary intervention studies (feeding trials) using test fats containing *trans* fatty acids have been conducted in the Netherlands (Refs. 7 and 8), Norway (Ref. 9), Finland (Ref. 10), Australia (Refs. 11 and 36), and the United States

(Refs. 12, 13, 14, 15, 34, and 82). As detailed in Table 1 of this document, test products consisted of partially hydrogenated vegetable and fish oils commercially available in the study country or products especially prepared for the study and similar to the partially hydrogenated oil products used in the country.

Serum LDL-C levels measured after consumption of diets containing low levels of *trans* fatty acids were compared with serum LDL-C levels measured after consumption of diets in which *trans* fatty acids replaced *cis*-polyunsaturated fatty acids (PUFA's) (mainly linoleic acid), *cis*-monounsaturated fatty acids (MUFA's) (mainly oleic acid), or saturated fatty acids (varying combinations of lauric, myristic, palmitic, and stearic acids). Within studies, the saturated fatty acid content of diets was not increased, and in some studies was decreased, by the inclusion of *trans* fat sources. See Table 1 of this document for details about fatty acids composition of diets.

In these studies, partially hydrogenated oils were incorporated into diets fed to adult men and women for experimental periods of 3-week (Refs. 7, 8, 9, 11, and 36), 4.5-week (Ref. 13), 5-week (Refs. 10, 34, and 82), or 6-week (Refs. 12, 14, and 15) intervals at levels providing 2.4 to 10.9 percent of energy intake as *trans* fatty acids. At the levels of dietary energy consumed, study participants consumed from 2.1 g/day to 38.3 g/day of *trans* fatty acids (see Table 1 of Appendix A of this document for details).

Overall, consumption of diets containing higher levels of *trans* fatty acids resulted in significantly higher LDL-C levels when *trans* fatty acids sources replaced fats high in *cis*-PUFA (mainly linoleic acid) or *cis*-MUFA (mainly oleic acid). With respect to studies comparing diets containing *trans* fatty acids to diets containing higher levels of *cis*-PUFA, Lichtenstein et al. (1993) found that LDL-C levels were 8.4 percent higher in 14 mildly hypercholesterolemic subjects after consumption of NCEP Step 2 diets containing 12.5 g/day of *trans* fatty acids for 3 weeks compared to a linoleic acid diet providing a daily intake of only 1.2 g/day of *trans* fatty acids (Ref. 13). (The Step 2 diet is an intensive dietary therapy for high blood cholesterol recommended by the NCEP when less restrictive dietary intervention has not resulted in serum LDL-C reduction (Ref. 5).) In a second study, Lichtenstein et al., (1999) (Ref. 82) found that serum LDL-C concentrations increased in a stepwise manner when 36 subjects consumed

NCEP Step 2 diets containing four hydrogenated soybean oil products (semiliquid margarine, soft margarine, shortening, and stick margarine) compared to a Step 2 diet containing unhydrogenated soybean oil. *Trans* fatty acids intakes of subjects consuming hydrogenated products ranged from 2.9 g/day for men and 2.1g/day for women consuming the semiliquid margarine diet to 20.8 g/day for men and 15.8 g/day for women consuming the stick margarine diet. *Trans* fatty acids intakes of subjects consuming the soybean oil diet were 1.7 g/day for men and 1.3 g/day for women (Ref. 82).

Zock and Katan (1992) also reported LDL-C levels 8.5 percent higher in 56 normolipidemic subjects after consumption of a diet containing 24.5 g/day of *trans* fatty acids compared to a linoleic acid diet providing less than 0.05 g/day of *trans* fatty acids (Ref. 8). In a less rigorously controlled study, Wood et al. (Ref. 15) reported that serum LDL-C levels were increased 6.1 percent in 38 healthy men after consumption of a hard margarine diet containing at least 15.8 g/day of *trans* fatty acids compared to a soft margarine diet with unspecified, but presumably lower, levels of *trans* fatty acids (Ref. 14).

Other studies compared *trans* diets to diets containing oleic acid. Compared to an oleic acid diet providing about 2 g/day *trans* fatty acids, LDL-C levels in 58 healthy men and women were 6.0 percent higher after consumption of diets containing moderate levels of *trans* fatty acids (7.6 g/day in an 1,800 kilocalories (kcal)/day diet or 11.8 g/day in a 2,800 kcal/day diet) and 7.8 percent higher after consumption of diets containing higher levels of *trans* fatty acids (13.2 g/day for the 1,800 kcal diet or 20.5 g/day for the 2,800 kcal diet) (Ref. 12). Mensink and Katan (1990) had earlier reported 13.9 percent higher levels of LDL-C in 59 healthy men and women after consumption of a diet containing 33.6 g/day of *trans* fatty acids compared to an oleic acid diet providing no *trans* fatty acids (Ref. 7). Nestel et al. (1992) also reported LDL-C levels 9.2 percent higher in 27 mildly hypercholesterolemic men after consumption of a diet providing 15.6 g/day of *trans* fatty acids compared to an oleic acid diet providing intakes of 3.8 g/day *trans* fatty acids (Ref. 11). It should be noted that changes in serum total cholesterol concentrations tended to parallel changes in LDL-C in these studies; HDL-C levels either did not differ significantly between treatment groups or were lower after consumption of *trans* fatty acid diets than after *cis*-MUFA or PUFA diets (see Table 1 of Appendix A of this document).

Consumption of diets in which *trans* fatty acids replaced some dietary saturated fatty acids resulted in LDL-C levels that were not significantly different or were lower than LDL-C levels after consumption of diets containing saturated fatty acids, although generally not as low as the reduction in saturated fatty acids would suggest. Aro et al. (Ref. 10), Zock and Katan (Ref. 8), and Nestel et al. (Ref. 11) reported that LDL-C levels following consumption of diets containing 24.9, 24.5, or 15.6 g/day, respectively, of *trans* fatty acids were not significantly different from LDL-C levels following consumption of saturated fatty acid diets providing mainly stearic acid or palmitic acid and providing 1 to 3 g/day of *trans* fatty acids. Judd et al. (1994) reported no significant difference in LDL-C in 58 apparently healthy subjects after consumption of a diet containing a high level of *trans* fatty acids (13.2 or 20.5 g/day) compared to a saturated fatty acid diet providing about 2 g/day of *trans* fatty acids (Ref. 12). Although, at a moderate level of *trans* fatty acid intake (7.6 or 11.8 g/day), LDL-C levels were 2.7 percent lower compared to the saturated fatty acid diet, these LDL-C levels were still significantly higher than after consumption of the *cis*-MUFA (oleic acid) diet (Ref. 12). In these diets, *trans* fatty acids replaced lauric, myristic, and palmitic acids; stearic acid levels provided 3 percent of energy in all diets.

In a 1998 study, Judd et al. (Ref. 34) reported that LDL-C decreased 4.9 percent after consumption of a diet containing a *trans* fatty acids margarine and providing 13 and 9 g/day of *trans* fatty acids to men and women, respectively, compared to a diet containing butter and foods providing 9 and 7 g/day of *trans* fatty acids for men and women (Ref. 34). At *trans* fatty acids intakes of 6.4 g/day or 6.8 g/day (Ref. 36) and 12.5 g/day (Ref. 13), LDL-C levels were lower in mildly hypercholesterolemic subjects after replacement of some saturated fatty acids by *trans* fatty acids. Almendingen et al. (Ref. 9) also reported 6.0 percent lower LDL-C levels in 30 healthy men after consumption of diets containing 22.6 to 38.3 g/day of *trans* fatty acids from partially hydrogenated soy oil than after a saturated fat (butter) diet providing only 2 to 4 g/day of *trans* fatty acids but no difference after consumption of a diet containing 21.6 to 36.1 g/day of *trans* fatty acids from partially hydrogenated fish oil compared to the saturated fat diet. Mensink and Katan (Ref. 7) reported LDL-C levels 3.2 percent lower in 59

healthy men and women after consumption of a diet containing 33.6 g/day of *trans* fatty acids than after a saturated fatty acid diet high in lauric and palmitic acids and containing 2.4 g/day *trans* fatty acids.

In a 1999 study, Lichtenstein et al. (Ref. 82), found that serum LDL-C concentrations decreased in a stepwise manner when 36 subjects consumed NCEP Step 2 diets containing four hydrogenated soybean oil products (stick margarine, shortening, soft margarine, and semiliquid margarine) compared to a butter diet containing the same amount of total fat and 3.9 g/day and 2.9 g/day of *trans* fatty acids for men and women, respectively. *Trans* fatty acids intakes of men and women consuming stick margarine were 20.8 and 15.8 g/day, shortening 9.7 and 12.9 g/day, soft margarine 10.2 and 7.8 g/day, and semiliquid margarine 1.7 and 1.3 g/day (Ref. 82).

Results from Mensink and Katan (Ref. 7), Judd et al. (1994 and 1998) (Refs. 12 and 34), and Lichtenstein et al. (1993 and 1999) (Refs. 13 and 82) indicate that consumption of diets containing *trans* fatty acids results in LDL-C levels between those observed after consumption of saturated fatty acid diets and *cis*-MUFA and PUFA diets; i.e., lower than after consumption of saturated fatty acid diets but higher than after *cis*-MUFA or PUFA diets. As noted previously in comparisons with *cis*-MUFA and PUFA diets, changes in total cholesterol concentrations also tended to parallel changes in LDL-C levels after consumption of *trans* fatty acid diets compared to saturated fatty acid diets; HDL-C levels either did not differ significantly between treatment groups or were lower after consumption of *trans* fatty acid diets than after saturated fatty acid diets.

Interpretation of these intervention studies described previously is complicated because *trans* fatty acids replace other dietary fatty acids that also affect serum cholesterol levels. However, comparing fatty acid composition of the test and control diets, these studies consistently indicate that consumption of diets containing fats with higher levels of *trans* fatty acids results in increased serum LDL-C, the major dietary risk factor for CHD, compared with diets containing *cis*-MUFA or PUFA fat sources and lower levels of *trans* fatty acids. The studies that compare a saturated fat diet with a diet in which some of the saturated fat has been replaced with *trans* fat also indicate that *trans* fatty acids, like saturated fatty acids, increase serum LDL-C. However, these studies do not conclusively show whether, on a gram-

for-gram basis, the rise in LDL-C from *trans* fatty acids is as great as the rise that results from saturated fatty acids.

b. *Observational (epidemiologic) studies.* The observational studies included in FDA's review in this proposed rule used two approximations of *trans* fatty acids intake (adipose tissue concentrations and dietary data) to examine associations between *trans* fatty acids intake and CHD risk. Details of the observational studies are provided in Table 2 of Appendix A of this document.

One case-control study of 1,388 men in 9 countries (the "EURAMIC Study") found no association between *trans* fatty acid concentrations in adipose tissue and the risk of acute myocardial infarction (MI) (Ref. 16). A second case-control study of 250 men in the United Kingdom found that the mean concentration of *trans* fatty acids in adipose tissue was lower in cases of sudden cardiac death (2.68 percent of total fatty acids) than in healthy controls (2.86 percent of total fatty acids) and that multivariate odds ratios for *trans* fatty acids were not independently related to the risk of sudden cardiac death (Ref. 17). Although *trans* fatty acid concentrations in adipose tissue have been reported to reflect dietary intake, for example, London et al. (Ref. 37), the relationship of differences in adipose tissue concentrations of fatty acids to CHD risk remains uncertain.

Other observational studies have reported positive associations between estimated dietary intakes of *trans* fatty acids and incidence of CHD manifested as risk of MI or acute MI (Refs. 16 and 18), risk of nonfatal MI (Refs. 19, 38, 20, and 21), risk of mortality from CHD (Refs. 17, 19, 20, 21, and 22), or increased risk of CHD predicted by higher levels of serum total cholesterol and LDL-C (Refs. 18, 22, 23, and 38). In a Massachusetts case-control study of the risk of MI in 239 men and women diagnosed with a first MI and in an age- and sex-matched control group (n=282), relative risk of MI was 2.03 in the highest quintile of *trans* fatty acids intake (about 6.7 g/day) compared to the lowest quintile of intake (about 3.0 g/day) (Ref. 18). These estimates took into account adjustments for standard risk factors for CHD as well as intakes of saturated fat, monounsaturated fat, linoleic acid, and cholesterol.

Trans fatty acids intake showed a statistical association with serum LDL-C ($r = 0.09$) in a multiple linear regression analysis in 748 men in the Normative Aging Study, conducted between 1987 and 1990 (Ref. 23). The mean *trans* fatty acids intake was determined to be 1.6 percent of energy

intake and did not differ between groups who did or did not have high serum total cholesterol concentrations 3 to 5 years earlier. Associations between *trans* fatty acids intake and serum LDL-C were stronger in the group who previously had high serum total cholesterol concentrations.

In an univariate intercohort analysis of 16 cohorts of men in the Seven Countries Study, Kromhout et al. (Ref. 22) reported that mean intakes of *trans* fatty acids of cohorts ranging from 0.05 percent to 1.84 percent of energy were associated with serum total cholesterol ($r = 0.70$) and with 25-year mortality rates from CHD ($r = 0.78$). In this study, estimated intakes of *trans* fatty acids were based on composites of foods retrospectively collected and analyzed in 1987 to approximate average food intakes of each cohort reported during the baseline period 1958–1964. Independent effects of individual fatty acids and dietary cholesterol on serum total cholesterol and CHD mortality could not be analyzed in multivariate models because mean intakes of individual saturated fatty acids, *trans* fatty acids, and dietary cholesterol were highly correlated among the cohorts.

One prospective cohort study in Finland (Ref. 20) and three in the United States (Refs. 19, 21, and 38) have reported higher CHD risk in population quintiles with the highest intakes of *trans* fatty acids compared to the quintiles with the lowest *trans* fatty acid intakes. In 21,930 male smokers, who were participants in the Finnish Alpha-Tocopherol, Beta-Carotene Cancer Prevention Study, higher *trans* fatty acid intakes were associated with higher risk of major coronary event and risk of CHD death. Relative risk (RR) of a major coronary event was 1.19 in the highest intake quintile (median intake 5.6 g/day) compared to the lowest quintile (median intake 1.3 g/day) when the estimate was adjusted for age and supplement group. An RR of an event associated with *trans* fatty acid ingestion that is greater than 1 would be a risk that is more likely to be associated with ingestion of *trans* fatty acids. Additional adjustment for cardiovascular risk factors reduced the RR to 1.14. With adjustments for age and supplement group, the RR of CHD death was 1.38 in the highest intake quintile compared to the lowest quintile. The association was also significant (RR = 1.39) after adjustment for cardiovascular risk factors and dietary fiber. The multivariate RR of coronary death for intakes of *trans* isomers from hydrogenated vegetable fats was 1.23 (Ref. 20).

In a cohort of 43,757 male health professionals followed for 6 years, median intakes of *trans* fatty acids were 1.5 g/day and 4.3 g/day for the lowest and highest quintiles. Between these intake quintiles, the RR of total MI (chi square for trend) was 1.27 after adjustment for age, cardiovascular risk factors, and dietary fiber intake. The RR of fatal CHD was similar to that for total MI (Ref. 19). In a cohort of 69,181 female nurses who reported that they had not changed their margarine consumption over a 10-year period, the RR of CHD (nonfatal MI or death from CHD) in relation to energy-adjusted *trans* fatty acids intake was 1.67 for the highest intake quintile (mean intake 5.7 g/day) compared to the lowest intake quintile (mean intake 2.4 g/day) after 8 years of followup (Ref. 21). Because intake of *trans* fatty acids was strongly associated with intake of MUFA and linoleic acid, the RR value reported here includes adjustments for dietary lipids. After 14 years of followup in this study, the RR of CHD in relation to energy-adjusted *trans* fat intake was 1.53 (Ref. 38).

These epidemiologic investigations of associations between dietary *trans* fatty acids and risk of CHD must be interpreted with caution because of the imprecision associated with the dietary collection methodologies used, the difficulty of eliminating confounding factors, and because no dose-response relationship has been demonstrated in the epidemiologic studies. However, despite these generally recognized deficiencies in the observational studies, the repeated and consistent findings from the observational studies suggest that consumption of *trans* fatty acids is associated with adverse effects on CHD risk in humans, which supports the findings from intervention studies.

c. *Estimates of dietary intake of trans fatty acids in the U.S. population.* Estimates of mean consumption of dietary *trans* fatty acids in the United States range from about 3 g/day to about 13 g/day. Values have been estimated from national food disappearance data (Refs. 24, 25, and 39), from dietary intakes reported in a national food consumption survey (Ref. 26), and from food frequency data collected in observational studies of *trans* fatty acids intakes and risk of CHD (Refs. 18, 19, 21, and 23).

Based on national food disappearance data, estimated mean values for the daily per capita consumption of total *trans* fatty acids were variable: 12.8 g/day (Ref. 24), 10.2 g/day (Ref. 39), and 8.1 g/day (Ref. 25). Values estimated from food disappearance data tend to be high because the data are collected

before subtraction of losses that occur during processing, marketing, cooking, and plate waste. However, each of these three estimates did apply corrections for these types of losses to varying degrees.

One estimate of mean intake of *trans* fatty acids in the U.S. population has been made based on dietary intake data reported by a nationally representative sample of individuals in the 1989 through 1991 Continuing Survey of Food Intakes of Individuals (CSFII) (Ref. 26). For this estimate, a food composition database with more extensive data on the *trans* fatty acids contents of foods than those used for many previous estimates was developed incorporating data released by USDA in 1995. The estimated mean intake of *trans* fatty acids derived by this approach was 5.3 g/day (2.6 percent of calories) and the 90th percentile intake was 9.4 g/day for individuals 3 years of age and older in the U.S. population. In comparison, the total saturated fatty acid intake was 25.0 g/day and the 90th percentile intake was 40.6 g/day for this population.

The previous estimates are somewhat higher than estimates made from observational studies of *trans* fatty acids intake and risk of CHD in the United States (Ref. 18, 19, 21, and 23). Estimates of mean *trans* fatty acids intake based on food frequency data were 4.4 g/day for men and 3.6 g/day for women in one observational study in the United States (Ref. 18) and 3.4 g/day for men in another (Ref. 23). These estimates included groups of participants who had MI or previous detection of elevated serum cholesterol levels and subjects without those characteristics. Some studies presented mean or median intakes for quintiles of the population studied. Median intakes were 3.1 g/day for men and 3.0 g/day for women in the lowest intake quintile and 6.7 g/day for men and 6.8 g/day for women in the highest quintile (Ref. 18). Another study reported intakes of 1.5 g/day and 5.3 g/day, respectively, for the lowest and highest quintiles of male health professionals (Ref. 19). For female nurses in the United States, mean energy-adjusted intakes of *trans* fatty acids were 2.4 and 5.7 g/day, respectively, for the lowest and highest quintiles of *trans* fatty acids intake (Ref. 21). Because data on *trans* fatty acids contents of food in food composition data bases were considered less than adequate for most foods except fats and oils at the times these estimates were made (Ref. 28) and because some commonly consumed foods such as cookies, crackers, and some salad dressings contain substantial amounts of *trans* fatty acids (Refs. 29 and 30), the

food composition data component of these estimates may not have included *trans* fatty acids content of all foods consumed. In addition, these estimates, as well as all estimates of intakes based on food frequency data (Ref. 27), may be subject to systematic bias toward either over- or underestimation of quantities consumed, depending on the design of the food frequency questionnaire.

Overall, these estimates of mean *trans* fatty acids intakes are similar to amounts of *trans* fatty acids provided in intervention studies in the United States in which *trans* fatty acids contents were determined by chemical analysis of duplicate portions of the diets and in which statistically significant increases in serum LDL-C were reported compared to diets containing *cis*-PUFA (Refs. 13, 34, and 82) or *cis*-MUFA (Ref. 12). The intakes of *trans* fatty acids in these intervention studies were 9 and 13 g/day (Ref. 34), 9.7 and 12.9 g/day (Ref. 82), 12.5 g/day (Ref. 13), and as low as 7.6 g/day (Ref. 12). Levels in these intervention studies are very similar to the estimated intakes of the many individuals in the United States whose *trans* fatty acids consumption is in the upper half of the intake distribution (i.e., greater than the mean of 5.3 g/day) derived from food consumption reported by a nationally representative sample of individuals.

d. *Summary.* Controlled intervention (feeding) studies in different population groups in the United States and other countries consistently indicate that consumption of diets containing *trans* fatty acids results in elevations of serum LDL-C (the major dietary risk factor for CHD) compared with consumption of diets containing *cis*-monounsaturated or polyunsaturated fat sources. Although these studies are too short in duration to provide direct evidence on the incidence of CHD, they provide evidence for an effect of dietary *trans* fatty acids on LDL-C, a biomarker and major risk factor for CHD. In addition, positive statistical associations are consistently reported in observational studies between estimated dietary intake of *trans* fatty acids in free-living populations and incidence of CHD manifested as first acute MI, mortality from CHD, or increased risk of CHD predicted by higher levels of serum total cholesterol and LDL-C.

The available studies do not provide a definitive answer to the question of whether *trans* fatty acids have an effect on LDL-C and CHD risk equivalent to saturated fats on a gram-for-gram basis. They also do not provide information about mechanisms responsible for the observed increases in LDL-C. However, the repeated and consistent findings

under a variety of conditions that consumption of *trans* fatty acids (1) results in increases in serum LDL-C when dietary saturated fatty acids are not increased in intervention studies, and (2) is associated in observational studies with increased risk of CHD are strong evidence of a relationship between consumption of higher levels of *trans* fatty acids and increased risk of CHD.

Estimates of mean dietary intake of *trans* fatty acids by the U.S. population are similar to the levels of *trans* fatty acids consumed in three intervention trials in the United States in which serum LDL-C was adversely affected and in which dietary content of *trans* fatty acids was determined by chemical analysis (9 and 13 g/day, 12.5 g/day, and as low as 7.6 g/day) (Refs. 34, 12, and 13). In addition, statistically significant associations between *trans* fatty acids intakes and increases in serum LDL-C concentrations among free-living populations were seen in observational studies with intakes of 5.7 and 6.7 g/day (Refs. 18 and 21).

C. International Recommendations and Regulatory Initiatives

Several national and international government bodies have recently made recommendations or taken regulatory initiatives on *trans* fatty acids. Internationally, a joint Food and Agriculture Organization/World Health Organization (FAO/WHO) consultation recently addressed *trans* fatty acids. In 1993, they recommended (Ref. 31):

Governments should limit claims concerning the saturated fatty acid content of foods which contain appreciable amounts of *trans* fatty acids and should not allow foods that are high in *trans* fatty acids to be labeled as being low in saturated fatty acids.

The Department of Health, United Kingdom (UK) wrote in 1994 (Ref. 32):

We recommend that, on average, *trans* fatty acids should provide no more than the current average of about 2% of dietary energy and that consideration should be given to ways of decreasing the amount present in the diet.

At this level of intake, a 2,000 calorie diet would provide a daily intake of 4.4 g of *trans* fatty acids.

In 1996, the government of Canada proposed that certain definitions for nutrient content claims be revised to take into account the *trans* fatty acid composition of foods for which claims were made (Ref. 33). In 1998, Canada presented its proposed revisions to the criteria for nutrient content claims (Ref. 41).

Canada proposed to revise the definition of "saturated fat free" to less than 0.2 g saturated fatty acids and less

than 0.2 g *trans* fatty acids per reference amount and per labeled serving and the definition of "low saturated fat" to not more than 2 g saturated and *trans* fatty acids combined per reference amount and per labeled serving and per 50 g if the reference amount is 30 g or 30 milliliters or less, and not more than 15 percent of energy from saturated and *trans* fatty acids combined per reference amount and per labeled serving.

For the claim "reduced saturated fat," Canada proposed that the product contain at least 25 percent less saturated fatty acids and, where present, at least 25 percent less *trans* fatty acids per reference amount (unless the *trans* fatty acid content is less than 0.2 g per reference amount and per labeled serving) than the reference food and the reference food must not meet the compositional criteria for "low in saturated fatty acids."

Canada proposed to define "*trans* fatty acids free" as less than 0.2 g *trans* fatty acids per reference amount and per labeled serving and the food must meet the compositional criteria for "low in saturates." For "reduced *trans* fatty acids," Canada proposed that the product contain at least 25 percent and at least 1 g less *trans* fatty acids per reference amount than the reference food and the content of saturated fatty acids must not be increased in comparison to the reference food.

D. Conclusions

Reports from the Federal Government and the NAS in the late 1980's concluded that *trans* fatty acids did not appear to have deleterious health effects. However, the 1995 Dietary Guidelines for Americans recognized that *trans* fatty acids may raise blood cholesterol levels although not as much as saturated fat (Ref. 6). In addition, the NCEP publication entitled "Second Report of the Expert Panel on Detection, Evaluation and Treatment of High Blood Cholesterol in Adults" stated that recent research indicates that *trans* fatty acids raise serum LDL-C levels (the major dietary risk factor for CHD) nearly as much as cholesterol-raising saturated fatty acids (Ref. 5).

Based on an independent evaluation of studies cited in the petitioner's submission, as well as recent studies in humans identified by a supplemental literature search, the agency concludes that controlled intervention studies in different population groups in the United States and other countries consistently indicate that consumption of diets containing *trans* fatty acids, like diets containing saturated fats, results in increased serum LDL-C compared with consumption of diets containing *cis*-

monounsaturated or *cis*-polyunsaturated fat sources. These findings are consonant with findings from observational studies among free-living persons in the United States and other countries.

The magnitude of the effect of *trans* fatty acids on serum LDL-C compared to the increase resulting from consumption of diets containing saturated fat is not known; its estimation is complicated by the different dietary conditions among studies. Estimates of mean dietary intake of *trans* fatty acids by the U.S. population are similar to the levels of *trans* fatty acids consumed in four intervention trials in the United States in which serum LDL-C was adversely affected and in which *trans* fatty acid contents of the diets were determined by chemical analysis (9 and 13 g/day, 9.7 and 12.9 g/day, 12.5 g/day, and as low as 7.6 g/day) (Refs. 12, 13, 34, and 82). Statistically significant associations between *trans* fatty acids intakes and increases in serum LDL-C concentrations among free-living populations were observed with intakes of 5.7 and 6.7 g/day (Refs. 19 and 21).

Estimates of dietary intake of *trans* fatty acids of the U.S. population by the various approaches described previously and the estimated levels of *trans* fatty acids consumed in intervention trials in which serum LDL-C was adversely affected are similar. Therefore, FDA concludes that under conditions of use in the United States, consumption of *trans* fatty acids contributes to increased serum LDL-C levels, which increases the risk of CHD. This conclusion is consonant with recent reports of other government and scientific bodies discussed previously. Moreover, the similar impact on LDL-C evidenced for *trans* fatty acids, as is known for saturated fatty acids, warrants serious attention from a public health perspective. Thus, the agency finds that addressing *trans* fatty acids in nutrition labeling and claims is important to public health.

V. Proposed Regulations

A. Nutrition Labeling

1. Inclusion of *Trans* Fatty Acids in Nutrition Labeling

FDA received approximately 1,000 letters in response to the petition. Many of the letters were form letters from consumers in support of the petition. One comment from the tropical oil industry supported the disclosure of *trans* fatty acid content information but recommended that *trans* fatty acids be declared as a separate line item in the nutrition label. FDA also received letters

from trade associations representing the edible fats and oil industries, food manufacturers, and nutrition and public health associations. These letters generally disagreed with the petition and opposed modification of existing food regulations to include consideration of *trans* fatty acids. These comments, dating back to 1994, reported that data were inadequate to assess the overall impact of *trans* fatty acids on health, especially at the levels consumed.

Section 403(q) of the act, which was added by the 1990 amendments, states that a food shall be deemed to be misbranded if, with certain exceptions, it fails to bear nutrition labeling. Congress enacted this statute in recognition of the important role diet plays in the maintenance of good health. Congress acted shortly after the publication of two reports (Refs. 2 and 4) that concluded that scientific evidence substantiated an association between dietary factors and rates of chronic disease. Without specific nutrition information on the labels, however, consumers were unable to determine how individual foods fit into dietary regimens that adhered to the dietary guidance in the reports. Accordingly, the 1990 amendments mandated nutrition labeling on most foods to provide consumers with information about specified nutrients that would help them choose more healthful diets, as well as to create an incentive to food companies to improve the nutritional qualities of their products.

With an appreciation of the evolving nature of nutritional science, Congress added section 403(q)(2) to the act that provides for nutrients to be added or deleted from the list of required nutrients in nutrition labeling if the Secretary (and, by delegation, FDA) finds such action necessary to assist consumers in maintaining healthy dietary practices.

When FDA issued the current nutrition labeling regulations on January 6, 1993, it required saturated fat to be listed. Current regulations also require monounsaturated fatty acids and polyunsaturated fatty acids to be listed when claims are made about fatty acids or cholesterol. Their listing is voluntary at all other times. For nutrition labeling purposes, monounsaturated and polyunsaturated fatty acids are defined as the *cis* isomers, i.e., *cis*-monounsaturated and *cis*, *cis*-methylene-interrupted polyunsaturated fatty acids (§ 101.9(c)(2)(ii) and (c)(2)(iii)).

The listing of saturated fat is important information for consumers

who are attempting to make dietary selections because of the positive relationship between saturated fat intake and increased serum LDL-C levels. Based on its review of the available scientific literature (see section IV.B of this document), FDA concludes that the scientific evidence consistently shows that consumption of *trans* fatty acids also contributes to increased serum LDL-C levels. Under current regulations for the Nutrition Facts panel, *trans* fatty acids are included in the declaration of total fat but are not included in the declaration of types of fatty acids (i.e., saturated, monounsaturated, and polyunsaturated fatty acids). Therefore, their presence in a food can only be estimated by subtraction, i.e., by subtracting the sum of saturated, monounsaturated, and polyunsaturated fatty acids from the value declared for total fat. This calculation can only be made when monounsaturated and polyunsaturated fatty acids are listed and is too cumbersome for most consumers to be expected to accomplish. Therefore, the food label is not helpful, and may be misleading, to consumers seeking to purchase and consume foods that do not contain cholesterol-raising fats because information on *trans* fatty acids is not readily available. Accordingly, the agency is persuaded that it would be beneficial for food labels to include *trans* fatty acid content in providing nutrition information so that consumers will not be misled about the possible impact of a product on the risk of CHD. Consequently, in accordance with section 403(q)(2)(A) of the act, FDA is proposing that information on *trans* fatty acids be added to the nutrition label to assist consumers in maintaining healthy dietary practices.

Four approaches for declaring *trans* fatty acids are included in the petition, its amendment, and comments. These are: (1) Include *trans* fatty acids with saturated fat and call the total value "saturated fat;" (2) include *trans* fatty acids with saturated fat, call the total value "saturated fat," and add an asterisk after the term "saturated fat" when the food contains *trans* fatty acids that refers to a footnote stating "Contains _____ g *trans* fat;" (3) include *trans* fatty acids with saturated fat and call the total value "saturated + *trans* fat;" and (4) list *trans* fatty acids separately under saturated fat. In addition, the agency considered a fifth approach that combines two of these four approaches.

The agency considers the options that would combine saturated fatty acids and *trans* fatty acids into one numeric value to be the most useful way of preventing

consumers from being misled about the possible impact of a food containing *trans* fatty acids on the risk of CHD. More specifically, the agency considers the option that would identify the combined amount as "Saturated fat*" with the asterisk referring to a footnote indicating the quantity of *trans* fat included in that amount to be the most helpful and least confusing approach for declaring *trans* fatty acids.

FDA does not prefer the petitioner's original approach of including *trans* fatty acids in the definition of saturated fat in § 101.9(c)(2)(i). This method would not inform consumers that the declared value included *trans* fatty acids or provide them with information on the *trans* fatty acid content of the food. In addition, amending the regulatory definition of saturated fat would be scientifically inaccurate because *trans* fatty acids are not saturated, i.e., they contain double bonds. Current regulations define saturated fatty acids as "the sum of all fatty acids containing no double bonds." The proposed approach would maintain this chemical definition.

Also, one of the principles used by the agency in establishing nutrient content claims is that the nutrient must be declared in the nutrition label so that the claim is verifiable by reference to the nutrition label. Accordingly, establishing a definition for "*trans* fat free" would be precluded if the *trans* fatty acid content of the product were not mentioned in the nutrition label.

FDA is also not proposing the petitioner's third amended approach of listing "saturated + *trans* fat" in one line of the nutrition label because listing "saturated + *trans* fat" with one value representing their combined weights does not enable consumers to know the content of either. Furthermore, this approach would increase the economic burden on industry by requiring label changes for all foods, even those that do not contain *trans* fat.

The agency also considered the approach of listing *trans* fatty acids as a separate line item under saturated fat. This approach would prevent consumers from misclassifying *trans* fatty acids as saturated fats, when, in fact, they are chemically mono- and polyunsaturated fatty acids. However, a great many consumers (almost 90 percent of consumers in a 1995 survey (Ref. 81)) do not understand that *trans* fatty acids raise serum LDL-C levels. Therefore, listing *trans* fats on a separate line would not be helpful in assisting them to maintain healthy dietary practice. Indeed, this approach has the potential of confusing consumers by undermining the messages in the

Dietary Guidelines for Americans (Ref. 6) and NCEP (Ref. 5) that have focused on saturated fat. FDA does not want to distract consumers from years of consumer education messages about saturated fat, especially because the average intake of saturated fat exceeds the average intake of *trans* fat by about fivefold (approximately 25 g versus 5 g/day, respectively) (Ref. 26). Thus, FDA tentatively concludes that it is preferable for the two types of cholesterol-raising fats to be labeled in a manner that emphasizes saturated fats. In this way, consumers will be able to utilize their knowledge of saturated fat in making food selections. However, FDA requests comments on this tentative conclusion and whether it would be preferable to make *trans* fats a mandatory separate line, when present, because the magnitude of change in LDL-C may differ between the two types of fats.

Finally, the agency considered the two remaining approaches to not have the weaknesses of the three approaches discussed previously in this section. One of these approaches combines two options suggested by the petitioner, i.e., using the name "Saturated + *Trans* Fat" and using an explanatory footnote stating the individual amounts of saturated fat and *trans* fat in the product. The amount of grams declared and the %DV would continue to be based on the combined value. This approach would give saturated fat and *trans* fat equal prominence and would further ensure that consumers are aware of the inclusion of *trans* fats in the amounts declared. It also may not confuse consumers into believing that *trans* fats are the same as saturated fats. FDA is concerned, however, that this approach could confuse consumers who do not yet know what *trans* fatty acids are or know about their impact on health and, therefore, could diminish the usefulness of the nutrition label and reduce health benefits. In addition, it could lead to increased costs for firms with products that do not contain *trans* fatty acids if such products' labels were required to indicate that they contained no *trans* fat. FDA requests comment on this possible approach, including whether FDA's concerns about potential consumer confusion are warranted and, if so, whether a consumer education program could address potential consumer confusion.

The other of these approaches is the petitioner's amended approach of declaring the total value of saturated fat and *trans* fatty acids following the term "Saturated fat*" with an explanatory footnote stating the amount of *trans* fatty acids included in the total value.

This approach is beneficial because consumers are unlikely to be confused about the cholesterol-raising potential of the food, because the value declared for saturated fats will include *trans* fatty acids, and consumers will also have access to information on the actual amount of *trans* fatty acids present in a serving of the food. As stated previously, this approach also builds on the extensive work done by public health programs, most notably the NCEP. However, this approach may confuse consumers and lead some to misclassify *trans* fatty acids as saturated fats. FDA requests comments on whether this approach provides consumers with clear information on the presence of and distinction between *trans* and saturated fats. In balance, the agency tentatively concludes that this approach would be the more effective way of informing consumers of the *trans* fatty acid content of foods.

For the reasons discussed above, FDA is proposing to amend § 101.9(c)(2)(i) to require that the statement of the saturated fat content of the food declare the number of grams of saturated and *trans* fatty acids combined per serving. For ease of administration, the agency is subdividing current § 101.9(c)(2)(i), with § 101.9(c)(2)(i)(A) directed at format and rounding requirements and § 101.9(c)(2)(i)(B) directed at the use of the asterisk and footnote when *trans* fatty acids are, or are not, present. In § 101.9(c)(2)(i)(B), the agency is proposing that the footnote state "Includes _____ g *trans* fat" with the option of using the term "*trans* fatty acids" instead of "*trans* fat" (see sample label in Fig. 1). The petitioner had suggested the word "contains" rather than "includes;" however, the agency is concerned that the word "contains" may not convey the idea that the amount specified in the footnote is included in the numerical value declared. The word "includes" is more specific, although either word would be acceptable when the product does not contain *trans* fats, that is, contains less than 0.5 g of *trans* fats per reference amount.

In recognition of the economic impact of changing food labels to incorporate *trans* fatty acid information, however, FDA does not believe there is a need to change labels of products that do not contain *trans* fatty acids and that do not make claims about fatty acids or cholesterol. Consequently, FDA is proposing in § 101.9(c)(2)(i)(B) to allow manufacturers to use the footnote "Includes (or contains) 0 g *trans* fat" or "Contains no *trans* fat" on these labels on a voluntary basis. This footnote would not be required when there is no

trans fat in the food unless fatty acid or cholesterol claims are made.

To maintain consistency in the nutrition labeling of conventional foods and of dietary supplements, the agency

is also proposing to amend § 101.36(b)(2)(i) and (b)(2)(iii) (21 CFR 101.36(b)(2)(i) and (b)(2)(iii)) to specify that, when present, *trans* fatty acids are

to be incorporated in the nutrition labeling of dietary supplements in the same manner as for conventional foods.

BILLING CODE 4160-01-F

Figure 1

Nutrition Facts	
Serving Size 1 Tbsp (14g)	
Servings Per Container 32	
Amount Per Serving	
Calories 100	Calories from Fat 100
% Daily Value*	
Total Fat 11g	17%
Saturated Fat** 4g	20%
Polyunsaturated Fat 3.5g	
Monounsaturated Fat 3.5g	
Cholesterol 0mg	0%
Sodium 115mg	5%
Total Carbohydrate 0g	0%
Protein 0g	
Vitamin A 6%	
Not a significant source of dietary fiber, sugars, vitamin C, calcium and iron.	
* Percent Daily Values are based on a 2,000 calorie diet.	
**Includes 2g <i>trans</i> fat.	

BILLING CODE 4160-01-C

2. Daily Value

Adding the number of grams of *trans* fatty acids to the value declared for saturated fat raises the question of how to calculate the %DV for saturated fat.

FDA tentatively concludes that the current regulations that consider only saturated fat when calculating the %DV do not help maintain healthy dietary practices, a goal set forth in the 1990 amendments, because *trans* fatty acids, which FDA has concluded also increase LDL-C, are not considered. If *trans* fatty acids are not considered, consumers who make food choices on the basis of saturated fat content with the intention of reducing their risk of CHD may be misled by the declared %DV.

For the past 20 years, a wide variety of consensus reports have recommended that Americans consume no more than 30 percent of calories from fat (Refs. 5, 6, 54, and 55). Many of these reports go

on to recommend that saturated fat account for less than 10 percent of calories with monounsaturated and polyunsaturated fatty acids furnishing the remaining calories from fat (Refs. 5 and 56). The Daily Value for saturated fat was calculated on the basis of these recommendations (58 FR 2206 at 2219, January 6, 1993).

Trans fatty acids have not been considered in these dietary recommendations because their intakes were relatively low at the time these recommendations were made and their link to increased risk of CHD has been relatively recent. At this time, the public health and scientific associations that are the source of these recommendations have not indicated what impact the recent research on *trans* fats might have on the recommendations. However, the agency does not believe that it should increase the percentage of total calories from fat

(i.e., from 30 percent or less to some higher value) when adding *trans* fat to the Daily Value. Therefore, FDA finds it necessary to consider the placement of *trans* fatty acids within the three categories of fatty acids that are addressed in the recommendations (i.e., saturated fatty acids, monounsaturated fatty acids, or polyunsaturated fatty acids) to ensure that consumers are not misled by label statements.

Dietary recommendations to limit saturated fat to less than 10 percent of calories were an attempt to limit the amount of fats known to have adverse effects on blood lipids. Evidence has accumulated that *trans* fatty acids have physiologic effects similar to saturated fats and *trans* fatty acids in foods are used functionally to replace saturated fat. The agency, therefore, tentatively concludes that it is reasonable to include *trans* fatty acids in the %DV for saturated fat. Doing so, however, would

have the effect of lowering the DV for saturated fat on labels of food products containing both saturated and *trans* fats since the DV (20g) would relate to the combined amounts of each. FDA will consider amending its approach if the public health and scientific organizations that are the source of current dietary recommendations arrive at different conclusions. Including *trans* fats in calculations of the %DV listed for saturated fat is also the logical outcome of having the quantitative amounts of these two types of fatty acids declared together in the nutrition label. Calculating the %DV on the basis of a quantitative value other than the one declared could be confusing to consumers. Comments are requested on this approach. In addition, comments are requested on whether there is a basis for developing a DV for *trans* fats if comments were to convince the agency to require a separate line for *trans* fat, and how a DV for *trans* fat should affect the DV's for total fat and saturated fat. Inasmuch as no authoritative bodies have recommended values that could be used as a basis for developing a DV for *trans* fat, would it be sufficient to list the quantitative amount of *trans* fat, with no %DV, as now occurs with listings of mono- and polyunsaturated fats? It should be noted that, without a DV for *trans* fat, consumers would not be able to put the quantitative amount in the context of a daily diet, and so would not be able to judge the magnitude of the amount present in relation to usual or recommended intake levels.

Based on these tentative conclusions, FDA is proposing to include *trans* fats in calculations of the %DV listed for saturated fat. Accordingly, FDA is proposing to amend § 101.9(d)(7)(ii) by adding the sentence "When *trans* fatty acids are present in a food, the percent for saturated fat shall be calculated by dividing the amount declared on the label for saturated fat, which includes *trans* fatty acids, by the DRV for saturated fat."

3. Other Issues

a. *Definition.* In revising § 101.9(c)(2)(i) to require the inclusion of *trans* fatty acid content in the declared amount of saturated fat, FDA is proposing to define *trans* fatty acids as "unsaturated fatty acids that contain one or more isolated (i.e., nonconjugated) double bonds in a *trans* configuration." This proposed definition is consistent with the way that *cis* isomers of polyunsaturated fatty acids are defined in § 101.9(c)(2)(ii) and (c)(2)(iii).

b. *Methodology.* Infrared spectroscopy (IR) and capillary gas chromatography (GC) are the methods used for the determination of *trans* fatty acids. IR is the classical method used for the determination of total *trans* fatty acids with isolated *trans* double bonds, while GC methods are used for determination of fatty acid composition. The Official Methods of the Association of Official Analytical Chemists (AOAC) and Official Methods and Recommended Practices of the American Oil Chemists Society (AOCS) that are applicable to the determination of *trans* fatty acids are described in Appendix B of this document (Refs. 42 through 50). The official method number, title, definition, scope and applicability of each method, taken directly from the published method, are included. Specific comments by FDA chemists knowledgeable in application of these methods are also included.

Currently, the method of choice for IR determinations is AOCS Recommended Practice Cd 14d-96 (number 4 in Appendix B) (Ref. 45) and for GC determinations is AOCS Official Method Ce 1f-96 (number 5 in Appendix B) (Ref. 46). IR methodology can be used to determine *trans* isomers in oils, margarines, shortenings, and other partially hydrogenated fats and oils with a limit of quantitation of about 1 percent *trans* as percent of total fat. When *trans* fat levels are less than 1 percent of total fat, they can be accurately determined by GC. GC methods provide more sensitivity but require more time. None of the IR or GC methods have been collaboratively studied for foods other than fats and oils. It is likely that the lower limits of quantitation for these methods will be higher for complex matrices, such as processed multi-ingredient foods, than for oils and other fats.

Trans fatty acid values reported in the nutrition label should utilize compliance procedures in § 101.9(g) that take normal variability due to production processes into account.

c. *Increments.* With respect to how to declare the content of *trans* fatty acids in the footnote "Includes _____ g *trans* fat," FDA believes that the methodology discussed previously supports declaring the amount per serving in the same increments specified in § 101.9(c)(2) for total fat, saturated fat, polyunsaturated fat, and monounsaturated fat, i.e., to the nearest 0.5 (1/2) g increment below 5 g and to the nearest gram increment above 5 g. If the serving contains less than 0.5 g, the content shall be expressed as zero g (i.e., "0" g) in the footnote, if the footnote is used.

d. *Type size.* FDA also is removing the phrase "in the same type size" in § 101.9(c)(2)(i) where it refers to the size of the statement "Not a significant source of saturated fat." In the technical amendments of August 18, 1993 (58 FR 44063 at 44066), the agency did not include footnotes in the types of information that must use 8 point type under § 101.9(d)(1)(iii). Therefore, under § 101.9(d)(1)(iii), 6 point type is sufficient for this statement and the proposed statement "Includes _____ g *trans* fat."

B. Nutrient Content Claims

A number of comments agreed with the petitioner's request that the saturated fat criteria for nutrient content claims should be amended to refer to the level of saturated and *trans* fat combined. Other comments disagreed. One comment suggested that consumer research be initiated to evaluate consumer understanding about *trans* fatty acids before such changes are considered. Another comment stated that the key question of whether *trans* fatty acids have an independent cholesterol-raising effect must be answered before the agency considers changes in food labeling for *trans* fatty acids.

As mentioned, the agency already has recognized that *trans* fatty acids should be considered with respect to the claim "saturated fat free." In the nutrition labeling final rule implementing the 1990 amendments, the agency stated that because:

[c]onsumers would expect a food bearing a "saturated fat free claim" to be free of saturated fat and other components that significantly raise serum cholesterol, and [because of] the potential importance of a saturated fat free claim, the agency believes that it would be misleading for products that contain measurable amounts of *trans* fatty acids to bear a "saturated fat free" claim.

(58 FR 2302 at 2332)

Consequently, the agency set a separate criterion for *trans* fat (i.e., less than 0.5 g) in addition to the criterion for saturated fat (i.e., less than 0.5 g) for the definition of "saturated fat free." The agency did not set a *trans* fat criterion for "low saturated fat" or for "reduced saturated fat" claims in the nutrient content claims final rule. FDA stated that, because the evidence suggesting that *trans* fatty acids raise serum cholesterol was inconclusive, the agency could not conclude that other nutrient content claims for saturated fat and cholesterol would be misleading on foods containing *trans* fatty acids (58 FR 2302 at 2334 and 2340).

However, based on its recent review of the available research, including that

published after 1993 and discussed in section IV.B of this document, FDA now concludes that dietary *trans* fatty acids have adverse effects on blood cholesterol measures that are predictive of CHD risk, specifically LDL-C levels. Consequently, the agency has reconsidered its 1993 conclusion and has evaluated the potential for saturated fat and cholesterol claims to be misleading if, as the petitioner suggests, these foods contain measurable amounts of *trans* fatty acids. This reconsideration is done under the authority of section 403(r)(2)(A)(vi) of the act, which prohibits a claim if the claim is misleading in light of the level of another nutrient in the food. As noted in section IV.C of this document, this action is consistent with that taken by other international government bodies (Refs. 31 through 33).

Nutrient content claims are voluntary statements that can assist consumers in selecting foods that may lead to a healthier diet. Consumers who select foods that have saturated fat or cholesterol claims should be able to do so with confidence that such products can, in fact, lead to a healthier diet. Consumer research on dietary fats and cholesterol suggests that consumers believe that dietary choices, including the selection of foods low in saturated fat and cholesterol, will help maintain healthy blood cholesterol levels (Ref. 35). Because of these expectations and the evidence that *trans* fatty acids raise LDL-C, FDA tentatively concludes that it is reasonable to consider the *trans* fatty acid content of products that bear these types of nutrient content claims to prevent such claims from being misleading.

1. Saturated Fat Claims

a. *Saturated fat free claims.* With respect to the claim "saturated fat free," the agency has considered the petitioner's request that the definition be amended to be less than 0.5 g of saturated fat and *trans* fat combined. The agency agrees with the petitioner that products bearing this claim should be free of components that significantly raise serum cholesterol. However, the agency does not agree that the level of 0.5 g should refer to the sum of saturated fat and *trans* fats combined because it is not possible to determine, for reasons of sensitivity, if a sample contains less than 0.5 g of both saturated and *trans* fat combined.

In defining "free" levels of nutrients, the approach used by the agency has been that the level of a nutrient that is defined as "free" should be at or near the level of detection for the nutrient in foods and should be dietetically trivial

or physiologically inconsequential (56 FR 60478 at 60484, November 27, 1991). In the nutrient content claims final rule, the agency established the "free" level of saturated fat at less than 0.5 g per serving because the majority of the comments that addressed this issue stated that a lower value cannot be reliably quantified (58 FR 2302 at 2332). With respect to *trans* fat, the nutrient content claims final rule stated that 1 percent of total fat was the appropriate criterion for *trans* fat because analytical methods for measuring *trans* fat below that level were not reliable. As discussed in section I of this document, comments objected to this criterion and, in response to these comments, the agency changed the *trans* fat criterion to less than 0.5 g because this level can be reliably determined analytically and is consistent with the definition of "free" for fat and saturated fat (58 FR 44020 at 44027, August 18, 1993).

The petitioner's suggestion that the definition of "saturated fat free" be changed to less than 0.5 g of saturated and *trans* fat combined is not analytically feasible because it would require accurate measurement of both saturated fat and *trans* fat at levels significantly below 0.5 g. In the absence of more sensitive methods, which the petitioner did not provide, it is not appropriate for the agency to set criteria that cannot be adequately analyzed. Consequently, the agency is not proposing to change the criteria in § 101.62(c)(1)(i) of less than 0.5 g of saturated fat and less than 0.5 g of *trans* fat for the "saturated fat free" claim. The agency notes that expressing these criteria collectively as "less than 1.0 g of saturated fat and *trans* fat combined" is not preferable because if, for example, one of the types of fatty acids were present at 0.7 g, it would not be possible to determine if the combined amount were less than 1.0 g because amounts of less than 0.3 g cannot be reliably measured. The agency is willing to reconsider the criteria for this definition in the future if more sensitive methodologies become practical for routine analyses.

b. *Low saturated fat claims.* With respect to "low saturated fat," the petitioner requested that the limit of "1 g or less of saturated fatty acids" in § 101.62(c)(2)(i) be amended to refer to "1 g or less total of saturated and *trans* fat combined." FDA agrees that the level of *trans* fat should be limited in foods bearing this claim because consumers may assume that the claim refers to all fats that adversely affect serum LDL-C levels. However, FDA does not agree that this claim should be based on the sum of saturated fat and *trans* fat

combined because, as previously discussed, it is not possible to reliably measure amounts of either type of fat at values below 0.5 g. Accordingly, if a food contains 0.8 g of saturated fat, there could be uncertainty about whether or not it contained 1 g or less of saturated and *trans* fat combined if the amount of *trans* fat were below 0.5 g.

Consequently, the agency tentatively concludes that separate criteria need to be established for saturated fat and for *trans* fat in the definition of "low saturated fat." However, decreasing the level of saturated fat to accommodate a *trans* fat criterion (e.g., 0.5 g or less of saturated fat) is not feasible because there would be too little difference between the lowered level and the "free" level of saturated fat (i.e., less than 0.5 g).

Given this constraint, the agency tentatively concludes that the saturated fat criterion for "low saturated fat" claims should remain at 1 g or less per reference amount. Therefore, FDA proposes that the *trans* fat criterion be less than 0.5 g, the proposed "free" level of *trans* fat. This proposed action would allow foods that contain insignificant levels of *trans* fats to continue to qualify for "low saturated fat" claims.

The current definition for "low saturated fat" includes a second criterion that the claim not be used on foods that contain more than 15 percent of calories from saturated fat. The petitioner requested that this criterion be amended to require that the food contain not more than 15 percent of calories from saturated fat and *trans* fat combined.

This second criterion was used to prevent misleading "low" claims on nutrient-dense foods with small serving sizes (58 FR 2302 at 2339). Since the amendments being proposed in this document would broaden the term "saturated fat" on the label to include both saturated and *trans* fatty acids, the agency tentatively concludes that it is reasonable to amend this criterion to include both types of fatty acids. While it was not feasible to combine saturated fat and *trans* fats in the quantitative requirements discussed previously, it is not a problem in this instance because the percent of calories can be calculated by multiplying the declared amount of saturated and *trans* fats combined (in grams) by the factor of 9 calories per gram, dividing by the total caloric content of a serving of the product, and multiplying by 100.

Accordingly, FDA is proposing to amend the definition of "low saturated fat" in § 101.62(c)(2)(i) to read: "The food contains 1 g or less of saturated fat and less than 0.5 g of *trans* fat per

reference amount customarily consumed and not more than 15 percent of calories from saturated fat and *trans* fat combined.” Likewise, the agency is proposing to revise § 101.62(c)(3)(i) for meal products and main dishes to state that “low saturated fat claims” may be made on meal products and main dishes if the product contains 1 g or less of saturated fat and less than 0.5 g of *trans* fat per 100 g, and less than 10 percent calories from saturated fat and *trans* fat combined. The agency also proposes to change the term “saturated fatty acids” to the term “saturated fat” in these two paragraphs for consistency with other paragraphs of § 101.62(c).

It should be noted that the definition for the nutrient content claim “healthy” includes a criterion that the food meet the definition of “low saturated fat” (§ 101.65(d)(2)(i) (21 CFR 101.65(d)(2)(i))). It is conceivable that some products may currently meet the criteria for this claim, yet not meet the proposed criteria for “low in saturated fat” and, therefore, would no longer qualify for the “healthy” claim if the agency takes the action proposed herein. The same thing is true for health claims that require that a food bearing the health claim meet the requirements for the claim “low in saturated fat”: dietary saturated fat and cholesterol and risk of coronary heart disease (§ 101.75(c)(2)(ii) (21 CFR 101.75(c)(2)(ii))); fruits, vegetables, and grain products that contain fiber, particularly soluble fiber, and risk of coronary heart disease (§ 101.77(c)(2)(ii)(B) (21 CFR 101.77(c)(2)(ii)(B))); and soluble fiber from certain foods and risk of coronary heart disease (§ 101.81(c)(2)(iii)(C) (21 CFR 101.81(c)(2)(iii)(C))).

c. Reduced saturated fat claims. The agency has defined the term “reduced saturated fat” to mean that the saturated fat content of a food has been reduced by at least 25 percent compared to a reference food. The petition states that without a limit on the *trans* fat content of foods with “reduced saturated fat” claims, manufacturers could replace saturated fat with *trans* fat.

The agency has studied the petition’s request that the “reduced saturated fat” claim be defined as “at least 25 percent less of saturated and *trans* fatty acids combined per reference amount customarily consumed than an appropriate reference food.” Based on its review of the available scientific literature (see section IV.B of this document) indicating that dietary *trans* fat, like saturated fat, increases serum LDL-C levels, the agency tentatively concludes that requiring a total reduction of at least 25 percent in saturated fat and *trans* fat combined is

appropriate and would prevent consumers from being misled by claims indicating a reduction in saturated fats when there is not a meaningful reduction in the combined value of saturated and *trans* fats. The percent reduction would be calculated by subtracting the sum of the saturated and *trans* fats in the labeled food (either the combined value declared on the nutrition label or the actual combined values before rounding (58 FR 44020 at 44024)) from the total of saturated and *trans* fat in the reference food, dividing by the total for the reference food, and multiplying by 100.

However, the agency believes that it is also appropriate to retain the requirement for at least a 25 percent reduction in saturated fat. Having only a single criterion that refers to the combined amount of saturated and *trans* fat would make it possible for foods with no reduction in saturated fat, or even an increase, to use the claim “reduced saturated fat.” For example, a food containing 4 g of *trans* fat and 2 g of saturated fat, could be modified to contain 2 g of *trans* fat and 2.5 g of saturated fat. The modified food would contain a total of 4.5 g of saturated and *trans* fat combined, which would mean that the total has been reduced by 25 percent, even though the saturated content would be increased by 25 percent. The agency tentatively concludes that it is misleading to allow a food that is reduced in this manner to bear the claim “reduced saturated fat.” Therefore, FDA is proposing that the definition of “reduced saturated fat” in § 101.62(c)(4)(i) read: “The food contains at least 25 percent less saturated fat and at least 25 percent less saturated fat and *trans* fat combined per reference amount customarily consumed than an appropriate reference food as described in § 101.13(j)(1).”

FDA points out that accompanying information is required with “reduced claims.” Section 101.62(c)(4)(ii)(A) requires information on the identity of the reference food and the percent (or fraction) that the saturated fat differs between the two foods, e.g., “Reduced saturated fat. Contains 50 percent less saturated fat than the national average for nondairy creamers.” This information must be declared in immediate proximity to the most prominent claim. Section 101.62(c)(4)(ii)(B) requires information on the amounts of saturated fat in the reference food and in the food, e.g., “Saturated fat reduced from 3 g to 2 g per serving.” This information generally must be declared adjacent to the most prominent claim or to the nutrition label. The agency is proposing no

changes in these provisions. Accordingly, as proposed, the accompanying information would refer to the actual amount of saturated fat in the food, not to the amount declared in the nutrition label, when that value includes *trans* fats. For example, if a reference food contained 4 g of saturated fat and this amount is reduced to 2 g in the product bearing the claim, this would be stated as a 50 percent reduction in saturated fat from 4 g to 2 g, regardless of the amount of *trans* fat present. As discussed, if this rule is finalized as proposed, foods qualifying for this claim would also have to meet the hidden (i.e., not visible to the consumer) criterion of at least a 25 percent reduction in saturated fat and *trans* fat combined.

2. *Trans* Fat Claims

Although the petitioner did not address the use of *trans* fat claims, the agency’s consideration of the subject petition has prompted the agency to consider the usefulness of such claims. As discussed previously, FDA concludes that *trans* fats contribute to increased serum LDL-C levels. In light of this conclusion, FDA is considering whether providing for the use of a “*trans* fat free” claim would assist consumers in maintaining healthy dietary practices by allowing them to readily identify foods free of fats known to increase the risk of CHD or if it would confuse them by detracting from the saturated fat message of the NCEP and other groups. The agency also is considering whether the claim is needed to provide an incentive to the food industry to remove *trans* fats from foods currently containing them. The agency requests comments on the usefulness of such a claim in these contexts. In particular, is allowing manufacturers to use the footnote “Contains no *trans* fats” in the nutrition label when foods are free of *trans* fats sufficient to allow these foods to be identified readily by consumers? In addition, requiring inclusion of *trans* fat, when present, in the declaration of saturated fat will increase the amounts declared. Will avoiding this increased saturated fat declaration provide sufficient incentive to manufacturers to eliminate *trans* fats whenever possible or is the “*trans* fat free” claim also needed?

FDA is proposing a definition for “*trans* fat free” in this document to be able to receive comments on the particulars of the definition and, thus, to be able to proceed to a final rule if the comments support this action. If comments do not justify the need for this claim, the agency intends to withdraw the proposed definition.

In arriving at a proposed definition, the agency reviewed its general approach to defining "free" levels of a nutrient when implementing the 1990 amendments. At that time, FDA stated that the level of a nutrient that is defined as "free" should be at or near the reliable limit of detection for the nutrient in foods (56 FR 60478 at 60484, November 27, 1991). In technical amendments to the nutrition labeling final rules, FDA concluded that less than 0.5 g of *trans* fat meets this criterion. As a result, the agency required that foods bearing "saturated fat free" claims contain less than 0.5 g of *trans* fat per reference amount and per labeled serving (58 FR 44020 at 44027, August 18, 1993). Because analytical techniques for measuring *trans* fats continue to preclude more precise determination, the agency tentatively concludes that foods bearing the claim "*trans* fat free" should contain less than 0.5 g of *trans* fat per reference amount customarily consumed and per labeled serving.

Section 403(r)(2)(A)(vi) of the act states that a claim may not be made if the claim is misleading in light of the level of another nutrient in the food. In the case of a "*trans* fat free" claim, the agency tentatively concludes that it would be misleading for foods bearing the claim to contain measurable amounts of saturated fat because consumers would expect such products to be "free" of components that significantly raise serum LDL-C. Therefore, in addition to a *trans* fat criterion of less than 0.5 g, the agency believes that foods bearing a "*trans* fat free" claim should also meet the criterion for "saturated fat free" of less than 0.5 g of saturated fat per reference amount and per labeled serving (§ 101.62(c)(1)(i)). It should be noted that the level of "saturated fat" specified in regulations as a criterion for a "*trans* fat free" claim, or for any other claim, refers to the analytically determined amount of saturated fat in a food, not to the combined amounts of saturated and *trans* fat declared on the label.

Accordingly, the agency is proposing to add § 101.62(c)(6) to provide for the use of the claim "*trans* fat free" and its synonyms on the labels of foods, meal products, and main dishes. Consistent with other "free" claims, the synonyms proposed include "free of *trans* fat," "no *trans* fat," "zero *trans* fat," "without *trans* fat," "trivial amount of *trans* fat," "negligible source of *trans* fat," or "dietarily insignificant source of *trans* fat." In addition, the agency is proposing to allow for the synonymous use of the terms "*trans* fat" or "*trans* fatty acids."

Because the proposed levels for *trans* fat and saturated fat in proposed § 101.62(c)(6)(i) would result in "*trans* fat free" and "saturated fat free" claims being synonymous, foods that meet the criteria for the two claims would be able to use either claim or both claims simultaneously.

Consistent with parallel provisions for saturated fat in § 101.62(c)(1)(ii), the agency is proposing to add § 101.62(c)(6)(ii) that states that a food bearing a "*trans* fat free" claim shall contain no ingredient that is generally understood by consumers to contain *trans* fats unless the listing of the ingredient in the ingredient statement is followed by an asterisk (or other symbol) that refers to a statement below the list of ingredients that states, "adds a trivial amount of *trans* fat," or other synonymous phrases. The agency tentatively concludes that this provision is needed because some consumers may be confused by the listing of ingredients such as partially hydrogenated oils, for example, on product labels that bear a "*trans* fat free" claim.

To ensure that "*trans* fat free" claims are not misleading by being used on foods that would not typically contain *trans* fats, and consistent with parallel provisions in § 101.62(c)(1)(iii) for saturated fat, the agency also is proposing to add § 101.62(c)(6)(iii) that states that a food bearing a "*trans* fat free" claim shall disclose when *trans* fats are not usually present in the food (e.g., "Corn oil, a *trans* fat free food").

The agency notes that it considers statements such as "no hydrogenated oils" or "hydrogenated fat free" to be implied claims that a product is free of *trans* fatty acids because, as described in section IV.A of this document, *trans* fatty acids are primarily the result of the hydrogenation process. In accordance with § 101.65(c)(3), such statements would be permissible on a food only if the food met the criteria for a "*trans* fat free" claim.

The agency specifically invites comments on the proposed definition of "*trans* fat free" and on the general usefulness of this claim.

FDA also considered, but rejected, proposing definitions for "low *trans* fat" and "reduced *trans* fat." The agency has consistently required that definitions for "low" claims relate to the total amount of the nutrient recommended for daily consumption (56 FR 60439 and 58 FR 2302 at 2335). However, because consensus documents do not provide quantitative recommendations for daily intake of *trans* fats, FDA concludes that the claim "low *trans* fats" cannot be defined. In the case of the claim "reduced *trans* fats," the agency is

concerned that use of the claim could detract from educational messages that emphasize saturated fatty acids.

However, any person who believes that such a claim is useful may petition the agency under § 101.69 (21 CFR 101.69).

The agency notes that proposing a definition for "*trans* fat free" in § 101.62(c)(6) necessitates consideration of the application of § 101.62(c) "Fatty acid content claims" to *trans* fatty acid claims. Current § 101.62(c) requires disclosure of total fat and cholesterol levels in proximity to saturated fat claims. Specifically, disclosure of total fat is required unless the food contains less than 0.5 g total fat when "saturated fat free" claims are made or 3 g or less total fat when "low" or "reduced" saturated fat claims are made. Likewise, disclosure of cholesterol is required unless the food contains less than 2 milligrams (mg) of cholesterol. These requirements are in response to sections 201(n), 403(a), and 403(r)(2)(A)(iv) of the act. Section 403(r)(2)(A)(iv) of the act requires disclosure of the cholesterol content of the food in immediate proximity to claims about the level of saturated fat. Similarly, FDA required disclosure of the amount of total fat adjacent to saturated fat claims because research suggested that consumers often did not differentiate between total fat and saturated fat content and, therefore, the level of total fat was a material fact necessary to prevent consumers from being misled about the total fat content of the food (56 FR 60478 at 60492 and 58 FR 2302 at 2340).

The agency believes that consumers are likely to purchase foods with claims about *trans* fats for the same purpose as they would purchase a food with claims about saturated fats, i.e., to help lower their CHD risk. Also, the agency does not believe that consumers are any more likely to differentiate between total fat and *trans* fat than between total fat and saturated fat. In fact, they may be less likely to differentiate because there have been no public education programs aimed at making consumers aware of *trans* fats, and, consequently, fewer consumers can be expected to recognize the name "*trans* fat." Therefore, FDA tentatively concludes that it is reasonable to require disclosure statements about total fat and cholesterol with both types of fatty acid claims, and that doing so should prevent consumers from being misled about the level of total fat and cholesterol in foods bearing a "*trans* fat free" claim. Accordingly, the agency is proposing to amend § 101.62(c) to have it apply to *trans* fat claims as well as to saturated fat claims.

3. Cholesterol Claims

Under current regulations, cholesterol claims are prohibited when a food contains more than 2 g of saturated fat per reference amount (or per labeled serving size for meals and main dishes). The petitioner requested that this saturated fat threshold be amended to state that foods bearing cholesterol claims must contain "2 g or less of saturated and *trans* fatty acids combined."

The saturated fat threshold was introduced when implementing the 1990 amendments to prevent cholesterol claims from being misleading in light of the amount of saturated fat present in the food (58 FR 2302 at 2333). This action was issued in accordance with section 403(r)(2)(A)(vi) of the act. As discussed in section IV.B.2 of this document, FDA has concluded that *trans* fats have physiologic effects similar to saturated fats. Because of this effect, FDA tentatively concludes that it is appropriate for the saturated fat threshold for cholesterol claims to be the total of saturated and *trans* fats combined. At the 2 g level, the agency does not anticipate that concerns about the sensitivity of analytical methods will preclude calculation of the combined amount.

Accordingly, FDA is proposing to revise § 101.62(d)(1)(i)(C) and (d)(1)(ii)(C) to state that a "cholesterol free" claim may be made when the food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed or, in the case of a meal product or main dish product, 2 g or less of saturated fat and *trans* fat combined per labeled serving. The proposed change in § 101.62(d)(1)(ii)(C) also corrects a technical error because this section currently reads "less than 2 g of saturated fat" and it should read "2 g or less of saturated fat." Similar changes are proposed for "low cholesterol claims" for foods and meals and main dishes in § 101.62(d)(2)(i)(B), (d)(2)(ii)(B), (d)(2)(iii)(B), (d)(2)(iv)(B), and (d)(3) and for "reduced cholesterol" claims for foods in § 101.62(d)(4)(i)(B) and (d)(4)(ii)(B) and for meals and main dishes in § 101.62(d)(5)(i)(B) and (d)(5)(ii)(B).

4. Lean and Extra Lean Claims

As requested by the petitioner and for the reasons noted previously for cholesterol claims, FDA is proposing to amend the definitions of "lean" and "extra lean" for foods and meal products to require that the saturated fat criterion now refer to the level for saturated fat and *trans* fat combined.

Therefore, FDA is proposing to revise § 101.62(e)(1) to state that seafood and game meat products may use the term "lean" if they contain less than 10 g total fat, 4.5 g or less saturated fat and *trans* fat combined, and less than 95 milligrams (mg) cholesterol per reference amount customarily consumed and per 100 g. Likewise, the agency is proposing to revise § 101.62(e)(3) to state that the term "extra lean" may be used on these foods if they contain less than 5 g total fat, less than 2 g saturated fat and *trans* fat combined, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g. Similar revisions are proposed for § 101.62(e)(2) and (e)(4), which address the use of the terms on labels or in labeling of meal and main dish products.

It should be noted that the regulation on the health claim regarding dietary lipids and cancer includes a criterion in § 101.73(c)(2)(ii) (21 CFR 101.73(c)(2)(ii)) that the food must meet the requirements for "low fat" in § 101.62, except that fish and game meats may meet the requirements for "extra lean" in § 101.62. Thus, some fish and game meat products that currently meet the criteria for this health claim may not be eligible if the proposed definition for the claim "extra lean" is issued.

C. Disqualifying and Disclosure Levels

The petitioner requested that FDA amend the disqualifying level for health claims and the disclosure level for nutrient content claims with respect to saturated fat. The petitioner also requested that § 101.14(a)(5) regarding disqualifying nutrient levels for health claims and the general disclosure requirements for nutrient content claims in § 101.13(h)(1) be amended by replacing "4.0 g of saturated fat" with "4.0 g total of saturated and *trans* fatty acids combined." The petitioner requested similar changes for health claims for meal and main dish products in § 101.14(a)(5)(i) and (a)(5)(ii) and for nutrient content claims for these types of products in § 101.13(h)(2) and (h)(3). The petitioner maintained that health claims and nutrient content claims are misleading on products containing high levels of *trans* fatty acids, and that incorporating *trans* fatty acids criteria into these requirements serves to limit the potential for any such misleading claims.

The purpose of the disqualifying levels for health claims is to ensure that health claims cannot be made for products that contain nutrients in amounts that increase to persons in the

general population the risk of a disease or health-related condition that is diet related (see section 403(r)(3)(A)(ii) of the act). For example, the disqualifying level for saturated fat ensures that a sodium and hypertension claim cannot be made for a product that contains high levels of saturated fat. Such a claim could lead consumers to believe that the product is useful in constructing a healthful total daily diet, when, in fact, it contains a high level of saturated fat, which increases the risk of heart disease.

For products bearing nutrient content claims, disclosure levels direct consumers to information about certain nutrients that are present in levels high enough to increase the risk of a diet-related disease or health condition. For example, a product may qualify for a "good source of vitamin A" claim yet contain high levels of cholesterol. The label for such a product must state "See nutrition information for cholesterol content" next to the claim. In this manner, the label draws attention to the presence of cholesterol, and the claim is not misleading for failing to reveal a material fact about the consequences of consuming the food.

The 1990 amendments directed the agency to take into account the significance of the food in the total daily diet in determining disqualifying and disclosure levels. Accordingly, both disqualifying and disclosure levels were based on 20 percent of the Daily Reference Values (DRV's) for total fat, saturated fat, cholesterol, and sodium, taking into account the number of eating occasions and the number of foods containing these nutrients in the food supply (58 FR 2478 at 2493 and 2494). FDA adopted the 20 percent criterion because it provides a consistent and appropriate basis for defining the levels at which the presence of a particular nutrient may be undesirable (58 FR 2478 at 2493 and 2494). Applying the 20 percent criterion to saturated fat, which has a DRV of 20 g, resulted in a disqualifying and disclosure level of 4 g for saturated fat.

FDA is persuaded by the petitioner that the disqualifying and disclosure level of 4 g of saturated fat should be amended to be "4 g total of saturated and *trans* fatty acids combined." As discussed previously, FDA has concluded that *trans* fatty acids have been shown to have physiologic effects on serum LDL-C similar to saturated fatty acids. Because of this effect, FDA believes that health claims and nutrient content claims would be misleading on products containing high levels of *trans* fatty acids. For this reason, FDA tentatively concludes that it is

appropriate for the level to be the total of saturated and *trans* fatty acids combined. Having the saturated fat level be amended to incorporate *trans* fat is consistent with tentative conclusions in the discussion on Daily Value (section V.A.2 of this document) that it is reasonable to include *trans* fats in calculations of %DV for saturated fatty acids. Therefore, FDA is proposing that § 101.14(a)(5) regarding disqualifying nutrient levels for health claims and the general disclosure requirements for nutrient content claims in § 101.13(h)(1) be amended by replacing "4.0 g of saturated fat" with "4.0 g of saturated fat and *trans* fat combined." FDA is proposing similar changes for health claims for meal and main dish products in § 101.14(a)(5)(i) and (a)(5)(ii) and for nutrient content claims for these types of products in § 101.13(h)(2) and (h)(3). For consistency with others food labeling regulations, FDA also is proposing in § 101.14(a)(5), (a)(5)(i), and (a)(5)(ii) that the term "per label serving size" be changed to read "per labeled serving size."

In view of this proposed change, FDA considered whether the referral statement accompanying nutrient content claims on the labels of foods that contain more than 4 g of saturated fat and *trans* fat should read "See nutrition information for saturated and *trans* fat content." FDA tentatively concludes that the statement "See nutrition information for saturated fat content" is sufficient because *trans* fat may not be present. Also, if *trans* fat were present, the amount declared for saturated fat would include the amount of *trans* fat in the food and would have a footnote stating this amount. However, under the proposed provisions, the agency would not object to the use of a statement that refers to both saturated fat and *trans* fat.

D. Vegetable Oil Claims

The petitioner requested that FDA require that the fat content in a product be low in both saturated and *trans* fatty acids if a vegetable oil claim is made. The petitioner argued that claims in restaurants that foods are cooked with "100% vegetable oil" are misleading when the oil contains high levels of total "heart-unhealthy" fat. The petitioner requested that § 101.65(c)(3) be amended to state that "made with vegetable oil" is an implied claim that the product is low in saturated and *trans* fatty acids combined.

The agency has stated that there are long established relationships between ingredients and nutrients that are covered under the definition of implied nutrient content claims (58 FR 2302 at

2372). FDA has issued warning letters regarding foods that bear label statements, such as "100 percent vegetable oil," that imply that these ingredients have low levels of saturated fat when that is not true (58 FR 2302 at 2372). FDA has said that ingredient claims that make an implied representation about the level of a nutrient in a food should be considered implied nutrient content claims (58 FR 2302 at 2372). Section 101.65(c)(3), which addresses implied nutrient content claims, states, in part, that a claim "that a food is made only with vegetable oil is a claim that the food is low in saturated fat." Therefore, because the agency is proposing to amend the definition of "low saturated fat" in § 101.62(c)(2) to include a *trans* fatty acid criterion, FDA believes that the action requested by the petitioner has been addressed and it is not necessary to propose an additional amendment to § 101.65(c)(3). Generally, nutrient content claims for restaurant foods must comply with the same requirements as for retail foods (see 58 FR 2302 at 2386 and 61 FR 40320, August 2, 1996).

E. "Partially Hydrogenated" in Ingredient Statements

The petitioner stated that the term "hydrogenated" is meaningless to most consumers, but that consumers are familiar with the term "saturated" and associate it with fats that can raise blood cholesterol levels. The petitioner maintained that using the term "saturated" instead of the term "hydrogenated" would be more understandable to consumers and would further serve to highlight the presence of "heart-unhealthy" fats. Further, the petitioner argued that the term "fully saturated" or "partially saturated" accurately describes the nature of the hydrogenated fat after the chemical process of hydrogenation.

The agency has previously considered this issue. In the **Federal Register** of January 6, 1976 (41 FR 1156), the agency established the term "partially saturated" for oils that were partially hydrogenated for the purpose of ingredient labeling. In November 1976, based on requests from six trade associations representing the edible oils industry, FDA reversed itself and proposed to amend its regulations by substituting "hydrogenated" and "partially hydrogenated" for "saturated" when those modifying terms are required to accompany the name of a fat or oil ingredient on the labeled foods (41 FR 52481, November 30, 1976). The trade associations for the edible fats and oils industry contended that the terms "saturated" and "partially

saturated" were confusing and misleading to consumers in that they tended to equate different oils that differ widely in their content of saturated fats. Data furnished by the trade associations showed that partially hydrogenated soybean oil has a lower saturated fatty acid content than unhydrogenated palm kernel oil, hydrogenated palm oil, and commercially blended shortenings. One association stated that the partial hydrogenation of an oil that is low in saturated fats (e.g., cottonseed oil, soybean oil) results in a product containing less total saturated fat than a similar product made from a fat or oil that intrinsically has a much higher degree of saturation, such as animal fats, palm oil, or coconut oil (41 FR 52481). Based in part on this information, FDA required use of the term "partially hydrogenated" in its final rule on the label designation of fats and oils (43 FR 12856, March 28, 1978).

FDA has re-examined this issue considering the *trans* fat content as well as the saturated fat content of fats and oils. A review of the nutritional content of varied fats and oils shows that many partially hydrogenated oils contain lower amounts of saturated fatty acids and *trans* fatty acids combined than fats that are unhydrogenated (e.g., lard) (Ref. 40).

Therefore, the agency continues to believe that use of the terms "saturated" and "partially saturated" to describe fats and oils processed in a certain way may mislead consumers to equate fats and oils that, in fact, differ substantially in their content of "heart-healthy" fats. This misperception could cause consumers to avoid a processed oil, which would be required to be identified as "partially saturated," and instead choose an unprocessed fat or oil, even though it may contain more saturated fatty acids than the combined amount of saturated fatty acids and *trans* fatty acids in another product.

The agency has stated that the purpose of the regulatory requirement in § 101.4(b)(14) is to distinguish in the name between unprocessed and processed fats or oils (43 FR 12856). The term "hydrogenated" more accurately makes this distinction because "saturated" describes a chemical characteristic of a fatty acid. All vegetable oils, whether processed or not, are at least partially saturated, that is, they contain some fatty acids that have only single bonds. However, a partially saturated oil is not necessarily partially hydrogenated and a partially saturated oil does not necessarily contain *trans* isomers. The terms "hydrogenated" and "partially hydrogenated" describe the chemical process of the addition of

hydrogen to a natural fat or oil for functional reasons (see section IV.A of this document).

The terms "hydrogenated" and "partially hydrogenated" are not intended to describe the nutritional properties of fats or oils. The purpose of the ingredient statement is to identify the ingredients in a food by listing the common or usual names of each ingredient. The mechanisms for supplying nutritional information about the finished food are the nutrition label and nutrient content claims. By considering both saturated and *trans* fats in nutrition labeling and nutrient content claims, this proposed rule, if adopted, will give consumers additional information to increase their ability to select foods to help lower their CHD risk. Therefore, FDA is not proposing to grant the petitioner's request.

VI. Preliminary Regulatory Impact Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "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 or if it raises novel legal or policy issues. FDA finds that this proposed rule is economically significant as defined by Executive Order 12866.

In accordance with the Small Business Regulatory Enforcement and Fairness Act (Public Law 104-121), the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that this proposed rule would be a major rule for the purpose of congressional review. A major rule for this purpose is defined in 5 U.S.C. 804(2) as one that the Administrator has determined has resulted or is likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-

based enterprises to compete with foreign-based enterprises in domestic or export markets.

A. Need for This Regulation

Current nutrition labeling regulations do not allow manufacturers to disclose information about the *trans* fat content in the nutrition label of their products. The regulations in § 101.9(c) read, in part, that "No nutrients or food components other than those listed in this paragraph as either mandatory or voluntary may be included within the nutrition label." Some of the nutrients listed are total fat, saturated fat, polyunsaturated fat (voluntary), and monounsaturated fat (voluntary). *Trans* fat is not included as either mandatory or voluntary and, therefore, no information about *trans* fat may be included in the Nutrition Facts panel.

Nutrient content claim regulations in § 101.62(a) read, in part, that "A claim about the level of fat, fatty acid, and cholesterol in a food may only be made on the label or in the labeling of foods if: (1) The claim uses one of the terms defined in this section in accordance with the definition of that term." No such term is defined for *trans* fat.

This proposed regulation is needed to amend existing regulations to permit and require manufacturers to provide important health-related information to consumers regarding the amount of *trans* fat in food products. This regulation is also needed to amend existing regulations of claims that in some manner involve the amount of saturated fat so that the regulations set limits for *trans* fat and do not permit misleading claims.

B. Regulatory Alternatives

FDA has considered a number of regulatory alternatives regarding *trans* fat. FDA requests comment on the benefits, costs, and any other aspect of these (and any other) alternatives.

1. Take No New Regulatory Action

FDA could choose to deny the petition and take no new action in regard to *trans* fat. Taking no new regulatory action will be considered the baseline. Absolute benefits and costs are associated with all regulatory options, including the baseline. Absolute benefits and costs can be thought of as the state of the world under various policy options. A regulatory assessment of an option measures the difference between the absolute benefits and costs of that option and the absolute benefits and costs of the baseline. Measured benefits and costs are therefore zero at the baseline.

FDA has not selected this option for three reasons. First, it found that *trans* fat increases the risk of CHD. Second, consumers would not be informed as completely as they could be by the nutrition label about the *trans* fat content of the food products that they consume. Third, claims that have limits for saturated fat and not for *trans* fat may be misleading.

Producers have limited incentives to reduce the *trans* fat content of food products because current regulations prohibit manufacturers from using the label to inform consumers about the *trans* fat content of their products. This lack of information about *trans* fat content results in increased *trans* fat consumption that is associated with an increased risk of CHD, as shown in the estimates of benefits when such information is provided. FDA believes that the proposed option minimizes any potential for diverting consumers' attention from the risk of CHD associated with saturated fat, while providing consumers with information on the *trans* fat content of food products. The proposed option also prevents misleading claims and provides producers with incentives to reduce the *trans* fat content of food products.

2. Take the Proposed Regulatory Action Described in Section V of this Document

The analysis beginning with section VI.C of this document estimates the benefits and costs of this alternative.

3. Propose to Permit the Voluntary Labeling of *Trans* Fat and to Permit *Trans* Fat Nutrient Content Claims

FDA could propose voluntary rather than mandatory labeling of *trans* fat and propose to allow *trans* fat claims. This alternative would directly address the difficulties posed by current regulations in providing information on *trans* fat content on the label. However, a voluntary rule is unlikely to result in information on *trans* fat content being provided on the labels of any products with one or more grams of *trans* fat. Therefore, consumers would not have important nutrition information available to them on the labels of many products where it is most needed. Margarine makers know how to reformulate margarine to eliminate *trans* fat. Indeed, many margarine products have already been reformulated. Voluntary labeling coupled with claims could therefore possibly provide sufficient incentives to cause the makers of unreformulated margarine to reformulate their products. Makers of other food products containing *trans* fat, however, do not yet know how to

reformulate their products. The agency believes that it is unlikely that voluntary labeling would provide sufficient incentive for reformulation of many other products. Although (as shown in section VI.D.6 of this document) reformulating these other food products is costly, the public health benefits generated by reformulating these products greatly exceed the costs. Because voluntary labeling leads to less reformulation and smaller health benefits than mandatory labeling, the net benefits would be lower for voluntary labeling than for the proposed rule.

Voluntary labeling would also require the listing of *trans* fat on a separate line in the Nutrition Facts Panel. The problems with a separate line for *trans* fat are discussed in the following paragraphs.

4. Alter the Proposed Regulatory Action—Propose Reporting of *Trans* Fat on a Separate Line Below Saturated Fat

FDA is proposing that the line in the Nutrition Facts panel for saturated fat report the total grams of saturated fat and *trans* fat combined, and that the combined amount be used to determine the %DV labeled for saturated fat. The saturated fat listing will be accompanied by an asterisk referring to a footnote in the Nutrition Facts panel indicating the amount of *trans* fat per serving in grams. Alternatively, FDA could propose the listing of *trans* fat on a separate line under saturated fat. In comparison with the proposed option, this alternative may make the *trans* fat content of the product more obvious to consumers and may provide more incentive to producers to reduce the amount of *trans* fat in food. This approach has the potential to confuse consumers by undermining educational messages that focus on saturated fat. Also, without a daily value for *trans* fat, consumers might be unable to tell if the amount per serving is high or low.

If the agency were to require listing the amount of *trans* fat on a separate line in the Nutrition Facts panel, all labels would have to be changed—including those for products containing no *trans* fat. These additional labeling costs would have no additional benefits associated with them.

5. Alter the Proposed Regulatory Action—Propose to Report *Trans* Fat Differently than in the Proposal

FDA could propose to include *trans* fat with saturated fat, call the total value “saturated fat,” and not have the amount of *trans* fat declared in a footnote. This alternative would not divert consumers’ attention from the

saturated fat content of food products. At the same time, it would provide consumers with information on combined saturated and *trans* fat content and provide producers with incentives to reduce the level of both saturated and *trans* fat in their products. However, it would not provide consumers with information on either the *trans* fat content or the actual saturated fat content of food.

One of the principles used by FDA in establishing nutrient content claims is that the nutrient must be declared in the Nutrition Facts panel so that the claim is verifiable by reference to the Nutrition Facts panel. Accordingly, establishing a definition for “*trans* fat free” would be precluded if the *trans* fat content of the product were not mentioned in the Nutrition Facts panel.

Alternatively, FDA could propose to include *trans* fat with saturated fat and call the total value “saturated and *trans* fat”. This approach would increase the economic burden on industry by requiring label changes for all foods, even those that do not contain *trans* fat. Moreover, consumers would not be able to determine the content of either saturated or *trans* fat, and saturated fat and *trans* fat content claims would not necessarily be verifiable by reference to the Nutrition Facts panel.

As a second alternative, FDA could propose to include *trans* fat with saturated fat and call the total value “saturated and *trans* fat,” with a footnote stating the individual amounts of saturated fat and *trans* fat. This approach would lead to higher costs than the proposed regulatory action if it requires label changes for all foods, even those that do not contain *trans* fat.

6. Expand the Proposed Regulatory Action—Propose “Low *Trans* Fat” and “Reduced *Trans* Fat” Claims

The proposed rule would define a nutrient content claim for “*trans* fat free.” FDA could propose to define “low *trans* fat” and “reduced *trans* fat” claims. These claims would provide producers with additional incentive to reduce the amount of *trans* fat in food products. However, FDA has consistently required that definitions for “low” claims relate to the total amount of the nutrient recommended for daily consumption. Because consensus documents do not provide quantitative recommendations for daily intake of *trans* fat, FDA concludes that the claim “low *trans* fat” cannot be defined. In the case of “reduced *trans* fat,” the agency is concerned that use of the claim could detract from educational messages that emphasize saturated fat.

7. Expand the Proposed Regulatory Action—Propose Labeling at Food Service Establishments

Partially hydrogenated fats and oils are used extensively in the food service industry for baking and frying. For example, USDA data indicate that a single serving of french-fried potatoes from a fast food restaurant may contain over 3.5 g *trans* fat per 70 g serving (Ref. 40). If FDA were to require that content information about *trans* fat be provided in food service establishments, consumers could more easily make informed menu choices. However, FDA is not permitted to pursue this alternative. The 1990 amendments specifically preclude FDA from requiring nutrition labeling in food service establishments unless the food bears a nutrition claim or other nutrition information on its menu or other forms of labeling. If an establishment is making a claim for a food, the food must meet the criteria for the claim and the amount of nutrient that is the subject of the claim must be made available.

C. Benefits

To estimate the health benefits of the proposed rule, FDA is following the general approach used to estimate the health benefits for the implementation of the 1990 amendments (56 FR 60856 at 60869, November 27, 1991). Accordingly, FDA is estimating: (1) The changes in *trans* fat intakes that would result from labeling changes; (2) the changes in health states that would result from changes in *trans* fat intakes; and (3) the value of changes in health states in terms of life-years gained, number of cases or deaths avoided, and dollar value of such benefits. FDA considered the adult population of the United States to be the target population for the estimate of health benefits. Although changes in dietary intake and biological factors in children may affect their later risk for CHD as adults, those changes, if present, have not been quantified and are beyond the scope of the health benefits assessment for this proposed rule. If reducing the *trans* fat intake of children does lead to later reduction in the risk of CHD, then the analysis of the proposed rule will underestimate the health benefits of decreasing *trans* fat intake.

1. Changes in *Trans* Fat Intakes

Three aspects of the estimated changes in *trans* fat intake will be discussed, as follows:

- a. Baseline *trans* fat intake,
- b. Quantitative changes in *trans* fat intake, and
- c. Qualitative changes in the type of macronutrient substituted for *trans* fat.

a. *Baseline trans fat intake.* As reviewed in section IV.B.2.c of this document, most of the current estimates of *trans fat* intake have been based on either food disappearance data or food frequency questionnaires (Ref. 3 and 70). Because information on *trans fat* content of foods is limited, there have been few estimates of *trans fat* intake based on dietary surveys using food records or recalls. Allison et al. (Ref. 26) estimated *trans fat* intake by linking a special 1995 USDA data base on *trans fat* content of foods with USDA's CSFII, 1989 through 1991.

To estimate baseline *trans fat* intake, FDA first used the special 1995 USDA data base to estimate the *trans fat* content of food groups defined by Standard Industrial Classification (SIC) Codes (Ref. 73). As described in section VI.D.1 of this document, this estimate was limited to foods with *trans fat* from partially hydrogenated fats and oils. Next, FDA linked the *trans fat* content of SIC Code food groups with mean intake of food groups in USDA's CSFII 1994 through 1996. For adults, age 20 and older, mean *trans fat* intake was estimated at 7.62 g/day for men and 5.54 g/day for women (Ref. 73). The estimated mean energy intake was 2,455

kcal/day for men and 1,646 kcal/day for women (Ref. 79). Therefore, *trans fats* provide approximately 2.79 percent of energy for men and 3.03 percent of energy for women (using the general conversion factor in § 101.9(c)(1)(i)(C), 1 g fat = 9 kcal). Because estimates of baseline *trans fat* intake as a percent of energy are very similar for men and women, these data were combined into a single estimate by a simple average, 2.91 percent of energy.

FDA's estimate of baseline *trans fat* intake used in this analysis is within the range of previous estimates in the literature, summarized in section IV.B.2.c of this document. The estimates of both FDA and Allison et al. (Ref. 26) are based on CSFII surveys and the special USDA *trans fat* data base. Allison et al. (Ref. 26) reported mean *trans fat* intake of 5.3 g/day (2.6 percent of energy). There are several differences in the method of estimation that would likely account for the differences in the two estimates. FDA's estimate used CSFII 1994–1996, was based on mean intake of food groups, and included men and women age 20 and older. The estimate of Allison et al. used CSFII 1989 through 1991, was based on specific foods eaten by each individual,

and included males and females age three and older.

As discussed in section VI.D.5 of this document, FDA estimates that about 30 percent of the margarine products currently on the market have already been reformulated to remove *trans fat*. FDA also estimates that, in the short term, the rest of the margarine on the market would be reformulated in response to a final rule based on this proposed rule. Additionally, FDA estimates that some proportion of baked goods products would eventually be reformulated to remove *trans fat*. Table 1 of this document shows the average *trans fat* intake from the food groups likely to be affected by reformulation. The *trans fat* intake from margarine products in Table 1 of this document represents the intake from the remaining 70 percent of margarine products currently on the market that is estimated to contain *trans fat*. As shown in Table 1 of this document, of the 2.91 percent of energy from *trans fat* intake, 0.39 percent is from the margarine food group, 0.67 percent from breads and cake products, and 0.98 percent from cookies and crackers.

TABLE 1.—CURRENT AVERAGE *trans Fat* Intake by Adults From Food Groups¹

Food Group	SIC Code ²	Current Average <i>Trans Fat</i> Intake				
		Men ³		Women ⁴		Average
		gm/day	% of energy	gm/day	% of energy	% of energy
Margarine	2079	1.02	0.37%	0.75	0.41%	0.39
Bread/Cake/etc.	2051	1.77	0.65%	1.28	0.70%	0.67
Cookies/Crackers	2052	2.48	0.91%	1.92	1.05%	0.98
All Other		2.35	0.86%	1.59	0.87%	0.87
Total		7.62	2.79%	5.54	3.03%	2.91

¹ Data for adults, age 20 and older (see section VI.C.1 of this document). Conversion factor: 1 gram *trans fat* intake equals 9 kcal.

² SIC, Standard Industrial Classification.

³ Mean energy (caloric) intake: 2,455 kcal per day for men.

⁴ Mean energy (caloric) intake: 1,646 kcal per day for women.

b. *Quantitative changes in trans fat intake: Four scenarios.* FDA developed several scenarios to demonstrate potential quantitative changes in *trans fat* intake based on a range of possible producer and consumer responses to labeling *trans fat* content. Although FDA has characterized these changes as “producer” and “consumer” responses, all responses to the proposed rule are based on the interactions in the food market between changes in producer cost and changes in consumer demand. In the analysis done for the 21 implementing rules for the 1990 amendments, FDA acknowledged that there would be both costs and benefits arising from the reformulation of

products likely to occur as a result of the rules. FDA chose not to quantify those costs and benefits in that analysis (in contrast to the analysis of this proposed rule) because of the uncertainty associated with estimating producer reactions to complex label changes.

For the rule now being proposed, the reactions of producers to the proposed rule can be estimated quantitatively. Including the reactions of producers, however, makes it difficult to compare the effects of the proposed rule with the effects of the 1990 amendments, which may be considered a standard of comparison for major labeling rules. In section VI.E of this document, FDA

calculates the benefits and costs of this proposed rule with methods similar to those used for the rules implementing the 1990 amendments, which allows the effects of the two rules to be compared. The characteristics of each scenario used to estimate the effects of the proposed rule are summarized in Table 2 of this document.

i. *Scenario 1: Maximum response.* In Scenario 1, the maximum response, a combination of reformulation and consumer response eliminates all *trans fat*. As shown in Table 2 of this document, in Scenario 1, 100 percent of *trans fat* would be removed from the diet, decreasing the intake of *trans fat* by 2.91 percent of energy. Because of the

magnitude of producer and consumer response, FDA considers Scenario 1 the least likely of the four scenarios, but has used it to illustrate the upper bound of possible decreases in *trans* fat intake.

ii. *Scenario 2: Some reformulation and some consumers change their behavior.* In Scenario 2, 100 percent of margarine, 3 percent of bread and cake, and 15 percent of cookies and crackers would be reformulated to remove *trans* fat. FDA assumed that the percentage *amounts* of bread, cake, cookies, and crackers reformulated would be about double the percentage *number* of products reformulated (see Table 17 later in this document). The percentage change in amounts exceeded the percentage change in number of products because FDA expected that the products to be reformulated will all be produced by large firms. Indeed, FDA expects that all large firms whose products contained claims that would be lost will reformulate. The agency assumed that these products account for above-average shares of bread, cake, cookies, and crackers containing *trans* fat. FDA requests comments on the assumptions that 3 percent of bread and cake and 15 percent of cookies and crackers will be reformulated by 7 years after the compliance period (scenario 2). Given the mean *trans* fat intake shown in Table 1 of this document, these reformulations would decrease *trans* fat intake by 0.56 percent of energy ($(1 \times 0.0039) + (0.03 \times 0.0067) + (0.15 \times 0.0098) = 0.0056$).

Because of the sizable cost of reformulation and the limited consumer appeal that bread and cake products, cookies, and crackers with claims have had thus far, FDA assumes that only a small percentage decrease in *trans* fat intake from reformulation of the products in these categories is a likely result of the proposed rule. If producers believe that consumers will respond more negatively to the information on *trans* fat than they have responded thus far to the information on saturated fat, then the actual number of products reformulated will be greater. If that happens, the actual benefits of the rule will be greater than those estimated here; the costs will increase only proportionally, so the net benefits of the rule would be greater than estimated in this scenario.

In this scenario, not all consumers respond to the labeling changes by eliminating *trans* fat in the other categories of their diets. Previous research showed that approximately 45 percent of consumers are aware of diet-health links, and read and understand nutrition labels (Refs. 68 and 74). In Scenario 2, therefore, FDA assumed that

45 percent of consumers would eliminate some *trans* fat from their diets.

Those consumers who read and understand nutrition labels are expected, on average, to make choices among existing products that result in only small changes in *trans* fat intake. In analyzing the anticipated health benefits of the regulations implementing the 1990 amendments (56 FR 60856 at 60870), FDA estimated consumer changes in consumption behavior using the results of previous research, including a study of grocery store shelf labeling (Refs. 68 and 74). In that analysis of changes in market share, consumer response to shelf labeling of 49 product categories resulted in an approximately 1 percent overall decrease in intake of total fat and saturated fat. FDA therefore used a 1 percent overall decrease in *trans* fat intake as an estimate of consumer response to this proposed labeling change. An overall 1 percent decrease in *trans* fat intake would be obtained if the 45 percent of consumers who use food labels to make purchase decisions changed their consumption by 2.2 percent ($0.01 \div 0.45 = 0.022$). The 55 percent of consumers who do not pay attention to food labels would decrease *trans* fat intake by 0.56 percent of energy because of reformulation only. The remaining 45 percent of consumers would decrease *trans* fat intake by 0.61 percent of energy, 0.56 percent due to reformulation plus 0.05 percent due to elimination of 2.2 percent of the *trans* fat from foods not reformulated ($0.022 \times (0.0291 - 0.0056) = 0.0005$). The total change in *trans* fat intake as a percent of energy would be 0.58 percent ($(0.55 \times 0.0056) + (0.45 \times 0.0061) = 0.0058$).

The 1-percent decrease in *trans* fat intake that FDA assumed for consumers may understate the direct consumer response. The agency took the 1-percent decrease from studies undertaken in support of the analysis of the rules implementing the 1990 amendments. The 1990 amendments required labeling changes for all FDA-regulated foods; the supporting studies estimated the change in fat and saturated fat as part of the outcome of changes in the overall diet in response to the new label. Rather than affecting all FDA-regulated foods, however, the proposed labeling of *trans* fat will mainly affect foods containing 0.5 g or more of *trans* fat per serving, which are predominantly products containing partially hydrogenated fats and oils, as described in section VI.D.1 of this document (Ref. 73). The narrower scope of the proposed labeling may, by emphasizing a single substance,

generate a larger direct consumer response.

In the shelf-labeling study, the reported change in market share ranged from 1 percent to 40 percent in 18 product categories and no significant change was reported in the remaining 31 categories (Refs. 72 and 74). The predicted consumer response in the specific product categories affected by *trans* fat labeling is, therefore, uncertain. In previous research, it was noted that different circumstances make it difficult to generalize consumer response from one food labeling or health claim situation to another (Ref. 74). In the absence of specific research on the reaction of consumers to *trans* fat labeling (Ref. 81), FDA used the estimate of a 1-percent decrease in intake, as used previously for the rules implementing the 1990 amendments.

iii. *Scenario 3: Less reformulation and some consumers change their behavior.* In Scenario 3, 100 percent of margarine, 1.5 percent of bread and cake, and 7.5 percent of cookies and crackers would be reformulated—half the reformulation of baked products of Scenario 2. Given the mean *trans* fat intake shown in Table 1 of this document, this would decrease *trans* fat intake by 0.48 percent of energy ($(1 \times 0.0039) + (0.015 \times 0.0067) + (0.075 \times 0.0098) = 0.0048$). Scenario 3 assumes the same direct consumer response as in Scenario 2. Under scenario 3, 55 percent of consumers decrease *trans* fat intake by 0.48 percent of energy due to reformulation. The remaining 45 percent of consumers decrease *trans* fat intake by 0.53 percent of energy, 0.48 percent due to reformulation plus 0.05 percent due to elimination of 2.2 percent of the *trans* fat from foods not reformulated ($0.022 \times (0.0291 - 0.0048) = 0.0005$). The total change in *trans* fat intake as a percent of energy would be 0.50 percent ($(0.55 \times 0.0048) + (0.45 \times 0.0053) = 0.005$).

iv. *Scenario 4: Least reformulation and some consumers change their behavior.* Scenario 4 assumes no reformulation of bread and cake products, but continues to assume reformulation of margarine. Scenario 4 also assumes the same direct consumer response as in Scenarios 2 and 3. Under this scenario, 55 percent of consumers would decrease *trans* fat intake by 0.39 percent of energy due to margarine reformulation only. The remaining 45 percent of consumers decrease *trans* fat intake by 0.45 percent of energy, 0.39 percent due to reformulation plus 0.06 percent due to elimination of 2.2 percent of the *trans* fat from foods not reformulated ($0.022 \times (0.0291 - 0.0039) = 0.0006$). The total change in *trans* fat

intake as a percent of energy would be 0.42 percent $((0.55 \times 0.0039) + (0.45 \times 0.0045) = 0.0042)$.

As summarized in Table 2 of this document, Scenarios 2 through 4 predict three levels of product reformulation together with an estimate of consumer behavior. FDA considers Scenarios 2 through 4 to be more likely

than Scenario 1, and has used them as the primary basis for estimation of health benefits. In addition to representing outcomes with different likelihoods, the three scenarios represent the effects of the proposed rule after different periods of time: 3 years after the effective date for Scenario

4, 8 years after the effective date for Scenario 3, and 10 years after the effective date for Scenario 2. The time period for the effects of each of the three scenarios includes the time for reformulation and the 3 years that pass before changes in diet affect the risk of CHD.

TABLE 2.— PREDICTED CHANGES DUE TO *trans* FAT LABELING¹

Characteristics of Each Scenario	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Description	Maximum combined producer and consumer response	Some reformulation and a proportion of consumers have partial behavior change	Less reformulation and a proportion of consumers have partial behavior change	Least reformulation and a proportion of consumers have partial behavior change
Margarine Category		100% Reformulated	100% Reformulated	100% Reformulated
Bread/Rolls Category		3% Reformulated	1.5% Reformulated	Not Reformulated
Cookies/Pastries Category		15% Reformulated	7.5% Reformulated	Not Reformulated
Foods Not Reformulated		45% of consumers pay attention to labels and eliminate 2.2% of <i>trans</i> fats	45% of consumers pay attention to labels and eliminate 2.2% of <i>trans</i> fats	45% of consumers pay attention to labels and eliminate 2.2% of <i>trans</i> fats
Decrease in Average <i>Trans</i> Fat Intake (% of energy)	2.91	0.58	0.50	0.42

Change in Coronary Heart Disease Risk

Method 1, LDL	- 4.28%	- 0.86%	- 0.73%	- 0.61%
Method 2, LDL and HDL	- 8.36%	- 1.67%	- 1.43%	- 1.20%

Time Periods for the Effects of Scenarios²

Time after effective date	Scenario 1	Scenario 2	Scenario 3	Scenario 4
3 years	Same effects as scenario 4	Same effects as scenario 4	Same effects as scenario 4	Full effect for scenario 4
8 years	Same effects as scenario 3	Same effects as scenario 3	Full effect for scenario 3	Full effect for scenario 4
10 years	Full effect for scenario 2	Full effect for scenario 2	Full effect for scenario 3	Full effect for scenario 4
Hypothetical future time (more than 10 years)	Full effect for scenario 1	Full effect for scenario 2	Full effect for scenario 3	Full effect for scenario 4

¹ It is assumed in this table that a given percent of energy from *trans* fats is replaced by the same percent of energy from *cis*-monounsaturated fats, keeping total energy intake constant. The effect of substituting other macronutrients for *trans* fats is shown in Table 3 of this document.

² The calculations used to estimate the changes in risk (listed in the second part of the table) are explained below. For the calculations of risk using the LDL model, see section VI.C.2.a of this document. For the calculations of risk using the LDL and HDL model, see section VI.C.2.b of this document.

c. *Qualitative changes, substituting different macronutrients for trans fats.* Although quantitative decreases in *trans* fat intake were estimated for the four scenarios in the preceding section, the actual substitutions manufacturers and consumers will make as a result of the labeling change are uncertain. The four scenarios assume that the margarine food group will be reformulated, and scenarios 1 through 3 assume that a proportion of products in the breads, cookies, and crackers food groups will be reformulated to eliminate *trans* fat.

In choosing among reformulated products, manufacturers and consumers might use products with saturated fat, *cis*-monounsaturated fat, or *cis*-polyunsaturated fat as substitutes for the *trans* fat removed by reformulation.

Some industry specialists estimate that current food technology will require the incorporation of about 0.5 g saturated fat for every 1 g *trans* fat removed from a food product by reformulation (Ref. 73). However, if consumers choose a very low fat (and low calorie) replacement product, they will obtain almost no fat in substitution for *trans* fat. They might then increase their intake of carbohydrate or other fat to replace the calories from the replacement product. Similarly, in the four scenarios FDA assumes that at least some consumers will eliminate at least some *trans* fat from their diets because of the labeling change. They will then obtain some combination of carbohydrate or other fat in the foods they choose in place of *trans* fat-containing foods.

In the scientific literature, *cis*-monounsaturated fat is often used as a reference point in describing effects of *trans* fat intake. Because there are no available data to predict which macronutrients might, in fact, replace *trans* fat, it is important to consider how the substitution of carbohydrate or of other types of fat would influence the CHD risk estimates. Therefore, in estimating the potential decrease in heart disease risk due to *trans* fat labeling, FDA first estimated the effect on CHD risk by assuming that the *trans* fat eliminated from the diet was replaced with *cis*-monounsaturated fat while holding energy (calories) constant. Next, FDA considered the effect on CHD risk of replacing a given percent of energy from *trans* fat with the

same percent of energy from a combination of 50 percent *cis*-monounsaturated fat, plus either 50 percent saturated fat, 50 percent polyunsaturated fat, or 50 percent carbohydrate. The effects of different substitutions for *trans* fats are shown in Table 1 of this document. In valuing health benefits, FDA assumed likely substitutions of ingredients for the *trans* fat now used in different products (see section VI.C.3 of this document).

2. Changes in Health States Due to Changes in *Trans* Fat Intake

FDA used two methods to estimate the potential decrease in CHD likely to result from decreased intake of *trans* fat in response to the labeling change.

a. Method 1. Decrease in CHD risk due to decreased serum concentrations of LDL-C.

b. Method 2. Decrease in CHD risk due to decreased serum concentrations of LDL-C and increased serum concentrations of HDL-C. FDA also reviewed the association of CHD risk with *trans* fat intake found in large prospective observational cohort studies.

In the following sections, FDA summarizes the estimated decrease in CHD using each method.

a. *Method 1: Changes in LDL-C.* As noted in section IV.B.2 of this document, the NCEP Expert Panel (Ref. 5) found increases in serum LDL-C to be a major risk factor for CHD. In keeping with the recommendations of the NCEP Expert Panel, FDA used changes in serum LDL-C as the primary criterion to evaluate the effects of *trans* fat intake on CHD risk in Method 1.

As discussed in section IV.B.2.b of this document, clinical trials of *trans* fat feeding have the advantage that they provide evidence for a cause and effect relationship between a given level of *trans* fat intake and the observed changes in physiologic measures such as LDL-C. However, a single feeding trial usually involves just one or a few test diets in comparison with a reference diet (called a "basal" diet) and typically provides information on only one (or occasionally two or more) levels of *trans* fat intake. When summarizing or comparing the results of various feeding trials, the different levels of *trans* fat intake and different basal diets across studies make the comparisons necessary for this benefits analysis difficult.

To overcome these difficulties, FDA used the regression equations of Katan et al. (Ref. 62) and Zock et al. (Ref. 69) in Method 1 to estimate the effect of *trans* fat intake on LDL-C. These authors considered the results of five feeding trials (and six levels of *trans* fat

intake), summarizing the CHD risk results as a function of the level of *trans* fat intake. Small differences in the basal diets in each study were accounted for by correction factors based on the regression equations of Mensink and Katan (Ref. 65). Compared with the results of a single feeding trial, the coefficients from the regression equations had three advantages: (1) They were based on data from a larger number of subjects, (2) they could be generalized over a range of *trans* fat intake, and (3) they were adjusted to a common basal diet.

The regression equation of Katan et al. (Ref. 62) and Zock et al. (Ref. 69) was based on the following studies that were reviewed in section IV.B.2 of this document: Judd et al. 1994, Mensink and Katan 1990, Lichtenstein et al. 1993, Nestel et al. 1992, Zock and Katan 1992 (Refs. 7, 8, and 11 through 13). The regression equation showed that each additional percent of energy from *trans* fat was predicted to increase LDL-C by 1.5 mg/deciliter (dL) (0.040 millimol/liter) ($R^2 = 0.86$, $p = 0.0028$) when substituted for the same percent of energy from *cis*-monounsaturated fat, holding total energy intake constant.

Previous research has shown that each 1-percent reduction in total serum cholesterol is associated with a decrease in CHD risk by a factor of 2 percent (Ref. 5). To quantify the relationship between changes in LDL-C and CHD risk, Gordon and coworkers carried out a standardized reanalysis of CHD incidence in four large prospective studies in the United States (Refs. 59 through 61). The results of Gordon and coworkers showed that each increment of 1 mg/dL in LDL-C (0.026 millimol/liter) was predicted to increase CHD risk by a factor of 0.6 percent to 0.8 percent (Refs. 59 through 61). FDA used the midpoint of this range, a 0.7 percent increase in risk per 1 mg/dL LDL-C increment, in the present analysis (throughout this analysis, a percent change in CHD risk means that change as a factor of existing risk). Because Gordon and coworkers expressed the change in LDL-C in mg/dL rather than as a percent of mean LDL-C concentration, the information was directly applicable to the changes in LDL-C in the intervention (feeding) studies.

Because an individual's serum lipid concentrations vary over time, a single measurement of serum lipid levels may underestimate the magnitude of the association between serum lipids and CHD risk (Refs. 5, 57, and 64). Single measurements include random variation (or error) that would be removed if repeated measurements of serum lipids

were made and the results for each individual were averaged. The presence of the additional random variation can statistically mask the actual relationship between serum lipids and CHD, causing an underestimate of the magnitude of the association. This apparent weakening of the observed association relative to the true association is called regression dilution bias (Refs. 57 and 64). In an analysis of data from the British United Providence Association, statistical removal of the regression dilution bias increased the association between serum cholesterol and CHD by a factor of 1.4 (Ref. 64). In this analysis, therefore, FDA increased the strength of the relationship between LDL-C and CHD risk by a factor of 1.4 to correct for regression dilution bias. Using these relationships, the change in CHD risk due to *trans* fat labeling can be predicted under the four consumer response scenarios.

Given the mean decrease in *trans* fat intake of 2.91 percent of energy in Scenario 1, LDL-C is predicted to decrease by 4.37 mg/dL, resulting in a decrease in CHD risk of 3.06 percent, or 4.28 percent (1.4×3.06 percent) after adjustment. Because the relationships in Method 1 are linear, the decreased *trans* fat intake of the consumers who do and those who do not use labels to make purchase decisions can be combined into a single estimate of net decrease in *trans* fat intake. For Scenario 2, the net decrease in *trans* fat intake is 0.58 percent of energy, predicting a 0.87 mg/dL decrease in LDL-C, a 0.61 percent decrease in risk of CHD, and a 0.86 percent (1.4×0.61 percent) adjusted decrease in risk of CHD. In Scenario 3, the net decrease in *trans* fat intake is 0.50 percent, giving a 0.75 mg/dL decrease in LDL-C, a 0.52 percent decrease in CHD, and a 0.73 percent (1.4×0.52 percent) adjusted decrease in risk of CHD. In Scenario 4, mean *trans* fat intake decreases by 0.42 percent of energy, resulting in a 0.63 mg/dL decrease in LDL-C, a 0.44 percent decrease in CHD risk, and a 0.61 percent (1.4×0.44 percent) adjusted decrease in risk of CHD. The adjusted decreases in risk for the four scenarios are summarized in Table 2 of this document.

Because the regression equations of Katan et al. (Ref. 62) and Zock et al. (Ref. 69) represent the result of a mathematical procedure, rather than the results of individual experiments, it is important to consider how the decrease in risk calculated compares with individual studies or with other summaries of studies. FDA compared these results with predictions based on the feeding trials of Mensink and Katan

(Ref. 7) and Judd et al. (Ref. 12) and on the summary of Kris-Etherton et al. (Ref. 63). FDA found that the decreased CHD risk predicted in this analysis was within the range predicted using estimates derived from individual feeding trials and from other summaries of research.

In the estimates using Method 1, FDA assumed that energy as *trans* fat will be replaced by energy as *cis*-monounsaturated fat. To account for the substitution of different macronutrients for *trans* fat, FDA compared these estimates with the effect on CHD risk of replacing a given percent of energy from *trans* fat with the same percent of energy from a combination of 50 percent *cis*-monounsaturated fat plus either 50 percent saturated fat, 50 percent polyunsaturated fat, or 50 percent carbohydrate. FDA examined this effect by considering the effect of carbohydrate and other fat on LDL-C. Mensink and Katan (Ref. 65) used regression equations to summarize the results of 27 clinical feeding trials on serum lipids. When substituted for 1 percent of energy from monounsaturated fat, polyunsaturated fat lowered LDL-C slightly (-0.31 mg/dL), carbohydrate raised LDL-C slightly (0.24 mg/dL), and saturated fat raised LDL-C a similar amount (1.52 mg/dL) to that found for *trans* fat (1.50 mg/dL).

Given these effects of various substitutions on LDL-C, the changes in CHD risk can be estimated. As examples, the results for Scenarios 2 and 4 are summarized in Table 3 of this document. The replacement of 0.58 percent of energy from *trans* fat (Scenario 2) with half *cis*-monounsaturated fat and half other fat or carbohydrate gives a decreased adjusted risk of 0.42 percent for saturated fat, 0.95 percent for polyunsaturated fat, and 0.79 percent for carbohydrate. These risks compare with 0.86 percent for replacement with only *cis*-monounsaturated fat under Scenario 2. Under Scenario 4 (replacement of 0.42 percent of energy from *trans* fat), the corresponding decreases in risk are 0.30 percent, 0.68 percent, and 0.56 percent for replacement with half *cis*-monounsaturated fat and, respectively, either half saturated fat, half polyunsaturated fat, or half carbohydrate. These risks compare with 0.61 percent for replacement with only *cis*-monounsaturated fat. Under Method 1, then, the decrease in CHD risk is smallest when saturated fat replaces some of the *trans* fat that is removed.

b. *Method 2: Changes in HDL-C and LDL-C.* As noted in the discussion on intervention (feeding) studies in section

IV.B.2.a of this document and in Appendix A, Table 1 of this document, *trans* fat intake appears to affect not only LDL-C, but also other serum lipids, including HDL-C, as well. A Consensus Statement on triglyceride, high-density lipoprotein, and coronary heart disease reported "considerable support for a causal relationship" between HDL-C and CHD (Ref. 71). The NCEP Expert Panel (Ref. 5) considered LDL-C to be the primary lipid risk factor for CHD. The Expert Panel also noted, however, the role of HDL-C as a "significant" lipid risk factor for CHD. The Expert Panel stated, "Even though there are no data from clinical trials designed specifically to show that raising HDL-C levels will reduce the risk for CHD, the strong epidemiological association between low HDL-C and CHD justifies considering HDL-C in risk assessment." The NCEP Expert Panel (Ref. 5) found that "the strength and independence of this association warrants calling low HDL-C * * * a [negative] risk factor for assessing the risk status of individual patients and for influencing the vigor of treatment directed at high levels of LDL-C."

Although FDA believes that justification for this proposed rule is primarily through the effect of *trans* fat intake on LDL-C, *trans* fat intake may also be associated with CHD through an effect on HDL-C. Therefore, with this noted qualification, FDA used changes in both HDL-C and LDL-C as a second method to quantify the effects of *trans* fat intake on CHD risk.

The effect of *trans* fat intake on HDL-C was also quantified by Katan et al. and Zock et al. (Ref. 62 and 69). The regression equation showed that each additional percent of energy from *trans* fat was predicted to decrease HDL-C by 0.4 mg/dL (0.013 millimol/liter) ($R^2 = 0.88$, $p = 0.0019$) when substituted for the same percent of energy from *cis*-monounsaturated fat, holding total energy intake constant. According to the analyses of Gordon and coworkers (Refs. 59 through 61), each 1 mg/dL (0.026 millimol/liter) increment in HDL-C was predicted to decrease CHD risk by 2 percent to 3 percent. For the purpose of this analysis, FDA chose the midpoint, a 2.5 percent decrease in risk per 1 mg/dL HDL-C increment. As described earlier, the strength of this relationship should be increased by a factor of 1.4 to account for regression dilution (Ref. 64).

For Scenario 1, the mean 2.91 percent of energy decrease in *trans* fat intake is predicted to increase HDL-C by 1.16 mg/dL, decreasing CHD risk by 2.91 percent or by 4.08 percent (1.4 x 2.91 percent) adjusted. The combined effect of the change in CHD risk due to

changes in HDL-C and LDL-C predicts an 8.36 percent decrease in CHD risk in Scenario 1 (4.28 percent decreased risk from lowering LDL-C plus 4.08 percent decreased risk from raising HDL-C). Applying the same procedures to the increase in HDL-C in the other scenarios would result in decreasing CHD risk by 0.82 percent, 0.70 percent, and 0.58 percent (adjusted) for Scenarios 2 through 4. The combined effect of raising HDL-C and lowering LDL-C, summarized in Table 2 of this document, would result in decreasing CHD risk by 1.67 percent, 1.43 percent, and 1.20 percent for Scenarios 2 through 4. As found for Method 1, the decreased CHD risk predicted for Method 2 using the regression equations of Katan et al. and Zock et al. (Refs. 62 and 69) was within the range predicted using estimates derived from individual feeding trials and from summaries of research.

In the estimates using Method 2, which estimated changes in both HDL-C and LDL-C, FDA assumed that *trans* fat was replaced by the same percent of energy as *cis*-monounsaturated fat. To account for the substitution of different macronutrients, FDA compared the Method 2 estimates with the effect on CHD risk of replacing a given percent of energy from *trans* fat with the same percent of energy from a combination of half *cis*-monounsaturated fat and half either saturated fat, polyunsaturated fat, or carbohydrate. FDA examined these effects by considering the effects of carbohydrate and other fat on both LDL-C (summarized previously for Method 1) and HDL-C. The regression equations of Mensink and Katan (Ref. 65) predicted that when substituted for one percent of energy from monounsaturated fat, polyunsaturated fat lowered HDL-C slightly (0.06 mg/dL), saturated fat raised HDL-C slightly (0.13 mg/dL), and carbohydrate lowered HDL-C by a similar amount (0.34 mg/dL) to that found for *trans* fat (0.40 mg/dL).

Using Method 2, which includes the effects on both HDL-C and LDL-C, the replacement of 0.58 percent of energy from *trans* fat (Scenario 2) with half *cis*-monounsaturated fat and half other fat or carbohydrate gives a decreased adjusted risk of 1.37 percent for saturated fat, 1.70 percent for polyunsaturated fat, and 1.26 percent for carbohydrate (Table 3 of this document). These changes compare with the 1.67 percent decreased CHD risk calculated for replacement with only *cis*-monounsaturated fat under Scenario 2. Using Method 2 and Scenario 4, the corresponding decreases in risk are 0.98 percent for saturated fat, 1.22 percent for polyunsaturated fat,

and 0.90 percent for carbohydrate, compared with 1.20 percent adjusted decrease in CHD risk for replacement

with only *cis*-monounsaturated fat. Under Method 2, therefore, the decrease in CHD risk is not as large when

saturated fat or carbohydrate is used to replace some of the *trans* fat that is removed.

TABLE 3.—PREDICTED CHANGES IN CORONARY HEART DISEASE (CHD) RISK DUE TO *trans* FAT LABELING, ACCORDING TO SUBSTITUTION FOR *trans* FATS

Description	Scenario 2		Scenario 4	
	Some reformulation and a proportion of consumers have partial behavior change		Least reformulation and a proportion of consumers have partial behavior change	
Decrease in average <i>trans</i> fat intake (% of energy)	0.58		0.42	
Substitution for <i>trans</i> fats	Change in CHD Risk: Method 1, LDL-C	Change in CHD Risk: Method 2, LDL-C and HDL-C	Change in CHD Risk: Method 1, LDL-C	Change in CHD Risk: Method 2, LDL-C and HDL-C
<i>cis</i> -monounsaturated fats	- 0.86%	- 1.67%	- 0.61%	- 1.20%
Half saturated and half <i>cis</i> -monounsaturated fats	- 0.42%	- 1.37%	- 0.30%	- 0.98%
Half <i>cis</i> -polyunsaturated and half <i>cis</i> -monounsaturated fats	- 0.95%	- 1.70%	- 0.68%	- 1.22%
Half carbohydrate and half <i>cis</i> -monounsaturated fats	- 0.79%	-1.26%	- 0.56%	- 0.90%

In June 1999, Ascherio et al. published an updated regression equation estimating the effect of *trans* fat intake on serum lipids (Ref. 83). The equation of Ascherio et al. incorporated the results of 8 feeding trials at 12 levels of *trans* fat intake, including 4 levels of *trans* fat intake from the newly-published feeding trial of Lichtenstein et al. (Ref. 82). In Method 1 and Method 2 of this document, FDA estimated the effect of *trans* fat intake on serum lipids using the 1995 regression equations of Katan et al. (Ref. 62) and Zock et al. (Ref. 69). The 1999 equation of Ascherio et al. (Ref. 83) estimated the effect of *trans* fat intake on the ratio of LDL-C to HDL-C (LDL/HDL ratio), and not on the separate lipid concentrations of LDL-C and HDL-C. As discussed in greater detail in sections IV.B.2 and VI.C.2 of this document, FDA's primary rationale for this proposed rule is the effect of *trans* fat on LDL-C. Therefore, FDA estimated the effects of *trans* fat on LDL-C and HDL-C separately, and FDA did not use the 1999 equation of Ascherio et al. However, FDA notes that the effect of *trans* fat intake on serum lipid ratios estimated by the 1999 equation of Ascherio et al. (Ref. 83) is very similar to the effect on serum lipid ratios estimated by the 1995 equation of Willett and Ascherio (Ref. 84). Moreover, the 1995 equation of Willett and Ascherio incorporated the results of the same five feeding trials at six levels of *trans* fat intake as did the equations of Katan et al. (Ref. 62) and Zock et al. (Ref. 69) that the agency used in Method 1 and Method 2 of this document. Therefore, FDA concludes that the decreased CHD risk predicted by

Method 1 and Method 2 of this document would not be appreciably changed even if a regression equation were available to it that predicted LDL-C and HDL-C separately, and incorporated the most recently published feeding trials.

c. *Estimates from large prospective studies.* As noted in section IV.B.2.b of this document, FDA reviewed the results from observational epidemiological studies of *trans* fat intake and risk of CHD. Because such studies can provide evidence of an association between a risk factor and disease, but cannot establish direct cause and effect, FDA considered the evidence from observational epidemiological studies as indirect evidence for a relationship.

Among the observational studies reviewed, FDA is aware of four large prospective studies reporting association between *trans* fat intake and CHD risk (Refs. 19 through 21 and 38). These studies suggest benefits that are several fold higher than even the high estimate of benefits presented previously in this analysis (i.e., benefits estimated for Method 2). FDA is asking for comments on the use of these studies in estimating benefits.

In these studies, the dietary intake and the health status of the prospective cohorts were followed over time. An advantage of prospective studies is that knowledge of a disease does not influence the reported dietary intake (from questionnaires) (Ref. 66). However, in prospective studies (as in other observational epidemiology), there is error included in individuals' self-reported dietary intake and in the

calculation of *trans* fat intake from foods reported eaten.

Additionally, statistical techniques are used to adjust for other dietary components and other characteristics of the subjects that may potentially confound the relationship between *trans* fat intake and CHD. If a direct cause and effect is present, the size of the effect may be over- or underestimated if there is bias due to errors in measurement of the other dietary components or other confounding factors. The presence of unknown or unmeasured confounding factors is another potential source of bias. The prospective studies have nevertheless consistently reported a greater risk of CHD attributable to *trans* fat intake than would be accounted for by changes in LDL-C and HDL-C alone.

Prospective studies typically report the association of a risk factor with a disease outcome in terms of "relative risk." RR indicates the degree to which the presence of the risk factor increases the chance of the health outcome. For example, an RR of 1.5 means that with the risk factor present there is a 50 percent greater chance of having the disease than if the risk factor was not present (holding all other factors constant and assuming a cause and effect relationship for the risk factor and the disease).

In the study of Hu et al. (Ref. 38), women completed diet questionnaires four separate times during a 14-year followup. The RR for CHD was reported to be 1.93 per 2 percent of energy intake from *trans* fat, with a 95 percent confidence interval ranging from 1.43 to 2.61. These numbers indicate that for every 2 percent of energy (calories) from

trans fat, there would be an increased risk of CHD of 93 percent (compared with the same amount of energy from carbohydrates). When only the initial diet questionnaire was used in the analysis (instead of all four questionnaires), greater measurement error was expected, and the RR for CHD was reduced to 1.62 per 2 percent of energy from *trans* fat (95 percent confidence interval from 1.23 to 2.13). This study can be compared to the study of men by Ascherio et al. (Ref. 19), using a single diet questionnaire, which reported a RR of 1.36 per 2 percent of energy from *trans* fat (95 percent confidence interval from 1.03 to 1.81).

Three of the prospective studies (Refs. 20, 21, and 38) reported the CHD risk for the subjects in the top 20 percent of energy intake from *trans* fat compared with those in the lowest 20 percent of intake. Again, the reported RR's were greater than 1.0 with overlapping confidence intervals. In addition, a report from the Framingham Heart Study found the RR for CHD in men was 1.12 per teaspoon margarine intake, with 95 percent confidence interval from 1.05 to 1.20 (Ref. 58). This result corresponds to an RR of 2.05 per 2 percent of energy from *trans* fat (95 percent confidence interval from 1.36 to 3.17), which is very similar to the results of Hu et al. (assuming that a tablespoon (3 teaspoons) of margarine contains 11 g of fat and that 25 percent of the fat in margarine is *trans* fat).

As a further check, the RR reported by Hu et al. (Ref. 38) for saturated fat may be compared to other prospective studies, such as the analysis from the Western Electric Study by Shekelle et al. (Ref. 67). The coefficient reported by Shekelle et al. corresponds to a RR of 1.17 per 5 percent of energy from saturated fat, the same as was reported by Hu et al. (Ref. 38).

When used to predict the health benefits of replacing *trans* fat with other types of fats or carbohydrates, the Hu et al. (Ref. 38) paper gives decreases in CHD much larger than those predicted using only changes in LDL-C and HDL-C. For example, Hu et al. reported that substitution of monounsaturated fat for *trans* fat at 2 percent of energy would decrease CHD risk by 52.4 percent (95 percent confidence interval of 37 percent to 64 percent).

Under Scenario 2, FDA calculated the estimated decrease in risk for CHD when monounsaturated fat is substituted for *trans* fat. In this scenario, *trans* fat intake decreases by 0.61

percent of energy for 45 percent of consumers and by 0.56 percent of energy for 55 percent of consumers, with a weighted average decrease of 0.58 percent. Using the relationships of Hu et al. (Ref. 38), the estimated weighted average decrease in CHD risk is 19.4 percent (95 percent confidence interval of 5.2 percent to 31.6 percent). This decrease is much larger than the decrease of 1.67 percent estimated for Method 2, which considered effects for both LDL-C and HDL-C. Even 5.2 percent, the lower limit of the 95 percent confidence interval, is three times higher than the LDL-C and HDL-C combined prediction of 1.67 percent.

Because of the possibilities of errors of measurement (particularly of dietary intake) or poorly measured or missing confounding variables, the RR's from these observational studies are imprecise. Although observational studies have limitations, they also have the advantage that they can measure directly (within a given study) an association between dietary intake and disease outcome. This association cannot be established from the short-term feeding trials. In such trials *trans* fat is fed to people for a few weeks, changes in serum lipids are measured, and it is assumed that the CHD risk associated with *trans* fat intake occurs through the mechanism of changes in LDL-C and possibly HDL-C. In contrast, the observational studies measure actual CHD occurrence in a large group of people over a period of years, and describe all CHD risk associated with *trans* fat intake, regardless of the mechanism of action by which *trans* fat intake may be associated with CHD. The prospective studies therefore raise the possibility that there may be additional mechanisms by which *trans* fat contributes to CHD (such as increases in fasting triglycerides and increases in lipoprotein (a) (Ref. 62)), and that the actual benefits may be higher than estimated using Methods 1 and 2.

3. Value of Changes in Health

In the previous sections, FDA presented potential changes in food markets because of this proposed rule and described various ways of calculating the decreases in CHD that would result from those market changes. Uncertainties in these analyses include:

- The size of consumer substitutions among existing products;
- The amount of producer reformulation to avoid losing market shares;

- The types of ingredient substitutions producers will make to reduce the amount of *trans* fat in their products; and,

- The decrease in CHD that will result from decreased *trans* fat in the diet.

FDA estimated the benefits from the proposed rule for three scenarios and two methods. The three scenarios estimate plausible changes over time in the intake of *trans* fat. The short-term benefits are associated with the reformulation of margarine and direct consumer substitutions within the existing product mix (Scenario 4). FDA assumed that the most likely ingredient substitutions for *trans* fat in margarine would be 100 percent *cis*-monounsaturated fat, or a mixture of 50 percent *cis*-monounsaturated and 50 percent *cis*-polyunsaturated fat, or a mixture of 50 percent *cis*-monounsaturated and 50 percent saturated fat (Ref. 73). After 5 years additional benefits are associated with some reformulation of baked goods (the increase in benefits estimated for Scenario 3 over Scenario 4). Finally, after 2 more years additional baked goods reformulation leads to greater benefits (the increase in benefits estimated for Scenario 2 over Scenario 3). FDA assumed that the most likely ingredient substitution for *trans* fat in baked goods would be a mixture of 50 percent *cis*-monounsaturated and 50 percent saturated fat.

The two methods give low and high estimates of the change in CHD risk brought about by changing intakes of *trans* fat. The low method (Method 1) assumes that the reduction in CHD risk associated with reduced *trans* fat intakes comes about through the reduction in LDL-C. The high method (Method 2) assumes that the reduction in CHD risk comes about through a combination of reducing LDL-C and increasing HDL-C.

The reduction in CHD is highly uncertain because the ease of reformulation, the size of consumer response, and the size of the effects of *trans* fat on CHD are uncertain. Also, these changes will occur over time and can be affected by other, unanticipated events. FDA dealt with the uncertainty by estimating a range of possible reductions in CHD associated with the proposed rule. The low and high estimated benefits can be interpreted as a range of potential effects. As the previous section showed, however, the actual realized benefits may exceed the range given by the two methods.

TABLE 4.—METHODS AND SCENARIOS USED TO ESTIMATE BENEFITS

Scenarios		
Scenario 4	Scenario 3	Scenario 2
Margarine reformulation and direct consumer response.	Margarine reformulation, direct consumer response, and some baked goods reformulation.	Margarine reformulation, direct consumer response, and additional baked goods reformulation.
All activity begins during the compliance period.	Margarine reformulation and direct consumer response begins during the compliance period.	Margarine reformulation and direct consumer response begins during the compliance period.
Health effects occur 3 years after effective date.	Some baked goods reformulation is completed 5 years after the effective date. Health effects from margarine reformulation, direct consumer response occur 3 years after effective date. Health effects from some baked goods reformulation occur 8 years after effective date.	Some baked goods reformulation is completed 5 years after the effective date. Additional baked goods reformulation is completed 7 years after the effective date. Health effects from margarine reformulation, direct consumer response occur 3 years after effective date. Health effects from some baked goods reformulation occur 8 years after effective date. Health effects from additional baked goods reformulation occur 10 years after effective date.
Methods		
Low Estimates of Change in CHD Risk	High Estimates of Change in CHD Risk	
Assumes that only changes in LDL-C affect risk of CHD.	Assumes that changes in both LDL-C and HDL-C affect risk of CHD.	

a. *CHD morbidity and mortality prevented.* FDA calculated the benefits from the proposed rule as the reduction (from the baseline) in CHD multiplied by the value of preventing both fatal and nonfatal cases of CHD. FDA assumed that the cases of CHD prevented by this rule will have the same proportions of fatal and nonfatal cases as currently exists in the population. The American Heart Association estimates that 1.1 million heart attack cases of CHD occur annually, with 33 percent of them fatal. FDA used these estimates as the baseline for the estimated benefits (Ref. 75). The number of cases varies from year to year, so FDA treated the annual number of cases as a distribution with a mean equal to 1.1 million (and a standard deviation of 110,000). FDA applied the estimated decline in the probability of CHD to the baseline to get estimates of the number of cases and fatalities prevented by the proposed rule. FDA estimated the effects using Method 1, which considers changes only in LDL-C, and using Method 2, which considers changes in both LDL-C and HDL-C. With Method 1 FDA estimated that, 3 years, 8 years and 10 years after the effective date, the proposed rule would annually prevent 6,300 cases of CHD and 2,100 deaths, 7,000 cases and 2,300 deaths, and 7,600 cases and 2,500 deaths. With Method 2 FDA estimated that, 3 years, 8 years and 10 years after the effective date, the proposed rule would annually prevent 12,800 cases of CHD and 4,200 deaths,

15,000 cases and 4,900 deaths, and 17,100 cases and 5,600 deaths. Because the association between *trans* fat consumption and CHD via changes in LDL-C is more conclusive, the benefits estimated using Method 1 should be regarded as more certain than the benefits estimated using Method 2.

b. *Value of CHD morbidity and mortality prevented.* The health costs associated with heart attacks were broken down into the costs of fatal and nonfatal events. The cost of a fatal event is the discounted years of life lost multiplied by the dollar value of a quality-adjusted life year. The average years of life lost from fatal CHD are 13, which is about 8.4 years when discounted at 7 percent (Ref. 76). FDA used \$100,000 as the value of a life year. That estimate was used by Cutler and Richardson (Ref. 77) and is close to the estimate used by Zarkin et al. (Ref. 68) and the estimate used in the economic analysis of the regulations implementing the 1990 amendments. The average cost per fatal case is, therefore, approximately \$840,000 (8.4 x \$100,000).

For nonfatal cases, FDA estimated the cost to be the sum of the medical costs, the cost of functional disability, and the cost of pain and suffering. The functional disability, and pain and suffering combine to reduce the quality of life for victims. In a recent study, Cutler and Richardson (Ref. 77) estimated from National Center for Health Statistics data that the quality

adjusted life year for a CHD survivor was 0.71, which indicates that the annual loss to the victim is 0.29 quality adjusted years. This loss represents the combined effects of functional disability and pain and suffering. FDA assumed that the loss lasts for 13 years, or 8.4 discounted years. FDA did not estimate the extent to which nonfatal cases reduce life expectancy or increase other health costs. Because nonfatal cases probably do have these effects, FDA may have underestimated the health benefits from preventing nonfatal cases.

The medical costs for nonfatal CHD are also important. The American Heart Association estimates that the cost of a new event is about \$22,700 and the total annual costs are \$51.1 billion (Ref. 75). If 1.1 million cases lead to \$22,700 per case, then all these cases cost about \$25 billion. The remaining 13.9 million cases average about \$1,900 per year ((\$51.1 billion – \$25 billion) / 13.9 million). FDA, therefore, estimated medical costs per case as \$22,700 in the first year and about \$1,900 per year thereafter.

The total cost per nonfatal case is the sum of lost quality-adjusted life years multiplied by \$100,000 per life year plus the medical costs of \$22,700 plus \$1,900 per year times the discounted life years. FDA estimated the morbidity cost per case to be about \$282,000 ((0.29 x \$100,000 x 8.4) + (\$1,900 x 8.4) + \$22,700).

The annual benefits of the proposed rule equal the number of deaths

prevented multiplied by the cost per death, plus the number of nonfatal cases prevented multiplied by the costs per nonfatal case. Because the number of CHD cases and the number of fatalities vary from year to year, FDA estimated the benefits with computer simulations that accounted for the variability. The estimated benefits reported by the agency are the mean simulated

outcomes of Monte Carlo simulations run with 1,000 iterations.

The main uncertainty associated with estimating benefits comes from the lack of knowledge about the correct method linking changes in *trans* fat to changes in CHD. FDA represented model uncertainty by presenting the low results based on the LDL-C alone and the high results based on the combined effects of *trans* fat on LDL-C and HDL-C. Representing uncertainty as a range

given by the results for the two methods, however, understates the true uncertainty because it does not account for the possibility of other links between *trans* fat and CHD. If those other links exist, then the benefits of the proposed rule could be much higher than estimated by the agency.

Tables 5 and 6 show the mean of the simulated low and high annual benefits for Scenarios 2 to 4.

TABLE 5.—LOW ESTIMATED BENEFITS OF THE PROPOSED RULE FOR SCENARIOS 2 TO 4 USING METHOD 1 IN MILLIONS OF DOLLARS (BENEFITS DISCOUNTED AT 7 PERCENT IN PARENTHESES)

	Prior to Three Years After Effec- tive Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date	Six Years After Effective Date	Seven Years After Effective Date	Eight Years After Effective Date	Nine Years After Effective Date	Ten Years After Effective Date and Later
Scenario 2	\$0	\$2,919 (\$2,383)	\$2,919 (\$2,227)	\$2,919 (\$2,081)	\$2,919 (\$1,945)	\$2,919 (\$1,818)	\$3,226 (\$1,877)	\$3,226 (\$1,809)	\$3,409 (\$1,733 ¹)
Scenario 3	\$0	\$2,919 (\$2,383)	\$2,919 (\$2,227)	\$2,919 (\$2,081)	\$2,919 (\$1,945)	\$2,919 (\$1,818)	\$3,226 (\$1,877)	\$3,226 (\$1,809)	\$3,226 (\$1,691 ¹)
Scenario 4	\$0	\$2,919 (\$2,383)	\$2,919 (\$2,227)	\$2,919 (\$2,081)	\$2,919 (\$1,945)	\$2,919 (\$1,818)	\$2,919 (\$1,699)	\$2,919 (\$1,588)	\$2,919 (\$1,484 ¹)

¹ Discounted values for year ten will continue to decline in later years.

TABLE 6.—HIGH ESTIMATED BENEFITS OF THE PROPOSED RULE FOR SCENARIOS 2 TO 4 USING METHOD 2 IN MILLIONS OF DOLLARS (BENEFITS DISCOUNTED AT 7 PERCENT IN PARENTHESES)

	Prior to Three Years After Effec- tive Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date	Six Years After Effective Date	Seven Years After Effective Date	Eight Years After Effective Date	Nine Years After Effective Date	Ten Years After Effective Date and Later
Scenario 2	\$0	\$5,941 (\$4,850)	\$5,941 (\$4,532)	\$5,941 (\$4,236)	\$5,941 (\$3,959)	\$5,941 (\$3,700)	\$6,935 (\$4,036)	\$6,935 (\$3,772)	\$7,880 (\$4,006 ¹)
Scenario 3	\$0	\$5,941 (\$4,850)	\$5,941 (\$4,532)	\$5,941 (\$4,236)	\$5,941 (\$3,959)	\$5,941 (\$3,700)	\$6,935 (\$4,036)	\$6,935 (\$3,772)	\$6,935 (\$3,525 ¹)
Scenario 4	\$0	\$5,941 (\$4,850)	\$5,941 (\$4,532)	\$5,941 (\$4,236)	\$5,941 (\$3,959)	\$5,941 (\$3,700)	\$5,941 (\$3,458)	\$5,941 (\$3,232)	\$5,941 (\$3,020 ¹)

¹ Discounted values for year ten will continue to decline in later years.

Under all scenarios, the benefits are expected to begin 3 years after the effective date. The 3-year lag occurs because CHD is a chronic condition, so a dietary change takes several years to begin to affect the risk of CHD. Under Scenario 3, the benefits increase 8 years after the effective date. The lag for Scenario 3 is the sum of 3-year lag for health effects and the 5 years that FDA expects industry to take to reformulate one-half of the baked goods that can be successfully reformulated. Under Scenario 2, the benefits increase 10

years after the effective date, with 10 years being the sum of the 3-year lag for health effects, the 5 years for industry to reformulate one-half of the baked goods that can be successfully reformulated, and 2 years to reformulate the remaining half of such baked goods. In the next section, on costs, the agency will explain the assumptions behind the lag times used to estimate the reformulation of baked goods.

D. Costs

FDA has identified several different categories of costs that are associated

with compliance with this proposed rule. Costs of the regulation include testing costs, decisionmaking costs, relabeling costs, and reformulation costs (including inventory loss). The basic formula is described in Figure 2 of this document. Because FDA has estimated benefits associated with a reduction in *trans* fat consumption due to reformulation, the estimated costs associated with reformulation are included in Figure 2.

FIGURE 2.—BASIC FORMULA FOR COST ESTIMATION

Testing costs per product	X	Number of products tested	=	Total testing costs
Decisionmaking costs per firm	X	Number of firms needing to test their products	=	+ Total decisionmaking costs
Reprinting costs per information panel	X	Number of information panels changed	=	+ Total information panel reprinting costs
Relabeling costs per principal display panel	X	Number of principal display panels changed	=	+ Total relabeling costs for principal display panels
Reformulation costs (including inventory loss) per product	X	Number of products reformulated	=	+ Total reformulation costs (including inventory loss)
				= Total costs

In this analysis, FDA assumed that all product formulations that include partially hydrogenated oil as an ingredient will be tested to determine the quantity of *trans* fat (except for margarine products, which are all expected to reformulate). The costs are described in section VI.D.2 of this document.

The proposed rule states that, for all products containing 0.5 g or more of *trans* fat per serving, the amount of *trans* fat must be added to the amount of saturated fat in the Nutrition Facts panel and the %DV for saturated fat must be adjusted accordingly. Also, the adjusted amount of saturated fat must be marked with an asterisk, and the amount of *trans* fat must be stated in a footnote to explain the asterisk. To avoid listing *trans* fat in the Nutrition Facts panel, manufacturers may choose to reformulate their products so that they contain less than 0.5 g *trans* fat per serving. FDA has estimated the cost of this decision to relabel or reformulate for each affected firm. These costs are described in section VI.D.3 of this document.

If manufacturers choose to relabel only rather than reformulate, the label for each package size will need to be redesigned and reprinted. These costs

are described in section VI.D.4 of this document.

If manufacturers choose to reformulate rather than relabel only, then the new formulation for each product will need to be developed, the production process may need to be altered, new ingredients will need to be purchased, and the new product will need to be consumer tested. These costs are described in sections VI.D.5 and VI.D.6 of this document.

Section VI.C.1.b of this document describes four scenarios for the effects of the rule. Scenario 1: Maximum Response, estimates the benefits of totally eliminating *trans* fats from the diet. The costs corresponding to this scenario have not been estimated because this scenario is not expected to occur as a result of this rule. Scenario 2: Some reformulation and some consumers change their behavior, corresponds to the full long-term costs estimated in this section. Scenario 4: Least reformulation and some consumers change their behavior, corresponds to the near-term costs estimated in this section for testing, decisionmaking costs, relabeling, and margarine product reformulation. Scenario 3 is an intermediate scenario between Scenarios 2 and 4. It would correspond to the costs for Scenario 4

plus 50 percent of the costs of the baked product reformulation calculated in Scenario 2.

1. Products Affected

The proposed rule covers all food products within the jurisdiction of the FDA. However, not all FDA-regulated products will be affected by the proposed rule: Only products that contain 0.5 g or more of *trans* fat per serving will be required to label the *trans* fat content. Although *trans* fat does occur naturally in some product groups such as dairy foods, it is only likely to be present at levels at or above 0.5 g per serving in products containing partially hydrogenated oils. Therefore, FDA identified the product groups that contain most of the products that use partially hydrogenated oil as an ingredient.

These categories do not cover all products that contain partially hydrogenated oil, but they include the products likely to be affected most by this rule. Focusing the analysis on these product groups allows FDA to use data available on product and label content that are available only by product group. It should be noted, however, that not all of the products in all of these groups contain partially hydrogenated oils.

FDA has used data from its Food Label and Package Survey (FLAPS) data base to estimate the percentage of products in each product group that contain partially hydrogenated oils. Because FDA did not consider the FLAPS data to be sufficiently representative of the Cereal and Refrigerated Spreads product groups for the purpose of this analysis, FDA has

used an informal market survey (Ref. 80) to estimate the percentage of these products that contain partially hydrogenated oils. For the Refrigerated Spreads, FDA's informal market survey indicates that 30 percent of the margarine products have already been reformulated to reduce *trans* fat below 0.5 g per serving, some by removing partially hydrogenated oil from the

products. Table 7 of this document shows the product groups most affected by this proposal and the percentage and number of products in each group estimated to contain partially hydrogenated oils. Throughout the cost analysis FDA has used rounded estimates and has rounded the results of calculations. The extent of the rounding is reported in the caption for each table.

TABLE 7.—PRODUCT GROUPS AND NUMBER OF PRODUCTS AFFECTED (NUMBERS ARE ROUNDED TO THE NEAREST TEN, PERCENTAGES ARE ROUNDED TO THE NEAREST 5 PERCENT)

Product Group	Number of Products	Percent of Products Containing Partially Hydrogenated Oil	Number of Products Containing Partially Hydrogenated Oil
Frozen Breakfast Foods (e.g., waffles, pancakes, French toast)	750	80%	600
Cereal (e.g., hot, ready-to-eat and granola types)	1,800	40%	720
Baking Mixes (e.g., mixes for breads, cakes, and cookies)	1,460	75%	1,100
Breading Products (e.g., breading products and croutons)	940	85%	800
Frozen Baked Goods (e.g., pies, bagels, breads, and cookies)	1,510	50%	760
Refrigerated Bread and Pastry Products (e.g., bread dough and sweet roll dough)	1,770	5%	90
Breads (e.g., bread, cakes, doughnuts and sweet rolls)	29,960	50%	14,980
Crackers	1,910	100%	1,910
Cookies	6,940	95%	6,590
Baking Needs (e.g., frostings, chocolate chips, and pie shells)	1,530	65%	1,000
Candy and Gum	14,910	40%	5,960
Shortenings and Oils (e.g., lard, cooking oils, and shortenings)	1,480	15%	220
Refrigerated Spreads (e.g., butter, margarine, and spreads)	1,290	65%	840
Chip Type Snacks (e.g., popcorn, pretzels, potato and corn chips and rice cakes)	10,220	70%	7,150
Total	76,470		42,720

2. Testing Costs

For each of the product groups, FDA used the A. C. Nielsen Database of food products sold in grocery stores with annual sales of \$2 million or more to identify the number of product formulations. For the purpose of this analysis, FDA assumed that each of

these products would be tested for *trans* fat content. The Refrigerated Spreads group is not included because—as will be explained below—FDA expects all margarine products to be reformulated; there is therefore no reason to test current margarine products. Research Triangle Institute (RTI) collected information on *trans* fat testing costs for

FDA. The per product cost of testing for *trans* fat is approximately \$200 (Ref. 73). Table 8 shows the number of products in each product group estimated to contain partially hydrogenated oils and the cost of product testing. Total testing costs are estimated to be about \$8 million.

TABLE 8.—NUMBER OF PRODUCTS TESTED AND COST OF TESTING BY PRODUCT GROUP (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Product Group	Number of Products Containing Partially Hydrogenated Oil	Cost of Testing per Product	Cost of Testing per Group
Frozen Breakfast Foods	600	\$200	\$120,000
Cereal	720	\$200	\$144,000
Baking Mixes	1,100	\$200	\$220,000
Breading Products	800	\$200	\$160,000
Frozen Baked Goods	760	\$200	\$152,000
Refrigerated Bread and Pastry Products	90	\$200	\$18,000
Breads	14,980	\$200	\$2,996,000
Crackers	1,910	\$200	\$382,000
Cookies	6,590	\$200	\$1,318,000
Baking Needs	1,000	\$200	\$200,000
Candy, Gum and Cough Drops	5,960	\$200	\$1,192,000
Shortenings and Oils	220	\$200	\$44,000
Chip Type Snacks	7,150	\$200	\$1,430,000
Total	41,880		\$8,376,000

FDA used data from the USDA Food Composition Data to estimate the

number of products that, when tested, are predicted to be found to contain 0.5

g or more *trans* fat per serving (Ref. 40). The USDA data base contains a list of

over 200 food products that were analyzed for *trans* fat content. Where possible, FDA has grouped the foods in the USDA data base into the identified product groups and calculated the percentage of the tested foods in each product group that will be found to contain 0.5 g or more *trans* fat per serving. For some product groups, no

foods were found in the USDA data base that contained partially hydrogenated oil. Because these products are similar to products in the Breads product group, FDA used the percentage containing 0.5 g or more *trans* fat from the Breads product group as a proxy. FDA is aware that some margarine products in the Refrigerated Spreads product group

have recently been reformulated. Therefore, for this category, FDA used an informal market survey (Ref. 80) to estimate the number of margarine products containing 0.5 g or more *trans* fat. Table 9 of this document shows the percentage of foods in each product group that are estimated to contain 0.5 g or more of *trans* fat.

TABLE 9.—PERCENTAGE AND NUMBER OF PRODUCTS CONTAINING 0.5 GRAM (g) OR MORE *trans* FAT PER SERVING (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Product Group	Number of Products Containing Partially Hydrogenated Oil	Percentage of Products Containing Partially Hydrogenated Oil Also Containing 0.5 g or More <i>Trans</i> Fat per Serving	Number of Products Containing 0.5 g or More <i>Trans</i> Fat per Serving
Frozen Breakfast Foods	600	70% ¹	420
Cereal	720	40%	290
Baking Mixes	1,100	70% ¹	770
Breading Products	800	70% ¹	560
Frozen Baked Goods	760	70% ¹	530
Refrigerated Bread and Pastry Products	90	70% ¹	60
Breads	14,980	70%	10,490
Crackers	1,910	100%	1,910
Cookies	6,590	100%	6,590
Baking Needs	1,000	100%	1,000
Candy, Gum and Cough Drops	5,960	70%	4,170
Shortenings and Oils	220	80%	180
Refrigerated Spreads	840	80%	670
Chip Type Snacks	7,150	60%	4,290
Total	42,720		31,930

¹ Estimate from the breads product group used as a proxy.

3. Decisionmaking Costs

To comply with this rule, firms will need to gain an understanding of the policy of the regulation, interpret that policy for their products, and determine the scope and coverage through analytical testing. Those firms that determine through testing that they are making products that contain 0.5 g or more of *trans* fat per serving will need to determine the options they have for compliance, gather information on the implications of each option, and decide whether to only relabel or to reformulate these products. The costs of all these decisionmaking activities are the decisionmaking costs of the rule.

Several factors affect the size of decisionmaking costs, including the complexity of the regulation, the number of distinct products affected, the size of the firm, and the length of the compliance period. This proposal involves analytical testing and product reformulation, and, therefore, compliance with it demands significant decisionmaking effort. The more products that a firm makes that are

affected by a regulation, the greater the decisionmaking effort needed to determine the compliance strategy of the firm. These factors largely explain why large firms typically have higher decisionmaking costs than do small firms. An additional factor relating to firm size is that large firms typically have more complex (and costly) decisionmaking processes than do small firms. Finally, longer compliance periods (the length of time between the publication of the final rule and the effective date of the regulation) reduce decisionmaking costs, because there is less need for overtime and for the rescheduling of planned activities. Within the compliance periods considered, a doubling of the compliance period cuts decisionmaking costs in half. The estimate of decisionmaking costs presented here is based on a 2-year compliance period.

For the purpose of this analysis, FDA assumes that each of the firms that make products containing 0.5 g or more *trans* fat per serving will bear decisionmaking costs for a complex regulation.

To estimate the number of these firms, FDA estimated the total number of firms that make foods in each product group. Next, FDA estimated the percentage of these firms (by group product) that make foods containing 0.5 g or more *trans* fat per serving. FDA expects these firms to bear decisionmaking costs for compliance with this rule.

Precise data are not available on the number of firms that make foods for each product group. Instead, FDA has used data from Dun and Bradstreet Market Identifiers to estimate the number of firms making food in each Standard Industry Classification (SIC) most closely related to each product group. Table 10 shows each product group along with the SIC code that most closely corresponds to each product group. It also shows the number of small and large firms producing food in each category. FDA has used the Small Business Administration (SBA) guidelines to define small businesses in each SIC. Unless otherwise noted, a small business is defined as one having 500 or fewer employees.

TABLE 10.—NUMBER OF FIRMS MAKING PRODUCTS IN EACH PRODUCT GROUP (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Product Group	Dun & Bradstreet Market Identifier SIC	Number of Small Firms	Number of Large Firms	Total Number of Firms
Frozen Breakfast Foods	20389901, 20389904, 20389910	10	10	20
Cereal	2043	60 ¹	10	70
Baking Mixes	204103	40	20	60
Breading Products, Frozen Baked Goods, Refrigerated Bread and Pastry Products, Breads	2051	3,000	1,340	4,340
Crackers Cookies	2052	660 ²	280	940
Baking Needs, Candy, Gum, and Cough Drops	206499	430	20	450
Shortenings and Oils, Refrigerated Spreads	207901, 207902, 207999	80 ²	20	100
Chip Type Snacks	2096	320	90	410
Total		4,600	1,790	6,390

¹ Small business is defined as 1,000 employees or fewer.

² Small business is defined as 750 employees or fewer.

FDA has information on the percentage of products in each product group that contain 0.5 g or more of *trans* fat, but it does not have information on the percentage of firms in each category that make such products. To estimate the number of firms affected by the rule, FDA assumed that when a small percentage of products contain 0.5 g or more *trans* fat per serving, then a proportionally smaller percentage of firms are making such products. Conversely, when a large percentage of products in a product group contain 0.5 g or more *trans* fat per serving, then a proportionally larger percentage of firms are making such products. In other

words, FDA assumed that individual firms are more likely to make products that are similar in composition to the preponderance of products on the market and less likely to make products that are different in composition.

To translate the estimate of the percentage of products that contain 0.5 g or more of *trans* fat into an estimate of the percentage of firms making such products, FDA has used the cumulative normal distribution with a mean of 0.5 and a standard deviation of 0.2. Graphically, this relationship is slightly S-shaped (a standard deviation larger than 0.2 would yield a more pronounced S-shape). Using a mean of 0.5 yields the result that when 50

percent of the products contain 0.5 g or more *trans* fat per serving, then 50 percent of the firms are estimated to be making such products.

Where FDA combined different product groups to fit within a single SIC, it averaged the percentages of products with 0.5 g or more *trans* fat per serving in the product group. Table 11 of this document shows the percentage and number of firms by size in each SIC estimated to make products containing 0.5 g or more *trans* fat per serving. FDA assumed that small firms are just as likely to make products containing 0.5 g or more *trans* fat per serving as large firms are.

TABLE 11.—PERCENTAGE AND NUMBER OF FIRMS BY SIZE MAKING PRODUCTS CONTAINING 0.5 GRAM (g) OR MORE *trans* Fat per Serving (numbers are rounded to the nearest ten, percentages are rounded to the nearest 5 percent)

Dun & Bradstreet Market Identifier SIC	Percentage of Products Containing 0.5 g or More <i>trans</i> Fat per Serving	Percentage of Firms Making Products Containing 0.5 g or More <i>trans</i> Fat per Serving	Number of Small Firms Making Products Containing 0.5 g or More <i>Trans</i> Fat per Serving	Number of Large Firms Making Products Containing 0.5 g or More <i>Trans</i> Fat per Serving
20389901,04,10	55%	60%	10	10
2043	15%	5%	0	0
204103	55%	60%	20	10
2051	30%	15%	450	200
2052	95%	100%	660	280
206499	30%	15%	60	0
207901,02,99	50%	50%	40	10
2096	40%	30%	100	30
Total			1,340	540

FDA used the Food Labeling Cost Model developed by RTI for the NLEA rules to estimate the per firm decisionmaking costs borne by firms for this rule (Ref. 74). FDA did not directly apply the RTI model of costs. Instead, the agency assumed that the decisionmaking costs per firm for the

proposed rule would be similar in magnitude—although not identical in detail—to the administrative costs per firm in the RTI model. In other words, the agency assumed that the level of effort but not the decisions involved were the same for the firms affected by the proposed rule and the firms in the

RTI model. FDA estimates the decisionmaking costs to be \$3,500 for a small firm and \$25,000 for a large firm. Table 12 of this document shows the estimated decisionmaking costs for the rule.

TABLE 12.—PERCENTAGE AND NUMBER OF FIRMS BY SIZE MAKING PRODUCTS CONTAINING 0.5 GRAM (g) OR MORE *trans* FAT PER SERVING (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Dun & Bradstreet Market Identifier SIC	Number of Small Firms Making Products Containing 0.5 g or More <i>trans</i> Fat per Serving	Number of Large Firms Making Products Containing 0.5 g or More <i>trans</i> Fat per Serving	Decisionmaking Cost for Small Firms per SIC	Decisionmaking Cost for Large Firms per SIC
20389901,04,10	10	10	\$35,000	\$250,000
2043	0	0	\$0	\$0
204103	20	10	\$70,000	\$250,000
2051	450	200	\$1,575,000	\$5,000,000
2052	660	280	\$2,310,000	\$7,000,000
206499	60	0	\$210,000	\$0
207901,02,99	40	10	\$140,000	\$250,000
2096	100	30	\$350,000	\$750,000
Total	1,340	540	\$4,690,000	\$13,500,000

Total decisionmaking costs of the rule are estimated to be about \$18 million.

4. Relabeling Costs

The two areas of a product's label that may be changed are: (1) The information panel (to alter the saturated fat line and add the footnote to the nutrition label or to change the list of ingredients), and (2) the principal display panel (to remove claims). Each firm must choose whether to change only the labels of existing products to reflect the proposed changes or to reformulate products to reduce or eliminate *trans* fat and relabel the reformulated products appropriately. If a firm chooses to reformulate a product, it will have to change the product's ingredient list. Therefore, regardless of how a firm chooses to comply with this rule, all labels of all products currently containing 0.5 g or more of *trans* fat will have to be changed to reflect changes in either the Nutrition Facts panel or the

ingredient list or both. The cost to change the Nutrition Facts panel is equivalent to the cost to change the ingredient list.

a. *Changes to the information panel.* The number of labels that will be changed is greater than the number of products that contain 0.5 g or more *trans* fat because product formulations come in various-sized packages. For example, for a cracker product that contains 0.5 g or more *trans* fat per serving and that is sold in 3 different-sized packages, the labels of each of the 3 packages must be changed.

For each of the product groups, FDA used the A. C. Nielsen Database of food products sold in grocery stores with annual sales of \$2 million or more to identify the number of food labels. Using this data base for each product group, FDA has calculated the ratio of the number of labels stockkeeping units (SKU's) to the number of products. FDA

then multiplied the number of products estimated to contain 0.5 g or more *trans* fat per serving with this SKU/product ratio to estimate the number of labels that will be changed.

FDA has based its estimate of the cost of changing each information panel on the expectation of a three-color change and a 2-year compliance period. The cost of changing labels varies across product groups because the type of package and label varies. For example, if the label is attached to the package, the cost of the label change is less than if the label is an integrated part of the package. With a 2-year compliance period, there should be no label inventory loss.

Table 13 of this document shows the estimated number of labels to be changed in each product group and the cost of the label change. Total information panel relabeling costs are estimated to be about \$30 million.

TABLE 13.—NUMBER OF INFORMATION PANELS CHANGED AND COST OF REPRINTING (NUMBERS ARE ROUNDED TO THE NEAREST TEN, DOLLARS ARE ROUNDED TO THE NEAREST HUNDRED)

Product Group	Number of SKU's ¹ for Products Containing 0.5 gram or More <i>Trans</i> Fat per Serving	Reprinting Cost per SKU	Reprinting Cost per Product Group
Frozen Breakfast Foods	460	\$1,000	\$460,000
Cereal	370	\$0 ²	\$0
Baking Mixes	880	\$300	\$264,000
Breading Products	0	\$1,300	\$0
Frozen Baked Goods	620	\$1,300	\$806,000
Refrigerated Bread and Pastry Products	70	\$1,300	\$91,000
Breads	12,800	\$1,300	\$16,640,000
Crackers	2,270	\$500	\$1,135,000
Cookies	8,170	\$500	\$4,085,000
Baking Needs	1,150	\$800	\$920,000
Candy, Gum, and Cough Drops	5,340	\$800	\$4,272,000
Shortenings and Oils	280	\$100	\$28,000
Refrigerated Spreads	730	\$100	\$73,000
Chip Type Snacks	5,530	\$200	\$1,106,000
Total	38,670		\$29,880,000

¹ Stockkeeping units.

² Cereal product labels are changed so frequently that the reprinting cost of changing an information panel with a three-color change and a 2-year compliance period amounts to a cost of less than \$50 per SKU.

b. *Changes to principal display panel.* In addition to changes that will be required to change the Nutrition Facts panel or to change the ingredient statement, there will be label changes required for a smaller number of products because of the loss of nutrient content claims about saturated fat or cholesterol. These changes are likely to involve changes to the principal display panel and other marketing-related labeling. FDA assumed that claims in the Refrigerated Spread product group are on margarine products that will be reformulated. Therefore, claims on these products will not be affected. Costs to make these changes are related to both costs per SKU (Table 14 of this document) and costs per firm (Table 15 of this document).

The types of claims affected by this proposal are low and reduced saturated fat claims; cholesterol free, low cholesterol, and reduced cholesterol claims; lean and extra lean claims; healthy claims; and four health claims with established qualifying levels of saturated fat as follows: (1) Fat and the risk of cancer (through the saturated fat criterion for extra lean, § 101.73); (2) dietary saturated fat and cholesterol and the risk of coronary heart disease (§ 101.75); (3) fruits, vegetables, and grain products that contain fiber and the risk of coronary heart disease (§ 101.77);

and (4) soluble fiber from certain grains and the risk of coronary heart disease (§ 101.81). The cost estimate in this section only refers to the effects of this proposal on the relevant saturated fat and cholesterol claims. FDA does not have sufficient information on the number of SKU's with the lean, extra lean, or healthy claims or the four health claims to include them in this analysis. FDA believes that not including these costs does not result in a serious underestimation of the costs of this proposal and requests comments on this issue.

To determine the number of SKU's with affected claims, FDA multiplied the number of products in each product group with such saturated fat or cholesterol claims by the percentage of products in the product group estimated to have 0.5 g or more *trans* fat per serving. FDA then multiplied the result by the SKU/product ratio for the product group.

FDA does not have information to estimate the percentage of existing saturated fat and cholesterol claims that could not continue to be made under this proposal. For the purpose of this analysis, FDA assumed that 50 percent of these claims would be lost. That a significant portion of claims would be lost is reasonable, because producers are likely to be making claims on many

products that are nutritionally very near the qualifying limit for the claim. More stringent qualifying levels for the claims are likely to affect the presumably large percentage of products that are clustered close to the existing qualifying levels. FDA's assumptions yield an estimate that less than eight percent $((2,990 \div 38,670) \times 100)$ of the number of SKU's for products containing 0.5 g or more *trans* fat per serving will have changes to the principal display panel.

Several factors determine the cost of relabeling for claim changes. There are costs for market testing of a new design for the principal display panel to replace the design of the panel that had been previously accepted in the market when the product was able to bear the claim. There are costs for redesign and reprinting of the principal display panel. There are also costs for administrative activities associated with removing the claim from all marketing and labeling.

FDA has used the RTI Labeling Model to estimate the per SKU redesign and printing costs associated with the change in the principal display panel. Table 14 of this document shows the number of SKU's estimated to need changes in the principal display panel and the redesign and printing costs of such changes.

TABLE 14.—NUMBER OF PRINCIPAL DISPLAY PANELS CHANGED AND COST OF REDESIGN AND REPRINTING (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Product Group	Number of SKU's ¹ Changed for Claims	Cost per SKU	Cost per Product Group
Frozen Breakfast Foods	40	\$1,900	\$76,000
Cereal	40	\$0	\$0
Baking Mixes	30	\$600	\$18,000
Breading Products	0	\$2,500	\$0
Frozen Baked Goods	40	\$2,500	\$100,000
Refrigerated Bread and Pastry Products	0	\$2,500	\$0
Breads	640	\$2,500	\$1,600,000
Crackers	590	\$800	\$472,000
Cookies	1,350	\$800	\$1,080,000
Baking Needs	20	\$1,500	\$30,000
Candy, Gum, and Cough Drops	0	\$1,500	\$0
Shortenings and Oils	20	\$100	\$2,000
Chip Type Snacks	220	\$300	\$66,000
Total	2,990		\$3,444,000

¹ Stockkeeping units.

FDA adapted information from the RTI labeling model to estimate the additional costs associated with changing principal display panels. These additional costs consist of market testing costs and marketing administrative costs. FDA estimates market testing costs—the costs of employee taste panels, consumer focus groups, and other marketing tests—to be \$2,000 per product for small firms and

\$23,500 per product for large firms. Marketing administrative costs include planning the change to a new label, making decisions about the appearance of the new principal display panel, and monitoring the marketing tests. The agency did not have direct estimates of these administrative marketing costs per product, but industry sources have asserted that these costs are at least as large as the market testing costs. The

agency assumed that marketing administrative costs per product would be about the same as the administrative costs per firm associated with a complex labeling rule in the RTI labeling model because the amounts of effort were similar. The estimates of marketing administrative costs are \$3,500 per product for small firms and \$25,000 per product for large firms. FDA, therefore estimates the total cost per product of

changing a principal display panel to be \$5,500 for small firms and \$48,500 for large firms. The estimates for these costs are applied per product as a weighted average based on the percentage of products made by small and large firms taken from the Enhanced Establishment Database of FDA-inspected firms developed by RTI (Ref. 73).

Table 15 of this document shows the number of products estimated to need changes in the principal display panel and the cost of market testing and administrative activity. Total principal display panel relabeling costs are estimated to be about \$43 million (\$3 million for redesign and printing plus \$40 million for market testing and

administrative activity). These costs do not include the cost to producers of the lost value of the firm-specific capital developed by marketing under existing claims or the cost to consumers of searching for and switching to new products.

TABLE 15.—NUMBER OF PRINCIPAL DISPLAY PANELS CHANGED AND COST OF MARKETING CHANGES AND ADMINISTRATIVE ACTIVITIES (NUMBER OF PRODUCTS ARE ROUNDED TO THE NEAREST TEN, DOLLARS ROUNDED TO THE NEAREST THOUSAND)

Product Group	Number of Products Changed for Claims	Average Cost per Product	Cost per Product Group
Frozen Breakfast Foods	40	\$20,000	\$800,000
Cereal	30	\$19,000	\$570,000
Baking Mixes	30	\$16,000	\$480,000
Breading Products	0	\$14,000	\$0
Frozen Baked Goods	30	\$14,000	\$420,000
Refrigerated Bread and Pastry Products	0	\$14,000	\$0
Breads	520	\$14,000	\$7,280,000
Crackers	500	\$17,000	\$8,500,000
Cookies	1,090	\$17,000	\$18,530,000
Baking Needs	20	\$14,000	\$280,000
Candy, Gum, and Cough Drops	0	\$14,000	\$0
Shortenings and Oils	10	\$17,000	\$170,000
Chip Type Snacks	170	\$15,000	\$2,550,000
Total	2,440		\$39,580,000

5. Margarine Reformulation Costs

The proposal states that if a product contains 0.5 g or more *trans* fat, then its label must meet certain requirements. Manufacturers may comply with this rule in either of two ways: (1) Relabel the product so that it complies with the rule, or (2) reformulate the product so that it contains less than 0.5 g of *trans* fat and will not be affected by the rule. When manufacturers are faced with reporting more saturated fat than previously reported, as well as revealing the presence of *trans* fat that consumers had not previously realized was present, reformulation is a likely response to avoid the reduced demand for products with labeled *trans* fat. Therefore, FDA has estimated the costs of both of these compliance choices.

FDA assumes that producers will decide whether or not to reformulate on a product-by-product basis. They will choose to reformulate when the expected private benefits minus the expected private costs of reformulating the product exceed the expected private benefits minus expected private costs of just relabeling the product. In other words, if a product is expected to lose market share because of the new disclosure, then manufacturers must compare lost sales to the cost of reformulation.

FDA expects that, in the near term, manufacturers will reformulate all margarine products containing 0.5 g or more of *trans* fat per serving in response

to this rule. The following five pieces of information support this expectation. First, in Germany and some other European countries, the actual, demonstrated market response to consumer concern about *trans* fat is that all margarine products have been reformulated to eliminate *trans* fat. Second, many people who currently consume margarine products are likely to do so to consume less saturated fat than is in butter. Because the rule would raise the reported amount of saturated fat on any unreformulated margarine products, these margarine consumers are likely to search for margarine products with lower levels of reported saturated fat. Third, publicity of the issue by consumer groups has highlighted margarine as a source of *trans* fat and has given prominent attention to reformulated margarine products. As more margarine products are reformulated, the emphasis of publicity by consumer groups will probably shift to calling attention to any remaining margarine products that do not reformulate. Fourth, information from RTI indicates that producers of margarine know more about the reformulation of margarine products than producers of other products know about the reformulation of those products and that, on the whole, U.S. margarine producers plan to reformulate to eliminate *trans* fat (Ref. 73). Fifth, by an informal market survey (Ref. 80), FDA estimates that 30 percent of

margarine products in the United States have already, before publication of this proposal, been reformulated to eliminate *trans* fat.

For this analysis, FDA estimates that this rule will result in the reformulation of all 670 remaining margarine products that contain *trans* fat to reduce *trans* fat below 0.5 g per serving within a 2-year compliance period.

The reformulation of food products is a very costly process. Although the process is likely to vary from company to company, the following provides a description of a typical process. FDA requests information on processes different from that described here. First, management, in conjunction with research and development, must determine which products are the best candidates to be reformulated. Next, laboratories (either in-house or out-source) are used to develop a new formula with acceptable characteristics for consumers. Then, an investigation must be made to determine that the new ingredients are available in sufficient quantity and at an acceptable price. Also, in the case of food additives, it may be necessary to determine that the new ingredients are approved for use in the food being reformulated. It may also be necessary to find a source for new equipment. If all of these activities do not rule out a new formulation, then a test kitchen is used to make the product in small batches. In the test kitchen,

some new formulations will be rejected and others will be improved.

Those new formulations that are found acceptable in the test kitchen are then tested in a pilot plant. The difference between the test kitchen and the pilot plant can be dramatic. Formulations that work well in small batches may be totally unacceptable when produced on a large scale. If tests at the pilot plant go well, then trials of the new formulation begin at actual, full-scale processing plants. A crucial issue for large-scale, commercial production is whether existing equipment is adaptable to the new product formulation. After all of these stages, if a new formulation is acceptable for large-scale, commercial production, then there are costs of label redesign, marketing, management and employee training, the purchase of new ingredients, and some inventory loss of either old labels or old ingredients (because the labels must match the ingredients). This entire process is time-intensive, taking about 1 year, on average. In general, large firms will have the capacity to perform all of these steps in-house, whereas small firms will contract out most of them. Nevertheless, on a per product basis, the process is the same for large and small firms.

FDA has made an estimate of the cost of reformulation based on information on the cost of reformulating tortilla chips supplied by industry (Ref. 78). The costs of reformulation are divided into three categories: (a) Formulation development and testing costs, (b) inventory loss, and (c) ingredient costs. As described in the following sections, the total cost of margarine reformulation because of this rule is estimated to be \$302 million.

a. Formulation development and testing costs. The formulation development process is estimated to require approximately 5,000 hours of professional time (product scientists, sensory scientists, analytical chemists, manufacturing engineers, and quality control scientists) at \$30 per hour per product. This estimate of labor time may be low. It assumes that the first attempt at reformulation is fully successful. Additionally, there are operating expenses for the laboratories, the pilot plants, and the switchover and retooling of manufacturing plants. Finally, there are costs for market testing to determine that the new formulation is acceptable to consumers for the entire shelf life of the product. The shelf-life issue has a significant impact on the amount of time required to market a new

formulation. For example, if a product has a shelf life of 2 years, then a new formulation for the product cannot be approved for production until the new formulation has been shelved for 2 years. Table 16 of this document shows the estimated per product formulation development and testing costs. FDA considers these estimates to be uncertain because of the limited amount of information available at this time and requests comment on the cost of reformulation on a product specific basis.

TABLE 16.—FORMULATION DEVELOPMENT AND TESTING COSTS PER PRODUCT

Category	Cost
Professional Labor (5,000 hours at \$30 per hour)	\$150,000
Development Facility Operation	\$190,000
Market Testing	\$100,000
Total	\$440,000

The total cost of formulation development and testing for the 670 margarine products that would be reformulated near-term because of this rule is \$295 million.

b. Inventory loss. A loss of inventory of either labels for the old formulation or ingredients that are not included in the new formulation is expected. The loss of label inventory can be reduced to zero with a long enough compliance period. However, the reformulation of a product requires a simultaneous change of ingredients and labels. Because both ingredients and labels must be ordered months in advance, it is difficult to order the amount of ingredients and labels such that both are used up completely in the same package.

The actual cost of inventory loss depends on how closely producers are able to coordinate the use of ingredients and labels and on the cost of disposing of the surplus ingredients or labels. FDA assumed a fixed amount of \$10,000 per SKU for this cost. The total cost of inventory loss for the 730 margarine SKU's that will be reformulated because of this rule is \$7 million.

c. Ingredient costs. For margarine reformulation, FDA has estimated no increase in ingredient costs, because the price of reformulated margarine products that are already on the market is no higher than the price of margarine products containing 0.5 g or more per serving of *trans* fat. The different ingredients used in the products appear

to have had no impact on the cost of production. However, as greater numbers of products are reformulated, the increased demand for the substitute ingredients may increase costs. FDA requests comments on this aspect of costs.

6. Baked Products Reformulation

In addition to the near term reformulation of margarine products expected within the compliance period of the rule, FDA expects that in the long term some baked products (product groups Breads (including cakes), Crackers, and Cookies) will be reformulated. On average, these products contain large amounts of *trans* fat relative to the amounts of saturated fat that they contain. FDA's estimate of the amount of reformulation in these product groups is based on two factors: (1) The number of claims potentially lost because of the rule, and (2) the size of the producing firm.

As described in section VI.D.4.b of this document, only 50 percent of the SKU's with claims are assumed to lose those claims. Therefore, only 50 percent of the SKU's with claims are likely to be candidates for reformulation.

Because reformulation is so expensive on a per product basis, FDA assumed that only large firms making these products will reformulate. Also, in the absence of information, FDA assumed that each large firm is just as likely as each small firm is to make a product with a claim. Therefore, the percentage of products losing claims that will be reformulated is equivalent to the percentage of large firms making products containing 0.5 g or more *trans* fat. Table 17 of this document shows the estimate of the number of products that will be reformulated.

FDA is assuming that only a very small percentage of the products in these categories will be reformulated because of the cost of reformulation and the limited consumer appeal (in terms of market share) that foods with health claims in these categories have had thus far. If producers perceive that consumers will respond more negatively to the information on *trans* fat than they have responded thus far to the information on saturated fat, then the actual number of products reformulated may be greater. If that happens, the actual costs of the rule will be greater than those estimated here. However, the benefits will increase to an even greater degree, so that the net benefits of the rule will be even greater than estimated in this analysis.

TABLE 17.—NUMBER OF SKU'S¹ AND PRODUCTS LOSING CLAIMS DUE TO CHANGES IN QUALIFICATIONS FOR CLAIMS AND NUMBER OF PRODUCTS REFORMULATED BY LARGE FIRMS (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Product Group	Number of SKU's Losing Claims	Number of Products Losing Claims	Number of Products Reformulated Long Term (made by large firms)	Products Reformu- lated as a Percent- age of Total Prod- ucts Containing 0.5 gram or more <i>trans</i> Fat per Serving
Breads	640	530	160	1.5%
Crackers	590	500	150	8%
Cookies	1,350	1,090	330	5%
Total			640	3%

¹ Stockkeeping units.

Because FDA has no specific information on the timing of reformulation, FDA assumed that the reformulation for these baked products would be divided evenly into two stages. In stage 1, producers will attempt to reformulate products with the best potential for reformulation. In stage 2, producers will make use of the products, knowledge and technologies developed in stage 1 of reformulation to reformulate a second set of products.

Stage 1 of products is assumed to take 5 years of ongoing labor effort in the product development facilities to develop a satisfactory reformulation for these products. The effort is expected to be fully successful only in the fifth year. The product development teams involved in the stage 1 reformulation effort should learn a great deal about the reformulation of baked products in the process. Therefore, FDA assumes that reformulation of the stage 2 of products

will take 2 years of ongoing labor effort in the product development facilities.

Tables 18 and 19 of this document show the expected annual cost per product of the reformulation development process in both stages of reformulation along with the present value of the costs for each year. The total discounted present value of the cost of stage 1 reformulation activity is about \$1 million per product and about \$400,000 for stage 2 reformulation activity.

FDA has not attempted to estimate the ongoing increased cost of substitutes for partially hydrogenated oil. Competition provides producers with incentives to use the least expensive ingredients that are acceptable for the quality of product they are making. Therefore, in general, any change in existing formulations (such as is expected to occur as a result of this rule) will increase the cost of ingredients. Even a very small increase

in the price of a minor ingredient can amount to an increase in production costs of millions of dollars when multiplied by millions of units. However, FDA does not have sufficient information on the types of substitutes that will be used, on the volume of substitutes that will be needed, on the future price of the substitutes at the time that reformulation is completed, or on the increase in price that could be expected as a result of reformulation of a sizable part of the food industry. For this reason the estimated cost of reformulation presented here is likely to be an underestimate of the true cost. Also, FDA has not included the cost of relabeling the reformulated baked good products. This cost would be so small in comparison to the costs of reformulation that it would not change the discounted estimate at the level of precision used here.

TABLE 18.—EXPECTED ANNUAL AND DISCOUNTED COST OF LONG-TERM REFORMULATION DEVELOPMENT PROCESS FOR A SINGLE BAKED PRODUCT IN STAGE 1 (DOLLARS ARE ROUNDED TO THE NEAREST THOUSAND)

Year	Category	Annual Expenditure	Present Value (discounted at 7%)
1	Labor (\$150,000) and facilities (\$50,000)	\$200,000	\$187,000
2	Labor (\$150,000) and facilities (\$50,000)	\$200,000	\$175,000
3	Labor (\$150,000) and facilities (\$50,000)	\$200,000	\$163,000
4	Labor (\$150,000) and facilities (\$50,000)	\$200,000	\$153,000
5	Fully successful reformulation (\$450,000)	\$450,000	\$321,000
Total			\$999,000

TABLE 19.—EXPECTED ANNUAL AND DISCOUNTED COST OF LONG-TERM REFORMULATION DEVELOPMENT PROCESS FOR A SINGLE BAKED PRODUCT IN STAGE 2 (DOLLARS ARE ROUNDED TO THE NEAREST THOUSAND)

Year	Category	Annual Expenditure	Present Value (discounted at 7%)
6	Labor (\$150,000) and facilities (\$50,000)	\$200,000	\$133,000
7	Fully successful reformulation (\$450,000)	\$450,000	\$280,000
Total			\$413,000

Table 20 of this document shows the total discounted cost of both stages of

long term reformulation for these baked product categories.

TABLE 20.—DISCOUNTED COST OF LONG-TERM BAKED GOOD REFORMULATION (NUMBERS OF PRODUCTS ARE ROUNDED TO THE NEAREST FIVE, DOLLARS ARE ROUNDED TO THE NEAREST THOUSAND)

Product Group	Number of Baked Products Reformulated in Stage 1 (made by large firms)	Discounted Cost of Reformulation in Stage 1	Number of Baked Products Reformulated in Stage 2 (made by large firms)	Discounted Cost of Reformulation in Stage 2
Breads	80	\$80,000,000	80	\$33,000,000
Crackers	75	\$75,000,000	75	\$31,000,000
Cookies	165	\$165,000,000	165	\$68,000,000
Total	320	\$320,000,000	320	\$132,000,000

7. Cost Summary

In summary, Table 21 of this document provides an overview of the

extent of the effect of the rule on products and firms in each product group significantly affected.

TABLE 21.—SUMMARY OF NUMBER OF PRODUCTS, FIRMS, AND LABELS AFFECTED

Product Group	Number of Products Tested	Number of Products With 0.5 gram or More <i>trans</i> Fat per Serving	Number of Firms with Decisionmaking Costs	Number of Information Panels Changed	Number of Principal Display Panels Changed	Number of Products Reformulated
Frozen Breakfast Foods	600	420	20	460	40	0
Cereal	720	290	0	370	40	0
Baking Mixes	1,100	770	30	880	30	0
Breading Products	800	560	650	0	0	0
Frozen Baked Goods	760	530		620	40	0
Refrigerated Bread and Pastry Products	90	60		70	0	0
Breads	14,980	10,490		12,800	640	160
Crackers	1,910	1,910	940	2,270	590	150
Cookies	6,590	6,590		8,170	1,350	330
Baking Needs	1,000	1,000	60	1,150	20	0
Candy, Gum, and Cough Drops	5,960	4,170		5,340	0	0
Shortenings and Oils	220	180	50	280	20	0
Refrigerated Spreads	0	670		730	0	670
Chip Type Snacks	7,150	4,290	130	5,530	220	0
Total	41,880	31,930	1,880	38,670	2,990	1,310

To provide cost estimates on the same basis as the benefits estimates, total costs of the rule are estimated in terms of the three scenarios that are likely from section VI.C.1.b of this document.

Tables 22, 23, and 24 of this document show the total estimated cost of the scenarios. FDA has not estimated the distribution of the burden of costs between producers and consumers. The

agency expects that some fraction of the costs—as measured at the producer's stage—will be passed on to consumers in the form of increases in the prices of the foods covered by the proposed rule.

TABLE 22.—COSTS FOR SCENARIO 2: FULL LONG-TERM YEARLY TOTAL COSTS IN MILLIONS (DISCOUNTED COSTS IN PARENTHESES)¹

Cost Category	During Compliance Period	One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date	Six Years After Effective Date	Seven Years After Effective Date	Eight Years After Effective Date and Later
Testing costs	\$8								
Decisionmaking costs	\$18								
Relabeling costs	\$73								
Margarine reformulation costs	\$302								
Baked products reformulation costs		\$64 (\$60)	\$64 (\$56)	\$64 (\$52)	\$64 (\$49)	\$144 (\$103)	\$64 (\$43)	\$144 (\$90)	\$0
Total costs	\$401	\$64 (\$60)	\$64 (\$56)	\$64 (\$52)	\$64 (\$49)	\$144 (\$103)	\$64 (\$43)	\$144 (\$90)	\$0

¹ Reformulation of all margarine products and some baked products plus some consumer response to the labeling.

TABLE 23.—COSTS FOR SCENARIO 4: NEAR-TERM YEARLY TOTAL COSTS IN MILLIONS (DISCOUNTED COSTS IN PARENTHESES)¹

Cost Category	During Compliance Period	One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date	Six Years After Effective Date	Seven Years After Effective Date	Eight Years After Effective Date and Later
Testing costs	\$8								
Decisionmaking costs	\$18								
Relabeling costs	\$73								
Margarine reformulation costs	\$302								
Total costs	\$401	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

¹ Reformulation of all margarine products plus some consumer response to the labeling.

TABLE 24.—COSTS FOR SCENARIO 3: NEAR-TERM COSTS PLUS 50 PERCENT OF FULL LONG-TERM YEARLY TOTAL COSTS IN MILLIONS (DISCOUNTED COSTS IN PARENTHESES)¹

Cost Category	During Compliance Period	One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date	Six Years After Effective Date	Seven Years After Effective Date	Eight Years After Effective Date and Later
Testing costs	\$8								
Decisionmaking costs	\$18								
Relabeling costs	\$73								
Margarine reformulation costs	\$302								
Baked products reformulation costs		\$32 (\$30)	\$32 (\$28)	\$32 (\$26)	\$32 (\$25)	\$72 (\$52)	\$32 (\$22)	\$72 (\$45)	\$0
Total costs	\$401	\$32 (\$30)	\$32 (\$28)	\$32 (\$26)	\$32 (\$25)	\$72 (\$52)	\$32 (\$22)	\$72 (\$45)	\$0

¹ Costs for Scenario 4 plus 50 percent of the costs of the baked product reformulation.

FDA acknowledges that there is a significant amount of uncertainty in the cost estimates provided here. FDA requests comment on the following uncertainties. The most significant source of potential divergence from the reported estimates would be an ongoing increased cost of substitutes for partially hydrogenated oil for producers of reformulated products. FDA has not included any costs for this item in this analysis, so that, if substitute oils do cost more, the costs here are underestimates.

Reformulation is a second significant area of uncertainty. The unknowns include the number of products that will be reformulated, the cost of reformulation, the number of abandoned attempts at reformulation, the length of time actually needed to reformulate products, and the degree to which the reformulation of some products reduces the cost of reformulating other products. The estimates that are provided in this

analysis might be either over- or underestimates of the actual costs of reformulation.

A third major area of uncertainty includes the number of products containing 0.5 g or more *trans* fat per serving and the number of products with affected claims. Actual costs are likely to be higher than those estimated here because this analysis focused only on product groups where a substantial portion of the total number of the products in the group contain partially hydrogenated oil. Among the numerous categories of foods not included in this analysis, a sizable number of additional products may be affected by this proposal.

Finally, restaurants making claims affected by this rule on menus or in other labeling will need either to update the basis for such claims or remove them. FDA does not have information to estimate such costs. However, their existence does suggest that costs

reported in this analysis will be lower than the actual costs.

E. Summary of Benefits and Costs

The benefits and costs of the proposed rule occur in different years. In order to compare costs and the ongoing benefits, the agency calculated the present value of benefits and costs for Scenarios 2, 3, and 4 during the compliance period and for 20 years beyond the compliance period. Each scenario assumes that some consumers reduce their consumption of *trans* fat based on labeling changes. Scenario 4 assumes that all margarine products will be reformulated to eliminate *trans* fat. Scenarios 3 and 2 assume in addition progressively more reformulation of baked products as well as assuming that all margarine products will be reformulated to eliminate *trans* fat. Table 25 of this document shows the results.

TABLE 25.—PRESENT VALUE OF BENEFITS AND COSTS OF THE PROPOSED RULE IN MILLIONS (DISCOUNTED TO COMPLIANCE PERIOD AT 7 PERCENT FOR 20 YEARS AFTER THE COMPLIANCE PERIOD)¹

	Low Estimated Benefits	High Estimated Benefits	Estimated Costs
Scenario 4	\$24,893	\$50,664	\$401
Scenario 3	\$26,516	\$55,579	\$628
Scenario 2	\$27,164	\$59,190	\$854

¹ Based on Tables 5, 6, 22, 23, and 24 of this document.

F. Comparison With Effects of the Rules Implementing the 1990 Amendments

The procedure used to estimate the benefits and costs of the proposed labeling rule differs somewhat from the procedure used to estimate the benefits and costs of the rules implementing the 1990 amendments. The economic analysis of the rules implementing the 1990 amendments did not attempt to estimate the effects of the labeling rules on product reformulation. For this proposed rule, however, FDA has sufficient information to estimate the benefits and costs of product reformulation.

The results of the current benefit-cost analysis, however, could cause some

confusion in that the inclusion of reformulation benefits and costs makes the effects of the proposed rule appear large relative to the effects of the rules implementing the 1990 amendments. Although those rules affected far more labels and products, FDA did not estimate the potentially very large effects of reformulation induced by those rules. To allow comparisons between the effects of this proposed rule and the effects of the rules implementing the 1990 amendments, FDA has also estimated only the relabeling effects of this proposed rule. The relabeling costs of the proposed rule, as shown in Tables 22 to 24 would be approximately \$100 million during the compliance period. FDA calculated

this estimate by assuming that margarine products would be relabeled with their existing formulations rather than being reformulated. The annual direct benefits, which begin 3 years after the effective date for the proposed rule, would be approximately 5 percent of the total after 10 years, or \$171 million to \$394 million per year.

The present value of the benefits and costs of the rules implementing the 1990 amendments were estimated for 20 years at a 5 percent rate of discount. To make the current rule comparable, FDA estimated the present value of this proposed rule for a 20-year period at a 5 percent rate of discount. Table 26 of this document shows the results of the comparison.

TABLE 26.—COMPARISON OF THE BENEFITS AND COSTS OF THE PROPOSED RULE AND THE BENEFITS AND COSTS OF THE RULES IMPLEMENTING THE 1990 AMENDMENTS (DISCOUNTED AT 5 PERCENT FOR 20 YEARS)

	Benefits	Costs
Rules implementing the 1990 amendments	\$4.4 to \$26.5 billion	\$1.4 to 2.3 billion
This proposed rule	\$1.7 to \$3.8 billion	\$100 million

VII. Initial Regulatory Flexibility Analysis

A. Introduction

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires

agencies to analyze regulatory options that would reduce the economic effect of the rule on small entities.

B. Economic Effects on Small Entities

1. Number and Type of Small Entities Affected

The proposed rule will affect food processors in several different industries. Table 27 of this document

shows the number of small businesses likely to be affected in each SIC. FDA calculated the number of businesses from a search using Dun & Bradstreet (Ref. 73). The number of firms listed for each code includes all small firms in the industry category producing products that contain *trans* fat. The SBA size standards apply to the 4-digit SIC codes associated with each product group.

TABLE 27.—NUMBER OF SMALL BUSINESSES AFFECTED (NUMBERS ARE ROUNDED TO THE NEAREST TEN)

Description	Standard Industry Classification and Dun's Market Identifiers Code	Small Business Administration Size Standard (employees)	Number of Small Firms
Frozen Breakfast Foods	20389901, 20389904, 20389910	500	10
Cereal	2043	1,000	60
Baking Mixes	204103	500	40
Breading Products, Frozen Baked Goods, Refrigerated Bread and Pastry, Breads	2051	500	3,000
Crackers Cookies	2052	750	660
Baking Needs, Candy, Gum, and Cough Drops	206499	500	430
Shortenings and Oils, and Refrigerated Spreads	207901, 207902, 207999	750	80
Chip Type Snacks	2096	500	320

TABLE 27.—NUMBER OF SMALL BUSINESSES AFFECTED (NUMBERS ARE ROUNDED TO THE NEAREST TEN)—Continued

Description	Standard Industry Classification and Dun's Market Identifiers Code	Small Business Administration Size Standard (employees)	Number of Small Firms
Total small businesses			4,600

Table 27 of this document slightly overstates the number of small businesses affected by the proposed rule, because it includes some businesses that would be exempt. The criteria for exemption are: (1) Annual sales of fewer than 100,000 units; (2) no claims or other nutrition information on product labels, labeling, or advertising; (3) fewer than 100 full-time employees; and (4) filing of a notice with the Office of Food Labeling (§ 101.9(j)(18)). FDA has previously estimated that the exemption for all foods would affect about 1.8 percent of FDA-regulated foods by volume (see 58 FR 2927 at 2928, January 6, 1993). FDA assumed that the percentage would be the same for the products affected by this proposed rule. Because FDA did not know how the exemption would be distributed across product groups, FDA estimated the effects of exemptions only for the total costs to small businesses.

2. Costs to Small Entities

Partially hydrogenated oils account for almost all of the *trans* fat in foods covered by the proposed rule; its presence in a product is, therefore, a proxy for the presence of *trans* fat. The proposed rule would cause small businesses whose products contain

partially hydrogenated oil to test for the amount of *trans* fat per reference amount. The proposed rule would require a firm to relabel any product that contains 0.5 g or more of *trans* fat per serving, unless the firm chooses to reformulate the product to contain less than 0.5 g of *trans* fat per serving.

FDA calculated the costs to small businesses with the same basic model that was used in section VI.D of this document to estimate the total costs. The basic formula is described there in Figure 1. Although the basic cost formula is the same for large and small firms, the individual components of costs differ for large and small firms. Small firms have lower decisionmaking costs, produce fewer products, and market fewer labels. The reprinting costs per label differ by product group and according to whether or not the principal display panel has to be changed. Reformulation is also less likely for small businesses. FDA assumed that margarine producers would be the only small businesses that would choose to reformulate within 10 years after the effective date for the proposed rule. Although FDA made no quantitative estimates of future reformulation costs for small businesses,

it assumed that after reformulation practices for other product groups become standard industry knowledge, small businesses would be able to reformulate at far lower cost than estimated for margarine.

FDA estimated the total costs of the proposed rule to small business by estimating the individual categories of costs and summing them. The first category is testing costs. Small businesses would need to test their products to determine the amounts of *trans* fats. FDA did not have direct estimates of the number of products produced by the small businesses affected by the proposed rule. FDA estimated the number of products produced by small businesses by using a sample from the Enhanced Establishment Database (EED) and assuming that the proportion of all products produced by small businesses was the same as the sample proportion (Ref. 73). FDA then multiplied the number of products in each category by the percent of products in that category containing partially hydrogenated oil. The result is the estimated number of products of small businesses that would have to be tested for *trans* fat shown in Table 28 of this document.

TABLE 28.—NUMBER OF PRODUCTS OF SMALL BUSINESSES CONTAINING PARTIALLY HYDROGENATED OIL

Product	Number of Products	Percent of Products Containing Partially Hydrogenated Oil	Number of Products Containing Partially Hydrogenated Oil
Frozen Breakfast Foods	470	80	380
Cereal	1,150	40	460
Baking Mixes	1,180	75	890
Breading Products	820	85	700
Frozen Baked Goods	1,330	50	670
Refrigerated Bread and Pastry	1,560	5	80
Breads	26,390	50	13,200
Crackers	1,480	100	1,480
Cookies	5,360	95	5,090
Baking Needs	1,380	65	900
Candy, Gum, and Cough Drops	13,390	40	5,360
Shortenings and Oils	1,100	15	170
Refrigerated Spreads	960	70	670
Chip Type Snacks	8,890	70	6,220
Total			36,270

FDA estimated testing costs to be \$200 per product, so the total cost of testing for small businesses would be approximately \$7 million (36,270 x \$200).

Decisionmaking costs would be borne by those small businesses whose products contain 0.5 g or more *trans* fat per reference amount. Table 29 of this document shows the likely number of

small businesses with products containing 0.5 g or more *trans* fat per reference amount; these firms would bear decisionmaking costs because of the proposed rule. FDA estimated the

number of small businesses affected by multiplying the number of small businesses in each category (see Table 10 of this document) by the percentage of firms in that category making products with 0.5 g or more *trans* fat per reference amount.

TABLE 29.—NUMBER OF SMALL FIRMS WHOSE PRODUCTS CONTAIN 0.5 GRAM (g) OR MORE *trans* FATS PER REFERENCE AMOUNT

Description	SIC and Dun's Market Identifiers Code	Percent of Small Firms Making Products Containing 0.5 g or More <i>Trans</i> Fat	Number of Small Firms Making Products Containing 0.5 g or More <i>Trans</i> Fat
Frozen Breakfast Foods	20389901 20389904 20389910	60	10
Cereal	2043	5	0
Baking Mixes	204103	60	20
Breading Products, Frozen Baked Goods, Refrigerated Bread and Pastry, Breads	2051	15	450
Crackers Cookies	2052	100	660
Baking Needs, Candy, Gum, and Cough Drops	206499	15	60
Shortenings and Oils, Refrigerated Spreads	207901 207902 207999	50	40
Potato Chips and Similar Snacks	2096	30	100
Total Small Businesses			1,340

The decisionmaking costs for small businesses are estimated to be approximately \$3,500 per firm. Total decisionmaking costs would be approximately \$5 million (1,340 x \$3,500).

FDA estimated reprinting costs for information panels on a per label (SKU) basis. FDA assumed that the proportion of SKU's from small businesses as a whole equaled the proportion in the EED for each category of foods.

Table 30 of this document shows the cost to small businesses of reprinting information panels.

TABLE 30.—REPRINTING COSTS FOR INFORMATION PANELS

Description	Number of SKU's ¹	Cost per SKU	Cost per Product Group
Frozen Breakfast Foods	230	\$1,000	\$230,000
Cereal	150	\$0	\$0
Baking Mixes	670	\$300	\$201,000
Breading Products	0	\$1,300	\$0
Frozen Baked Goods	470	\$1,300	\$611,000
Refrigerated Bread and Pastry	50	\$1,300	\$65,000
Breads	9,730	\$1,300	\$12,649,000
Crackers	1,250	\$500	\$625,000
Cookies	5,330	\$500	\$2,665,000
Baking Needs	990	\$800	\$792,000
Candy, Gum, and Cough Drops	4,590	\$800	\$3,672,000
Shortenings and Oils	170	\$100	\$17,000
Refrigerated Spreads	450	\$100	\$45,000
Chips Type Snacks	4,150	\$200	\$830,000
Total	28,230		\$22,402,000

¹ Stockkeeping units.

In addition to the costs of reprinting information panels, small businesses making claims may have to change their principal display panels. The redesign and reprinting cost per SKU change for a small business is estimated to be \$1,200. FDA estimated that small businesses accounted for about 50 percent of the labels (SKU's) and about 50 percent of the products that would require changes to the principal display panel. The total number of SKU's estimated in section VI.D.4.a of this document to require such changes was 2,990; small businesses therefore accounted for 1,500 products (0.5 x 2,990). The marketing and

administrative costs per product change for a small business is estimated to be \$5,500. The total number of products estimated in section VI.D.4.b of this document to require changes was 2,440; small businesses therefore accounted for 1,220 products (0.5 x 2,440). The total cost to small businesses of changing principal display panels would be \$9 million (((\$1,200 x 1,500) + (\$5,500 x 1,220)).

FDA assumed that the only small businesses that would reformulate products to eliminate or reduce *trans* fat would be margarine producers responding to market pressures. The reformulation costs for small businesses

producing margarine equals the reformulation costs per product multiplied by the number of products produced by small firms, plus the reformulation costs per SKU times the number of SKU's produced by small firms. FDA assumed that 20 percent of the 670 margarine products to be reformulated, or 134, are produced by small businesses. FDA estimated the cost of formulation and testing to be \$440,000 per product. The number of SKU's affected is estimated to be 146 (0.2 x 730). The inventory loss is estimated to be \$10,000 per SKU. Table 31 of this document shows the

margarine reformulation costs for small businesses.

TABLE 31.—MARGARINE REFORMULATION COSTS FOR SMALL BUSINESSES

	Number	Costs per Product or per SKU ¹	Total Costs for All Products or SKU's
Products	134	\$440,000	\$59 million
SKU's	146	\$10,000	\$2 million

¹ Stockkeeping unit.

Table 32 of this document shows the total costs to small businesses of the proposed rule. The adjusted total costs of the proposed rule equal the unadjusted total minus \$7 million, 1.8 percent of all compliance period costs of the proposed rule (\$401 million x 0.018) (see 58 FR 2927 at 2928, January 6, 1993).

TABLE 32.—TOTAL COSTS FOR SMALL BUSINESSES (IN MILLIONS OF DOLLARS)

Type of Cost	Amount
Testing costs	\$7
Decisionmaking costs	\$5
Costs of reprinting information panel	\$22
Costs changing principal display panel	\$9
Formulation and testing costs	\$59
Inventory costs	\$2
Total	\$104
Total adjusted for exemptions	\$97

C. Regulatory Options

The Regulatory Flexibility Act requires that FDA consider options for regulatory relief for small entities. Some regulatory relief is already built into the proposed rule. The uniform compliance

date should give small entities sufficient time to avoid many potential costs of the rule, such as loss of inventory.

1. Exemption for Small Businesses

The exemption of small businesses from the provisions of the proposed rule would provide regulatory relief. Table 32 of this document shows that small businesses are expected to bear total costs of about \$100 million as a result of the proposed rule, an average of \$22,600 per small business. As a first approximation, then, exempting small businesses would reduce the burden by an average of \$22,600 per small business.

FDA believes that this option would not be desirable. On the one hand, because so many of the businesses in the food processing industry are classified as small by SBA, if small businesses are exempted, much of the potential benefits from the proposed rule would not be realized. On the other hand, exempt businesses may be forced by market pressures to adopt the proposed label in any case. In addition, under section 403(q)(5)(E) of NLEA, very small producers (those with fewer than 100 full-time employees) that: (1) File a notice with the Office of Food Labeling; (2) make very low volume products (fewer than 100,000 units annually); and (3) place no claims or

other nutrition information on product labels, labeling, or advertising would already be exempt from this proposed rule.

2. Longer Compliance Period for Small Businesses

Longer compliance periods provide regulatory relief for small businesses. FDA has estimated the costs based on a 2-year compliance period. The estimated costs will decrease if small businesses are given more than two years to comply with the proposed rule.

Labeling costs (decisionmaking, redesign, and printing) fall as the compliance period rises. With the base period of 2 years, labeling costs double with each halving of the length of the compliance period and fall by one-half for each doubling of the compliance period. Testing and reformulation costs also decline with a lengthening of the compliance period. Small businesses would have more opportunity to benefit from technology transfer from large businesses making similar products.

Table 33 of this document shows how the burden on small businesses falls as the compliance period is extended to 18 and 24 months beyond the effective date. The weights used were the proportion of small business costs represented by each component.

TABLE 33.—EFFECT OF COMPLIANCE PERIOD ON SMALL BUSINESS COSTS (ADJUSTMENT FACTORS RELATIVE TO EFFECTIVE DATE)

	At Proposed Effective Date	18 Months After Proposed Effective Date	24 Months After Proposed Effective Date
Decisionmaking costs	100%	75%	50%
Testing costs	100%	97%	93%
Printing costs	100%	75%	50%
Reformulation costs	100%	97%	93%
Weighted average costs	100%	89%	78%

In other words, the costs to small businesses would fall by about 11 percent with an 18-month extension beyond a 2-year compliance period and by about 22 percent with a 24-month extension beyond a 2-year compliance period. FDA will evaluate the length of

the compliance period if it finalizes this proposal.

3. Exemptions for Particular Products Produced by Small Entities

In the category of breakfast foods, the average intake of *trans* fat for both men and women is less than one-tenth of a

gram per day. Because the entire category contributes so little to the overall dietary intake of *trans* fats, exempting small businesses in this category from the rule would have small effects on health. The exemption, however, would provide regulatory relief for approximately 70 small

businesses (including cereal and frozen breakfast foods). The total burden on small businesses would fall by less than \$500,000 (the sum of \$316,000 relabeling costs and \$167,000 testing costs for 835 products). The relief offered by this option, then, would be small.

An objection to this option for regulatory relief is that by exempting an entire class of products, FDA could create incentives for small firms to create products in that category. These new products would have no effective limits on *trans* fat. The exemption would therefore allow small firms to develop products with high *trans* fat content but no indication of that content on the label. The contribution of breakfast cereals to total dietary intake of *trans* fats could increase because of the exemption. The most telling objection to this option is that

exempting some products from the proposed labeling rule would make the nutrition facts panel inconsistent across product categories. This inconsistency would be counter to the intent of the 1990 amendments. It would undermine the policy goal of providing consistent nutrition information to consumers.

D. Recordkeeping and Reporting Requirements

The Regulatory Flexibility Act requires FDA to include a description of the recordkeeping and reporting required for compliance with this proposed rule. This proposed rule does not require the preparation of a report or a record.

E. The Burden on a Small Business: A Typical Small Business

The average cost per small business would be about \$22,600 (\$104 million/

4,600 firms). In this section FDA will show how a hypothetical small business could incur this average cost. Although the entity is hypothetical, the cost estimate is based on costs that a single entity could in fact bear as a result of the proposed rule. Suppose that a small business must test and possibly relabel—but does not reformulate—its products. The firm's three products are in the bread category and three of its four labels contain claims. The other product contains less than 0.5 grams of *trans* fat per serving and, therefore, its label need not be changed. Table 34 of this document shows the costs for this hypothetical typical small business. The cost can be compared to some plausible level of sales revenue to estimate the potential burden of the rule.

TABLE 34.—COSTS FOR A HYPOTHETICAL SMALL BUSINESS

Decisionmaking costs	\$3,500 per small business	\$3,500
Testing costs	\$200 per product for 3 products	\$600
Reprinting information panel costs	\$1,300 per SKU ¹ for 3 SKU's	\$3,900
Changing principal display panels	\$1,200 per SKU for 3 SKU's	\$3,600
Changing principal display panels costs per product	\$5,500 per product for 2 products	\$11,000
Total costs		\$22,600

¹ Stockkeeping unit.

The median firm in the food groups covered by the proposed rule has annual sales of about \$500,000. The proposed rule could therefore lead to a one-time burden of about 5 percent of annual sales (\$22,600/\$500,000). If the firm borrowed the funds to pay for the label changes and other costs at 7 percent for 10 years, the annual payments would be about \$3,200. This estimate may overstate the burden in that the firm may pass most of the cost on to consumers in the form of higher prices for its products. Small margarine producers will bear much higher costs if market pressures force them to reformulate. If the firms are large enough so that they are not exempted from this rule, they will compare potential market share losses with the cost of reformulation. FDA believes that, although the costs of reformulation are large (\$450,000 per product), the product volume of even a small plant is large enough to make reformulation the logical choice.

F. Summary

FDA finds that under the Regulatory Flexibility Act (5 U.S.C. 605(b)) this proposed rule will have a significant economic impact on a substantial

number of small entities. Approximately 4,600 small businesses could be affected by the rule. The total burden on small entities is estimated to be more than \$100 million.

VIII. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses for rules that would cost more than \$100 million in 1 single year. The proposed rule qualifies as significant rule under the statute. FDA has carried out the cost-benefit analysis in sections VI.C and VI.D of this document. The other requirements under the Unfunded Mandates Act of 1995 include assessing the rule's effects on:

- A. Future costs;
- B. Particular regions, communities, or industrial sectors;
- C. National productivity and economic growth;
- D. Full employment and job creation; and,
- E. Exports.

A. Future Costs

FDA estimated some of the future costs of the proposed rule in section VI.D of this document. The reported costs include costs incurred during the

compliance period and up to 7 years after the effective date. Section VI.D of this document also includes some qualitative discussion of costs that would occur beyond that time period. Most of the costs of the rule, however, would occur in the years immediately after the publication of a final rule. Future costs beyond that period would likely be small, because the food industry would have adjusted to the new requirements by that time.

B. Particular Regions, Communities, or Industrial Sectors

The proposed rule applies to the food industry and would, therefore, affect that industry disproportionately. Any long-run increase in the costs of food production would largely be passed on to the entire population of consumers.

C. National Productivity and Economic Growth

The proposed rule is not expected to substantially affect productivity or economic growth. It is possible that productivity and growth in certain sectors of the food industry could be slightly lower than otherwise because of the need to divert research and development resources to compliance

activities. The diversion of resources to compliance activities would be temporary. Moreover, FDA anticipates that, because the health benefits are estimated to be large, both productivity and economic growth would be higher than in the absence of the rule. In section VI.C.3 of this document, FDA estimated benefits from the reduction in functional disability associated with a reduction in nonfatal CHD. A reduction of functional disability would result in an increase in productivity. The increased health of the population and the reduction in direct and indirect health costs could increase both productivity and economic growth.

D. Full Employment and Job Creation

The human resources devoted to producing certain foods would be redirected by the proposed rule. The proposed rule could lead to some short-run unemployment as a result of the structural changes within the food industry, the rise of some product lines and decline of others. The growth of employment (job creation) could also be temporarily slower.

E. Exports

Because the proposed rule does not mandate any changes in products, current export products will not be required to change in any way. Food processors, however, do not necessarily distinguish between production for export and production for the domestic market. The effect of the proposed rule on U.S. food exports depends on how foreign consumers react to information about *trans* fats and to product formulations that contain no partially hydrogenated oils. The new label and possible new formulations could either increase or decrease exports. Germany and certain other European countries, for example, do not currently use partially hydrogenated oils, so the proposed rule could make U.S. exports of margarine and other reformulated products more attractive to consumers in those countries than they have been. However, it could also make U.S. exports of unreformulated products that reveal the presence of *trans* fat less

attractive to consumers in those countries than they have been.

IX. Environmental Impact

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

X. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the next paragraphs below with an estimate of the annual 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.

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

Title: Food Labeling; *Trans* Fatty Acids in Nutrition Labeling and Nutrient Content Claims.

Description: Section 403(q)(1)(A) and (q)(1)(B) of the act requires that the label or labeling of a food bear nutrition information on the amount of nutrients

present in the product. Under these provisions of the act and section 2(b) of the 1990 amendments, FDA has issued regulations in § 101.9(c)(2) that require that the nutrition facts panel disclose information on the amounts of fat and certain fatty acids in the food product. Similarly, under the provisions of section 403(q)(5)(F) of the act, FDA has issued regulations in § 101.36(b) that specify the nutrition information that must be on the label or labeling of dietary supplements.

The regulations set forth in this proposed rule would require producers of foods, including dietary supplements, that contain 0.5 g or more of *trans* fatty acids per serving to disclose in the nutrition label the amount of *trans* fatty acids present in such foods. To do so, the proposed rule would require that the amount and the %DV for saturated fatty acids disclosed in the nutrition label of a food represent the combined amount of saturated and *trans* fatty acids. In addition, the amount of *trans* fatty acids would be disclosed in a footnote.

Section 403(r)(2)(B) of the act requires that the labeling of any food bearing a nutrient content claim that contains a nutrient at a level that increases to persons in the general population the risk of a disease or health-related condition that is diet related must contain, prominently and in immediate proximity to such nutrient content claim, a disclosure statement specified by the statute. The proposal would also establish the nutrient content claim "*trans* fat free" as an authorized nutrient content claim for food, including dietary supplements. Any food bearing a "*trans* fat free" nutrient content claim would be required to include a footnote in the nutrition label disclosing that the product contains 0 g *trans* fatty acids. In addition, food products bearing a "*trans* fat free" nutrient content claim would be required to disclose the level of total fat and cholesterol, if present at significant levels.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 35.—ESTIMATED REPORTING BURDEN¹

21 CFR Section	Number of Respondents	Responses per Respondents	Total No. of Responses	Hours per Response	Total hours	Operating costs
101.9(c)(2)(i) and (d)(7)(ii) ²	1,880	4	38,670	2	77,340	\$38,256,000
101.36(b)(2) ²	40		300	2	600	\$210,000
101.62(c)	25		100	0.5	50	\$70,000
Totals	1,945		39,070		77,990	\$38,536,000

¹ There are no capital cost or maintenance costs associated with this collection of information.

² The number of responses per respondent under this section varies greatly depending upon the size of the firm and the numbers and types of products marketed by the firm.

The impact of the proposed requirements concerning *trans* fatty acids would be largely a one-time burden created by the need for firms to revise the labels for those existing products containing *trans* fatty acids. FDA estimated the operating costs for food products that might be affected by this proposed rule by combining the approximate cost of analysis to determine those products containing more than 0.5 g of *trans* fatty acids and the approximate cost of revising the labels for those products containing more than 0.5 g of *trans* fatty acids. As noted in section VI of this document in the Preliminary Regulatory Impact Analysis, FDA estimates that the approximate cost of analysis to determine the amount of *trans* fatty acids in affected products to be approximately \$8,376,000 for 41,800 products (see Table 8 of this document). Also, as noted in section VI of this document, FDA estimates that there are approximately 1,880 firms producing products that would be affected by this proposed rule. Further, FDA estimates that there are approximately 38,670 SKU's for food products, other than dietary supplements, that would be affected by this proposed rule with the associated operating costs for revising labels of \$29,880,000 (see Table 13 of this document).

In the final rule establishing requirements for the nutrition labeling of dietary supplements, FDA estimated that there were approximately 850 suppliers of dietary supplements and that they had on average 40 products each (62 FR 49826 at 49846). Although FDA is uncertain as to exactly how many dietary supplement suppliers (certainly, fewer than 40 suppliers) have products that contain *trans* fatty acids and welcomes comments on this point, based upon its experience, it believes that less than 1 percent of the approximate total of 34,000 dietary supplements, or approximately 300, would contain *trans* fatty acids. Based upon its knowledge of food labeling, FDA estimates that firms would require less than 2 hours per product to comply with the nutrition labeling requirements in § 101.36(b)(2) of a final rule based on this proposal.

FDA also estimates that approximately 25 firms would choose to make *trans* fatty acid free claims under proposed § 101.62(c)(6) on approximately 4 products per firm. Because the regulations supply the wording that would appear on the label, the making of a "*trans* fat free" claim and the required disclosure of 0 g *trans* fatty acids in an accompanying footnote would impose no burden and would not

constitute a "collection of information" under the PRA. Rather, the proposed nutrient content claim "*trans* fat free" and accompanying footnote would be a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320(c)(2)). Because the information on total fat and cholesterol levels required to be disclosed under § 101.62(c) would be information that the firms would already have, FDA estimates that this additional requirement would add less than 0.5 hours burden for each product.

For the requirements in §§ 101.36(b)(2) and 101.62(c), FDA has estimated operating costs by combining the approximate cost of analysis to determine the level of *trans* fatty acids in the affected products requiring disclosure of *trans* fatty acids (\$200 per product) and the approximate cost of revising labels for those products (\$500 per product). Thus, FDA tentatively finds that the requirements of a final rule based on this proposal would result in total one-time operating costs of \$38,536,000. FDA expects that, with at least a 1-year compliance date, firms will coordinate labeling revisions required by any final rule that may issue based on this proposal with other planned labeling for its products.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 17, 1999, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

XI. Effective Date

The agency proposes that any final rule that may issue based upon this proposal become effective in accordance with the uniform effective date for compliance with food labeling requirements that is announced by notice in the **Federal Register** and that is not sooner than 1 year following publication of any final rule based on this proposal. However, FDA will not object to voluntary compliance immediately upon publication of the final rule.

XII. Comments

Interested persons may, on or before February 15, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal, except that written comments

regarding collection of information should be submitted to the Office of Information and Regulatory Affairs, OMB (address above), on or before December 17, 1999. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed 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, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:
Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.9 is amended by revising paragraphs (c)(2)(i) and (d)(7)(ii) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(2) * * *

(i) "Saturated fat," or "Saturated": A statement of the number of grams of

saturated fat in a serving, defined as the sum of the number of grams per serving of all fatty acids containing no double bonds (i.e., "saturated fatty acids") plus the number of grams per serving of any unsaturated fatty acids that contain one or more isolated (i.e., nonconjugated) double bonds in a *trans* configuration (i.e., "*trans* fatty acids" or "*trans* fat").

(A) The label declaration of saturated fat content information (i.e., the combined value of saturated fatty acids plus *trans* fatty acids) is not required for products that contain less than 0.5 gram of total fat in a serving if no claims are made about fat, fatty acids, or cholesterol content, and if "calories from saturated fat" is not declared. Except as provided for in paragraph (f) of this section, if a statement of the saturated fat content is not required and, as a result, not declared, the statement "Not a significant source of saturated fat" shall be placed at the bottom of the table of nutrient values. The term "Saturated fat" or "Saturated" shall be indented and the combined value of saturated fatty acids and *trans* fatty acids expressed as grams per serving to the nearest 0.5 (1/2)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram of saturated fatty acids and less than 0.5 gram of *trans* fatty acids, the content when declared, shall be expressed as zero.

(B) When 0.5 or more grams per serving of *trans* fatty acids are present, the heading shall be followed by an asterisk (or other symbol) (e.g., "Saturated fat*") referring to another asterisk (or other symbol) at the bottom of the nutrition label adjacent to a footnote stating that the product "Includes ____g *trans* fat," with the blank specifying the amount of *trans* fat present in a serving. Optionally, when less than 0.5 gram per serving of *trans* fatty acids are present, manufacturers may, but need not, use an asterisk (or another symbol) following "Saturated fat" to refer to the footnote "Includes (or contains) 0 g *trans* fat" or "Includes (or contains) no *trans* fat," except that the footnote is required when a fatty acid or cholesterol claim is made. The term "*trans* fatty acids" may be used interchangeably with "*trans* fat." Amounts specified within the footnote shall be expressed as grams per serving to the nearest 0.5 (1/2)-gram increment below 5 grams and to the nearest gram increment above 5 grams.

* * * * *

(d) * * *

(7) * * *

(ii) A listing of the percent of the DRV as established in paragraphs (c)(7)(iii)

and (c)(9) of this section shall be given in a column aligned under the heading "% Daily Value" established in paragraph (d)(6) of this section with the percent expressed to the nearest whole percent for each nutrient declared in the column described in paragraph (d)(7)(i) of this section for which a DRV has been established, except that the percent for protein may be omitted as provided in paragraph (c)(7) of this section. The percent shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the DRV for the nutrient, except that the percent for protein shall be calculated as specified in paragraph (c)(7)(ii) of this section. When *trans* fatty acids are present in a food, the percent declared for saturated fat shall be calculated by dividing the amount declared on the label for saturated fat, which includes *trans* fatty acids, by the DRV for saturated fat. The numerical value shall be followed by the symbol for percent (i.e., %).

* * * * *

3. Section 101.13 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(h) * * *

(1) If a food, except a meal product as defined in § 101.13(l), a main dish product as defined in § 101.13(m), or food intended specifically for use by infants and children less than 2 years of age, contains more than 13.0 g of fat, 4.0 g of saturated fat and *trans* fat combined, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form), then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for _____ content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."

(2) If a food is a meal product as defined in § 101.13(l), and contains more than 26 g of fat, 8.0 g of saturated

fat and *trans* fat combined, 120 mg of cholesterol, or 960 mg of sodium per labeled serving, then that food must disclose, in accordance with the requirements as provided in paragraph (h)(1) of this section, that the nutrient exceeding the specified level is present in the food.

(3) If a food is a main dish product as defined in § 101.13(m), and contains more than 19.5 g of fat, 6.0 g of saturated fat and *trans* fat combined, 90 mg of cholesterol, or 720 mg of sodium per labeled serving, then that food must disclose, in accordance with the requirements as provided in paragraph (h)(1) of this section, that the nutrient exceeding the specified level is present in the food.

* * * * *

4. Section 101.14 is amended by revising paragraph (a)(5) to read as follows:

§ 101.14 Health claims: general requirements.

(a) * * *

(5) *Disqualifying nutrient levels* means the levels of total fat, saturated fat and *trans* fat combined, cholesterol, or sodium in a food above which the food will be disqualified from making a health claim. These levels are 13.0 grams (g) of fat, 4.0 g of saturated fat and *trans* fat combined, 60 milligrams (mg) of cholesterol, or 480 mg of sodium, per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g. For dehydrated foods that must have water added to them prior to typical consumption, the per 50 g criterion refers to the as prepared form. Any one of the levels, on a per reference amount customarily consumed, a per labeled serving size or, when applicable, a per 50 g basis, will disqualify a food from making a health claim unless an exception is provided in subpart E of this part, except that:

(i) The levels for a meal product as defined in § 101.13(l) are 26.0 g fat, 8.0 g of saturated fat and *trans* fat combined, 120 mg of cholesterol, or 960 mg of sodium per labeled serving size, and

(ii) The levels for a main dish product as defined in § 101.13(m) are 19.5 g of fat, 6.0 g of saturated fat and *trans* fat combined, 90 mg of cholesterol, or 720 mg of sodium per labeled serving size.

* * * * *

5. Section 101.36 is amended by adding a sentence after the first sentence in paragraph (b)(2)(i) and by revising paragraph (b)(2)(iii) introductory text to read as follows:

§ 101.36 Nutrition labeling of dietary supplements.

* * * * *

(b) * * *

(2) * * *

(i) * * * When *trans* fatty acids are present, they shall be declared in accordance with § 101.9(c)(2)(i). * * *

* * * * *

(iii) The percent of the Daily Value of all dietary ingredients declared under paragraph (b)(2)(i) of this section shall be listed, except that the percent for protein may be omitted as provided in § 101.9(c)(7) and when *trans* fatty acids are present in a food, the percent for saturated fat shall be calculated by dividing the amount declared on the label for saturated fat, which includes *trans* fatty acids, by the DRV for saturated fat; no percent shall be given for subcomponents for which DRV's have not been established (e.g., sugars); and, for labels of dietary supplements of vitamins and minerals that are represented or purported to be for use by infants, children less than 4 years of age, or pregnant or lactating women, no percent shall be given for total fat, saturated fat, cholesterol, total carbohydrate, dietary fiber, vitamin K, selenium, manganese, chromium, molybdenum, chloride, sodium, or potassium.

* * * * *

6. Section 101.62 is amended by adding paragraph (c)(6), by revising paragraph (c) introductory text, and paragraphs (c)(2)(i), (c)(3)(i), (c)(4)(i), (c)(5)(i), (d)(1)(i)(C), (d)(1)(ii)(C), (d)(2)(i)(B), (d)(2)(ii)(B), (d)(2)(iii)(B), (d)(2)(iv)(B), (d)(3), (d)(4)(i)(B), (d)(4)(ii)(B), (d)(5)(i)(B), (d)(5)(ii)(B), and (e) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(c) "*Fatty acid content claims.*" The label or labeling of foods that bear claims with respect to the level of saturated fat or *trans* fat shall disclose the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made and in type that shall be no less than one-half the size of the type used for the claim with respect to the level of saturated fat or *trans* fat. Declaration of cholesterol content may be omitted when the food contains less than 2 milligrams (mg) of cholesterol per reference amount customarily consumed or in the case of a meal or main dish product less than 2 mg of cholesterol per labeled serving. Declaration of total fat may be omitted with the terms defined in paragraphs (c)(1) and (c)(6) of this section when the

food contains less than 0.5 g of total fat per reference amount customarily consumed or, in the case of a meal product or a main dish product, when the product contains less than 0.5 g of total fat per labeled serving. The declaration of total fat may be omitted with the terms defined in paragraphs (c)(2) through (c)(5) of this section when the food contains 3 g or less of total fat per reference amount customarily consumed or in the case of a meal product or a main dish product, when the product contains 3 g or less of total fat per 100 g and not more than 30 percent calories from fat.

* * * * *

(2) * * *

(i) The food contains 1 g or less of saturated fat and less than 0.5 g of *trans* fat per reference amount customarily consumed and not more than 15 percent of calories from saturated fat and *trans* fat combined; and

* * * * *

(3) * * *

(i) The product contains 1 g or less of saturated fat and less than 0.5 g of *trans* fat per 100 g and less than 10 percent of calories from saturated fat and *trans* fat combined; and

* * * * *

(4) * * *

(i) The food contains at least 25 percent less saturated fat and at least 25 percent less saturated fat and *trans* fat combined per reference amount customarily consumed than an appropriate reference food as described in § 101.13(j)(1); and

* * * * *

(5) * * *

(i) The food contains at least 25 percent less saturated fat and at least 25 percent less saturated fat and *trans* fat combined per 100 g of food than an appropriate reference food as described in § 101.13(j)(1); and

* * * * *

(6) The terms "*trans* fat free," "free of *trans* fat," "no *trans* fat," "zero *trans* fat," "without *trans* fat," "trivial source of *trans* fat," "negligible source of *trans* fat," or "dietarily insignificant source of *trans* fat" (with "*trans* fatty acids" allowable as a synonym for "*trans* fat") may be used on the label or in the labeling of foods, provided that:

(i) The food contains less than 0.5 g of *trans* fat and less than 0.5 g of saturated fat per reference amount customarily consumed and per labeled serving or, in the case of a meal product or a main dish product, less than 0.5 g of *trans* fat and less than 0.5 g of saturated fat per labeled serving; and

(ii) The food contains no ingredient that is generally understood by

consumers to contain *trans* fat unless the listing of the ingredient in the ingredient statement is followed by an asterisk (or other symbol) that refers to the statement below the list of ingredients which states, "adds a trivial amount of *trans* fat," "adds a negligible amount of *trans* fat," or "adds a dietarily insignificant amount of *trans* fat; and

(iii) As required in § 101.13(e)(2), if the food meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower *trans* fat content, it is labeled to disclose that *trans* fat is not usually present in the food (e.g., "Corn oil, *a trans* fat free food").

(d) * * *

(1) * * *

(i) * * *

(C) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed or, in the case of a meal product or main dish product, 2 g or less of saturated fat and *trans* fat combined per labeled serving; and

* * * * *

(ii) * * *

(C) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed or, in the case of a meal product or main dish product, 2 g or less of saturated fat and *trans* fat combined per labeled serving; and

* * * * *

(2) * * *

(i) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed; and

* * * * *

(ii) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed; and

* * * * *

(iii) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed;

* * * * *

(iv) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed;

* * * * *

(3) The terms defined in paragraph (d)(2) of this section may be used on the label and in labeling of meal products as defined in § 101.13(l) or a main dish

product as defined in § 101.13(m) provided that the product meets the requirements of paragraph (d)(2) of this section except that the determination as to whether paragraph (d)(2)(i) or (d)(2)(iii) of this section applies to the product will be made only on the basis of whether the meal product contains 26 g or less of total fat per labeled serving or the main dish product contains 19.5 g or less of total fat per labeled serving; the requirement in paragraphs (d)(2)(i)(A) and (d)(2)(iii)(A) of this section shall be limited to 20 mg of cholesterol per 100 g, and the requirement in paragraphs (d)(2)(i)(B) and (d)(2)(iii)(B) of this section shall be modified to require that the food contain 2 g or less of saturated fat and *trans* fat combined per 100 g rather than per reference amount customarily consumed.

(4) * * *

(i) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed; and

* * * * *

(ii) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per reference amount customarily consumed;

* * * * *

(5) * * *

(i) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per 100 g; and

* * * * *

(ii) * * *

(B) The food contains 2 g or less of saturated fat and *trans* fat combined per 100 g;

* * * * *

(e) “Lean” and “extra lean” claims.

(1) The term “lean” may be used on the label or in labeling of foods except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food is a seafood or game meat product and as packaged contains less than 10 g of total fat, 4.5 g or less of saturated fat and *trans* fat combined, and less than 95 mg of cholesterol per reference amount customarily consumed and per 100 g;

(2) The term defined in paragraph (e)(1) of this section may be used on the label or in the labeling of meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food contains less than 10 g of total fat, 4.5 g or less of saturated fat and *trans* fat combined, and less than 95 mg of cholesterol per 100 g and per labeled serving;

(3) The term “extra lean” may be used on the label or in labeling of foods

except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food is a discrete seafood or game meat product and as packaged contains less than 5 g of total fat, less than 2 g of saturated fat and *trans* fat combined, and less than 95 mg of cholesterol per reference amount customarily consumed and per 100 g; and

(4) The term defined in paragraph (e)(3) of this section may be used on the label or in the labeling of meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food contains less than 5 g of total fat, less than 2 g of saturated fat and *trans* fat combined, and less than 95 mg of cholesterol per 100 g and per labeled serving.

* * * * *

Dated: July 29, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following Appendix A and Appendix B will not appear in the Code of Federal Regulations.

BILLING CODE 4160-01-F

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Almendingen et al., 1995 (Ref. 9)	Norway Randomized crossover Three 19-21 day dietary periods with 1-week washout periods 30 apparently healthy males 21-46 years of age (mean 28 years) with no history of coronary heart disease	Three diets: $\approx$ 35% dietary energy from fat, 15% from protein, and 50% from carbohydrate. Diets were provided at 4 energy levels to meet energy needs of participants. <i>Trans</i> fatty acids replaced saturated fatty acids (SFA). 176 mg cholesterol/1000 kcal for all diets. All foods were provided for subjects by the study center.	Partially hydrogenated soybean oil margarine (PHSO) containing $\approx$ 34% <i>trans</i> isomers. <i>Trans</i> isomers provided 8.5% of energy in diet. Partially hydrogenated fish oil margarine (PHFO) containing $\approx$ 27% <i>trans</i> isomers. <i>Trans</i> isomers provided 8.0% of energy in diet. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis. Includes <i>trans</i> monoene and <i>trans</i> diene isomers of C-16--C-24 fatty acids.	Butter diet <i>Trans</i> isomers provided 0.9% of energy	Values given for 4 energy levels at which diets were provided. 22.6, 29.3, 33.9, or 38.3 g/day PHSO diet 21.2, 27.6, 31.9, or 36.1 g/day PHFO diet 2.4, 3.1, 3.6, or 4.1 g/day butter diet	Low-density lipoprotein cholesterol (LDL-C) $\downarrow$ 6.0% (0.23 mmol/L, $p=0.02$) after PHSO and not significantly different (NSD) after PHFO compared to butter Total cholesterol (TC) $\downarrow$ 3.9% (0.21 mmol/L, $p=0.04$) after PHSO and NSD after PHFO compared to butter High density lipoprotein cholesterol (HDL-C) PHSO NSD and PHFO $\downarrow$ 6.7% (0.07 mmol/L, $p\leq 0.01$) compared to butter Apolipoprotein A-I (ApoA-I) PHSO $\downarrow$ ($p=0.04$) and PHFO $\downarrow$ ($p\leq 0.01$) compared to butter Apolipoprotein B (ApoB) PHSO NSD and PHFO $\uparrow$ ($p\leq 0.01$) compared to butter	Oils for PHSO and PHFO were taken directly from production lines. Serum lipid levels were compared across diets at the end of dietary periods and were not compared at beginning and end of each dietary period. % total fatty acids in diets <i>cis</i> -polyunsaturated fatty acids (<i>cis</i> PUFA), <i>cis</i> -monounsaturated fatty acids (<i>cis</i> MUFA) SEFA Diet 16.4% butter 11.0% PHSO 11.3% PHFO <i>cis</i> PUFA Diet 6.2% butter 6.5% PHSO 7.3% PHFO <i>cis</i> MUFA Diet 9.6% butter 9.6% PHSO 5.9% PHFO <i>trans</i> Diet 0.9% butter 8.5% PHSO

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Ato et al., 1997 (Ref. 10)	Finland Double-blind Parallel Two 5-week periods First 5 weeks all subjects consumed baseline diet high in SFA, mainly from dairy fat. Second 5 weeks half of subjects were assigned to diet high in <i>trans</i> fatty acids and half to diet high in stearic acid. Subjects were assigned to diets pairwise in order of serum cholesterol values. 80 apparently healthy, normocholesterolemic subjects: 49 females and 31 males 20-52 years of age (mean=29)	Three diets providing 32.2%-33.9% of energy as fat, 14.7%-15.1% of energy as protein, and 50%-52% of energy as carbohydrate. The baseline, stearic acid, and <i>trans</i> fatty acids diets contained 15.0%, 13.8%, and 7.1% of energy from SFA, 12.2%, 12.2%, and 21.2% of energy from monounsaturated fatty acids (MUFA), and 3.4%, 3.5%, and 2.9% from polyunsaturated fatty acids (PUFA). Mean daily cholesterol intakes were 216 mg/day, 250 mg/day, and 223 mg/day for the baseline, stearic acid, and <i>trans</i> fatty acids diets. All foods provided by the study center.	Margarine composed of 65% partially hydrogenated sunflower oil high in oleic acid mixed with 35% unaltered oil. <i>Trans</i> fatty acids diet provided 8.7% of energy as <i>trans</i> fatty acids. All diets provided 14.6%-15.8% of energy as saturated plus <i>trans</i> fatty acids. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and expressed as C18:1 <i>trans</i> fatty acids.	Baseline diet provided 0.8% of energy as <i>trans</i> fatty acids and 3.6% as stearic acid. Dairy fat with some coconut oil were main sources of fat. Stearic acid diet provided 0.5% of energy as <i>trans</i> fatty acids and 9.3% as stearic acid. A margarine composed of a mixture of interesterified fully hydrogenated sunflower oil (49%) and sunflower oil high in oleic acid (43%) and linoleic acid (8%) served as the source of stearic acid.	24.9 g/day margarine (<i>trans</i>) diet 1.2 g/day stearic acid diet 2.3 g/day baseline diet	LDL-C ↓ 8.3% (0.24 mmol/L, p=0.046) after <i>trans</i> diet compared to stearic acid diet and NSD compared to baseline diet. TC NSD after <i>trans</i> diet compared to stearic acid diet and ↓ 11.7% (0.62 mmol/L, p<0.001) compared to baseline diet HDL-C ↓ 1.4% (0.20 mmol/L, p=0.009) after <i>trans</i> diet compared to stearic acid diet and ↓ 17.1% (0.25 mmol/L, p=0.001) compared to baseline diet ApoA-I ↓ (p<0.026) after <i>trans</i> diet compared to stearic acid diet and ↓ (p=0.001) compared to baseline diet ApoB ↑ (p=0.006) after <i>trans</i> diet compared to stearic acid diet and NSD compared to baseline diet Stearic acid diet compared to baseline diet: serum TC, LDL-C, HDL-C, ApoA-I, and Apo-B were lower (p<0.001) after consumption of the stearic acid diet.	Margarine products for two experimental diets were specially prepared. % total fatty acids in diets (% of energy) SFA Diet 13.8% baseline 15.0% stearate 7.1% <i>trans</i> <i>cis</i> PUFA Diet 3.4% baseline 3.5% stearate 2.9% <i>trans</i> <i>cis</i> MUFA Diet 10.9% baseline 11.3% stearate 11.7% <i>trans</i> <i>trans</i> Diet 0.8% baseline 0.4% stearate 8.7% <i>trans</i>

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Judd et al., 1998 (Ref. 34)	United States Latin square Three 5-week dietary periods with no washouts. 46 apparently healthy, normolipidemic adults with no history of heart disease 23 males and 23 females 46.8 ± 1.4 years of age	Three diets with 34.5-34.6% of energy from fat, 15.5% from protein, and 49.9-50.0% from carbohydrate. Table spreads (butter or two tub margarines) provided 8.3% of energy intake as fat. <i>Trans</i> fatty acids or PUFAs plus stearic acid in the two margarines replaced saturated fatty acids in the butter diet. Energy intake was adjusted in 200 or 400 kcal increments to maintain initial body weight. For men and women respectively, average daily cholesterol intakes were 386 and 278 mg/day on the butter diet and 292 and 210 mg/day on both margarine diets	Tub margarine made from partially hydrogenated soybean oil. The <i>trans</i> margarine contained 17% <i>trans</i> fatty acids by dry weight (about the average <i>trans</i> monoene content of <i>trans</i> fatty acids containing margarines in the U.S.) The <i>trans</i> margarine diet provided 3.9% of energy as <i>trans</i> monoenes. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and reported as <i>trans</i> (C18:1) monoenes.	PUFA margarine diet provided 2.4% of energy as <i>trans</i> monoenes. All <i>trans</i> fatty acids in this diet were provided by the basal diet. The butter diet provided 2.7% of energy as <i>trans</i> monoenes (2.4% from the basal diet).	<i>Trans</i> margarine diet: 13 and 9 g/day of <i>trans</i> monoenes for males and females, respectively. PUFA margarine diet: 8 and 6 g/day of <i>trans</i> monoenes for males and females, respectively. Butter diet: 9 and 7 g/day of <i>trans</i> monoenes for males and females, respectively.	LDL-C ↓ 4.9% (0.17 mmol/L, p = 0.005) after consumption of diet containing <i>trans</i> margarine and ↓ 6.7% (0.23 mmol/L, p<0.001) after consumption of PUFA margarine compared to butter diet. LDL-C ↓ 0.19% (0.06 mmol/L, p = 0.017) after consumption of <i>trans</i> margarine diet compared to PUFA margarine diet. TC ↓ 3.5% (0.18 mmol/L, p = 0.009) after consumption of diet containing <i>trans</i> margarine and ↓ 5.4% (0.28 mmol/L, p<0.001) after consumption of PUFA margarine compared to butter diet. TC ↓ 2% (0.10 mmol/L, p = 0.01) after consumption of <i>trans</i> margarine diet compared to PUFA margarine diet. HDL-C NSD after consumption of any of the diets. ApoA-I NSD after either margarine diet compared to butter diet but ↓ (p≤0.05) after the <i>trans</i> margarine diet compared to the PUFA margarine diet. ApoB NSD after <i>trans</i> margarine diet compared to butter diet but was ↓ after PUFA margarine diet compared to <i>trans</i> margarine diet	Serum lipid levels were compared across diets. Changes from the beginning to the end of each dietary period were not reported. % total fatty acids in diets (% of energy) SEA, Diet 11.2% butter PUFA 8.3% PUFA 7.9% <i>trans</i> cisPUFA Diet 7.2% butter PUFA 10.8% PUFA 9.0% <i>trans</i> cisMUFA Diet 10.8% butter PUFA 10.4% PUFA 11.2% <i>trans</i> <i>trans</i> 2.7% butter PUFA 2.4% PUFA 3.9% <i>trans</i>

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Judd et al., 1994 (Ref. 12)	United States Latin square Four 6-week dietary periods with no washouts. 58 apparently healthy subjects with no history of heart disease: 29 males and 29 females (42.6±10.7 yr)	Four diets with 39-40% energy from fat, 15% from protein, and 45-46% from carbohydrate. <i>Trans</i> fatty acids or saturated fat replaced oleic acid Diets were provided at 2 energy levels (1800 kcal/day and 2800 kcal/day) Cholesterol content of diets was 13.5 mg/100 kcal or ≈240 mg/day and ≈380 mg/day for the two energy levels. All foods were provided for subjects by the study center.	Hydrogenated vegetable oils <i>Trans</i> isomers provided 3.8% of energy in moderate <i>trans</i> diet and 6.6% of energy in high <i>trans</i> diet. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and reported as all <i>trans</i> isomers of C18:1 and C18:2.	Oleic acid diet. <i>Trans</i> isomers provided ~0.7% of energy. Saturated fat diet. <i>Trans</i> isomers provided ~0.7% of energy.	Values are for 2 energy levels at which diets were provided. 7.6 or 11.8 g/day moderate <i>trans</i> diet 13.2 or 20.5 g/day high <i>trans</i> diet 1.4 or 2.2 g/day oleic acid diet 1.4 or 2.2 g/day saturated fat diet	LDL-C ↑ 6.0% and 7.8% (0.20 and 0.26 mmol/L, $p \leq 0.05$) after moderate and high <i>trans</i> diets compared to oleic acid diet. LDL-C ↓ 2.7% (0.10 mmol/L, $p \leq 0.05$) after moderate <i>trans</i> diet and NSD after high <i>trans</i> diet compared to saturated fat diet. TC ↑ 3.8% and 4.7% (0.20 and 0.26 mmol/L, $p \leq 0.05$) after moderate and high <i>trans</i> diets compared to oleic acid diet. TC ↓ 2.7% and 1.6% (0.15 and 0.09 mmol/L, $p \leq 0.05$) after moderate and high <i>trans</i> diets compared to saturated fat diet. HDL-C NSD after moderate <i>trans</i> diet and ↓ 2.8% (0.04 mmol/L, $p \leq 0.05$) after high <i>trans</i> diet compared to oleic acid diet. HDL-C ↓ 4.8% and 6.1% (0.7 and 0.9 mmol/L, $p \leq 0.05$) after high and moderate <i>trans</i> diets compared to saturated fat diet. NSD in any serum lipid concentrations between two <i>trans</i> diets. ApoA-1 NSD after moderate <i>trans</i> and ↓ ($p \leq 0.05$) after high <i>trans</i> compared to oleic acid diet and ↓ ($p \leq 0.05$) after both <i>trans</i> diets compared to saturated fat diet.	Serum lipid levels were compared across diets. Changes from the beginning to the end of each dietary period were not reported. % total fatty acids in diets (% of energy) SFA: Diet 14.6% oleic acid 14.1% mod <i>trans</i> 13.6% high <i>trans</i> 20.9% saturated <i>cis</i> PUFA: Diet 6.1% oleic acid 6.0% mod <i>trans</i> 6.2% high <i>trans</i> 6.1% saturated <i>cis</i> MUFA: Diet 16.7% oleic acid 14.1% mod <i>trans</i> 11.4% high <i>trans</i> 10.9% saturated <i>trans</i> : Diet 0.7% oleic acid 3.8% mod <i>trans</i> 6.6% high <i>trans</i> 0.7% saturated

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Lichtenstein et al., (1999) (Ref. 82)	United States Latin square. Double-blind Six 35-day dietary periods. 36 subjects with LDL-C levels > 130 mg/dL: 18 males and 18 postmenopausal females older than 50 years of age.	Six diets with 30% of energy from fat. Butter diet NCEP Step 2 diet with 2/3 of fat contributed by soybean oil. 4 diets with 2/3 of fat contributed by hydrogenated fat sources: semiliquid margarine, soft margarine, or stick margarine. Cholesterol levels ≤ 70 mg/1000 kcal for soybean oil and hydrogenated fat diets and 121 mg/1000 kcal for butter diet All food provided by the study center.	Soybean oil-based margarines and shortening (semiliquid margarine also contained some cottonseed oil) <i>Trans</i> fatty acids provided 0.91% of energy in semiliquid margarine diet, 3.30% in soft margarine diet, 4.15% in shortening diet, and 6.72% in stick margarine diet. <i>Trans</i> fatty acids concentrated in diets determined by chemical analysis.	Butter diet with <i>trans</i> fatty acids providing 1.25% of energy intake. Soybean oil-based diet with <i>trans</i> fatty acids providing 0.55% of energy intake.	Calculated values for males and females, respectively Soybean oil 1.7 and 1.3 g/day Semiliquid margarine 2.8 and 2.1 g/day Soft margarine 10.2 and 7.8 g/day Shortening 12.9 and 9.7 g/day Stick margarine 20.8 and 15.8 g/day Butter 3.9 and 2.9 g/day	All serum lipid values are for both sexes combined. Only statistically significant changes are reported below and all are significant at $p < 0.05$. LDL-C $\downarrow$ 5%-11% with all hydrogenated products compared to butter and 8% with semiliquid compared to stick margarine LDL-C $\uparrow$ 6% and 9% with shortening and stick margarine compared to soybean oil and 8% with stick margarine compared to semiliquid margarine TC $\downarrow$ 10%, 8%, and 6% with semiliquid and soft margarines and shortening compared to butter and 7% and 5% with semiliquid and soft margarines compared to stick margarine TC $\uparrow$ 18%, 8%, and 5% with hard margarine compared to soybean oil and semiliquid and soft margarines HDL-C $\uparrow$ 7% for stick margarine compared to butter ApoA- $\uparrow$ 4% to 7% with all hydrogenated products compared to butter and 4% with stick margarine compared to oil Apo-B $\downarrow$ 9% and 6% with semiliquid and soft margarines compared to butter and 8% and 3% compared to stick margarine and 5% with semiliquid margarine compared to	Graded changes in serum lipid levels were observed with changes in <i>trans</i> fatty acids intakes. Serum lipid levels compared across diets. % total fatty acids in diets (of energy) SFA: Diet oil 7.3% 8.6% 8.4% 8.6% 8.5% 16.7% c Δ PUFA: Diet oil 12.5% 13.5% 11.1% 8.1% 6.3% 2.4% c Δ MUFA: Diet oil 8.1% 8.1% 8.0% 9.9% 8.5% 8.1% <i>trans</i> 0.6% Diet oil

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Lichtenstein et al., 1993 (Ref. 13)	United States Fixed sequence of feeding periods. All subjects consumed same diet during each period in following order: baseline, corn oil, corn oil margarine. Three 32-day periods with 1-wk washout periods 14 mildly hypercholesterolemic subjects: 6 males and 8 postmenopausal females 44-78 years of age with no history of chronic illness (mean=63 yr)	Three diets For baseline diet, fat provided 35% of energy (13% SFA, 12% MUFA, and 8% PUFA), protein provided 15%, and carbohydrate 50%. For corn oil margarine and corn oil diets, NCEP Step 2 diet with fat providing 30% of energy (<7% SFA, 10-15% MUFA, and up to 10% PUFA), protein providing 15%, and carbohydrate providing 55% of energy. Corn oil margarine and corn oil provided 20% of energy. Cholesterol level <80 mg/1000 kcal. All foods provided by the study center.	Commercially available corn oil margarine <i>Trans</i> fatty acids provided 4.16% of energy. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and reported as C18:1 <i>trans</i> isomers.	Baseline (usual) diet Corn oil with <i>trans</i> fatty acids providing 0.44% of energy	12.5 g/day corn oil margarine (<i>trans</i>) diet 1.2 g/day corn oil diet 2.4 g/day baseline diet	LDL-C ↑ 8.4% (0.27 mmol/L, p=0.058) after <i>trans</i> diet compared to corn oil diet and ↓ 11.6% (0.46 mmol/L, p<0.01) compared to baseline diet TC ↑ 5.8% (0.29 mmol/L, p=0.039) after <i>trans</i> diet compared to corn oil diet and ↓ 8.0% (0.46 mmol/L, p=0.006) compared to baseline diet HDL-C NSD after <i>trans</i> compared to corn oil diet and ↓ 10.5% (0.13 mmol/L, p=0.02) compared to baseline diet ApoA-I NSD after <i>trans</i> diet compared to corn oil and baseline diets ApoB ↑ (p=0.068) and ↓ (p<0.01) after <i>trans</i> diet compared to corn oil and baseline diets Apo-B lower (p<0.01) after the corn oil margarine diet but not as low as with corn oil diet; ApoA-I and triglycerides were NSD.	Serum lipid levels were compared only across diets. Changes from the beginning to the end of each dietary period were not reported % total fatty acids in diets SFA Diet 12.9% baseline 6.4% corn oil 7.7% corn oil margarine cisPUFA Diet 7.9% baseline 9.5% corn oil 8.3% corn oil margarine cisMUFA Diet 11.2% baseline 10.4% corn oil 11.9% corn oil margarine trans 0.8% baseline 0.4% corn oil 4.2% corn oil margarine

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TABLE 1.--INTERVENTION STUDIES OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Mensink et al, 1992 (Ref. 46)	Subjects were from studies by Mensink and Katan, 1990 and Zock and Katan, 1992. See entries below.						

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Mensink and Katan, 1990 (Ref. 7)	Netherlands Randomized crossover Three 3-week dietary periods with no washout periods 59 apparently healthy subjects with no history of CHD: 25 males 19-52 years of age (mean = 25 years) and 34 females 19-57 years of age (mean = 26 years)	Three diets (<i>trans</i> fatty acids, oleic acid, and saturated fat diets) with 39-40% dietary energy from fat, 13-14% from protein, and 45-46% from carbohydrate. Cholesterol content 147, 134, and 140 mg/1000 kcal for the three diets. <i>Trans</i> fatty acids replaced oleic acid. All foods provided by the study center except for a few free-choice cholesterol- and fat-free items.	Special margarine and shortening products made with hydrogenated sunflower oil mixed with oleic acid-rich sunflower oil, regular sunflower oil, and rapeseed oil low in erucic acid. <i>Trans</i> fatty acids provided 10.9% of energy. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and expressed as elaidic acid.	Oleic acid diet containing no <i>trans</i> isomers. Saturated fat diet. Special margarine and shortening high in lauric and palmitic acids. <i>Trans</i> isomers provided 1.8% of energy.	33.6 g/day hydrogenated margarine (<i>trans</i>) diet 0 g/day oleic acid diet 2.4 g/day saturated fat diet	LDL-C $\uparrow$ 13.9% (0.37 mmol/L, $p<0.0001$) after <i>trans</i> diet compared to oleic acid diet and 13.2% (0.10 mmol/L, $p<0.0001$) compared to saturated fat diet TC $\uparrow$ 5.8% (0.26 mmol/L, $p<0.0001$) after <i>trans</i> diet compared to oleic acid diet and $\uparrow$ 4.7% (0.28 mmol/L, $p<0.0001$) compared to saturated fat diet HDL-C $\uparrow$ 12% (0.17 mmol/L, $p<0.0001$) after <i>trans</i> compared to oleic acid diet and compared to saturated fat diet ApoA-I $\uparrow$ after <i>trans</i> diet compared to oleic acid and saturated fat diets ($p<0.0001$) Apo-B $\uparrow$ after <i>trans</i> diet compared to oleic acid diet ($p<0.0001$) and saturated fat diet ($p=0.017$)	Fats for all diets were specially prepared. Changes from the beginning to the end of each dietary period were not reported % total fatty acids in diets SFA Diet 19.4% saturated 9.5% oleic acid 10.0% <i>trans</i> <i>cis</i> PUFA Diet 3.4% saturated 4.6% oleic acid 4.6% <i>trans</i> <i>cis</i> MUFA Diet 12.8% saturated 23.0% oleic acid 12.6% <i>trans</i> <i>trans</i> Diet 0.8% saturated 0% oleic acid 11.0% <i>trans</i>

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Nestel et al., 1992 (Ref. 11)	Australia Randomized crossover Four periods totaling 11 weeks: 2-week run-in with fat mixture similar to habitual diets, 3 weeks oleic acid diet for all subjects, two 3-week periods with crossover between <i>trans</i> diet and palmitic acid-enriched diet. No washout periods. 27 mildly hypercholesterolemic males 30-63 years of age (mean = 46.8 years)	Three test diets with 36-37% energy from fat, 14% from protein, and 49-51% from carbohydrate Mean cholesterol intakes were 157, 168, and 186 mg/day for the oleic, <i>trans</i> , and palmitic acid-enriched diets. All foods provided by the study center.	Margarine containing canola, linseed, and safflower oils plus hardened canola/palmolein blend. <i>Trans</i> isomers provided ~7% of energy. <i>Trans</i> fatty acids content of diets calculated from dietary records and <i>trans</i> content of Australian foods, expressed as elaidic acid.	Oleic acid diet. <i>Trans</i> isomers provided 1.5% of energy. Palmitic acid-enriched diet. <i>Trans</i> isomers provided <1% of energy.	15.6 g/day margarine diet 3.8 g/day oleic acid diet 2.7 g/day palmitic acid-enriched diet	LDL-C 19.2% (0.36 mmol/L, p<0.001) after <i>trans</i> diet compared to oleic acid diet and NSD compared to palmitic acid diet TC 16.5% (0.36 mmol/L, p<0.001) after <i>trans</i> diet compared to oleic acid diet and NSD compared to palmitic acid diet HDL-C NSD after <i>trans</i> diet compared to the oleic acid diet and 1.10% (0.11 mmol/L, p<0.001) compared to the palmitic acid diet	Changes from the beginning to the end of each dietary period were not reported % total fatty acids in diets (% of energy) SFA Diet 8.9% oleic acid 13.9% palmitate 9.9% <i>trans</i> <i>cis</i> PUFA Diet 7.0% oleic acid 8.0% palmitate 9.0% <i>trans</i> <i>cis</i> MUFA Diet 16.4% oleic acid 11.9% palmitate 9.5% <i>trans</i> <i>trans</i> Diet 1.4% oleic acid <1% palmitate 5.7% <i>trans</i>

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Nestel et al., 1992 (Ref. 47)	Australia Randomized crossover Four periods totaling 14 weeks: 2-week run-in with control fat mixture similar to national Australian diet, followed by three 4-week periods with random assignment of two partially hydrogenated fat blends or a second control diet. No washout periods. 26 mildly hypercholesterolemic men 27-57 years of age (mean = 42.4 years)	Four diets providing 41-42% dietary energy from fat, 13-15% from protein, and 43-45% from carbohydrate. Cholesterol contents of the two control diets were 254 and 214 mg/day and the two partially hydrogenated fat diets were 272 and 280 mg/day. The second control diet also provided less total fat, and saturated fatty acids than the run-in control. All foods provided by the study center	Both test fat blends contained 16% by weight of <i>trans</i> fatty acids. Sources were either sunflower oil and a mix of partially hydrogenated cottonseed and soybean oils or sunflower oil and partially hydrogenated canola oil and palm olein. Levels of addition of fat blends to diet were not provided.	Control fat blend contained 9% by weight of <i>trans</i> fatty acids. Authors reported that the difference in <i>trans</i> fatty acid content of the control and test diets was ~4% of energy.	Information not provided.	See "Comments."	Experiments were not designed to assess the effects of <i>trans</i> fatty acids on plasma lipids. Levels of SFA, MUFA, and PUFA were adjusted simultaneously to achieve desired ratios of SFA, MUFA, and PUFA. In doing so, ratios of PUFA and SFA (e.g., linoleic to palmitic acids) changed greatly and any effects of <i>trans</i> fatty acids in these diets cannot be separated out from other dietary fatty acid changes.

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Noakes and Clifton, 1998 (Ref. 36)	Australia Parallel 11-week study with low-fat baseline diet for first 2 weeks followed by three 3-week periods when subjects in two groups consumed 3 diets (butter, <i>trans</i> fat margarine, <i>trans</i> -free margarine) in random order. No washout periods.	Low-fat basal diet plus test fats (butter, 2 margarines made with partially hydrogenated canola oil (<i>trans</i> fatty acids margarines), and 2 margarines made with interesterified palmolein and fully hydrogenated vegetable oils (<i>trans</i> -free)). Fats were provided as spreads and as shortbread biscuits. Basal diet provided $\approx 15\%$ of energy as fat. Test fats provided 20% of energy.	Two tub margarines contained <i>trans</i> fatty acids. They were prepared by mixing canola oil or sunflower oil ($\approx 75\%$) with a hardstock of partially hydrogenated canola oil. <i>Trans</i> fatty acids (C18:1) provided 10.4% and 10.3% of total fatty acids in the margarines. <i>Trans</i> fatty acids provided $\approx 2.4\%$ of energy in canola- <i>trans</i> margarine diet and $\approx 3.1\%$ in sunflower- <i>trans</i> margarine diet.	Low-fat baseline diet described as fat $<25\%$ of energy. In this table, data were not compared with low-fat baseline diet since no information on fat composition of that diet was provided and the % of energy provided by fat in the baseline diet was lower ($p<0.01$) than for other diets. Butter diet. <i>Trans</i> provided 3.4% of total fatty acids in butter diet (reported as 18:1). <i>Trans</i> fatty acids provided 1.3% and 1.5% of energy consumed by the two groups. <i>Trans</i> -free diets. Two tub margarines were prepared by mixing canola oil or sunflower oil ($\approx 75\%$) with interesterified palmolein and fully hydrogenated vegetable oils.	Total MUFA content of diets reported (<i>cis</i> and <i>trans</i> not reported separately). In this table, <i>trans</i> content (as <i>trans</i> MUFA) calculated from values for <i>cis</i> and <i>trans</i> MUFAs in the butter and margarines and the daily dietary intake of total MUFAs (% energy) as calculated from dietary records. Butter diet 3.5 g/day for group 1 3.2 g/day for group 2 <i>Trans</i> fat margarines 6.4 g/day for canola- <i>trans</i> 6.8 g/day for sunflower- <i>trans</i> <i>Trans</i> -free diet Intake of groups fed interesterified fats margarines were considered to be zero.	LDL-C $\downarrow$ ($p<0.01$) after both <i>trans</i> margarines--12.1% (0.5 mmol/L) after canola- <i>trans</i> and 10% (0.47 mmol/L) after sunflower- <i>trans</i> compared to butter. TC $\downarrow$ ($p<0.01$) after both <i>trans</i> margarines--8.4% (0.51 mmol/L) after canola- <i>trans</i> and 8.1% (0.55 mmol/L) after sunflower- <i>trans</i> compared to butter. HDL-C NSD after both <i>trans</i> margarines compared to butter. LDL-C, TC, HDL-C NSD after canola- <i>trans</i> diet compared to canola- <i>trans</i> -free diet. LDL-C $\downarrow$ 6.3% (0.25 mmol/L, $p<0.01$) after sunflower- <i>trans</i> diet compared to sunflower- <i>trans</i> -free diet. TC $\downarrow$ 5.6% (0.33 mmol/L, $p<0.01$) and HDL-C NSD after sunflower- <i>trans</i> diet compared to sunflower- <i>trans</i> -free diet.	Changes from the beginning to the end of each dietary period were not reported. % total fatty acids in diets (% of energy) SEA Diet 15.5% butter (1) 8.9% can <i>trans</i> 8.7% can <i>trans</i> -free 17.7% butter (2) 13.2% sun <i>trans</i> 10.3% sun <i>trans</i> -free cisPUFA Diet 10.1% butter (1) 14.2% can <i>trans</i> 14.5% can <i>trans</i> -free 11.5% butter (2) 11.3% sun <i>trans</i> 11.3% sun <i>trans</i> -free cisMUFA Diet 8.8% butter (1) 11.8% can <i>trans</i> 14.5% can <i>trans</i> -free 10.0% butter (2) 8.1% sun <i>trans</i> 8.3% sun <i>trans</i> -free trans Diet 1.3% butter (1) 2.4% can <i>trans</i> 0% can <i>trans</i> -free 1.5% butter (2) 3.2% sun <i>trans</i> 0% sun <i>trans</i> -free

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TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Wood et al., 1993 (Ref. 15)	United States Latin square Six 6-week dietary periods with 6-week washout periods between 29 healthy males 30-60 years of age (mean = 41 years)	Usual diet plus six diets containing butter, crude palm oil, hard margarine, refined palm oil, 80% refined palm oil and 20% sunflower oil, or sunflower oil. All diets provided 36-38% of energy as fat, 14-16% from protein, and 46-50% from carbohydrate Test fats provided 18-20% of energy. Cholesterol intake on margarine diet was about 75 and 125 mg/day lower than on usual and butter diets. Participants were given dietary instructions and supplied with test fats as spreads and in cookies, ice cream and milk in which the test fats were substituted for the fats usually used. Other foods were prepared in participants' homes.	Commercially available hard margarine containing 26.2% <i>trans</i> fatty acids. <i>Trans</i> fatty acids provided $\approx$ 5% of energy. (Calculation based on 26.2% <i>trans</i> fatty acids in margarine, assumption that no other foods contained <i>trans</i> fatty acids, and the authors' estimate that the fat sources supplied 18-20% of energy) <i>Trans</i> fatty acids content of diets calculated from dietary records and analyzed values of test fats, expressed as <i>trans</i> octadecanoate isomers.	Other fat sources (butter, crude palm oil, refined palm oil, 80% refined palm oil and 20% sunflower oil, and sunflower oil). Butter diet provided $\approx$ 0.75% of energy as <i>trans</i> fatty acids. (Calculation based on 4% <i>trans</i> fatty acids in butter, assumption that no other foods contained <i>trans</i> fatty acids, and the authors' estimate that the fat sources supplied 18-20% of energy) fatty acids, and the authors' estimate that the fat sources supplied 18-20% of energy)	7.9 g/day, minimum hard margarine diet 0.6 g/day, minimum butter diet No value reported for baseline diet Values do not include amounts of <i>trans</i> fatty acids provided by foods other than test fat and products containing test fat.	LDL-C NSD after <i>trans</i> diet and after butter diet compared to baseline values for each test period TC NSD after <i>trans</i> diet and after butter diet compared to baseline values for each test period HDL-C NSD after <i>trans</i> diet and after butter diet compared to baseline values for each test period ApoA-I NSD after the <i>trans</i> diet and $\downarrow$ (p $\leq$ 0.05) after the butter diet compared to baseline values for each test period ApoB $\downarrow$ (p $\leq$ 0.05) after the <i>trans</i> diet and NSD after the butter diet compared to baseline values for each test period	Usual diet contained a similar percentage of energy from fat as other diets but no other information provided about the fat sources or fatty acid composition. Dietary content of <i>trans</i> fatty acids is underestimated because contributions by processed foods is not included. Data reported did not provide a basis for comparison of SFA, <i>cis</i> PUFA, <i>cis</i> MUFA, and <i>trans</i> fatty acids among diets.

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Wood et al., 1993 (Ref. 14)	United States Latin square Five 6-week dietary periods with 6-week washout periods 38 healthy males 30-60 years of age (mean = 42 years)	Usual diet plus five diets containing hard margarine, soft margarine, butter, butter-olive oil blend (50/50), or butter-sunflower oil blend (50/50). All diets provided 36-39% energy from fat, 15-16% from protein, and 45-48% from carbohydrate. Test fats provided 19% of energy. Cholesterol intakes on hard and soft margarine diets were 100 mg and 200 mg lower than usual and butter diets. Participants were given dietary instructions and supplied with test fats as spreads and in cookies, ice cream and milk in which the test fats were substituted for the fats usually used. Other foods were prepared in participants' homes.	Hard margarine containing 29% <i>trans</i> fatty acids Calculated % energy from <i>trans</i> fatty acids was 5.5%. (Calculation based on 29% <i>trans</i> fatty acids in margarine, assumption that no other foods contained <i>trans</i> fatty acids, and the authors' estimate that the fat sources supplied 19% of energy) <i>Trans</i> fatty acids content of diets calculated from dietary records and analyzed values of test fats, expressed as <i>trans</i> octadecanoate isomers.	<i>Trans</i> fatty acids content of comparison fats: 0% soft margarine, 5.3% butter, 2.6% butter-sunflower, 2.6% butter-olive. Calculated % energy from <i>trans</i> fatty acids in comparison diets was 0% for soft margarine, 1% for butter, and 0.5% for butter-sunflower and butter-olive. (Calculation based on fatty acid concentrations reported, assumption that no other foods contained <i>trans</i> fatty acids, and the authors' estimate that the fat sources supplied 19% of energy.)	15.8 g/day, minimum hard margarine diet 2.9 g/day, minimum butter diet 0 g/day, minimum soft margarine diet Values do not include amounts of <i>trans</i> fatty acids provided by foods other than test fat and products containing test fat.	LDL-C ↓ 6.1% (0.20 mmol/L, $p \leq 0.05$) after <i>trans</i> diet compared to soft margarine diet and ↓ 8.2% (0.31 mmol/L, $p \leq 0.05$) compared to butter diet TC ↓ 6.0% (0.29 mmol/L, $p \leq 0.05$) after <i>trans</i> diet compared to soft margarine diet and ↓ 6.1% (0.33 mmol/L, $p \leq 0.05$) compared to butter diet HDL-C NSD after <i>trans</i> diet compared to soft margarine and butter diets ApoA-1 NSD after <i>trans</i> diet compared to soft margarine diet and ↓ ($p \leq 0.05$) compared to butter diet Apo B ↑ ($p \leq 0.05$) after <i>trans</i> diet compared to soft margarine diet and NSD compared to butter diet	Usual diet contained a similar percentage of energy from fat as other diets but no other information about the fat sources or fatty acid composition was provided. Dietary content of <i>trans</i> fatty acids is underestimated because contributions by processed foods is not included. % total fatty acids in diets (% of energy) SFA Diet 22.4% butter 10.5% soft marg 10.0% hard marg <i>cis</i> PUFA Diet 4.3% butter 17.2% soft marg 4.6% hard marg <i>cis</i> MUFA Diet 10.2% butter 9.7% soft marg 14.2% hard marg <i>trans</i> Diet 2.6% butter 0% soft marg 9.5% hard marg

APPENDIX A

TABLE 1.--INTERVENTION STUDIES OF EFFECTS OF *Trans* FATTY ACIDS ON SERUM LIPIDS IN HUMANS--
CONTINUED

Reference	Study Location, Design, Period, and Subjects	Dietary Information	Source and Level of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (g/day)	Changes in Serum Lipids	Comments
Zock and Katan, 1992 (Ref. 8)	Netherlands Randomized crossover Three 3-week dietary periods with no washout periods. Apparently healthy, normolipidemic subjects: 26 males 19-48 years of age (mean = 25 years) and 30 females 18-49 years of age (mean = 24 years)	Three diets (<i>trans</i> , linoleate, and stearate) with 40-44% of energy from fat, 12-13% from protein, and 44-47% from carbohydrate ≈ 140 mg cholesterol/1000 kcal for all diets All foods were provided for subjects by the study center except for a few free-choice cholesterol- and fat-free items.	Special margarine and shortening products made from hydrogenated sunflower oil mixed with oleic acid-rich sunflower oils. <i>Trans</i> fatty acids provided 7.7% of energy. <i>Trans</i> fatty acids concentration in diets determined by chemical analysis and expressed as elaidic acid.	Linoleate diet providing 12% of energy as linoleic acid and 0.1% as <i>trans</i> Stearate diet providing 8.8% of energy as stearic acid and 0.3% as <i>trans</i>	24.5 g/day margarine diet 1 g/day stearic acid diet <0.05 g/day linoleic acid diet	LDL-C ↑ 8.5% (0.24 mmol/L, p<0.02) after <i>trans</i> diet compared to linoleic acid diet and NSD compared to stearic acid diet. TC ↑ 3.4% (0.16 mmol/L, p<0.02) after <i>trans</i> diet compared to linoleic acid diet and NSD compared to stearic acid diet HDL-C ↑ 6.8% (0.10 mmol/L, p<0.02) after <i>trans</i> diet compared to linoleic acid diet and NSD compared to stearic acid diet ApoA-I ↓ (p<0.02) after <i>trans</i> diet compared to linoleic acid diet and NSD compared to stearic acid diet ApoB ↑ (p<0.02) after the <i>trans</i> diet compared to the linoleic acid and stearic acid diets	Fats for all diets were specially prepared. Sunflower oil was main source of fatty acids for all diets. Changes from the beginning to the end of each dietary period were not reported. % total fatty acids in diets SFA <u>Diet</u> 20.0% stearate 11.0% linoleate 10.3% <i>trans</i> <u>cis</u> PUFA <u>Diet</u> 4.3% stearate 12.5% linoleate 4.2% <i>trans</i> <u>cis</u> MUFA <u>Diet</u> 15.4% stearate 14.7% linoleate 14.6% <i>trans</i> <u>trans</u> <u>Diet</u> 0.3% stearate 0.1% linoleate 7.7% <i>trans</i>

APPENDIX A

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Aro et al., 1995 (Ref. 16)	Case-control. Risk of acute myocardial infarction. Finland, Germany, Israel, Netherlands, Norway, Russia, United Kingdom, Spain, and Switzerland (EURAMIC Study) 1991–1992.	Men ≤ 70 years of age. Cases: 671 men with first acute myocardial infarction consecutively recruited from coronary care units of participating hospitals. Controls: 717 men without a history of acute myocardial infarction, recruited from the population in the catchment area and frequency-matched for age according to 5-year intervals.	Adipose tissue samples from the buttocks were analyzed for <i>trans</i> fatty acids content. Calculation of odds ratios (OR).	Relative risk of acute myocardial infarction was slightly greater with higher adipose <i>trans</i> fatty acids concentrations when OR's were calculated excluding the Spanish sites but differences between cases and controls were not significant. Although there were no overall differences in mean proportions of <i>trans</i> fatty acids in adipose tissue samples between cases and controls, mean proportion of <i>trans</i> fatty acids in adipose tissue samples differed considerably among centers. Cases in Norway and Finland had significantly higher mean proportions of <i>trans</i> fatty acids than controls. Pattern of adipose tissue fatty acids was different in Spain from other countries in that proportion of <i>trans</i> fatty acids was very low and that of oleic acid was high in Spain.	Authors assumed that <i>trans</i> fatty acids intakes were primarily from hydro-generated vegetable oils but no food intake data were collected to verify that this assumption was true for all countries.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Ascherio et al., 1994 (Ref. 18)	Case-control. Risk of myocardial infarction. Boston, MA 1982–1983.	239 white males and females <76 years of age (mean=57.9 years) diagnosed with myocardial infarction. Patients had no previous history of diabetes, high serum cholesterol, myocardial infarction, or angina. 282 control subjects of the same age (mean=57.1 years) and sex who had no history of diabetes, high serum cholesterol, myocardial infarction, or angina. Control subjects were selected at random from town where patient resided. Sample consisted of 197 matched pairs and an additional 42 patients and 85 control subjects.	Patients and controls were interviewed and blood samples taken 8 weeks after patient's myocardial infarction. Confirmation of diagnosis was based on clinical history and creatine kinase increase. <i>Trans</i> fatty acids intake was estimated from a semi-quantitative food frequency questionnaire and analyzed values for all <i>trans</i> isomers of C-18 fatty acids from the scientific literature. High density lipoprotein cholesterol (HDL-C) and low density lipoprotein cholesterol (LDL-C) concentrations were measured in serum.	Mean intake of total <i>trans</i> fatty acids was 4.4 g/day in men (1.5% of energy) and 3.6 g/day in women (1.7% of energy). Median intakes in the lowest and highest quintiles were 3.1 and 6.7 g/day for men and 3.0 and 6.8 g/day for women. Relative risk (RR) of myocardial infarction was 2.03 (p=0.0001) in the highest compared to the lowest quintile of energy-adjusted <i>trans</i> fatty acids intake after adjustment for cigarette smoking, history of hypertension, family history of CHD, alcohol intake, physical activity, body mass index, and intakes of saturated fat, monounsaturated fat, linoleic acid, and cholesterol.	Patients were not asked whether they had changed their dietary intakes after their myocardial infarction. Serum LDL-C has been shown to respond to dietary changes within 3 weeks in clinical trials and LDL-C in this group may reflect recent dietary intakes rather than diet before myocardial infarction.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Ascherio et al., 1996 (Ref. 19)	Cohort study. Incidence of fatal coronary heart disease (CHD) and nonfatal myocardial infarction. United States 1986–1996 for these data.	43,757 male health professionals 40–75 years of age free of diagnosed cardiovascular disease in 1986.	Food frequency questionnaire administered at beginning of study in 1986. Tracking of fatal CHD and nonfatal myocardial infarction occurring between return of the baseline questionnaire and January 1992. Nonfatal myocardial infarction confirmed by use of WHO criteria (symptoms plus either typical ECG changes or increased activities in cardiac enzymes). Fatal CHD was documented by death records and medical records or necropsy reports.	Mean daily intake of <i>trans</i> fatty acids was 0.8% of energy and 1.6% of energy for the lowest and highest quintiles. Median intakes were 1.5 g/day and 4.3 g/day for the lowest and highest quintiles. RR of total myocardial infarction (chi square for trend) was 2.59 (p=0.01) after adjustment for age, body mass index, smoking, alcohol consumption, physical activity, history of hypertension or high blood cholesterol, family history of myocardial infarction before age 60, and profession. Additional adjustment for dietary fiber intake adjusted for energy reduced chi square value to 1.27 (p=0.20). RR of fatal CHD was very similar to that for total myocardial infarction.	Source of food composition data not reported. Analyses conducted with proportion of energy contributed by different fats as continuous variables.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Hu et al., 1997 (Ref. 38)	Prospective cohort study begun in 1976. Incidence of CHD (nonfatal myocardial infarction or death from CHD) United States 1980–1994	80,082 female nurses who completed dietary questionnaires in 1980. Sample excluded women with previous cancer, angina, myocardial infarction, stroke, diabetes, or high serum total cholesterol (TC).	Semiquantitative food frequency questionnaires and all <i>trans</i> isomers of C–18 fatty acids in foods from 1993 Harvard University Food Composition Database. Incidence of CHD (nonfatal myocardial infarction or death from CHD). Diagnosis of myocardial infarction was confirmed if WHO criteria were met. Fatal CHD was documented by death and medical records. Multiple linear regression analysis used to adjust for age, smoking, body mass index, hypertension, aspirin use, vigorous exercise, alcohol intake, menopausal status, postmenopausal hormone replacement therapy, parental history of myocardial infarction before 65 years of age, energy intake, energy from protein, use of multivitamins, and vitamin E supplement use.	Median intakes of <i>trans</i> fats were 1.3, 1.7, 2.0, 2.4, and 2.9% of energy for quintiles of 80,082 women. RR of CHD in relation to energy-adjusted <i>trans</i> fat intake was 1.53 (p=0.002) for the highest quintile compared to the lowest after adjustments for factors listed and for intakes of saturated fatty acids (SFA), monounsaturated fatty acids (MUFA), and polyunsaturated fatty acids (PUFA).	Study provides 14 years of followup for this population group. See Willett et al (1993) for results from 8 years of followup. Study did not report amounts of <i>trans</i> fatty acids intake. The median <i>trans</i> fatty acids intakes reported as % of energy intakes for quintiles were calculated to be 2.9, 3.8, 4.4, 5.3, and 6.4 g/day in a 2,000 calorie diet.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Kromhout et al., 1995 (Ref. 22)	Cohort.(25-year follow-up of inter-cohort CHD mortality and serum TC concentrations. 16 cohorts in Finland, Italy, Greece, the former Yugoslavia, Japan, United States, Italy, and the Netherlands (Seven Countries Study) 1958–1964 to 1987.	12,763 men 40–59 years of age during the years 1958–1964.	Dietary information was collected from small random samples of 14 of the 16 cohorts between 1959 and 1964. In 1987, <i>trans</i> fatty acids (reported as elaidic acid) were analyzed in composites representing average food intakes of each cohort at baseline collected from local markets and prepared according to the average consumption patterns of cohorts. International Classification of Diseases category for mortality from CHD (ICD 410–414) was used to establish cause of death from CHD.	Mean <i>trans</i> fatty acids intakes calculated from the food composites analyses ranged between 0.05% and 1.84% of energy among the 16 cohorts and were associated with SFA intake ($r=0.84$). Mean SFA intake ranged from 3.8% to 22.7% of energy. Mean <i>cis</i> MUFA intake ranged from 3.8% to 26.9% of energy. Mean PUFA intake ranged from 3.4% to 8.6% of energy. Mean dietary cholesterol ranged from 141 to 612 mg/day. Mean intake of <i>trans</i> fatty acids of cohorts was associated with serum TC ($r=0.70$, $p<0.01$) and 25-year mortality rates from CHD ($r=0.78$, $p<0.001$). Mean intake of all SFA was positively associated with serum TC ($r=0.70$, $p<0.01$) and 25-year CHD mortality rates ($r=0.88$). Mean cholesterol intake was positively associated with serum TC ($r=0.46$, NS) and 25-year CHD mortality rate ($r=0.55$, $p<0.05$).	Use of foods available in 1987 for dietary composite data assumes little change over the 25 years from the beginning of the study. <i>Trans</i> fatty acids could not be measured at the first time point. Correlations between analyses at the two time points were 0.92 ($p<0.01$) for SFA, 0.93 ($p<0.01$) for MUFA, and 0.52 ($p<0.07$) for PUFA. The independent effects of individual fatty acids and dietary cholesterol on serum cholesterol and CHD mortality could not be analyzed in multivariate models because mean intakes of individual SFA, <i>trans</i> fatty acids, and dietary cholesterol were highly correlated among the cohorts.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Pietinen et al., 1997 (Ref. 20)	Cohort study. Observations from a placebo-controlled primary prevention trial designed to investigate an association between supplementation with alpha-tocopherol, beta-carotene, or both on incidence of lung cancer in male smokers. Major coronary events and coronary deaths. Finland 1985–1993.	21,930 male smokers excluding prior diagnosis of myocardial infarction, angina, stroke, diabetes, or exercise-related chest pain.	Semi-quantitative food frequency questionnaire and analyzed values of Finnish foods used to calculate intakes of <i>trans</i> fatty acids. Analyzed values included all <i>trans</i> isomers of C–16—C–22 fatty acids. Occurrence of major coronary events was obtained from the National Hospital Discharge Register (ICD 410.00 or 410.99). Deaths were identified through the Central Population Register and coronary death was assigned when CHD was described as the underlying cause of death (ICD 410–414). Data were adjusted for supplementation group because the main results of the trial showed fewer CHD deaths among participants given alpha-tocopherol than those not given the vitamin and more CHD deaths among those given beta-carotene than those not receiving it.	Median intakes of <i>trans</i> fatty acids were 1.3, 1.7, 2.0, 2.7, and 5.6 g/d in quintiles (2 g/day = 0.95% of energy; % energy values for medians of other quintiles were not reported). After adjusting for age and supplementation group, <i>trans</i> fatty acids intake (as % energy) was related to the risk of major coronary event. RR=1.19 in highest intake quintile compared to lowest (p for trend= 0.06). After adjustment for cardiovascular risk factors, RR=1.14 (p for trend=0.16). No significant associations were found between intakes of other fatty acids and the risk of CHD death. With age and supplementation group adjustments, <i>trans</i> fatty acids intake was also associated with risk of CHD death. RR=1.38 in highest intake quintile compared with lowest (p for trend=0.06). Significant association remained after adjustment for cardiovascular risk factors. No significant associations were found between intakes of other fatty acids and the risk of CHD death. In the multivariate analyses, there was a significant inverse association between CHD death and the intake of SFA and significant direct associations with intake of PUFA and linoleic acid (p trend for both < 0.05).	Major source of <i>trans</i> fatty acids was margarines. Soft margarines contained 0% or 15–17% of total fatty acids as <i>trans</i> fatty acids. Hard margarines contained animal and vegetable fats and their <i>trans</i> fatty acids content ranged from 2.7 to 13% of total fatty acids. No other category of fatty acids, total fat (triglycerides), or cholesterol intakes was associated with higher RR of major coronary event.

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Roberts et al., 1995 (Ref. 17)	Case-control study. Sudden cardiac death due to coronary artery disease. Southampton, United Kingdom 1990–1991.	Men < 65 years of age with no history of CHD Cases: 64 cases of sudden cardiac death due to coronary artery disease. Cases were identified by necropsy reports. Potential subjects with a diagnosis of CHD before death were excluded from the sample. Controls: 286 healthy, age-matched men.	Samples of adipose tissue taken from the anterior abdominal wall were analyzed for <i>trans</i> fatty acids content. RR of sudden cardiac death in cases compared with controls was calculated from the distribution of <i>trans</i> isomers by quintiles in the control population. Independent contribution of <i>trans</i> isomers to the risk of sudden cardiac death assessed by multiple regression with adjustments for age, cigarette smoking, treated hypertension, diabetes, and oleic and linoleic acids in adipose tissue.	Mean concentration of <i>trans</i> fatty acids (as a percent of total fatty acids) was lower in cases than in controls ($p<0.05$). Multivariate OR's were not independently related to the risk of sudden cardiac death for total <i>trans</i> fatty acids (C18:1 and C18:2) or for <i>trans</i> C18:1 only.	
Troisi et al., 1992 (Ref. 23)	Cross-sectional examination of participants in the Normative Aging Study begun in 1961. Serum lipids. United States 1987–1990.	748 men 43–85 years of age (mean=62 years) examined in the Normative Aging Study between 1987 and 1990. Subjects did not have hypertension, cancer, or diabetes in 1961 when study began. Exclusion criteria for the present study included taking medications that could affect blood lipids.	Semiquantitative food frequency questionnaire and <i>trans</i> fatty acids (all <i>trans</i> isomers of C–18 fatty acids) data from USDA, other published sources, and personal communications from laboratories and food manufacturers. Men were divided into two groups based on whether or not they had high serum TC concentrations 3–5 years earlier. Multiple linear regression analysis used to adjust for age, body mass index, waist-to-hip ratio, smoking status, physical activity, alcohol intake, total energy intake, dietary cholesterol and linoleic acid, and previous serum cholesterol concentration.	Mean <i>trans</i> fatty acids intake was 1.6% of energy (3.4 g/day) and did not differ between groups based on earlier serum TC concentration. Correlation coefficient (r) for <i>trans</i> fatty acids intake was positively related to serum LDL-C ($r=0.09$, $p=0.01$) and TC ($r=0.07$, $p=0.06$). HDL-C was lower in men with higher <i>trans</i> fatty acids intakes ($r=0.08$, $p=0.03$). Associations between <i>trans</i> fatty acids intake and serum TC and LDL-C were stronger in group who had previously had high serum cholesterol concentrations.	

APPENDIX A—Continued

TABLE 2.—OBSERVATIONAL STUDIES OF ASSOCIATIONS OF *trans* FATTY ACIDS INTAKES AND ADIPOSE TISSUE CONCENTRATIONS WITH RISK OF CORONARY HEART DISEASE (CHD) IN HUMANS

Reference	Study Design, Main Outcome Measures, Location, and Date	Subjects	Methods	Results	Comments
Willett et al., 1993 (Ref. 21)	Prospective cohort study begun in 1976. Incidence of CHD (nonfatal myocardial infarction or death from CHD). United States 1980–1988.	85,095 female nurses who completed dietary questionnaires in 1980. Sample excluded women with previous angina, myocardial infarction, stroke, diabetes, or high serum TC.	Semiquantitative food frequency questionnaires and <i>trans</i> fatty acids concentrations (all <i>trans</i> isomers of C–18 fatty acids) in foods from published literature. Incidence of CHD (nonfatal myocardial infarction or death from CHD). Diagnosis of myocardial infarction confirmed if WHO criteria were met. Fatal CHD documented by death and medical records. Multiple linear regression analysis was used to adjust for age, smoking, body mass index, hypertension, alcohol intake, menopausal status, postmenopausal estrogen use, energy intake, dietary lipids, family history of myocardial infarction before 60 years of age, and multivitamin use.	Median intakes of <i>trans</i> fatty acids were 1.3, 1.8, 2.2, 2.6, and 3.2% of energy for quintiles of 69,181 women who reported no change in margarine intake 1970–1980. RR of CHD in relation to energy-adjusted <i>trans</i> fatty acids intake among 69,181 women who had not changed margarine consumption 1970–1980 was 1.67 ($p=0.002$) for the highest quintile compared to the lowest quintile.	Energy-adjusted mean intakes of <i>trans</i> fatty acids were 2.4, 3.2, 3.9, 4.5, and 5.7 g/day in 1980 for the quintiles of the whole cohort. Intake of <i>trans</i> fatty acids was strongly associated with intake of total MUFA and linoleic acid. RR value reported in this table includes adjustments for dietary lipid intake

APPENDIX A

TABLE 3.—SUMMARY OF EFFECTS OF DIETARY *trans* FATTY ACIDS ON SERUM LDL-CHOLESTEROL LEVELS IN HUMANS

Reference	Level and Source of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (gram (g)/day)	Change in Serum LDL-Cholesterol (LDL-C)
Almendingen et al., 1995 (Ref. 9)	8.5% of energy. Partially hydrogenated soybean oil margarine (PHSO). 8.0% of energy. Partially hydrogenated fish oil margarine (PHFO).	Butter diet. <i>Trans</i> isomers provided 0.9% of energy.	22.6, 29.3, 33.9, or 38.3 g/day PHSO diet. 21.2, 27.6, 31.9, or 36.1 g/day PHFO diet. 2.4, 3.1, 3.6, or 4.1 g/day butter diet.	↓6.0% (0.23 millimole per liter (mmol/L), $p=0.02$) after PHSO compared to butter diet. No significant difference (NSD) after PHFO compared to butter.
Aro et al., 1997 (Ref. 10)	8.7% of energy. Main source was a special margarine.	Stearic acid diet provided 0.5% of energy as <i>trans</i> fatty acids and 9.3% as stearic acid. Main source was a special margarine. Baseline diet provided 0.8% of energy as <i>trans</i> fatty acids and 3.6% as stearic acid. Main fat sources were dairy with some meat and coconut oil.	24.9 g/day margarine (<i>trans</i>) diet. 1.2 g/day stearic acid diet. 2.3 g/day baseline diet.	↑8.3% (0.24 mmol/L, $p=0.046$) after <i>trans</i> diet compared to stearic acid diet. NSD after <i>trans</i> diet compared to baseline diet.

APPENDIX A—Continued

TABLE 3.—SUMMARY OF EFFECTS OF DIETARY *trans* FATTY ACIDS ON SERUM LDL-CHOLESTEROL LEVELS IN HUMANS

Reference	Level and Source of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (gram (g)/day)	Change in Serum LDL-Cholesterol (LDL-C)
Judd et al., 1994 (Ref. 12)	3.8% of energy in moderate <i>trans</i> diet and 6.6% of energy in high <i>trans</i> diet. Hydrogenated vegetable oils.	Oleic acid diet provided about 0.7% of energy as <i>trans</i> isomers. Saturated fat diet provided about 0.7% of energy as <i>trans</i> isomers.	7.6 or 11.8 g/day moderate <i>trans</i> diet. 13.2 or 20.5 g/day high <i>trans</i> diet. 1.4 or 2.2 g/day oleic acid diet and saturated fat diet.	↑6.0% and 7.8% (0.20 and 0.26 mmol/L, $p \leq 0.05$) after moderate and high <i>trans</i> diets compared to oleic acid diet. ↓2.7% (0.10 mmol/L, $p \leq 0.05$) after moderate <i>trans</i> diet and NSD after high <i>trans</i> diet compared to saturated fat diet.
Judd et al., 1998 (Ref. 34)	3.9% of energy from <i>trans</i> monoenes. Partially hydrogenated tub table spread.	PUFA margarine diet provided 2.4% of energy as <i>trans</i> monoenes. Butter diet provided 2.5% of energy as <i>trans</i> monoenes. Basal diet contained 8.9% <i>trans</i> fatty acids on a dry weight basis.	<i>Trans</i> margarine diet: 13 and 9 g/day of <i>trans</i> monoenes for males and females. PUFA margarine diet: 8 and 6 g/day of <i>trans</i> monoenes for males and females. Butter diet: 9 and 7 g/day of <i>trans</i> monoenes for males and females.	↓4.9% (0.17 mmol/L, $p = 0.005$) after consumption of <i>trans</i> margarine diet compared to butter diet. ↑0.19% (0.06 mmol/L, $p = 0.017$) after consumption of <i>trans</i> margarine compared to PUFA margarine diet.
Lichtenstein et al., 1999 (Ref. 82)	0.91% of energy in semiliquid margarine diet, 3.30% in soft margarine diet, 4.15% in shortening diet 6.72% in stick margarine diet Four hydrogenated soybean oil products	Soybean oil diet provided 0.55% of energy as <i>trans</i> fatty acids Butter diet provided 1.25% of energy as <i>trans</i> fatty acids	Soybean oil diet: 1.7 and 1.3 g/day for males and females Semiliquid margarine diet: 2.8 and 2.1 g/day Soft margarine diet: 10.2 and 7.8 g/day Shortening diet: 12.9 and 9.7 g/day Stick margarine diet: 20.8 and 15.8 g/day Butter diet: 3.9 and 2.9 g/day	↓5% to 11% with all hydrogenated products compared to butter and 8% with semiliquid margarine compared to stick margarine ($p < 0.05$) ↑6% and 9% with shortening and stick margarine compared to soybean oil and 8% with stick margarine compared to semiliquid margarine
Lichtenstein et al., 1993 (Ref. 13)	4.16% of energy. Commercially available corn oil margarine.	Corn oil with <i>trans</i> fatty acids providing 0.44% of energy. Baseline (usual) diet.	12.5 g/day corn oil margarine (<i>trans</i>) diet. 1.2 g/day corn oil diet. 2.4 g/day baseline diet.	↑8.4% (0.27 mmol/L, $p = 0.058$) after <i>trans</i> diet compared to corn oil diet. ↓1.6% (0.46 mmol/L, $p \leq 0.01$) after <i>trans</i> diet compared to baseline diet.
Mensink and Katan, 1990 (Ref. 7)	10.9% of energy. Main sources were special margarine and shortening.	Oleic acid diet. containing no <i>trans</i> isomers. Saturated fat diet. <i>Trans</i> isomers provided 1.8% of energy.	33.6 g/day hydrogenated margarine (<i>trans</i>) diet. 0 g/day oleic acid diet. 2.4 g/day saturated fat diet.	↑13.9% (0.37 mmol/L, $p < 0.0001$) after <i>trans</i> diet compared to oleic acid diet. ↓3.2% (0.10 mmol/L, $p < 0.0001$) after <i>trans</i> diet compared to saturated fat diet.
Nestel et al., 1992 (Ref. 11)	about 7% of energy. Main source of <i>trans</i> fatty acids was hydrogenated vegetable oil margarine.	Oleic acid diet. <i>Trans</i> isomers provided 1.5% of energy. Palmitic acid-enriched diet. <i>Trans</i> isomers provided <1% of energy.	15.6 g/day margarine diet. 3.8 g/day oleic acid diet. 2.7 g/day palmitic acid-enriched diet.	↑9.2% (0.36 mmol/L, $p < 0.001$) after <i>trans</i> diet compared to oleic acid diet. NSD after <i>trans</i> diet compared to palmitic acid diet.

APPENDIX A—Continued

TABLE 3.—SUMMARY OF EFFECTS OF DIETARY *trans* FATTY ACIDS ON SERUM LDL-CHOLESTEROL LEVELS IN HUMANS

Reference	Level and Source of <i>trans</i> Fatty Acids in Test Diet(s)	Comparison Diet(s)	<i>Trans</i> Fatty Acids Intakes (gram (g)/day)	Change in Serum LDL-Cholesterol (LDL-C)
Noakes and Clifton, 1998 (Ref. 36)	10.4% and 10.3% from 2 soft margarines made from partially hydrogenated canola oil and canola oil or sunflower oil.	Butter diet. <i>Trans</i> isomers provided 1.3 and 1.5% of energy for two dietary groups. <i>Trans</i> -free diet. Intakes of groups fed these margarines were considered to be zero.	6.4 g/day for canola- <i>trans</i> and 6.8 g/day for sunflower- <i>trans</i> . 3.5 g/day and 3.2 g/day for groups on butter diet. Intakes considered zero for <i>trans</i> -free margarines.	↓(p<0.01) after both <i>trans</i> margarines -12.1% (0.5 mmol/L) after canola- <i>trans</i> and 10% (0.47 mmol/L) after sunflower- <i>trans</i> compared to butter. NSD after canola- <i>trans</i> diet compared to canola- <i>trans</i> -free diet. ↑6.3% (0.25 mmol/L, p<0.01) after sunflower- <i>trans</i> diet compared to sunflower- <i>trans</i> -free diet.
Wood et al., 1993 (Ref. 15)	≈5% of energy Commercially available corn oil margarine.	≈0.75% of energy provided as <i>trans</i> fatty acids in butter diet. No value reported for baseline diet.	7.9 g/day, minimum, hard margarine diet. 0.6 g/day, minimum, butter diet.	NSD after <i>trans</i> diet and after butter diet compared to baseline values for each test period.
Wood et al., 1993 (Ref. 14)	≈5.5% of energy Hard margarine.	Energy from <i>trans</i> fatty acids in comparison diets was 0% for soft margarine and 1% for butter. <i>Trans</i> fatty acids content was 0% soft margarine and 5.3% butter.	15.8 g/day, minimum, hard margarine diet. 2.9 g/day, minimum, butter diet. 0 g/day, minimum, soft margarine diet.	↑6.1% (0.20 mmol/L, p≤0.05) after <i>trans</i> diet compared to soft margarine diet. ↓8.2% (0.31 mmol/L, p≤0.05) compared to butter diet.
Zock and Katan, 1992 (Ref. 8)	7.7% of energy Main source of <i>trans</i> fatty acids was special margarine and shortening.	Linoleic acid diet providing 0.1% of energy as <i>trans</i> and 12% as linoleate. Stearic acid diet providing 0.3% of energy as <i>trans</i> and 8.8% as stearate.	24.5 g/day margarine diet. <0.05 g/day linoleic acid diet. 1 g/day stearic acid diet.	↑8.5% (0.24 mmol/L, p<0.02) after <i>trans</i> diet compared to linoleic acid diet. NSD compared to stearic acid diet.

APPENDIX B

TABLE 1.—AMERICAN OIL CHEMISTS SOCIETY (AOCS) AND ASSOCIATION OF OFFICIAL ANALYTICAL CHEMISTS (AOAC) METHODS FOR DETERMINATION OF *trans* FATTY ACIDS.

	Method	Definition, Scope, and Applicability as Stated in the Published Method	FDA Comments
1	AOAC Official Method 965.34 (Revised 1997; AOCS—AOAC Method) Isolated <i>Trans</i> Isomers in Margarines and Shortenings (Ref. 42)	Infrared spectrometric method. Method is applicable to determination of isolated <i>trans</i> bonds in natural or processed long-chain fatty acids, esters and triglycerides with <i>trans</i> levels $\geq 5.0\%$. For direct analysis of glycerides, use procedure described in Method 965.35. For high accuracy, common interfering absorptions associated with glycerol backbone of triglycerides and carboxyl group of fatty acids must be eliminated by conversion of these samples to their methyl esters prior to analysis. This method is <i>not</i> applicable, or is applicable <i>only</i> with specific precautions, to fats and oils containing large quantities (over 5%) of conjugated unsaturation; to materials containing functional groups which modify intensity of C—H deformation around <i>trans</i> bond; to mixed glycerides with long- and short-chain moieties; or, in general, to any material containing constituents that have functional groups that give rise to specific absorption bands at 966 cm^{-1} or sufficiently close to interfere with the 966 cm^{-1} band of C—H deformation of isolated <i>trans</i> double bond.	The method is time-consuming: It requires derivatization of the fat or oil to fatty acid methyl esters (FAME) and weighing and quantitative dilution of each FAME test sample in the volatile and toxic solvent carbon disulfide. The limit of quantitation of this method of 5% is too high to allow it to be generally useful.
2	AOCS Official Method Cd 14–95 (Reapproved 1997) Isolated <i>trans</i> Isomers-Infrared Spectrometric Method (Ref. 43)	Infrared spectrometric method. Isolated <i>trans</i> bonds in long-chain fatty acids, esters and triglycerides are measured by IR. For high accuracy, common interfering absorptions associated with the glycerol backbone of triglycerides and the carboxyl group of fatty acids must be eliminated by conversion of these samples to their methyl esters prior to analysis. The method is applicable to the accurate determination of isolated <i>trans</i> bonds in natural or processed long-chain acids, esters and triglyceride with <i>trans</i> levels $\geq 0.5\%$. The method is not applicable, or is applicable only with specific precautions, to fats and oils containing functional groups that modify the intensity of the C—H deformation around the <i>trans</i> double bond, to mixed glycerides having long- and short-chain moieties, or in general to any material containing constituents that have functional groups that give rise to specific absorption bands at or sufficiently close to interfere with the 966 cm^{-1} ($10.3\text{ }\mu\text{m}$) band of the C—H deformation of the isolated <i>trans</i> double bond. The method is not applicable to samples containing $>5\%$ conjugated unsaturation. For accurate determinations on materials with <i>trans</i> levels below 0.5%, AOCS method Ce 1c–89 or Ce 1F–96 is recommended. For the direct analysis of triglycerides, AOAC method 965.34 is recommended.	This is the AOCS version of AOAC Method 965.34, with the stated exception that it applies to <i>trans</i> levels of $\geq 0.5\%$. The data provided with this method do not support the low limit of quantification of 0.5%. Use of this method at <i>trans</i> levels <i>below</i> 5% is inappropriate. See AOAC Method 965.34.

APPENDIX B—Continued

TABLE 1.—AMERICAN OIL CHEMISTS SOCIETY (AOCS) AND ASSOCIATION OF OFFICIAL ANALYTICAL CHEMISTS (AOAC) METHODS FOR DETERMINATION OF *trans* FATTY ACIDS.

	Method	Definition, Scope, and Applicability as Stated in the Published Method	FDA Comments
3	AOAC Official Method 994.14 Isolated <i>trans</i> Unsaturated Fatty Acid Content in Partially Hydrogenated Fats (Ref. 44)	Infrared spectrophotometric method. Isolated <i>trans</i> double bonds (the predominant <i>trans</i> configuration in partially hydrogenated fats) show absorption at ca 967 cm ⁻¹ (10.3 μm) deriving from C—H deformation about the <i>trans</i> bond. Isolated <i>trans</i> content is determined by measurement of intensity of this absorption. Triglycerides or fatty acids are converted to methyl esters before making IR measurements. Total isolated <i>trans</i> content is calculated using calibration curve of absorption versus <i>trans</i> content of calibration solutions. The method is applicable to the determination of total isolated (i.e., nonconjugated) <i>trans</i> content in fats and oils containing >5% <i>trans</i> fatty acids. The method is not applicable to samples containing >5% conjugated unsaturation, materials containing functional groups which modify absorption of C—H deformation around <i>trans</i> bonds, or any materials in which specific groups may absorb close to 967 cm ⁻¹ . Results obtained by this method are comparable to those obtained by AOAC Method 965.34.	The experimental procedure is similar to that of AOAC Method 965.34. See comments on AOAC Method 965.34, above.
4	AOCS Recommended Practice Cd 14d–96 (Reapproved 1997) Isolated <i>trans</i> Geometric Isomers Single Bounce-Horizontal Attenuated Total Reflection Infrared Spectroscopic Procedure (Ref. 45)	Single Bounce-Horizontal Attenuated Total Reflection (SB-HATR) Infrared Spectroscopic procedure. The method is applicable to the accurate determination of isolated <i>trans</i> double bonds in natural or processed oils and fats with <i>trans</i> levels equal to or greater than about 0.8%. This method requires no weighing and no quantitative dilution of TAG or fatty acid methyl ester test samples in any solvent. Limited data suggest that the lower limit of quantitation may be higher for complex systems, such as biological matrices and commercial food products. The method is not applicable to fats and oils containing large quantities (over about 0.5%) of conjugated unsaturation, to materials containing functional groups that modify the intensity of the C—H deformation about the <i>trans</i> double bond, or in general, to any materials containing constituents that have functional groups that give rise to specific absorption bands at or sufficiently close to interfere with the 966 cm ⁻¹ band of the C—H deformation of the isolated <i>trans</i> double bond. For accurate determinations of materials with <i>trans</i> levels below about 0.8%, gas chromatography (e.g., AOCS Method Ce 1f–96 (Ref. 46), JAOCS 73: 275–282, 1996 (Ref. 51)) is recommended.	The method is rapid, requiring 5 minutes for experimental work and calculations. It is applicable to undiluted (i.e., neat) fats and oils, does not require derivatization of fat or oil to fatty acid methyl esters, and requires neither weighing nor quantitative dilution of fat or oil test samples in carbon disulfide. The lower limit of quantitation is about 1%, which is sufficiently low to make the method generally useful for most applications. The data provided with this Recommended Practice were compared with those obtained by AOAC Official Methods 965.34 and 994.14. Published results (Ref. 52) indicated that better reproducibility and repeatability were found with Cd 14d–96 than with the AOAC methods cited. This Recommended Practice is expected to be voted AOCS Official Method Cd 14d–96 in late 1999.

APPENDIX B—Continued

TABLE 1.—AMERICAN OIL CHEMISTS SOCIETY (AOCS) AND ASSOCIATION OF OFFICIAL ANALYTICAL CHEMISTS (AOAC) METHODS FOR DETERMINATION OF *trans* FATTY ACIDS.

	Method	Definition, Scope, and Applicability as Stated in the Published Method	FDA Comments
5	AOCS Official Method Ce 1f-96 (Re-approved 1997) Determination of <i>cis</i> - and <i>trans</i> Fatty Acids in Hydrogenated and Refined Oils and Fats by Capillary GLC (Ref. 46)	Gas-liquid chromatography (GLC) method. The method utilizes GLC conditions optimized to identify and quantify the <i>trans</i> fatty acids isomers in vegetable oils and fats. The fatty acid methyl esters of the sample are separated on a capillary gas chromatography column having a high polar stationary phase, according to their chain length, degree of (un)saturation, and geometry and position of the double bonds. The method is specially designed to evaluate by a single capillary GLC procedure, the level of <i>trans</i> isomers as formed during refining or during hydrogenation of vegetable oils or fats. The method may also be used to report all other fatty acids, for example, to obtain saturated fatty acid, monounsaturated fatty acid, and polyunsaturated fatty acid levels from the same sample and same analysis.	This method paraphrases one submitted by Duchateau (JAOCS 73:275-282, 1995). The method is the industry standard and provides the best resolution to date of <i>cis</i> and <i>trans</i> monoene fatty acid methyl esters, and hence, leads to better accuracy. The lower limit of quantitation was not stated. The method is time-consuming, but it can also be used to determine fatty acid composition.
6	AOCS Official Method Ce 1c-89 (Re-approved 1993; Updated 1995) Fatty Acid Composition by GLC - <i>cis</i> , <i>cis</i> and <i>trans</i> Isomers (Ref. 47)	Capillary gas-liquid chromatography (GLC) method. This method is for the determination of fatty acid composition of hydrogenated and unhydrogenated vegetable fats and oils by capillary gas-liquid chromatography (GLC), using an SP 2340 column. The method is designed to evaluate, by a single capillary GLC procedure the following properties of a vegetable oil: (a) Fatty acid composition; (b) level of <i>trans</i> unsaturation; and (c) <i>cis</i> , <i>cis</i> , methylene-interrupted double bonds. This procedure reports the <i>trans</i> content as the area percent of all components that have one or more <i>trans</i> double bonds. The <i>cis</i> , <i>cis</i> value is determined by summing the results from methyl linoleate and methyl linolenate. <i>Trans</i> content as determined by this procedure may not agree with <i>trans</i> content as determined by the infrared spectrophotometric method (AOCS Official Method Cd 14-61). There is a reported observation indicating that the method underestimates the <i>trans</i> -octadecenoate content in favor of the <i>cis</i> isomers in partially hydrogenated vegetable oils (Ref. 53).	This method does not provide the best resolution of <i>cis</i> and <i>trans</i> monounsaturated C18:1 fatty acid methyl esters. See AOCS Ce 1f-96 and related comments.
7	AOAC Official Method 985.21 (Final Action 1992) Total <i>trans</i> Fatty Acid Isomers in Margarines (Ref. 48)	Gas chromatographic method. The method is appropriate for determination of total <i>trans</i> contents of 10-30%. Methyl esters of fatty acids from margarines are separated and measured by gas chromatography to determine total <i>trans</i> unsaturation content (<i>trans</i> content of unsaturated 18 C acids). Results by this method are comparable to those obtained by IR method AOAC 965.34. The method is not applicable to samples containing hydrogenated marine oils.	The lower limit of quantitation (10%) is too high to make the method generally useful. The method does not provide the best resolution of <i>cis</i> and <i>trans</i> monounsaturated C18:1 fatty acid methyl esters. See AOCS Official Method Ce 1f-96.

APPENDIX B—Continued

TABLE 1.—AMERICAN OIL CHEMISTS SOCIETY (AOCS) AND ASSOCIATION OF OFFICIAL ANALYTICAL CHEMISTS (AOAC) METHODS FOR DETERMINATION OF *trans* FATTY ACIDS.

	Method	Definition, Scope, and Applicability as Stated in the Published Method	FDA Comments
8	AOCS Official Method Cd 14b-93 (Revised 1995; Surplussed, 1997) Fatty Acid Composition of Partially Hydrogenated Oils-A Combined GLC-IR Method (Ref. 49)	Combined gas-liquid chromatography-infrared spectroscopy (GLC-IR) method. This method is for the determination of fatty acid composition of partially hydrogenated vegetable oils and animal fats containing more than 5% <i>trans</i> fatty acids, by a combined capillary gas-liquid chromatography (GLC)-infrared spectrophotometry (IR) procedure. This method is a research method and is not practical for use in normal operations, especially QA/QC work. The method will provide accurate values, but requires considerable experience in its applications. This method is designed to evaluate, by combining the fatty acid data determined by capillary GLC with a very polar flexible fused silica column, with the total <i>trans</i> percentages of <i>cis</i> and <i>trans</i>-octadecenoates, of partially hydrogenated oils. The international collaborative study showed that there was no advantage in using the combined GLC-IR method for samples containing <5% <i>trans</i> fatty acids.	This method was surplussed in 1997 and therefore, its use is discouraged.
9	AOAC Official Method 994.15 Total <i>cis</i> and <i>trans</i> -Octadecenoic Isomers and General Fatty Acid Composition in Hydrogenated Vegetable Oils and Animal Fats (Ref. 50)	Capillary gas chromatographic-infrared spectrophotometric method. Applicable to partially hydrogenated vegetable oils and terrestrial animal fats containing >5% <i>trans</i> fatty acids. Total <i>trans</i> isomer content consists of <i>trans</i> fatty acids that occur in hydrogenated vegetable oils and terrestrial animal fats. <i>Trans</i> content consists of <i>trans</i> fatty acids 18:1<i>t</i>, 18:2<i>ct</i> or <i>tc</i>, described as 18:2<i>t</i>; 18:2<i>tt</i>, and 18:3 <i>cct</i>, <i>ctc</i>, and <i>tcc</i>, described as 18:3<i>t</i>. Total <i>trans</i> content is determined by infrared spectrophotometry (IR) using methyl elaidate as external standard. Various isomers of 18:2<i>tt</i>, 18:2<i>t</i> and 18:3<i>t</i> are resolved; their weight percentages are determined by gas chromatography. Based on the IR determination, the weight percentage of 18:1<i>t</i> is calculated. This method is not applicable to hydrogenated marine oils and partially hydrogenated fish oils that contain high levels of <i>cis</i> and <i>trans</i> isomers of C₁₆, C₁₈, C₂₀, and C₂₂ chain lengths.	This method is the AOAC version of the surplussed method AOCS Cd 14b-93 (see above) and, therefore, its use is discouraged. For samples containing <5% <i>trans</i> content, a direct GLC method (e.g., AOCS Method Ce 1c-89 or AOCS Method Ce 1f-96) is recommended.

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Wednesday
November 17, 1999

Part III

**Department of
Transportation**

Federal Railroad Administration

**49 CFR Parts 209 and 230
Inspection and Maintenance Standards
for Steam Locomotives; Rule**

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 209 and 230**

[Docket No. RSSL-98-1, Notice No. 3]

Inspection and Maintenance Standards for Steam Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing new Steam Locomotive Inspection and Maintenance Standards in order to update and enhance its steam locomotive regulatory program. In recognition of the reduced frequency of use of steam locomotives in today's transportation system, the revised standards—which incorporate consensus recommendations of the Railroad Safety Advisory Committee's Tourist and Historic Working Group—relax certain inspection requirements and tighten others. Significant changes include: the creation of a “service-day” inspection system that directly relates inspection time periods to the actual use of the steam locomotive; the elimination, with certain exceptions, of waivers for steam boilers, steam locomotives and their appurtenances; the inclusion of allowances which encourage the use of new technologies, such as non-destructive testing, for boiler testing and inspections; and the imposition of qualification requirements for individuals making certain repairs to steam locomotives, steam locomotive boilers, and steam locomotive appurtenances. Certain of the 1978 inspection standards remain substantively intact but are being relocated to new sections and given new section numbers. Due to the magnitude of the changes made, these newly issued standards replace the 1978 standards in their entirety.

DATES: This regulation is effective January 18, 2000.

ADDRESSES: Any petition for reconsideration should reference FRA Docket No. RSSL-98-1, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Mail Stop 10, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

George Scerbo, Motive Power & Equipment Specialist, Federal Railroad Administration, (telephone 202-493-6249); Paul F. Byrnes, Trial Attorney, Office of Chief Counsel, FRA, 400

Seventh Street, SW, Washington, DC, 20590, (telephone 202-493-6063); or John Megary, Regional Administrator, Federal Railroad Administration, 8701 Bedford-Eules Road, Suite 425, Hurst, TX 76053, (telephone 817-284-8142).

SUPPLEMENTARY INFORMATION:**I. Historical Background**

The Locomotive Boiler Inspection Act was passed by a Congress concerned over the ever-increasing rate of serious injury and death on the nation's railroads in the early 1900s. In his annual message to Congress in 1910, President Taft noted the need for regulation of the steam locomotive industry:

The protection of railroad employees from personal injury is a subject of the highest importance and demands continuing attention * * *. It seems to me that with respect to boilers a bill might well be drawn requiring and enforcing by penalty a proper system of inspection.

Congressional Record, December 6, 1910, p. 33. At that time, the only rule or regulation governing the inspection and maintenance of steam locomotives was the Ash Pan Act, 45 U.S.C. S. 17 (1908), repealed Pub. L. 97-468 (1983), which prescribed the method for attaching ash pans to steam locomotive boilers. Acting in response to President Taft's speech, Congress passed the Locomotive Boiler Inspection Act (LBIA) on February 17, 1911. The LBIA, enactment of which was initially opposed by locomotive owners and operators, brought all steam locomotive boilers under Federal jurisdiction and established the Bureau of Locomotive Inspections.

The LBIA, which became effective on July 1, 1911, was limited in scope to steam locomotive boilers. Despite its restricted coverage, the LBIA had an immediate, positive impact on safety with the number of incidents caused by the failure of the boiler or any of its appurtenances declining sharply after its passage. However, the number of incidents involving failures of locomotive parts other than boilers and related appurtenances continued to increase, and railroad labor soon appealed to Congress to expand the LBIA to cover the entire steam locomotive and tender and all its parts and appurtenances. Although the railroad owners and operators were strongly opposed to this expansion in the Act's coverage, a bill amending the LBIA to incorporate the requested changes was passed by Congress and signed into law by President Woodrow Wilson on March 4, 1915.

When the LBIA became effective in 1911, it required each railroad subject to

the Act to file copies of its rules and instructions for the inspection of locomotive boilers. A review of the 170 rules and instructions submitted (out of approximately 2,200 railroads in the country at that time) disclosed that these rules were either substantially similar, or identical, to those promulgated by the Master Mechanics' Association. These rules, in combination with the 1915 amendments to the LBIA, formed the basis for the Interstate Commerce Commission (ICC) rules on inspection and maintenance of steam locomotives and tenders: rules, that with some modification, continue in effect to this day. When the FRA came into existence in 1967 as part of the newly formed DOT, it adopted all ICC rules, interpretations, and instructions pertaining to railroads that were in effect at that time. These rules were published in the **Federal Register** and incorporated into the Code of Federal Regulations in December of 1968. Since then, the rules have been updated and amended periodically. Although the steam locomotive regulations were removed from the CFR in 1980, FRA has continued to enforce them. For purposes of clarity, whenever those removed standards are referenced in this rule, they will be referred to as “the 1978 standards” since there is no current CFR citation for them.

At present, there are approximately 150 steam locomotives in operation in the United States. Most of them are used in tourist or historic service on an intermittent, seasonal basis. Several years ago, the Engineering Standards Committee (ESC), a task group of the NBBPVI comprised of steam locomotive operators, petitioned the FRA to change the then current rules on inspection and maintenance of steam locomotives to more realistically reflect the current use and conditions of service for today's steam locomotives. The agency agreed to work with the ESC to consider revisions to these standards. After FRA established the Railroad Safety Advisory Committee (RSAC) in 1996, the subject of steam locomotive inspection and maintenance was identified as one fit for collaborative rulemaking. Accordingly, the agency tasked the RSAC with the formal revision of steam locomotive inspection standards on July 24, 1996. It was also decided that the ESC, and the FRA representatives working with it, would become a task force assigned to the RSAC's Tourist and Historic Working Group.

II. The Railroad Safety Advisory Committee

The RSAC's mandate is to provide recommendations and advice to the

Administrator of the FRA on the development of FRA's railroad safety regulatory programs, including the issuance of new regulations, the review and revision of existing regulations, and the identification of non-regulatory alternatives for improvement of railroad safety. The RSAC is presently comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and three associate non-voting representatives from the National Transportation Safety Board (NTSB), Canada, and Mexico. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) is the Chairperson of the Committee.

III. Steam Task Force of the Tourist and Historic Working Group

During the July 24, 1996 meeting of the RSAC, FRA tasked it with recommending revisions to the regulations governing locomotive inspection standards for steam-powered locomotives (49 CFR part 230). The stated purpose of this task was to promote the safe operation of tourist and historic rail operations, including "such additions and deletions [to the regulations] as may be warranted by appropriate data and analysis." In its Task Statement (Task No. 96-5) to RSAC, the agency instructed it to refer this task to the pre-existing Tourist and Historic Railroads working group ("THWG" or "The Group"). The THWG is comprised of the following organizations:

Association of American Private Railcar Owners
American Short Line Railroad Association
Association of American Railroads (AAR)
Association of Railway Museums
Brotherhood of Locomotive Engineers
FRA
Tourist Railway Association Inc. (TRAIN)

The THWG voted during its April 1996 meeting to officially endorse the ESC (which had been examining the issues of steam locomotive inspection and maintenance standards outside of the RSAC arena) and have it serve as a task force reporting to the Group. The Steam Standards Task Force (task force) is comprised of representatives from the organizations listed below:

Valley Railroad Company
Durango & Silverton Narrow Gauge
Union Pacific Railroad (UP)
Strasburg Railroad
Hartford Steam Boiler Inspection & Insurance Company

NBBPVI
ABB/Combustion Engineering
Smithsonian Institution
FRA.

The task force met approximately seven times over an eighteen month period to develop recommendations for a proposed rule. During these meetings, the task force considered a previous ESC proposal to revise part 230, which had been presented to FRA in the early 1990's. The issues in this proposal engendered much discussion and debate within the task force. Brief summaries of those discussions are recorded in the appropriate parts of the section-by-section analysis portion of this document. The technical details supporting certain of the recommendations that were discussed by the task force may be found in the public docket of this rulemaking. Those issues designated by FRA as "major issues" are more fully discussed below.

During an early meeting, the task force identified a number of objectives in revising part 230:

- (1) Harmonizing FRA and National Boiler Inspection Code terminology and standards;
- (2) Modernizing the rules to reflect current operating realities;
- (3) Eliminating any incentives, financial or otherwise, for operators not to follow the rules;
- (4) Encouraging the use of new technologies; and
- (5) Producing a more clearly written and understandable rule that is more enforceable.

These goals are reflected throughout this document and are embodied in the changes and additions made to part 230.

On September 19, 1997, the THWG informed FRA of the group members' unanimous agreement that the task force's proposed recommended rule text revisions to part 230 should be forwarded to the RSAC. On January 16, 1998, the task force and the THWG reached consensus that the proposed preamble should be included in the package presented to RSAC at the January 27, 1998 meeting. Following the presentation, the RSAC formulated a consensus recommendation for a proposed rulemaking which was forwarded to the Administrator of FRA.

IV. The Proposed Rule

Pursuant to section 553 of the Administrative Procedure Act, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 25, 1998, detailing the agency's intent to issue new regulations for steam locomotive inspection and maintenance. In the NPRM, FRA solicited written comments

from all interested parties and provided notice of its intention to conduct a public hearing on the proposed rulemaking only if so requested. A total of 20 commenters responded to the NPRM, including: The AAR; Association of Railway Museums, Inc.; John C. Boykin; Grand Canyon Railway; Locomotive and Tower Preservation Fund, LTD; Michigan State Trust Fund for Railway Preservation, Inc.; Minnesota Transportation Museum, Inc.; NBBPVI; North Star Rail; Ohio Central Railroad System; San Diego Railroad Museum; St. Louis Steam Train Association; Tennessee Valley Railroad; UP; United States Department of the Interior; and Wisconsin Railway Preservation Trust. Although FRA had originally believed that a public hearing would be unnecessary, a number of interested parties requested the opportunity to present their views at such a forum, and a public hearing was held in Corpus Christi, Texas on February 4, 1999. Seven organizations presented testimony at the public hearing. Those testifying included: Austin and Texas Central Railroad; Diversified Rail Services; Grand Canyon Railway; Ohio Central Railway System; Tennessee Valley Railroad; TRAIN; and UP.

Because of the number of substantive comments received during the notice and comment period and at the public hearing, the task force suggested and FRA agreed to meet to address the issues raised and to consider changes to the proposal for inclusion in the final rule. The meeting was held in Columbus, Ohio on March 11-12, 1999. Among the issues addressed at this meeting were: Implementation of the rule; Preemption of state oversight of steam locomotive operations; Waivers of requirements; Responsibility for compliance; Definitions of terms used; Movement of non-complying locomotives; Thirty-one (31) service day inspection requirements; Ninety-two (92) service day inspection requirements; Annual Inspection requirements; One thousand four hundred and seventy-two (1472) service day inspection requirements; Alteration and repair reports for steam locomotive boilers; Responsibility for general construction and safe working pressure; Maximum allowable stress on stays and braces; Tensile strength of shell plates; Maximum shearing strength of rivets; Higher shearing strength of rivets; Times and methods of inspection; Welded repairs and alterations; Hydrostatic testing of boilers; Broken staybolts; Times and methods of staybolt testing; The number and location of water

glasses and gauge cocks; When to require boiler washing; Inspection, repair and/or replacement of arch tubes, water bar tubes, circulators, and thermic siphons; Steam locomotive speed indicators; Testing main reservoirs; Time of cleaning; Stenciling dates of testing and cleaning; Fire doors and mechanical stokers; Required illumination; Throttles; The draw gear between the steam locomotive and tender; Main, side, and valve motion rods; The steam locomotive frame; Tender trucks; Feed water tanks; and Inspection requirements.

The discussion that follows examines in detail comments received, the task force's consideration of and response to those comments, and those changes (if any) FRA is making in the final rule as a result of the comments received. This discussion is organized by the relevant section of the rule.

In order to make the final rule clearer (and therefore easier to comply with) FRA explains here the rationale and the deliberative thought processes of the task force in reaching its conclusions. Unless otherwise noted, the agency agrees with the reasoning and explanations advanced by the task force for the revisions and amendments the task force recommended be made to the 1978 standards. The task force's deliberations were thorough and deliberative in nature, though frequently marked by spirited debate. Throughout this document, FRA has tried to recapture as much of that debate as is relevant and practical.

V. Reorganization of Part 230

The 1978 standards were divided into two main parts—one for the steam locomotive boiler and its appurtenances, and the other for the steam locomotive and tender. As part of the revisions to part 230, the agency has restructured the rule so that it contain a “general” part, Subpart A, which includes those provisions that are applicable to the entirety of part 230; a boiler part, Subpart B, applicable to the boiler and its appurtenances; and a locomotive part, Subpart C, applicable to the steam locomotive and tender. Some of the concepts found in Subpart A of this rule were formerly contained in Subparts A and B of the 1978 standards. These revisions are designed to reduce and eliminate identified redundancies in the 1978 standards, thereby making the rule easier to read and comprehend.

VI. Major Issues

A. Responsibility for Compliance

In the NPRM, FRA struck the term “railroad company” throughout the body of the rule and replaced it with the term “locomotive owner and/or operator.” FRA has retained this term in the final rule, consistent with the task force's recommendations, to reflect the changes in steam locomotive operating practices. Very few railroad companies own and/or operate steam locomotives today. While some tourist railroads own and operate their own locomotives, most frequently steam locomotives are owned and/or operated by entities other than the railroad on whose line they operate. These entities range all the way from wealthy private enthusiasts to state historical agencies. Sometimes the owner of the equipment actually runs (operates) the steam railroad operation; in other cases, an individual or individuals are hired (or volunteer) to do so. This means that in many—if not most—instances, the locomotive owner and/or operator is in a much better position than the railroad company to ensure compliance with various regulatory requirements. In recognition of this reality, the task force recommended that the agency more specifically affix responsibility for compliance on those who are primarily responsible for the operation of the steam locomotive and tender. In most cases, that party will be the locomotive owner and/or operator. The task force members debated how to best express the liability standard—whether to use “owner and operator,” “owner/operator,” or “owner or operator.” They settled on the “owner and/or operator” construct as the clearest method for affixing joint and severable liability for the inspection and maintenance of steam locomotives on the owner and operator. In certain sections of the rule, however, the owner and the operator are individually identified as the appropriate party on whom liability would rest.

In addition, as provided by statute, this rule makes clear that a railroad may also be held liable for permitting any entity to use a noncomplying locomotive on its line (see section-by-section discussion of § 230.4, below). The adoption of the owner and/or operator language is a clear signal that FRA intends to look first to the owner and/or operator to ensure compliance, regardless of whether that happens to be the railroad on which the steam locomotive is operating. It is important to note that the applicability section, § 230.2, which the agency modified from that originally submitted by the

task force, uses the term “railroad” to denote where the rule applies. As explained in the section-by-section analysis of the applicability section, FRA is making this change to harmonize all of its applicability sections. Since this section is intended to explain where the rule applies, it does not affect the primary compliance responsibility, which remains with the owner and operator. Therefore, FRA believes that this change does not substantially change the task force's proposal to the agency.

B. Inspection Scheme

In issuing this rule, FRA has revised the inspection scheme for steam locomotive boilers to reflect the changed nature of modern steam locomotive operations. The 1978 standards required steam locomotive boilers to be inspected at various time periods that were linked to an annual calendar, regardless of the amount of actual usage the locomotive has incurred. When locomotives were in continuous service, this system was not unduly burdensome. Operation of steam locomotives today, however, occurs much more infrequently, sometimes only a few times a year, greatly reducing the need for frequent inspections rigidly tied to the passage of calendar days. Under the new inspection scheme, required locomotive inspections are based on the number of “service days” a steam locomotive accrues, with various intermediate calendar inspection requirements retained to ensure an adequate level of safety.

1. Service Days

This new inspection scheme is underpinned by the concept of a “service day”—defined as “any day the locomotive has steam pressure above atmospheric pressure and a fire in the firebox.” Because good operating practice requires that a steam locomotive boiler be slowly heated before use and slowly cooled after use to avoid the damage rapid heating and cooling can inflict on the boiler, a locomotive that runs on weekends may accrue as many as three service days for each day of actual “use.” For example, a steam locomotive could have fire in the firebox and pressure above atmospheric pressure for an entire day before it actually runs, for the entire day that it runs, and while it cools down after it runs. Under this scenario, the locomotive would accrue three service days although only in actual “use” for one day. Some operators were concerned that adopting this service day concept could create an incentive for operators to “dump” their fires at the end of a day operating the steam

locomotive in order to avoid incurring an extra service day. The task force was of the opinion, however, that the financial cost (in terms of stress and damage to the locomotive boilers from such behavior) to operators who did so dump their fires would likely outweigh any inspection time period benefits they might gain from such dumping. The task force also expressed the belief that, with proper damping and draft restriction, fire can be removed from the firebox (and a service day preserved) with no adverse affects for the boiler, and that this practice can, in fact, be easier on the boiler than banking the fire.

2. Daily Inspection

The new "daily inspection" section sets forth the daily inspection requirements for steam locomotive owners and/or operators. The only daily inspection requirement in the 1978 standards was that the steam locomotive and tender be inspected "after each trip, or day's work." The new section retains the general daily inspection requirement for each day that a steam locomotive is "offered for use," but adds a number of additional specific "pre-departure" inspection requirements that must be complied with at the beginning of each day the locomotive is used. This "pre-departure" inspection regime emphasizes the need to examine certain safety critical items such as the water glasses and gauge cocks, the boiler feedwater delivery systems, the air compressors and governors, and the air brake system on a daily basis.

3. 31 and 92 Service Day Inspections

This rule also establishes 31 and 92 service day inspection requirements. These are roughly comparable to the monthly and trimonthly inspections in the 1978 standards.

4. Annual Inspections

In addition, this rule establishes annual inspection requirements similar to the 1978 standards: requiring that a steam locomotive be inspected after 368 calendar days have elapsed since the time of the prior annual inspection. The 1978 standards required that certain items be inspected at least "once every 12 months." The revised annual inspection, as do all the other periodic inspections, incorporates the inspection requirements of those inspections required to be conducted more frequently. Thus, locomotives that are not operated often enough to accrue either 31 or 92 service days in a 368 day period will have those inspections conducted, at a minimum, once every 368 calendar days. In addition, this rule extends the inspection time period for

flexible staybolts and caps from once each 2 years under the 1978 standards to during each 5th annual inspection.

5. 1472 Service Day Inspection

Finally, the 1978 standards required that a steam locomotive boiler be inspected, at a minimum, once each 5 calendar years (boiler interior to be inspected after 48 calendar months, within 5 consecutive years; and the boiler exterior to be inspected every 5 years, or, if the locomotive is out of service for at least one full month during that time, after 60 calendar months within 6 consecutive years). This inspection was a major one, requiring the removal of the jacket and lagging to conduct the exterior inspection, and the removal of all flues in the locomotive boiler to conduct a "minute" inspection of the interior of the boiler. FRA is amending this provision by requiring that these inspections be conducted when the locomotive has accrued 1472 service days or when a period not to exceed 15 years has elapsed since the last 1472 service day inspection was performed. These revisions are being made in order to take into account the amount of actual usage a steam locomotive receives. The 15 year maximum, beyond which time a 1472 service day inspection must be conducted, is based on the task force's recommendations.

FRA is requiring the completion, verification and updating of the locomotive's FRA Form No. 4, the "specification card" required by § 230.54 of the 1978 standards, as part of the 1472 service day inspection. The updated FRA Form No. 4 must be filed within 1 month after the completion of the 1472 service day inspection. The agency is making clear that the verification and updating of this form as necessary to reflect the current condition of the boiler is required as part of every 1472 service day inspection. This recordkeeping requirement is not actually new, it merely clarifies and makes express what the 1978 standards required. Although the 1978 standards did not expressly require periodic surveying to verify the accuracy of the current form or the updating of any changes thereto, the need to do so was implicit in the requirement of a signed testimonial that all information provided on the form was true and accurate. In addition, the 1978 standards actually required that the FRA Form No. 4 be updated to reflect boiler repairs or changes that might affect the FRA Form No. 4 data. However, because some locomotive owners and/or operators may not understand that the 1978 standards

required that the FRA Form No. 4 be kept up-to-date and accurate, this change in language may be perceived by some as imposing new recordkeeping requirements.

FRA has also determined that safety concerns dictate that there be a competency requirement for the person or persons conducting a 1472 service day inspection and for the person or persons surveying the boiler for the purpose of recalculating a FRA Form No. 4. Accordingly, this rule specifically provides that only competent individuals may perform 1472 service day inspections and/or surveys of locomotive boilers in order to evaluate the accuracy of information on the locomotives' current FRA Form No. 4s.

6. FRA Inspection Oversight

Concerned that an adequate level of safety be maintained in light of the extended inspection intervals allowed under this rule, the task force recommended that FRA increase the amount of oversight it exercises over steam locomotive inspections. FRA shares the task force's concerns and is, therefore, requiring that the agency be afforded the opportunity to be present during certain periodic steam locomotive inspections. In the case of the 31 service day inspection, FRA will be responsible for communicating to the steam locomotive owner and/or operator that the agency wants to be notified prior to the inspection and given an opportunity to attend. Upon notification, the steam locomotive owner and/or operator must provide FRA with the anticipated date and location for the inspection. Once that information is conveyed to the agency, any subsequent change in the inspection schedule must be mutually agreed upon. FRA believes this approach balances competing interests and comports with the task force recommendations. In formulating their recommendation, the task force members sought to provide steam locomotive owners and/or operators with the flexibility to conduct their business without unreasonable interference by FRA scheduling demands while also insuring that the owners and/or operators would act in good faith and take all reasonable measures to accommodate FRA requests to be present at periodic locomotive inspections.

In the case of the annual inspection, the steam locomotive owner and/or operator is required to provide FRA with one month's prior notice that the annual inspection is to be conducted. The agency then has the option of notifying the owner and/or operator of its desire to be present for the

inspection. At that point, the steam locomotive owner and/or operator must provide FRA with a scheduled date and location for each aspect of the inspection. As with the 31 service day inspection, once the annual inspection is scheduled, any changes to that schedule have to be mutually agreed upon.

This notification scheme is designed to allow the agency the opportunity to observe the steam locomotive owner and/or operator performing the various required inspections and to allow the FRA field personnel directly responsible for inspecting steam locomotive operations to work cooperatively with the regulated community. Being able to observe the inspections firsthand also provides FRA with more accurate and up-to-date information on the condition of the steam locomotive fleet operating today.

C. Elimination of the Special Waiver Process

As part of this rule, FRA has eliminated all the special waivers that were available under part 230. The 1978 standards contained a section that allowed for the "modification of rules" for "roads operating less than 5 locomotives" upon a showing that conditions warrant it. This language, which predated the agency's formal waiver process (codified at 49 CFR 211.41), was originally intended to apply only to the subpart addressing the steam locomotive and tender. In addition, the flue removal section in the 1978 standards provided for the granting of extensions of the time period for removing flues and for conducting the comprehensive boiler inspection, upon formal application to the ICC's Director of Railroad Safety. One consequence of this waiver process, which was administered locally by the agency's eight regions, was that locomotive owners and/or operators were able to delay the conduct of the boiler inspection by varying amounts of time based, in part, on the regional procedures for addressing these requests. These waivers will now expire unless submitted to FRA for reevaluation prior to the effective date of this rule. By eliminating the waiver provision in part 230, the agency has accomplished several things: (1) Provided notice to the regulated community that the agency's part 211 waiver process is the appropriate vehicle for gaining relief from the requirements of this part; (2) gained assurance that FRA will have knowledge of and the ability to coordinate on a uniform, nationwide basis the consideration and granting of

all steam locomotive waivers applied for; and (3) ensured that steam locomotives are regulated consistently. The task force and FRA also believe that, although the extensions and waivers previously granted under this part will generally no longer be necessary given the flexibility being afforded by the proposed new inspection scheme, when an owner and/or operator believes such a waiver is necessary, such requests are best addressed by the centralized waiver process provided for in part 211.

D. Standard for Repairs

The agency is establishing standards for making certain repairs to the steam locomotive and boiler. The task force was concerned about controlling the quality of the repairs made to steam locomotives and boilers and decided to impose, as a minimum, the requirement that repairs be made in accordance with an "accepted industry standard." The task force considered simply requiring that repairs be made in accordance with the National Board Inspection Code (NBIC) published by the NBBPVI or in conformance with the standards established by the American Petroleum Institute (API). However, the task force finally decided to recommend that the agency allow steam locomotive owners and operators to perform repairs in accordance with established railroad practices that have been successfully utilized over time, thereby affording industry members a measure of flexibility. This proposal reflects that decision. While there was some concern about whether the term "accepted" was too vague, the task force felt that the industry members would know what was required to ensure that repairs are properly made. Due to the small size and cohesiveness of the steam locomotive community, the task force felt that imposing an "accepted industry standard" on repairs made, and allowing that standard to include "established railroad practices, or NBIC or API established standards" would result in an acceptable level of quality in the repairs made. Section 230.29 of the final rule reflects the task force's recommendations. Finally, as used in this proposal, "established railroad practices" means those practices used by one or more railroads over a period of time that can be reasonably shown to have been successful in service, or that most industry members would agree is an appropriate standard to use for a given repair. In practice, the locomotive owner and/or operator will be responsible for proving that the standard is established within the railroad community and that it is

appropriate for the repair under consideration.

For the first time, FRA is expressly allowing welding on both stayed and unstayed portions of the boiler, with some limitations. While the 1978 standards did not prohibit welding on unstayed portions of the boiler, it was widely understood that such welding was not allowed. Therefore, expressly allowing welding on unstayed portions of the boiler is a fairly radical change from the existing standards. Under § 230.33 of this final rule, "Welded Repairs and Alterations," FRA is requiring prior approval for any welding done on unstayed portions of high carbon boilers (greater than 0.25 percent carbon). FRA believes prior approval is necessary since the risk of welding on the boiler is much higher for boilers with a high carbon content. Welds on unstayed portions of lower carbon boilers (less than 0.25 percent carbon) are not so restricted. For both low and high carbon boilers, however, FRA is imposing a repair standard that allows the locomotive owner and/or operator a measure of flexibility while simultaneously insuring an adequate minimum level of safety. Accordingly, the agency is requiring that any welded repairs to unstayed portions of the boiler be performed in "accordance with an accepted national standard for boiler repairs." This modifies the general repair standard discussed above to more narrowly apply to boiler repairs.

By referencing an accepted national standard for boiler repairs, the task force and the agency sought to impose a measure of quality control that would provide assurance that all welding is performed properly. Because there are several national organizations that prescribe such procedures, the operator will be allowed to follow any one of a number of recognized methods. "In accordance with an accepted national standard for boiler repairs," therefore, means that all the physical, mechanical, and documentation requirements delineated in a particular standard such as the NBIC have been satisfied. The task force considered recommending that FRA simply adopt the NBIC standard but decided that the financial burden imposed on owners and/or operators would be too great. The NBIC program requires reporting of the final repair and third-party oversight throughout the repair, which can be very costly. Accordingly, the task force decided to simply reference the standard to which the repair should be done, without imposing the reporting or third-party inspection requirements of the standard. FRA agrees with and has adopted the task force's position.

The task force was also very concerned about follow-up radiography for the welds conducted, and at one point considered recommending that all welds on unstayed portions of the boiler be radiographed. The task force also considered incorporating an American Society of Mechanical Engineers (ASME) radiography standard (which includes procedures for conducting radiography of welds), but eventually decided that so doing would make this part too complicated. The task force felt that doing so was unnecessary because all "accepted national standards" include radiography where necessary. Accordingly, the final rule mandates only that any radiography required under the accepted national standard chosen for the welded repair at issue be so performed.

The task force discussed the potential for abuse of the "accepted national standard for boiler repairs" standard but felt that the risk of such abuse was low. This belief is based upon the clear requirement in this section that locomotive owners and/or operators be able to establish through documentation compliance with such a national standard, *i.e.*, point to the procedures they followed in performing a particular weld. The locomotive owner and/or operator will bear the burden of proving to FRA that they correctly followed a particular, relevant national standard. Accordingly, this section simply requires that the locomotive owner and/or operator adhere to whatever the particular national standard followed dictates—from pre-weld treatments and welder qualifications through post-weld inspection requirements. The locomotive owner and/or operator will be required to make a showing that they satisfied the accepted national standard upon request by an FRA inspector.

E. Allowances Encouraging the Use of New Technologies

The task force felt strongly that the 1978 standards, which had not been substantively revised in over 20 years, did not adequately address the new technologies which have developed during that time. Accordingly, the task force believed this rule should address recent innovations in inspection and maintenance methodology and technology. The task force was also concerned that compliance with the 1978 standards may have resulted in excessive wear of steam locomotives, locomotive boilers, and locomotive appurtenances. In addition, the task force felt that the changed nature of steam locomotive operations today provided additional justification for updating the rule to reflect modern

operating circumstances and for encouraging the use of non-destructive technologies to satisfy various inspection requirements. Accordingly, in many sections of this rule, FRA is encouraging the use of advanced technologies by granting additional regulatory flexibility where such technologies are utilized. In some cases, however, the task force recommended, and the proposal incorporates, mandatory non-destructive examination (NDE) testing for safety reasons. The main sections so affected are: (1) The flue removal section, 230.31; (2) the Arch tube, water bar tube and circulator section, 230.61; (3) the dry pipe section, 230.62; (4) the main reservoir testing section, 230.72; and (5) the draw gear and draft system section, 230.92.

F. Imposition of Qualification Requirements for Repair

By referencing national standards, this rule addresses, for the first time, the issue of qualification requirements for individuals making repairs to steam locomotives. The NTSB and the task force both felt strongly that the rule should establish minimum competency requirements for individuals making certain safety critical repairs. Thus, wherever the relevant national standards include qualification requirements, steam locomotive owners and/or operators making such repairs will have to comply with these requirements. The task force considered imposing more explicit qualification requirements than those imputed from these national standards but concluded that doing so was not necessary at this time. FRA agrees with the task force's position, and, therefore, is not mandating more explicit qualification requirements.

G. Implementation Schedule

This rule provides for a gradual phase-in of part 230 in order to provide locomotive owners and operators the flexibility necessary to bring their operations into compliance (see section 230.3 for a full discussion of the implementation schedule). Some requirements must be complied with no later than one year after the effective date for the final rule. In addition, FRA is allowing locomotive owners and/or operators two years after the effective date for the final rule in which to request flue removal extensions. Finally, locomotive owners and/or operators that qualify to file a Petition for Special Consideration will be required to do so within one year of the effective date of the final rule, and the agency will have one year from the date of filing to

consider and respond to any such petitions.

VII. NTSB Recommendations

Following their investigation of the 1995 steam boiler explosion on the Gettysburg Passenger Services railroad, the NTSB issued the following recommendations to the agency:

(1) Require that each operating steam locomotive have either a water column or a water glass in addition to the water glass and three gage cocks that are already required. (R-96-53).

(2) Require steam locomotive operators to have a documented water-treatment program. (R-96-54).

(3) Describe basic responsibilities and procedures for functions required by regulation, such as blowing down the water glass and washing the boiler. (R-96-55).

(4) In cooperation with the TRAIN, promote awareness of and compliance with the Hours of Service Act. (R-96-56).

(5) In cooperation with the NBBPVI and the TRAIN, explore feasibility of requiring a progressive crown stay feature in steam locomotives. (R-96-57).

(6) In cooperation with the NBBPVI and the TRAIN develop certification criteria and require that steam-locomotive operators and maintenance personnel be periodically certified to operate and/or maintain a steam locomotive. (R-96-58).

(7) In cooperation with the NBBPVI and the TRAIN, update 49 CFR part 230 to take advantage of accepted practical modern boiler-inspection techniques and technologies, to minimize interpretation based on empirical experience, and to maximize the use of objective standards. (R-96-59).

This rule reflects the careful consideration of these recommendations, both by FRA and the task force who, through the full RSAC, advised the Administrator regarding revisions to this part. That advisory committee task force was comprised of steam locomotive experts, steam railroad operators, steam boiler insurance companies, the National Boiler Inspection Code Committee, representatives from the Volpe National Transportation Systems Center (Volpe Center) and several representatives from FRA. Representatives of NTSB were offered a seat at the table but declined. FRA requested that the task force address the NTSB's recommendations and suggest appropriate responses. In response to FRA's request, the advisory committee task force recommended, and FRA has adopted, the following steps: R-96-53 Water Glasses—Based on task force support for this

recommendation and FRA concurrence, section 230.51 of this rule establishes a minimum requirement of two sight glasses or a sight glass and a water column on each operating steam locomotive.

R-96-54 **Water Treatment**—Industry members of the task force did not express support for NTSB's proposed water treatment requirement because they felt that the current regulatory focus on boiler washing was adequate to address the condition of the boiler interior, and to prevent the build up of sediment and mineral deposits. The task force also felt that water treatment programs could be unduly burdensome, especially for steam locomotives with a single water source that requires constant testing due to water quality variations, or where locomotives travel long distances and draw water from numerous sources. Finally, the industry members felt that the issue of water treatment should be addressed in a performance standard, but they indicated that it would be impossible to write a uniform performance standard. FRA agrees that the fundamental issue is the interior condition of the boiler and that the task force recommendations and FRA inspection practices adequately address the condition of the boiler interior.

R-96-55 **Delineation of Responsibilities**—The task force expressed support for this recommendation, and this rule clearly describes basic responsibilities and procedures. In addition, the Volpe Center has produced a training video for steam-locomotive operators for FRA. The video covers procedures required during daily inspections and pre-trip inspections in order to ensure the safe operation of a steam locomotive. This video was unveiled during TRAIN's annual convention in November of 1997, and was mailed to steam locomotive owners and operators throughout the country shortly thereafter. Finally, the industry members of the task force endorsed putting together a "Recommended Practice Manual" (RPM) for many issues that this proposal does not address. FRA will continue to work with the industry on the development of a RPM.

R-96-56 **Hours of Service Act Awareness**—The industry members indicated their support for the proposal that FRA working in tandem with the TRAIN to promote awareness of the Hours of Service Act. Although issues of compliance with the Hours of Service Act are beyond the scope

of this rule, FRA does wish to state that it will work with TRAIN to increase awareness of Hours of Service Act requirements, and to promote compliance with the Act.

R-96-57 **Progressive Crown Stays**—The industry representatives indicated their willingness to explore the feasibility of progressive crown-stays, but because of time constraints were not able to address this issue in the part 230 revisions. FRA has requested that the NTSB make staff assistance available to the task force to outline the steps necessary to conduct this evaluation.

R-96-58 **Certification Program**—The industry representatives expressed support for this recommendation and are investigating the feasibility of developing certification criteria for several classes of employees or volunteers affected. Some members, however, expressed concern about the cost involved in assessing job and task requirements. FRA's preference is a voluntary certification program. While the current standards for Qualification and Certification of Locomotive Engineers contain training requirements that may serve as a framework for better defining the competencies of steam locomotive operators, at present, those regulations only apply to railroads that operate locomotives on standard gage track that is part of the general system of rail transportation. Administering a technically elaborate certification program that would ultimately affect the operation of less than 175 locomotives does not appear to be a wise use of scarce federal resources. FRA encourages the Tourist & Historic Working Group to carry forward this discussion, with the objectives of (1) supporting private initiatives and; (2) offering technical support for sound training programs (including the evaluation of current competencies).

R-96-59 **Modernization of part 230**—Industry members expressed support for this recommendation and acted in partnership with FRA through the task force to accomplish it. FRA submitted responses to the NTSB's recommendations. The NTSB was satisfied with the agency's plan, influenced by the task force recommendations, to address NTSB recommendations R-96-53, R-96-55, R-96-56, and R-96-59 but was, however, dissatisfied with our plan to address recommendations R-96-54, R-96-57, and R-96-58. These three latter recommendations will be discussed at greater length below. FRA concurs with the task force's

responses to NTSB's recommendations and believes that the proposed revisions to the steam locomotive regulations will address most of those recommendations. The agency invited NTSB staff to participate in the task force deliberations, but they were unable to do so. FRA believes that a full technical exchange of views would have been helpful to resolving the remaining recommendations.

NTSB's recommendation R-96-54 would require operators to maintain a documented water treatment program. The task force simply disagreed that such a program was necessary. They felt that the boiler washes were the real issue, not the chemical remediation of the owner or operator's water source. The NTSB, in its response, concurred with the task force that the wash is "probably more directly effective in controlling boiler sediment and mineral deposits." However, the NTSB added, "a documented water treatment program does not have to be expensive, rigid or burdensome." While FRA lacks the data to evaluate the cost-effectiveness of any such program, it doesn't feel such an inquiry is necessary since all parties agree that a boiler wash is the most "directly effective" method of preventing boiler sediment and mineral deposits. Based on discussions in the task force and field experience concerning steam boiler maintenance, it is the agency's judgement that safety would not have been enhanced by incorporating this additional requirement into the rule. Operators are always free to voluntarily conduct their own water treatment programs (and many do). Given the effectiveness of the boiler wash, it does not appear to be cost-beneficial to mandate documented water treatment programs at this time. FRA is also concerned about the paperwork burdens associated with such a program. Federal agencies are mandated to reduce information collection burdens, and regulatory burdens on small entities are to be minimized. However, FRA remains willing to consider specific data and analysis submitted in support of this recommendation.

NTSB's recommendation R-96-57, if adopted, would have required the agency to explore the feasibility of progressive crown-stays in mitigating the damage caused by boiler failures. The task force's experience with progressive crown stays was not sufficient to support such a mandate at this time. The agency, after consultation with the task force, conveyed to the NTSB its willingness to explore this

issue fully at some later date, based on its belief that it lacked time and resources to adequately address this issue at this time. The NTSB found this response unacceptable. FRA told the NTSB it would appreciate the Board's making available staff assistance to the task force to help outline the steps necessary to conduct this evaluation, but no such assistance was forthcoming. The agency remains open to this issue but believes that more research is necessary before it can conclude, one way or another, that progressive crown stays are a cost-beneficial safety enhancement. In the NPRM, the agency requested that any party with data or analysis related to progressive crown stays, and their role in mitigating boiler failures, submit it to the agency for consideration: no such information was received.

Finally, NTSB recommendation R-96-58 would require the agency to develop a certification program for steam locomotive operators and maintenance personnel. After due consideration, FRA has decided in favor of a voluntary certification program. Given the small number of affected entities and the scarcity of federal resources available to administer a technically elaborate certification program, the agency believes a mandatory certification program is unnecessary at this time. The task force, in association with the Volpe Center, has already created and produced a training video for the conduct of steam locomotive daily inspections. This video was aired during the TRAIN convention held in November of 1997, and was subsequently mailed to each steam locomotive owner or operator for whom the agency had user fee records. This was but a first step in response to the NTSB's recommendation. The agency will continue to work with the regulated community to carry forward this discussion and, as such, supports those private initiatives offering technical support for training programs, including the evaluation of current competencies of steam locomotive operators and maintenance personnel. In the NPRM, FRA requested that any party supporting the NTSB's recommendation submit data and analysis indicating the need for a more prescriptive approach: again, no such information was received.

Comments and Responses

The discussion that follows examines in detail comments received, the task force's consideration of and response to those comments, and those changes (if any) FRA is making in the final rule as a result of the comments received.

Section 230.3 Implementation

The provisions of this section generated a number of comments and counter-proposals from interested parties. In the NPRM, FRA proposed a staggered implementation schedule for placing the new rule into effect. Under this schedule, locomotive owners and/or operators would be required to perform a 1472 service day inspection meeting the requirements of § 230.17 at that time when the locomotive flues would have had to be removed under § 230.10 of the 1978 revisions. Subsection (c)-(d) of the proposal provided for a 3-year period during which a steam locomotive owner and/or operator would be allowed to file a petition for special consideration of boiler inspections performed in accordance with § 230.17 within the 3-year period prior to the final rule's publication. Several commenters expressed concern about when steam locomotive owners and/or operators would be required to perform 1472 service day inspections under the new rule. Grand Canyon Railway commented that any locomotive in full compliance with § 230.17 of the proposed rule should have any flue time remaining under § 230.10 incorporated into the time allowed before having to perform a 1472 service day inspection. Grand Canyon Railway also stated that the 1472 service day period is a valid service time for steam locomotive boiler flues and should be applied to all steam locomotives with original flue time remaining within a 5-year maximum period. Minnesota Transportation Museum, Inc. commented that this section should allow a steam locomotive with existing flue time under § 230.10 of the 1978 revision to incorporate that flue time under the new 1472 service day period. North Star Rail commented that the implementation section, as proposed, would have its greatest impact on the newest, largest, least operated steam locomotives. North Star Rail also commented that if the new regulations are to be based on service days, then incorporation of properly documented locomotives meeting all aspects of the new regulations should also be based on actual documented service days. Wisconsin Railway Preservation Trust commented that the proposed 1472 service day inspection requirement needs to be changed to take into account the economic circumstances of the regulated community and the potential inequities of the rule as presently written. A number of the comments received addressed the issue of when the 3-year period for special consideration should

run from. The Association of Railway Museums, Inc. stated that the period of eligibility for filing a petition for "special consideration" should begin 1/27/96. Grand Canyon Railway commented that the 3-year period is arbitrary and should be revised to take into account the actual date of publication of the final rule. Michigan State Trust for Railway Preservation, Inc. expressed its belief that the period for special consideration should be increased to 4 years or more depending upon the date of publication of the final rule. Minnesota Transportation Museum, Inc. observed that the 3 year period for consideration was arbitrary. NBBPVI, Ohio Central Railroad, Tennessee Valley Railroad, and UP all commented that the final rule needs to take into account delays in getting the rule published. NBBPVI suggested that January 1, 1999 was a reasonable date for implementation of the 3 year period for special consideration. San Diego Railroad Museum commented that the time period in which to file a petition for special consideration should be increased to 4 or 5 years, or alternatively, start 3 years prior to the date of publication of the proposed rule.

At the Columbus, Ohio meeting, several members of the task force also expressed concern about the issue of when the time for filing special petitions for consideration would begin. It was suggested that the date of publication of the NPRM was the most equitable time to relate back from since that could be considered as the date that the regulated community first had constructive knowledge of FRA's intentions. The task force was agreeable to that proposal, reaching consensus on a recommendation to FRA that the period for filing special petitions for consideration extend back 3 years from the date of publication of the NPRM. FRA, after due consideration of the comments received and the task forces recommendations, has decided to adopt the date of publication of the Notice of Proposed Rulemaking as the date the 3 year period for special consideration will relate back from. This means that any locomotive owner and/or operator whose locomotive was fully or partially in compliance with § 230.17 (1472 service day inspection requirements) between September 25, 1995 and September 25, 1998 may petition FRA for special consideration.

Section 230.5 Preemptive Effect

This section of the NPRM, addressing the preemptive effect of the proposed rule, generated a large number of comments concerning state regulation of and/or enforcement of state boiler codes

against steam locomotive owners and/or operators. Many of the comments received took exception to FRA's stated intention of allowing state inspection and regulation of steam locomotives operations in those areas where FRA chooses not to exercise jurisdiction. A number of commenters took issue with the statement in this section that this part comes under 49 U.S.C. 20106's exception from preemption of an additional or more stringent State law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

UP submitted comments which were supported in whole by the AAR. In its comments, UP stated that § 230.6 of the proposed rule takes too narrow a view of preemption, drawing on the Federal Railroad Safety Act (FRSA), but failing to take into account the total preemptive effect of the Locomotive Boiler Inspection Act (LBIA) and the Federal Safety Appliance Act (FSAA). UP also noted that neither the 1970 passage of the FRSA nor the 1994 recodification of the federal railroad safety laws changed the preemptive effect of the LBIA or the FSAA. The AAR observed that it is well settled that the federal railroad safety laws and regulations governing locomotive parts and appurtenances and safety appliances preempt the field and foreclose any state regulation thereof.

Several commenters expressed concern over having to comply with State standards. The Austin and Texas Central Railroad expressed concern that this section, as written, would allow states to hold steam locomotive owners and/or operators to different and possibly conflicting standards. Diversified Rail Services commented that allowing state regulation could impose unreasonable financial burdens and result in locomotive owners and/or operators having to comply with conflicting state and federal standards. Grand Canyon Railway opined that allowing the States to regulate steam locomotives was undesirable, would be disruptive to operations and severely burdensome on steam locomotive owners and/or operators forced to comply with conflicting, inconsistent state and federal regulations. The Michigan State Trust for Railway Preservation, Inc. commented that state regulation of standard gauge steam locomotives would impede interstate travel by steam locomotives. The Michigan State Trust also stated that the preemption language which tracked that of the Federal Railroad Safety Act

should be deleted. The NBBPVI was concerned that, under the proposed rule, states and local authorities could apply more stringent rules, thereby conflicting with the goal of establishing national steam locomotive standards. North Star Rail stated that the wording of the preemption section should be consistent with the language of other rules such as the Track Standards Rule. Ohio Central Railroad System's comment was that the preemption language as proposed should be stricken since there is no need to involve other authorities. St. Louis Steam Train Association commented that having to follow more than one set of rules and regulations invites misinterpretation and confusion over which rules apply. Tennessee Valley Railroad observed that it has had firsthand experience dealing with state boiler inspectors. Tennessee Valley Railroad further noted that in its experience, the state boiler inspectors had applied the state boiler code provisions—with methodology and inspection methods designed for stationary boilers—to steam locomotives, resulting in steam locomotive owners and/or operators being required to make repairs which were in conflict with FRA's repair requirements. The TRAIN organization commented that it was concerned that the preemption language in the proposed rule would allow the states to come in and create problems for tourist railroad owners and/or operators.

Although the preemption issue was discussed, the task force decided not to issue any recommendation, believing that preemption is a purely legal issue involving the interplay of state and federal law: an area in which the task force has no particular expertise. FRA recognizes the concerns raised by the commenters and acknowledges that the LBIA has been consistently interpreted for over 70 years as totally preempting the field of locomotive safety, extending to the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof.

The proposed rule cited the standard for preemption under the former FRSA (now codified at 49 U.S.C. 20106). That standard allows additional or more stringent State regulations, under certain limited conditions, even where FRA has issued a rule or order covering a subject matter. By contrast, the LBIA (which has no preemption provision) has been held to preempt the entire field of locomotive safety. See *Napier v. Atlantic Coast R.R.*, 272 U.S. 605 (1926).

This rule is issued under the authority of both § 20103 (the former FRSA regulatory provision) and §§ 20701–

20703. While the preemption provision § 20103 would ordinarily set the standard for preemption of a rule issued under § 20701, the broader field preemption provided by the LBIA (as interpreted by the courts) seems the more appropriate standard to apply in light of this rule's subject matter. Field preemption is not dependent upon agency action; it is statutory in nature.

However, any preemption issue is fundamentally a question of legislative intent. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299 (1988). Executive Order 13132 on Federalism instructs Federal agencies to construe statutes as preemptive only where there is an express preemption provision or clear evidence that Congress intended to preempt. FRA is not aware of any indication that, in enacting the LBIA, Congress intended to preempt State regulation of rail operations over which FRA (or its predecessor, the ICC) had never exercised jurisdiction. Insular tourist railroads are a type of rail operation that includes theme parks, narrow gage lines, railroad museums, and amusement park operations. FRA has not exercised jurisdiction over these operations and has no present intention of doing so in the future (as made clear in the revisions to part 209 as amended by Appendix A to this final rule). When first enacted, the LBIA applied only to "common carriers engaged in interstate commerce by rail." *Napier v. Atlantic Coast R.R.*, 272 U.S. 605 (1926). As amended by the Rail Safety Improvement Act of 1988 (Pub. L. No. 100–342), the LBIA now applies to railroads as defined in 49 U.S.C. 20102. The stated intent of that amendment was to make the LBIA applicable to any railroad covered by the FRSA. However, there is no indication that, in broadening the reach of the LBIA, Congress intended to broaden the LBIA's field preemption beyond the railroad operations covered by the LBIA before 1988. The early cases finding preemption of the locomotive safety field (*e.g.*, *Napier*), precede the 1988 amendments, and there is no record of any subsequent case applying field preemption to a railroad that would not have been covered by the LBIA before the 1988 amendments.

Even if, in 1988, Congress did intend to extend field preemption beyond common carriers engaged in interstate commerce, it is highly unlikely that it intended that preemption to extend beyond the universe of railroads over which FRA exercises jurisdiction. Presumably, Congress would have been quite explicit about preempting state action where Federal law has never been exercised.

Moreover, whether FRA could exercise safety jurisdiction over insular tourist railroads is an open question. While FRA has left open the possibility that it could someday assert such jurisdiction, the agency believes that a reasonable argument can be made that insular theme parks and amusement rides are not "railroads" within the meaning of 49 U.S.C. 20102, despite the breadth of that provision. Accordingly, it seems impossible to conclude, in the absence of clearly stated legislative intent, that Congress intended to preclude state regulation of operations where FRA has not exercised jurisdiction and where the very existence of that jurisdiction is open to debate.

Therefore, while FRA has stated in the rule text the general rule of field preemption in the area of locomotive safety, it has also stated its belief that Congress did not intend such preemption to apply to insular tourist railroads over which FRA has not exercised jurisdiction. This will not result in conflict with State rules and regulations because it allows for State regulation only with regard to those operations not covered by this rule.

Section 230.6 Waivers

In the NPRM, FRA proposed nullifying all waivers granted under part 230 of the 1978 revisions that are not filed for reassessment by the agency. Waivers so filed would be reviewed by FRA which would then notify the applicants whether their waivers were to be continued. Grand Canyon Railway and North Star Rail each submitted comments urging FRA to establish a position at the national level charged with the oversight of steam locomotive regulation to include addressing petitions, granting waivers, and receiving notifications of repairs performed. In considering the comments submitted, several task force members noted that since FRA would be enforcing the steam locomotive regulations on a national basis, there should be no issue of inconsistent or conflicting application of the rules. Although the task force felt that there was no need for FRA to establish an office of "national steam inspector", no recommendation was issued because the task force members felt this issue was primarily a matter of internal agency policy. After review of the comments received and the task force's discussion of this issue, FRA has decided that there is no need for the agency to create an office at the national level to consider petitions, waiver requests, and repair requests and notifications. FRA believes that the present system, whereby each

FRA Regional Administrator oversees the compliance of steam locomotives operating in his or her region with federal requirements, and all requests for waivers of compliance with the regulations are filed centrally with FRA in Washington DC, has resulted in uniform, consistent regulation of steam locomotive operations.

Section 230.7 Responsibility for Compliance

In § 230.8 in the NPRM, FRA is holding the locomotive owner and/or operator directly and primarily responsible for ensuring that all requirements of part 230 are complied with. Diversified Rail Services commented that contractors should also be held responsible under this section. Grand Canyon Railway commented that, in addition to owners, operators, and railroads, contractors should be held responsible for work they perform covered by this regulation. St. Louis Steam Train Association commented that responsibility should extend to the steam locomotive owner and/or compensated consultants and contractors. After a discussion in which it was pointed out that the rule as written requires that any person or persons performing covered work act in compliance with part 230, the task force reached consensus, recommending that this section be left as written in the NPRM. It was also noted that the definition of "person" in § 230.9 expressly includes contractors and their employees.

Section 230.8 Definitions

In § 230.9 in the NPRM, FRA proposed to add or amend 25 definitions. A number of these proposed definitions produced comments from interested parties.

FIRE: The NPRM did not provide a definition for the term "fire" and Tennessee Valley Railroad commented that "fire" should be defined so as to eliminate any ambiguity and to help determine what a "service day" is.

Although initially there was disagreement over the need to define the term "fire," the task force did finally agree that the term should be defined since it is used in the definition of "service day" which is one of the central underpinnings of the new rule. The task force reached consensus on a proposal to define "fire" as "anything that produces products of combustion that heat transferring components are exposed to." FRA agrees with this recommendation and has included the definition of "fire" in the final rule.

FRA believes the inclusion of a definition of "fire" will help to clarify

what a "service day" is. It is important that the definition of "service day" be unambiguous, which in turn necessitates that there be no uncertainty over what is a "fire" since the periodic inspection requirements in the final rule are predicated upon accrual of service days, the definition of which refers to those days where there is "fire" in the locomotive firebox.

Heavy Repairs. Although § 230.106(a) of the NPRM mentions "heavy repairs," the term is not defined anywhere in the rule. Grand Canyon Railway commented that the term "heavy repairs" was mentioned in the NPRM and, therefore, should be defined.

The task force was in agreement that there was no need to define "heavy repairs" since the term was only used once in the text of the rule. The consensus was to recommend that the language of § 230.106 be changed, substituting "as often as needed" for "each time the steam locomotive is in shop for heavy repairs."

Upon consideration of the comments and the task force recommendation, FRA has decided to strike the words "heavy repairs" from the final rule. The agency has done so, in the belief that requiring that locomotive frames be cleaned "as needed" is more consistent with the "safe and suitable for service" requirement used in the inspection criteria adopted in the final rule.

Operator/Owner. The NPRM defined Locomotive Operator so as to distinguish between locomotive operators and locomotive owners. Grand Canyon Railway commented that the definition of "operator" needs to be written so that the lines of accountability and responsibility are clearly delineated. Grand Canyon expressed concern over the growing incidence of steam locomotive operators who lease the locomotives from their owners, and the need to define the operators' accountability and areas of responsibility. Grand Canyon Railway also commented that "owner" should be defined in terms of who is responsible or assigned responsibility for compliance with applicable rules and regulations of the NPRM. Grand Canyon expressed concern over what the accountability and responsibility of owners is when their steam locomotives are not under their direct control, such as when the locomotives are being leased by independent operators.

The task force reached consensus, agreeing that the definitions of "locomotive owner" and "locomotive operator" provided in § 230.9 adequately address the issue of responsibility for compliance with all applicable rules and regulations. The

task force also felt that "locomotive operator," as defined, addresses the issue of who is primarily responsible for compliance in lease arrangements. FRA has reviewed the comments submitted and recognizes the concerns raised, but believes that the definitions provided in the NPRM adequately address those concerns. The agency has, therefore, decided that the final rule will adopt the definitions for locomotive owner and locomotive operator provided in the NPRM. However, it is to be noted that the final rule includes language making clear that an "operator" may in fact be a railroad.

Service Day. In the NPRM, FRA proposed an inspection schedule based on the number of service days a steam locomotive accumulates, with a service day defined as each day the steam locomotive boiler has steam pressure above atmospheric pressure and a fire in the firebox. John C. Boykin commented that the rule, as proposed, would promote over rapid cooling of locomotive boilers. Mr. Boykin suggested that a "service day" be any day where the steam locomotive boiler pressure is raised to a minimum of 50 percent of allowable working pressure. Diversified Rail Services commented that "service day" should be defined as a day where the locomotive is available for service, a day the locomotive moves away from a designated shop area under its own power. Diversified Rail Services also suggested that the definition of "service day" exclude those days where steam pressure is not raised or where steam tests are being performed within a designated shop area and include any day on which the locomotive has a fire in the fire box. In addition, Diversified Rail Services took issue with the statement that dumping a fire and damping is less dangerous than banking a fire. The Locomotive and Tower Preservation Fund, LTD commented that, since a slow cool down process imposes the least strain on a steam locomotive boiler, those days on which steam pressure is properly raised or the boiler is properly cooled down should not be considered service days. The Ohio Central Railroad commented that "service days" should be defined as those days the locomotive is used in revenue service with an assigned crew; requested clarification on whether a "service day" would include those days where: (1) a new or repaired locomotive was steam test-fired; (2) a locomotive had dying coal embers and was slowing losing steam pressure. Ohio Central also stated that the method of drawing fire from the firebox proposed in the NPRM would subject steam locomotive

ashpans and associated components to abuse. The St. Louis Steam Train Association commented that days when a steam locomotive is steamed up in a shop area for maintenance purposes should not be counted as service days. Finally, the Tennessee Valley Railroad commented that a requirement that a steam locomotive boiler stack be capped when banking its fire in order to qualify as a non-service day would be helpful.

The task force reached consensus on this issue, recommending that the definition of "service day" remain unchanged. One task force member commented that capping the stack as proposed by several of the commenters is actually a non-issue, since a steam locomotive is subjected to much higher thermal stresses in its everyday operations where a continuous stream of cool outside air is introduced into the firebox.

FRA has decided to retain the definition of "service day" provided in the NPRM in the final rule. The agency believes this is the most equitable way to calculate service days; balancing the need to take into account the realities of steam locomotive operations today with the need to ensure that steam locomotives are inspected on a timely basis.

Section 230.12 Movement of Non-Complying Locomotives

In the NPRM, FRA proposed making part 230 current with part 229 by allowing steam locomotive owners and/or operators to move "lite" or in tow, noncomplying steam locomotives for repair purposes after making the determination that the noncomplying steam locomotive was safe to so move. Grand Canyon Railway commented that this section should include a provision that the requirement that the steam locomotive be tagged as "non-complying" does not apply when such moves are made in yard areas and restricted to 10 miles per hour maximum speed. Grand Canyon Railway also suggested that this section include a requirement that the steam locomotive initials must be written on the non-complying tag in addition to the locomotive number. Tennessee Valley Railroad commented that, when referring to the movement of steam locomotives without railroad cars coupled on, the term "lite engines" should be spelled "light engine."

The task force agreed that this section should conform with the provisions for movement of non-complying locomotives found in part 229. Task force consensus was that FRA should revise this section to allow locomotive owners and/or operators to move non-

complying steam locomotives in yard areas at speeds not to exceed 10 miles per hour without having to tag the locomotives as non-complying. The task force was also in agreement that the spelling of "lite" engines would be retained so as to avoid confusion between "light" and "heavy" locomotives and because "lite" is the traditional (and uniformly recognized) spelling within the railroad industry.

FRA is revising the final rule to comport with the task force's recommendations. This revision is also based upon the agency's acknowledgment of the commenters' contention that there is no compelling reason for having different procedures for the movement of noncomplying steam and nonsteam locomotives.

Section 230.14 Thirty-One (31) Service Day Inspection

In the NPRM, FRA proposed requiring that certain inspections be performed when the steam locomotive accrued 31 service days. This section, which included subsections on (a) general inspection requirements, (b) FRA notification, and (c) the filing of inspection reports, generated a number of comments. A number of commenters expressed concern that under this section, as proposed, some steam locomotives would not be adequately inspected. There were also a number of comments submitted seeking clarification of the notification and scheduling of inspections procedures proposed in this section. Finally, comments were received on the requirement that locomotive owners and/or operators file a report of each steam locomotive's 31 service day inspection in the place where that steam locomotive is maintained and with the FRA Regional Administrator for that region. Diversified Rail Services commented that the boiler wash requirement is too "lax;" suggested that a 31 service day inspection and a boiler wash be required no later than every 92 calendar days, regardless of the number of service days the steam locomotive has accrued. The representatives of Grand Canyon Railway urged that steam locomotive owners and/or operators be required to perform 31 service day inspections no later than 92 calendar days after the last 31 service day inspection. Grand Canyon Railway also suggested that an inspection's effective date be the date the steam locomotive is placed in service and not the day upon which the steam locomotive's boiler is test fired. In addition, Grand Canyon Railway commented that this section should mandate that FRA inspectors may only request daily records during

normal business hours, with such records to be produced within 4 hours of a request to do so. In its comments, St. Louis Steam Train Association expressed the belief that the proposed 31 service day inspection must be performed no later than every 92 calendar days. Grand Canyon Railway requested clarification on how and when FRA will notify steam locomotive owners and/or operators of its desire to observe a 31 service day inspection. Grand Canyon Railway also commented that FRA inspectors desiring to attend a 31 service day inspection should be required to notify the steam locomotive owner and/or operator performing the inspection of their desire to so attend. Ohio Central Rail System suggested that this subsection include an explanation of how and within what prescribed time period FRA would respond to the notifications of inspection dates required under this section. Ohio Central Rail System also requested clarification on whether an inspection can take place as scheduled when the FRA delegate is unable to attend at the agreed upon time and the parties cannot reach agreement on another inspection date. Tennessee Valley Railroad also expressed concern about whether an inspection scheduled to be performed with an FRA inspector in attendance could be conducted as planned if the inspector failed to show at the agreed upon time and place. The United States Department of Interior commented that the inspection criteria should include the requirement that all water glasses are to be maintained free from leakage. Tennessee Valley Railroad commented that filing 31 service day inspection reports with FRA is unnecessary since the annual FRA Form No. 3 provides the agency with adequate notice that the steam locomotive is in service that year, and it suggested eliminating the filing requirement.

The task force members were in accord that—as clearly explained in this section—when FRA is unable to attend a scheduled inspection as agreed upon and FRA and the locomotive owner and/or operator are unable to agree upon a new date to perform the inspection, the inspection may go on as planned. The task force was also in agreement that when FRA desires to attend an inspection, it will convey that information to the steam locomotive owner and/or operator through generally accepted means of business communication. The issue of boiler washes and the effects of long-term water storage of water on the steam locomotive boiler were discussed at length. The task force members agreed

that the concerns raised by the commenters were legitimate but, at the same time, addressed by the requirement that steam locomotive be inspected to determine safety and suitability for service each day. The task force believes that the “safe and suitable” requirement includes a duty on the part of the steam locomotive owner and/or operator to monitor water quality and the effects of water storage on the locomotive each day that it is offered for service. The task force members reached consensus on the issue of when and how 31 day inspection reports must be filed with FRA; agreeing that the agency’s desire to be furnished with written proof that required inspections have been performed was reasonable, especially in light of the fact that the paperwork burden imposed on owners and/or operators has been reduced by approximately 33 percent under the new rule. There was also agreement that the difference between alterations and repairs is explained in the definitions section of the proposed rule, and that the proposed rule clearly states when a FRA Form No. 19 must be filed with FRA. The task force also discussed the issue of when a steam locomotive is considered to be in service, reaching consensus that any day the locomotive has fire in the firebox and boiler pressure above atmosphere is a service day.

After weighing the concerns of the commenters and the recommendations of the task force, FRA has decided to leave this section unchanged in the final rule. The agency believes that the “safe and suitable for service” requirement, by implication, imposes a duty on all steam locomotive owners and/or operators to ensure that water quality and water storage do not have a detrimental effect on the steam locomotive. The agency also believes that, as written, this rule clearly explains how notification and rescheduling of inspections is to be done and how inspections will go on as originally scheduled if FRA is unable to attend as scheduled and is unable to reach agreement with the locomotive owner and/or operator as to an alternative date on which to conduct the inspection. On the issue of “service days,” no evidence has been produced to show that FRA is not justified in its conviction that every day that a steam locomotive has fire in the firebox and steam pressure raised to above atmospheric pressure must be counted as a service day. As previously explained, FRA believes that the stresses and wear imposed on a steam

locomotive every time it has fire in the “box” and raised steam pressure necessitate such days being counted as service days. FRA also believes that the requirement of timely filing of inspection reports is justified by its need to have up-to-date proof that all steam locomotives currently in use are being inspected as required.

Section 230.15 Ninety-two (92) Service Day Inspection

In this section of the NPRM, FRA proposed requiring certain inspections be performed when the steam locomotive has accrued 92 service days with the steam locomotive owner and/or operator required to file an inspection report with the appropriate Regional Administrator. The agency received a number of comments regarding the (a) general inspection requirements, and (b) filing on 92 service day inspection reports. A number of commenters expressed concern that under this section as proposed, some steam locomotives would not be adequately inspected. Comments were also received regarding the requirement that locomotive owners and/or operators keep a report of each steam locomotive’s 92 service day inspection on file in the place where that steam locomotive is maintained and with the FRA Regional Administrator for that region. Grand Canyon Railway noted that under this rule, certain operations (such as those who run on weekends only) could go as long as 12 consecutive months without having a 31 day or 92 day inspection performed. Grand Canyon Railway also sought clarification on what the effective date of an inspection is; suggested that a 92 service day inspection’s effective date be the day the steam locomotive is placed in service and not the day upon which the steam locomotive’s boiler is test fired following a repair or rebuild. Tennessee Valley Railroad commented that filing 92 service day inspection reports with FRA is unnecessary since the annual FRA Form No. 3 provides the agency with adequate notice that the steam locomotive is in service that year, and it suggested eliminating the filing requirement.

The task force believes that the “safe and suitable” requirement includes a duty on the part of the steam locomotive owner and/or operator to inspect and monitor the locomotive each day that it is offered for service. The task force members agreed that the agency’s desire to be furnished with written proof that 92 service day inspections have been performed was reasonable considering the safety issues implicated, especially in light of the greatly reduced

paperwork burden imposed on owners and/or operators under the new rule.

FRA has also decided to leave this section unchanged in the final rule. As previously stated, the agency believes that the "safe and suitable for service" requirement, by implication, imposes a duty on all steam locomotive owners and/or operators to ensure that water quality and water storage do not have a detrimental effect on the steam locomotive. Also previously stated, FRA believes that no evidence has been produced to show why every day that a steam locomotive has fire in the firebox and steam pressure raised to above atmospheric pressure should not be counted as a service day. As previously explained, FRA believes that the stresses and wear imposed on a steam locomotive every time it has fire in the "box" and raised steam pressure necessitate such days being counted as service days. FRA also believes that the requirement of timely filing of inspection reports is justified by its need to have up-to-date proof that all steam locomotives currently in use are being inspected as required.

Section 230.16 Annual Inspection

FRA has proposed requiring that an annual inspection be performed 368 calendar days after the last (previous) annual inspection, with the steam locomotive owner and/or operator required to notify FRA of the time and place of the inspection and to file an inspection report with the appropriate FRA Regional Administrator. A number of interested parties submitted comments on subsections (a)(1) general requirements, subsection (b) FRA notification, and subsection (c) filing inspection reports. Ohio Central Rail System requested clarification on whether an inspection can take place as scheduled when the FRA delegate is unable to attend at the agreed upon time and the parties cannot reach agreement on another inspection date. The United States Department of the Interior (USDI) stated its belief that annual inspections are only needed on steam locomotives that have dome throttles or shut-off valves at the dome end of the dry pipe. USDI also recommended requiring that annual inspections be performed each year for the first 2 years a steam locomotive is in service, with the provision that if no wastage was found at that time, any further annual inspections could be deferred until the 1472 service day inspection. Tennessee Valley Railroad commented that the requirement that annual reports be filed with FRA should be eliminated.

As previously explained, the task force members believe that the rule

clearly states that when FRA is unable to attend a scheduled inspection as agreed upon and FRA and the locomotive owner and/or operator are unable to agree upon a new date to perform the inspection, the inspection may go on as planned. The task force was also in agreement that the proposed annual inspection requirements are not "overkill", and that safety considerations justify any "burden" imposed on the owners and/or operators under this section.

Here too, FRA has decided to leave this section unchanged in the final rule, believing that the "safe and suitable for service" requirement, by implication, imposes a duty on all steam locomotive owners and/or operators to ensure that water quality and water storage do not have a detrimental effect on the steam locomotive. FRA also believes that the inspection and filing requirements are justified by the safety concerns implicated, especially in light of the reduced compliance "burden" imposed on locomotive owners and/or operators under the final rule.

Section 230.17 One Thousand Four Hundred and Seventy-Two (1472) Service Day Inspection

In the NPRM, FRA proposed an extremely comprehensive inspection which is to be performed when a steam locomotive is first brought out of retirement and thereafter when 1,472 service days have accrued or 15 years have elapsed from the time of the last such inspection (whichever comes first). The agency received several comments on the general inspection requirements. Grand Canyon Railway requested clarification on what the effective date of an inspection is; suggested that a 1472 service day/15 year inspection's effective date be the day the steam locomotive is placed in service and not the day upon which the steam locomotive's boiler is test fired following a repair or rebuild. St. Louis Steam Train Association expressed the belief that protection needs to be provided for owners and/or operators who perform the work required under the 1472 service day inspection, but who otherwise may have to repeat some of that work because the requisite reports were not filed in a timely manner.

Because most steam locomotives accrue relatively few service days in the space of a year, the task force concentrated on the issue of when the 15 year period [maximum time between 1472 service day inspections] would begin to run. After a lengthy discussion, the task force was able to reach a consensus, recommending that the 15

year "clock" start on the day a steam locomotive is placed in service or 365 calendar days after the first flue tube is installed, whichever comes first.

FRA is adopting the task force recommendation that the 15 year clock start running on the day the steam locomotive is placed in service or 365 calendar days after the first flue tube is installed, whichever comes first. The agency recognizes that many steam locomotive restorations are done on by "part-timers," primarily volunteers who are only able to work on the locomotives on weekends. Because of the complexity of the task and the sheer number of manhours required to restore such a locomotive, restoration can literally take years; often times with the locomotive sitting outside, continuously exposed to inclement weather. In such situations, corrosion is a primary safety concern; especially so after the flue tube installation begins, since at that point it is no longer possible to do a visual and tactile inspection of the entire boiler surface. After considering all the factors involved, FRA has decided to impose a 15 year "drop-dead" limit on the length of time after the steam locomotive is placed in service or first flue tube is installed (whichever occurs first) that a steam locomotive can go before a 1472 service day inspection must be performed.

Section 230.18 Recordkeeping Requirements (Service Days)

Under this section, steam locomotive owners and/or operators are required to (a) keep and have available for inspection, a current copy of the service day record for each steam locomotive currently in service, (b) file a FRA Form No. 5 no later than January 31st of each year showing the days the steam locomotive was in service during the preceding year, and (c) complete all the requirements of the 1472 service day inspection before that locomotive can be returned to service, if the required service day reports are not filed for a steam locomotive and FRA considers that steam locomotive to have been retired. Diversified Rail Services, Inc. commented that this section needs to take into account certain out-of-service and/or ownership conditions. Diversified Rail suggested that a steam locomotive should be considered retired only if the locomotive owner and/or operator failed to file a service day report with FRA within 2 years of the last filing of a service day report.

The task force agreed that the 31 calendar day "grace period" provided for under the rule is sufficient given FRA's need for timely proof that all steam locomotives currently in service

were properly inspected and maintained during the preceding year. The task force was also in agreement that the Preamble should explain that FRA recognizes that exigent circumstances may arise which make it difficult for an owner and/or operator to furnish the FRA Form No. 5 in a timely manner. The task force also recommended that FRA not be totally inflexible in enforcing this section.

FRA believes the recordkeeping and filing requirements proposed in the NPRM are reasonable and, therefore, has incorporated them in the final rule. The agency also realizes that a 1472 service day inspection is a very time-consuming, costly procedure and that, under certain circumstances, locomotive owners and/or operators may be unable to file a FRA Form No. 5 within the prescribed time. As such, FRA will consider those claims that failure to timely file was due to compelling circumstances on a case-by-case basis.

Section 230.20 Alteration and Repair Report for Steam Locomotive Boilers

In § 230.20 of the NPRM, FRA proposed that steam locomotive owners and/or operators who make alterations to steam locomotive boilers be required to file alteration reports with the appropriate FRA Regional Administrator. This section would also require the filing of repair reports with the FRA Regional Administrator whenever steam locomotive owners and/or operators perform either welded or riveted repairs to unstayed parts of locomotive boilers, and the completion and maintenance of repair reports when welded or riveted repairs are performed on stayed parts of locomotive boilers. A number of interested parties submitted comments on subsections (a) Alterations; subsection (b) Welded and riveted repairs to unstayed locomotive boiler portions; and subsection (c) Welded and riveted repairs to stayed portions of the locomotive boiler. Diversified Rail Services commented that locomotive owners and/or operators performing welded repairs on stayed areas should only be required to maintain records of those repairs. Grand Canyon Railway commented that locomotive owners and/or operators should be required to maintain—but not file with FRA—records of standard repairs such as welding or repairing staybolts. Grand Canyon Railway also suggested that FRA should establish the position of National Steam Inspector with responsibility for handling waivers, petitions, repair acceptance notifications, and alteration/repair reports. Ohio Central Railroad System requested clarification on when FRA

Form No. 19s must be filed. The St. Louis Steam Train Association commented that reports on steam locomotive boiler work should continue to be maintained and FRA Form No. 19s filed when locomotive boilers are altered. St. Louis Steam Train Association also commented that when a locomotive boiler is repaired, the form used to report the repair should not require the calculation of stress levels.

The task force reached consensus on this issue, agreeing that the present system (whereby FRA Regional Administrators provide oversight of steam locomotives operating within their respective regions) is efficient and does result in uniform application of the regulations. Concern was expressed that creation of a national steam inspector would result in one more layer of bureaucracy, and that the person filling that position would be overburdened and unable to provide proper oversight over the regulated community as a whole. It was also felt that there is no issue of local vs. national standards since the FRA Regional Administrators already send alteration and repair reports and other documentation to FRA's Office of Safety as conditions warrant. The task force was also in agreement that the rule as written clearly explains that owners or operators performing welded or riveted repairs on stayed portions of steam locomotive boilers are only required to complete and maintain a FRA Form No. 19 record of the work done. It was noted that Form 19s need to be filed with FRA whenever alterations are performed in order to satisfy the requirement that a current FRA Form No. 4 be on file with FRA at all times for each steam locomotive in service.

FRA agrees with the task force recommendations and observations; also believing that creation of another level of oversight would provide little or no additional safety benefit while needlessly straining the agency's already limited resources. Since the agency believes that the present system of reporting and filing is efficient and not unduly burdensome to locomotive owners and/or operators, this section of the final rule remains unchanged from that of the NPRM.

Section 230.23 Responsibility for General Construction and Safe Working Pressure

Section 230.23 sets out what the specific responsibilities of the steam locomotive owner and the steam locomotive operator are. Grand Canyon Railway submitted comments in which it objected to what it considered to be FRA's lack of consistency in the use of

the terms "locomotive owner" and "locomotive operator", stated the belief that all reference should be to "owners or operators." Grand Canyon Railway further commented that the regulation should specify that responsibility for construction of and repairs to a steam locomotive lies with whoever is delegated responsibility for that locomotive. The task force discussed this issue, but felt that it involves legal matters best left to FRA's Office of Chief Counsel. The consensus was to make no recommendations; deferring to the agency's interpretation on this issue.

FRA believes that, in most cases, the responsibility for compliance will fall equally on the owner and the operator of the steam locomotive, and, in these cases, the agency has chosen to use the words "owner and/or operator" in the final rule. However, the agency also believes that in certain limited situations, the responsibility for compliance will lie with either the steam locomotive owner (such as when a steam locomotive is being rebuilt or brought out of retirement), or the steam locomotive operator (such as where a steam locomotive breaks down while in actual use). In these cases FRA has used the words "owner or operator" in the final rule.

Section 230.25 Maximum Allowable Stress on Stays and Braces

This section sets the maximum allowable stress per square inch of net cross-sectional area on firebox and combustion chamber stays and braces. The Tennessee Valley Railroad commented that the maximum allowable stress levels should be presented as a percentage of the ultimate tensile strength of the material used in the braces and stays. Tennessee Valley Railroad believes that so doing would encourage steam locomotive owners and/or operators to make use of the higher strength steels now available. Tennessee Valley Railroad also noted that the ATSM requirements for some of the older materials are no longer available. The task force was in agreement that the maximum allowable stresses should continue to be based on the psi ratings provided. In the discussion on this issue, it was pointed out that steam locomotives were designed and built as integral units with stress levels calculated based on the locomotives in whole. Several members of the task force observed that it is not good engineering practice to use a combination of materials of different composition and strengths in an interdependent structure like a locomotive. It was also noted that changing the rule as suggested would

result in little or no advantage over the present standard since there are few, if any, new steam locomotive boilers being built. FRA agrees with the task force's observations and is leaving this section unchanged in the final rule. The agency believes that allowing stays and braces made of higher strength steels to be subjected to higher stress levels could result in damage to or even failure of surrounding sections that are not made of correspondingly high strength materials.

Section 230.26 Tensile Strength of Shell Plates

This section establishes a default tensile strength figure to be used for steel or wrought iron shell plates when the actual figure is unknown. Tennessee Valley Railroad submitted comments on this issue, urging that the final rule recognize the advances in materials available today and take those advances into account when publishing ductility and/or tensile/shearing strength standards. Tennessee Valley Railroad also suggested that the words "for pre-existing boilers" be inserted after "wrought-iron shell plates."

The task force members disagreed with Tennessee Valley's comments; recommending instead that the final rule retain the language in the NPRM. It was observed that this was essentially a non-issue since the default standard is only intended to pertain to materials the tensile strength of which is unknown and the tensile strength of present day steels is known or easily determinable. The task force believes that these standards are only intended to apply to the maintenance of existing equipment.

This section of the final rule is unchanged from the NPRM. After reviewing the comments and the task force's recommendation, FRA decided that the safety benefits of establishing maximum tensile strength values for shell plates made of steel or wrought-iron, the strength of which cannot be ascertained, outweighs any inconvenience or burden placed upon locomotive owners and/or operators.

Section 230.27 Maximum Shearing Strength of Rivets

This section establishes a default tensile strength figure to be used for steel or wrought iron shell plates when the actual figure is unknown. The Tennessee Valley Railroad submitted the only comments on this issue, stating that the maximum shearing strength values for rivets should be presented as a percentage of the ultimate tensile strength of the material the rivets are made from since this would encourage steam locomotive owners and/or

operators to utilize the higher strength steels now available. Tennessee Valley Railroad also requested clarification on what the basis was for the maximum shearing strength values published and recommended that the final rule include the actual basis for the published values.

The task force reached consensus, agreeing that the maximum shearing strength of rivets used in steam locomotives should continue to be calculated based on values listed in the table unless the rivets are made from other materials: materials that have been proven through testing to exceed those levels. It was noted that the psi levels provided in the table were based on many years of actual operating experience.

FRA is in concurrence with the task force recommendations and is adopting them in the final rule. The agency believes that the conservative shearing strength values provided in the table provide a margin of safety in an area where failure could result in extensive damage to the equipment and serious injury or loss of life.

Section 230.28 Higher Shearing Strength of Rivets

In this section, FRA proposed allowing steam locomotive owners and/or operators to use a higher shearing strength for rivets when tests of the material used show it to be of such quality as to justify so doing. Tennessee Valley Railroad commented that this section is no longer needed since the appropriate ASTM or ASME specifications were referenced in previous sections. In the alternative, Tennessee Valley Railroad recommended that current ASTM standards be used as the basis for higher strength values in lieu of requiring that the materials used be strength tested.

The task force disagreed with Tennessee Valley Railroad; recommending instead that the maximum shearing strength of rivets used in steam locomotives continue to be calculated based on values validated through empirical evidence unless the rivets are composed of materials that have been proven through testing to exceed the levels provided.

Here too, FRA is in concurrence with the task force recommendations and is adopting them in the final rule. The agency believes that limiting the assignment of higher strength values to those materials that have been conclusively proven to have shearing strengths in excess of the table values provides the necessary margin of safety in an area where failure could result in

extensive property damages, as well as serious injury or loss of life.

Section 230.32 Time and Method of Inspection

Subsection 230.32(a) imposes a requirement that the entire steam locomotive boiler be inspected when a 1472 service day inspection is performed. Tennessee Valley Railroad took exception to the proposed inspection requirements; commenting that these provisions would create unnecessary work and inflict needless stress and wear on dome lid studs and seal rings.

After due consideration of the comments submitted, the task force decided to recommend that the criteria for performing a 1472 service day inspection remain unchanged from the NPRM. Several members of the task force noted that the inspection procedure referred to by the Tennessee Valley Railroad is only required after 1,472 service days have accrued or 15 years have elapsed and, considering the minimal burden imposed on locomotive owners and/or operators and the safety benefits gained, the criteria for the 1472 service day inspection should be retained.

FRA is retaining the 1472 service day inspection methods prescribed in the NPRM. The agency remains convinced that, in light of the age of the steam locomotive community, and the potential danger posed by boiler explosions and other catastrophic failures, any burden imposed on locomotive owners and/or operators by requiring a comprehensive, hands on inspection be performed once every 1472 service days or 15 calendar years (whichever occurs first) is reasonable.

Section 230.33 Welded Repairs and Alterations

This section of the NPRM generated a number of comments. Several commenters took exception to subsection (a), which imposes reporting requirements on steam locomotive owners and/or operators welding on unstayed portions of the locomotive boiler, and subsection (d), which provides that steam locomotive owners and/or operators must submit a written request for approval to FRA before installing flush patches on unstayed boiler portions. Diversified Rail Services commented that steam locomotive owners and/or operators that perform welded repairs on stayed portions of the locomotive boiler should be required to maintain records of those reports but not be required to file FRA Form No. 19s with FRA. Grand Canyon Railway submitted similar comments, urging that

FRA only require that such reports or FRA Form No. 19s be kept by the steam locomotive owner and/or operator's chief mechanical officer or at the site where the work was performed. Tennessee Valley Railroad requested clarification on what FRA considers a "repair" and on whether FRA considers a "flush patch" to be a "repair." Tennessee Valley Railroad also questioned whether FRA would consider a partial boiler course replacement to be a repair.

The task force members agreed that a partial boiler course replacement should be considered a flush patch if it is applied by welding. There was also agreement that § 230.33(d) steam locomotive owners and/or operators installing welded flush patches on unstayed portions of the locomotive boiler are required to submit a written request for approval by FRA prior to performing such work and to file a FRA Form No. 19 with FRA as per § 230.20(a) of the rule after the work is completed. The task force also noted that § 230.9 of the rule explains that any restoration work is considered a "repair" while "alterations" are defined as "any changes to the boiler affecting its pressure retention capability." Addressing the comments urging that the proposed filing requirements be deleted from the final rule, it was noted that, in light of the fact that FRA is allowing the use of relatively new methods of repair not previously applied to steam locomotives, these filing requirements are not onerous. It was also observed that in the past FRA had required that such patches be riveted, a much more expensive method of repair than welding.

FRA believes that the reporting and filing requirements in this section are justified. The agency believes that, considering the critical nature of such work and the importance that it be done properly, requiring owners and/or operators to obtain FRA approval before performing this type of work on a locomotive boiler and to file a report with FRA after completing said work is not unreasonable.

Section 230.34 Riveted Repairs and Alterations

Subsections (a)–(c) impose reporting requirements on steam locomotive owners and/or operators performing riveted alterations or repairs on stayed and/or unstayed portions of the locomotive boiler. Grand Canyon Railway commented that the rule should only require that such reports or FRA Form No. 19s be kept by the steam locomotive owner and/or operator's

chief mechanical officer or at the site where the work was performed.

The task force recommended that the reporting requirements be retained. The task force members expressed the belief that FRA oversight will ensure that riveted repairs are made in compliance with established railroad practices and/or accepted national standards for boiler repairs.

FRA is retaining the requirements of this section in the final rule. The agency believes that it is essential that it have the right to review all proposed riveted alterations on unstayed boiler portions since any such work, in changing the boiler's pressure retention capability, may have a major impact on the locomotive's structural integrity.

Section 230.36 Hydrostatic Testing of Boilers

Subsection (b) explains how steam locomotive owners and/or operators will perform a hydrostatic test on their locomotive boilers, and subsection (c) sets forth the requirement that steam locomotive owners and/or operators conduct an internal inspection of the locomotive boiler after every hydrostatic test conducted above MAWP. Several steam railroads objected to those parts of § 230.36. Grand Canyon Railway commented that performing a hydrostatic pressure test on a boiler with a metal temperature of 60° F could result in the boiler metal be shocked/stressed, further commented that the minimum boiler temperature should be 70° F whenever a steam locomotive boiler is subjected to hydrostatic pressure, and the minimum temperature should be 120° F whenever the locomotive boiler is subjected to hydrostatic pressure at or above maximum authorized working pressure (MAWP). Grand Canyon Railway also commented that all hydrostatic testing should be done at 125 percent of MAWP. Tennessee Valley Railroad commented that the annual boiler inspection required under § 230.32(a) is sufficient to detect wear. Tennessee Valley Railroad further commented that such an inspection requirement is not in conformity with industry practice; results in unnecessary work being done; and inflicts needless stress and wear on dome lids, studs, and seal rings.

Upon consideration of the comments received, the task force agreed that a minimum boiler metal temperature of 60° F consensus was probably too low; deciding to recommend that the required minimum metal temperature to be raised to 70° F. One task force member stated that it is extremely important that boiler metal temperature be above 45°–50° F before such testing

is done. Another member observed that there are a number of easy, inexpensive methods available for supplying heated fill water. It was also noted that the ASME has raised its recommended minimum metal temperature to 70° F. The task force agreed that raising the minimum temperature required to 70° F was in keeping with industry trends and would provide an extra margin of safety when performing hydrostatic tests. However, the task force did not agree with the comments urging that the minimum boiler metal temperature for performing hydrostatic tests at or above MAWP be raised to 120° F. The task force members believe that the maximum boiler metal temperature should remain at 120° F because boiler metal heated to a temperature above 120° F could pose a substantial risk of injury to any personnel coming in direct contact with the steam locomotive. The task force noted that the rule already requires that hydrostatic testing is to be performed at 125 percent of MAWP. On the issue of boiler inspections, the task force was in agreement that requiring a boiler inspection after hydrostatic testing of the locomotive boiler is in keeping with industry safety practices and does not impose undue burdens on the owners and/or operators and that any stress and wear inflicted on dome lids, studs, seal rings etc. is justified.

FRA also agrees that the boiler metal temperature should be, at a minimum, 70° F before hydrostatic testing of the boiler is performed. The agency believes that raising the minimum metal temperature will reduce the risk of metal "shock" and stress which could lead to boiler failure. FRA does not agree with the comments urging that the boiler metal temperature be at least 120° F whenever hydrostatic testing is done at or above MAWP. The agency believes that the danger presented to people working around metal heated to such temperatures would outweigh any safety benefits gained. FRA agrees with the recommendation that hydrostatic testing be done at or above MAWP, but points out that the NPRM already specified that all hydrostatic testing must be done at 125 percent of MAWP.

Section 230.39 Broken Staybolts

This section establishes (a) a limit on the number of broken staybolts a steam locomotive can have and still remain in service; (b) when and how broken staybolts must be replaced; (c) what counts as a broken staybolt; and (d) what methods of closing telltale holes are prohibited. Subsections (a) and (d) generated comments. Diversified Rail Services commented that this section is repetitive and could be interpreted as

requiring a steam locomotive with a broken staybolt be operated in that condition for as long as 30 days. Grand Canyon Railway commented that this section should be deleted and replaced with the 1978 § 230.25 language. Grand Canyon Railway also commented that the rule should not contain a blanket prohibition on plugging telltale holes of leaking staybolts.

The task force considered the comments but disagreed with them, deciding to recommend that this section remain as written in the NPRM. It was observed that there were a number of compelling reasons for amending the rule and deleting § 230.25 of the 1978 standards. Among the reasons cited were the continuing aging of the steam locomotives in use in the United States today; the longer operating and inspection cycles of steam locomotives today; and the progressive nature of staybolt failures. It was observed that the failure of one staybolt puts significant additional pressure on the surrounding staybolts, leading to the possibility of a "cascade" or "domino" effect with each ensuing staybolt failure rapidly leading to yet another failure ultimately resulting in a catastrophic boiler failure. In addition, all members of the task force concurred that, while this section of the rule establishes that the maximum time a steam locomotive may be operated with broken staybolts is 30 days, it does not require owners and/or operators to run their steam locomotives for that period of time with broken staybolts. The task force was also in complete agreement that this section does not impose a total ban on the closing of telltale holes; it simply lists the prohibited methods for so doing.

FRA is leaving this section unchanged in the final rule. The agency believes that, in light of the safety concerns implicated, it is essential that steam locomotives not be allowed to operate with 2 or more broken staybolts within 24 inches of one another or with more than 4 broken staybolts at one time. FRA also believes that the rule does not prohibit the closing of telltale holes per se.

Section 230.40 Time and Method of Staybolt Testing

Subsection (a) establishes when staybolts are to be hammer tested and provides an exception for inaccessible staybolts; subsection (b) sets out the procedure to be followed when staybolts are hammer tested. Diversified Rail Services and Grand Canyon Railway both took exception to the procedures set forth in subsection (b). Diversified Rail Services commented that hammer testing of staybolts done with the

locomotive boiler under pressure is much more successful in detecting broken staybolts. Grand Canyon Railway suggested that the procedure for hammer testing staybolts be changed to a 3-step process starting at 50 percent MAWP, water temperature 70° F and incrementally increasing pressure and water temperature to 95 percent MAWP and water at 120° F. Grand Canyon Railway also recommended that the provision allowing testing of staybolts without water in the locomotive boiler be deleted; expressed the belief that such tests are highly inaccurate.

The task force reviewed the comments but disagreed with the commenters' conclusions: believing instead that this section simply prescribes the minimum testing criteria and should not be changed. Several task force members observed that steam locomotive owners and/or operators are free to make use of stricter testing methods if they believe the method prescribed is inadequate.

FRA's purpose, in writing this section, was to set forth minimum testing procedures. As such, FRA will not take exception to steam locomotive owners and/or operators using more comprehensive testing methods, provided the minimum testing requirements are met.

Section 230.51 Number and Location of Water Glasses and Gauge Cocks

This section provides that all steam locomotive boilers must be equipped with a minimum of 2 water glasses. John C. Boykin commented that the requirement for 2 water glasses is unreasonable and that there is no evidence that trycocks do not work as well.

The task force felt that the 2 water glass requirement was based on valid concerns and should remain. It was observed that 75 years of experience have shown that water glasses are more accurate and more reliable than trycocks. One task force member noted that the NTSB has recommended that each steam locomotive be equipped with 2 water glasses. Another task force member observed that the ASME Boiler Code § 1 has abolished the requirement for water gauge trycocks because of the high level of operator skill and experience required to operate properly and safely.

FRA concurs with the findings of the NTSB and the recommendations of the task force and is retaining the requirement that all steam locomotives be equipped with at least 2 water glasses in the final rule. FRA believes that this requirement will enhance safety since water glasses are more accurate and easier to use than water gauge trycocks.

Section 230.60 Time of Washing

This section of the NPRM generated a number of comments, most of which were in regards to subsection (a) Frequency of washing. The NBBPVI commented that the reference in the section-by-section analysis of § 230.60 to § 230.45 of the 1978 standards was inaccurate or incomplete. Grand Canyon Railway expressed concern that under this washing schedule, water could be left in steam locomotive boilers for more than 30 days at a time; commented that boiler washes should be performed at least once every 92 calendar days. Ohio Central Railroad System observed that a requirement that boilers be washed every 92 calendar days would be a lot better than the current regulation. Ohio Central Railroad System also noted that requiring that boiler washes be performed at least once every 92 calendar days would insure that sediment and other solids would remain soft enough to be easily flushed and would help to avoid a buildup of excess sediment in the locomotive boiler. Tennessee Valley Railroad commented that the rule needs to address the issue of steam locomotives being stored for long periods of time with water in the boiler; expressed concern about the situation where a steam locomotive owner and/or operator uses his or her steam locomotive less than 31 service days a day, under this section, in such a case, the locomotive boiler might only be washed once a year. Tennessee Valley Railroad also advocated requiring that locomotive boilers be washed at least once every 92 calendar days, expressing the belief that leaving standing water in a locomotive boiler is detrimental to the boiler: suspensions will settle out and create sludge while dissolved oxygen in the water may react with carbon components in the boiler metal.

The task force recommended that this section stay as written in the NPRM. It was noted that the concerns expressed by the commenters merited consideration but were, in fact, addressed under the daily inspection requirements. The task force believes that the requirement that the steam locomotive be inspected on a daily basis to ensure that it is safe and suitable for service includes a duty to test water quality and to ensure that water is not kept in boilers so long that it causes damage to the locomotive boiler and other parts and appurtenances.

FRA has decided to leave this section unchanged in the final rule. The agency believes that under the "safe and suitable for service" requirement, a duty is imposed on all steam locomotive

owners and/or operators to ensure that water quality and water storage are continuously monitored so as to not have a detrimental effect on the steam locomotive and all its parts and appurtenances.

Section 230.61 Arch Tubes, Water Bar Tubes, Circulators, and Thermic Siphons

In § 230.61 of the NPRM, FRA proposed that every time a steam locomotive boiler is washed (a) its arch tubes, water bar tubes, circulators, and thermic siphons be cleaned, washed, and inspected; and at every annual inspection that (b) defective arch tubes and/or water bar tubes be renewed, defective circulators and thermic siphons be renewed or repaired; and (c) arch bar tubes, water bar tubes, and circulators be examined through nondestructive means, with those found to have wall thickness reduced below required levels replaced or repaired. Diversified Rail Services commented that the rule should require that arch bar tubes be replaced every 1472 service day inspection. Diversified Rail also observed that removing the arch bar tubes would allow for a full inspection of all telltales and staybolts. Grand Canyon Railway commented that this section should specify that the locomotive owners and/or operators are responsible for compliance therewith. The NBBPVI commented that the reference in the section-by-section analysis of § 230.61 to § 230.45 of the 1978 standards was inaccurate or incomplete.

After careful consideration of Diversified Rail Services' comments and recommendations, the task force consensus was that adopting in the final rule the requirement that steam locomotive owners and/or operators perform an ultrasonic inspection of the arch tubes every time the boiler is washed and repair or replace those not safe and suitable for operation will adequately address those safety concerns raised. The task force believes that this is more prudent than an absolute requirement that arch tubes be replaced every 1472 service days since that could be interpreted as requiring replacement of the arch tubes only at that time. The task force then considered NBBPVI's comments, agreeing that the reference as cited in the section-by-section analysis was inaccurate and incomplete. The task force's recommendation was that the section-by-section analysis of § 230.61 be amended to include reference to §§ 230.14 and 230.46 of the 1978 Rule.

FRA believes that requiring that an ultrasonic inspection of the arch tubes

be performed every time the boiler is washed adequately addresses the issue of defective arch tubes, while, at the same time, taking into account the economic burdens imposed on steam locomotive owners and/or operators required to perform such inspections. The agency shares the concerns of the task force that a "blanket" requirement that arch tubes be replaced when the 1472 service day inspection is performed could be misinterpreted by owners and/or operators, leading to the mistaken belief that they were only required to replace arch tubes at that time.

Section 230.68 Speed Indicators

Under § 230.68, all steam locomotives that operate on the general system of railroad transportation at speeds in excess of 20 miles per hour are required to be equipped with speed indicators maintained to ensure accurate functioning. Grand Canyon Railway and Minnesota Transportation Museum commented that the speed indicator requirement should be the same as that for nonsteam locomotives (found at 49 CFR 229.117).

With the stipulation that the term "accurate functioning" be further explained, the task force members recommended that this section remain as written. The task force issued its recommendation in the belief that FRA can adequately address the issue of what it considers to be "accurate functioning" of the speed indicator in the preamble to the final rule.

Section 230.70 Safe Condition of Brake and Signal Equipment

This section establishes: (a) the criteria for performing a pre-departure inspection of a steam locomotive at the beginning of each day the locomotive is used; and (b) a requirement that each steam locomotive and/or locomotive tender be equipped with a clearly identified emergency brake valve. Grand Canyon Railway, commenting on subsection (a)(2)'s requirement that the steam locomotive air compressor or compressors be in condition to provide "an ample supply of air for the locomotive service intended," urged that the rule be rewritten to allow a steam locomotive to continue to operate as long as it is able to provide a safe level of air for the service the train is being operated in.

The task force took exception to Grand Canyon Railway's comments. After due consideration, the task force's recommendation to FRA was that the agency allow any steam locomotive equipped with 2 or more air compressors that experiences a

compressor failure while in service to complete that day's service, provided that the remaining air compressors on that locomotive are able to supply a safe level of air for the train's operation. However, the task force was adamant that, as per the requirements of the daily inspection, no steam locomotive be allowed to start a service day unless/ until all of the locomotive's air compressors are properly operating.

FRA believes that no steam locomotive should be allowed to begin service unless all of its air compressors are properly operating. The agency recognizes that locomotives do experience equipment failures while operating away from service facilities and, in such instances, will allow a steam locomotive suffering a compressor failure to finish its service for that day provided that a safe level of air for the service being performed is continuously maintained.

Section 230.71 Orifice Testing of Compressors

Section 230.71(b) of the NPRM referenced a published table which lists the compressors commonly used on steam locomotives. The compressor size of one of Westinghouse compressors is listed in the table as "150 HP 8½ CC" and another as "120 LP 8½ CC". Tennessee Valley Railroad commented that these compressors should be listed as "150 cfm" and "120 cfm" respectively. In the discussion of Tennessee Valley's comments, it was observed that at one time Westinghouse had used the terms "HP" and "LP" in rating its compressors' output.

The task force, agreeing in principle with Tennessee Valley Railroad, recommended that, for the sake of consistency and ease of compliance, the table rate all compressors in terms of cfm.

In the interests of consistency and ease of enforcement, FRA is changing the terminology for the aforementioned steam locomotive compressors to "150 cfm" and "120 cfm" respectively.

Section 230.72 Testing Main Reservoirs

This section establishes (a) how and when main reservoirs must be hammer and hydrostatically tested; (b) how and when main reservoirs may be drilled with telltale holes; (c) testing procedures for welded main reservoirs without longitudinal lap seams; and (d) testing procedures for welded or riveted main reservoirs with longitudinal lap seams. Tennessee Valley Railroad requested clarification on testing methods for welded main reservoirs, commented that the testing

requirements should be clarified, stated its belief that the rule should adopt the language of the diesel rule and that nondestructive testing of welded main reservoirs is unnecessary. The NBBPVI commented that the formula provided in subsection (c) for wall thickness values was missing a parens at the end.

The task force agreed that the language of the part of § 230.72 dealing with drilling of main reservoirs (part b) needs to be clarified. Since the intent of this part is to restrict drilling of main reservoirs to welded reservoirs built to a safety factor of 5, the task force recommended that the first word of § 230.72(b), "every" should be replaced with the term "only," thereby making clear that drilling is only allowed on main reservoirs meeting the specified criteria. There was also unanimous agreement that—given the potential for serious injury and death resulting from a main reservoir failure—there is a need for non-destructive testing of main reservoirs in order to determine when wall thicknesses become dangerously thin. The task force agreed with NBBPVI that the formula in section (c) for determining wall thickness is incorrect, recommending that another parenthesis be inserted to the right of the one following .6P, resulting in the correct formula of $t = [PR / (S - .6P)]$.

After review of the comments and the task force recommendations, FRA is making a small but significant change in the language of part (b): striking the first word "every" and replacing it with the restrictive term "only." The agency feels that this change will alleviate any confusion over when drilling of main reservoirs is allowed. FRA remains convinced that non-destructive testing of main reservoirs must be done on an annual basis in order to minimize the risk of a structural failure of a main reservoir under pressure.

Section 230.74 Time of Cleaning

Section 230.74 of the NPRM provides that all valves, related dirt collectors, and related filters shall be cleaned and tested as per accepted brake equipment manufacturer specifications or as often as necessary to maintain in a safe and suitable condition for service, with cleaning and testing required after 368 service days or at the time of the second annual inspection, whichever occurs first. Tennessee Valley Railroad commented that the wash dates are inconsistent, recommended that the rule allow owners and/or operators of steam locomotives equipped with diesel type air systems to adopt the washing and testing schedule of similarly equipped diesel locomotives.

The task force was in agreement that the cleaning and testing requirements should remain as written in the NPRM. It was observed that steam locomotives operate in a much "dirtier" environment than diesel-electric and electric locomotives. Several task force members pointed out that steam locomotives are continuously exposed to water, steam, smoke, ash, and coal dust; all of which have the potential of getting inside and "fouling" the airbrake system.

FRA remains firmly convinced that, because of the environmental conditions in which steam locomotives operate, the air brake system on these locomotives must be cleaned and tested no less frequently than after 368 service days accrue or during every second annual inspection, whichever comes first.

Section 230.75 Stenciling Dates of Testing and Cleaning

Section 230.75 requires that the date of testing and cleaning and the initials of the shop or station where the work was done be legibly stenciled on the tested parts or displayed under transparent cover in the steam locomotive cab. Grand Canyon Railway commented that the shop and/or station where the testing and cleaning was performed should be spelled out.

The task force agreed that this section of the rule should remain as written. Several task force members noted that this section merely sets the minimum stenciling requirement and owners and/or operators are free to stencil additional information if so desired.

FRA is leaving this section unchanged in the final rule. The agency will allow steam locomotive owners and/or operators to provide (stencil) additional, more detailed information provided the basic requirements of the final rule are met.

Section 230.82 Fire Doors and Mechanical Stokers

Section 230.82 establishes the requirements for steam locomotive fire doors. The NBBPVI commented that the words "and mechanical Stokers" should be deleted from the section title since there is no mention of fire doors in this section.

The task force was in agreement that the words "and mechanical stokers" are excess verbiage and should be deleted as their inclusion could mislead readers into thinking that section of the rule was incomplete as published.

FRA agrees that the words "and mechanical stokers" are unnecessary and even possibly confusing and is, therefore, striking them from the heading for § 230.82.

Section 230.86 Required Illumination

Under § 230.86(a), steam locomotives used between sunset and sunrise are required to be equipped with an operating headlight of a specified brightness; (b) which may be dimmed when necessary; and (c) which the lead steam locomotive is required to display when 2 or more steam locomotives are used in the same train. Grand Canyon Railway commented that this section should follow the language of the diesel regulation (49 CFR 229.125(a)—(c)), thereby clarifying the requirements and providing for the dimming and extinguishing of the lead steam locomotive headlight when a non-steam locomotive is on the point (actually in the lead).

The task force agreed that § 230.86(c), as written, is subject to misinterpretation and could be read as requiring the lead steam locomotive have its headlight on at all times between sunset and sunrise regardless of whether the lead steam locomotive was actually the lead locomotive on the train. The task force, therefore, recommended that the word "steam" be struck from § 230.86(c) of the final rule.

FRA acknowledges that § 230.86(c), as written in the NPRM, was subject to misinterpretation and is amending the language of this section in the final rule by striking the word "steam." The agency's primary objective in this section is ensuring that whenever a locomotive is used in the lead position, it is displaying a headlight.

Section 230.88 Throttles

This section provides that throttle must be safe and suitable for service and equipped with an effective means for holding the throttle lever in any desired position. A number of comments were received on the issue of throttle locking devices and on the need to include in the rule a ban on tampering with safety devices. Diversified Rail Services, Ohio Central Railroad System, St. Louis Steam Train Association, and Tennessee Valley Railroad each submitted comments urging FRA to require throttle locking devices on steam locomotives. Diversified Rail Services and Tennessee Valley Railroad also urged the inclusion of language expressly forbidding the removal of or failure to properly maintain safety devices.

The task force, while recognizing the concerns raised in the comments, was in agreement that there is no need to add a specific requirement for throttle locking devices to the rule. In the discussion of this issue, several task force members observed that the requirement in this section that

“efficient means [be] provided to hold throttle levers in any desired position” may be read as requiring the use of throttle-locking devices to lock throttle levers in the off position when that is the desired position. The task force also felt that the addition of a specific provision prohibiting tampering with safety devices was unnecessary in light of § 230.4(a)’s general prohibition on the use of steam locomotives or tenders that are not in proper condition and safe to operate.

FRA believes the requirement under this section that throttles be maintained in safe and suitable condition for service with efficient means to hold the throttle lever in any desired position imposes a duty on steam locomotive owners and/or operators to include a throttle locking device on the steam locomotive if a locked throttle is a desired position. FRA further believes that the general requirement that steam locomotives be maintained in the proper condition and safe to operate includes a prohibition on tampering with safety devices since an inoperative or altered safety device is by definition not in the proper condition.

Section 230.90 Draw Gear Between Steam Locomotive and Tender

This section establishes (a) the maintenance and testing criteria for the draw gear; (b) the requirements for safety bars and/or safety chains; (c) the minimum length of safety chains and/or safety bars; (d) the permissible limits for lost motion between steam locomotives and tenders; and (e) the conditions under which spring buffers may be used between steam locomotives and tenders. Ohio Central Railroad requested clarification on the intent of subsection (a); specifically questioning whether visual inspection is considered a form of nondestructive examination (NDE). Tennessee Valley Railroad also requested clarification on the language and intent of the visual testing requirement and the additional testing requirement.

The task force considered the comments submitted, but, in the end, decided to recommend that this section remain as published in the NPRM. The task force members felt that this section clearly explains that a visual inspection of the draft gear between the steam locomotive and its tender must be performed at every annual inspection and, if the visual inspection fails to uncover any defects, an additional inspection using another form of NDE testing methods will be performed on the gear.

FRA believes that steam locomotive owners and/or operators should be allowed to choose an appropriate

method of NDE for the testing of the locomotive pins and drawbar. FRA also believes that, if a visual inspection of the pins and drawbar is performed and fails to detect any defects, an additional examination of the pins and drawbar must be performed utilizing another appropriate method of NDE.

Section 230.96 Main, Side, and Valve Motion Rods

Section 230.96 sets forth (a) when main, side, or valve rods must be removed from service; (b) how and when repairs of main, side, or valve rods may be made; (c) the criteria for bearings and bushings; (d) how much rod side motion is acceptable; (e) the requirements for oil and grease cups; (f) limits on main rod bearing wear; and (g) wear limits on side rod bearings. Grand Canyon Railway and Tennessee Valley Railroad submitted comments in which they expressed disagreement with the requirement in subsection (b) that steam locomotive owners and/or operators submit a written request to FRA for approval prior to doing any welding of defective main rods, side rods, and valve gear components. Grand Canyon Railway, concerned that steam locomotive owners and/or operators would likely incur long delays waiting for agency approval during which the owners and/or operators would not be able to use their steam locomotives, urged instead that the owners and/or operators be permitted to perform welding on the rods (as per accepted national standards) and then submit detailed notification to FRA. The task force quickly reached consensus on this issue, emphatically agreeing that the reporting requirement should remain as written in the NPRM. The task force members agreed that, because rod welding is a relatively new procedure and can involve welding on a number of different types of metals, there is need for uniform oversight and prior approval to minimize the possibility of these repairs being done improperly. It was noted that an improperly repaired rod could break and fly up into the locomotive, resulting in the serious injury or death of crew members, passengers, and bystanders as well as substantial damage to the steam locomotive, and the possible derailment of the train.

FRA agrees completely with the task forces observations and recommendations. Given the potentially disastrous consequences if an improperly repaired side and/or valve rod were to break while the steam locomotive was operating in service, the agency believes that it is mandatory that it have the opportunity to review and

approve or deny requests to perform such repairs beforehand.

Section 230.106 Steam Locomotive Frame

Section 230.106(a) establishes the cleaning, inspection, and maintenance requirements for steam locomotive frames, decks, plates, tailpieces, pedestals, and braces—requiring cleaning and thorough inspection of these parts whenever the steam locomotive is shopped for “heavy repairs.” Grand Canyon Railway took exception to this section as written, commenting that if the cleaning and inspection requirement is tied to the performance of “heavy repairs” then that term should be defined.

The task force agreed that the term “heavy repairs” is not essential since it is only used once in the proposed rule. The task force quickly reached consensus that the term “heavy repairs” should be stricken from the rule. It was decided to recommend that § 230.106(a) be changed to require that frames, decks plates be cleaned “as often as necessary to maintain in a safe and suitable condition for service, with cleaning intervals not to exceed every 1472 service days.”

FRA believes the term “heavy repairs” is very subjective and would be difficult to define clearly and concisely. Therefore, the agency has decided to accept the task force’s recommendations and is changing this section by striking the words “each time the steam locomotive is in shop for heavy repairs” and replacing them with the words “as often as necessary to maintain in a safe and suitable condition for service, with cleaning intervals not to exceed every 1472 service days.”

Section 230.109 Tender Trucks

Subsection (d) establishes a requirement that all tenders be equipped with devices or securing arrangements to prevent the separation of the tender body and trucks in the event of a derailment. This section drew comments from Ohio Central Railroad System and the Tennessee Valley Railroad. Ohio Central Railroad commented that the requirement is vague and does not explain how such a device is to be setup and what the installation standard will be for tenders not originally equipped with such devices. Ohio Central also requested clarification on whether steam locomotive tenders that were designed and built without such securing devices would be “grandfathered” in under the rule and as to whether auxiliary water and/or fuel cars are considered to be tenders. Tennessee Valley Railroad

requested clarification as to what is a "securing device" and stated its belief that this section is not needed and will place a major financial burden on those locomotive owners and/or operators whose tenders are not so equipped.

The task force discussed this issue at some length and finally decided to recommend that this section be amended to adopt the requirements of the 1978 revisions to part 230. Under the 1978 revisions, when tenders are equipped with securing arrangements or devices, those arrangements or devices must be maintained in safe and suitable condition for service. The effect of the recommended change would be to simply require that such devices must be properly maintained when used. The task force members agreed to recommend that FRA consider only auxiliary water and/or fuel cars that are semi-permanently or permanently coupled to the steam locomotive and tender as tenders.

FRA agrees with and is adopting the recommendations of the task force. Section 230.109(d) will be amended by changing the language in the NPRM to read that "When a tender is equipped with a device or securing arrangement to prevent the truck and tender body from separating in the event of a derailment, that device or securing arrangement shall be maintained in a safe and suitable condition for service. FRA is making this change in the final rule because of its concern that requiring the installation of truck securing devices/arrangements on tenders that were built without such devices would impose substantial financial costs on the locomotive owners and/or operators while conferring minimal additional safety benefits in return.

Section 230.115 Feed Water Tanks

This section of the rule sets the requirements for steam locomotive feed water tanks. Subsection (a) includes a requirement that feed water tanks be equipped with measuring devices that allow the amount of water in the tank to be measured from the locomotive cab or tender deck. Tennessee Valley Railroad commented that 3 truck Shay locomotives should be specifically excluded from this section or, in the alternative, a provision for the issuance of waivers from this requirement should be included in this section.

The task force weighed Tennessee Valley's comments but decided to recommend against making the suggested changes. The task force members believed that compliance with this section will not be unduly burdensome and the safety benefits of

being able to continuously monitor the amount of water in the feed water tank greatly outweigh any financial burden imposed on locomotive owners and/or operators.

Inspection Requirements

Appendix A to part 230 lists (for guidance purposes only) the inspection requirements for daily, 31 service day, annual, and 5 year inspections. Listed under item 18 of the daily inspection requirements is a duty to inspect the classification lamps. The Minnesota Transportation Museum, Inc., took exception to this requirement, commenting that the inspection requirement for class lights should be deleted as such lights no longer have any function.

The task force disagreed with Minnesota Transportation Museum's comments. One task force member observed that his steam locomotive operation utilizes class lamps whenever extra trains are run. The task force decided to recommend that FRA retain the requirement that class lamps be inspected on a daily basis because, although unlikely, the need to illuminate these lamps could arise at any time.

FRA is retaining the requirement that classification lamps be inspected in the final rule. The agency believes this requirement is justified because whenever a steam locomotive is used on a steam operation that runs extras, the need to use the class lamps may arise.

49 CFR Part 209

Section-by-Section Analysis

The following section-by-section analysis discusses in more detail the changes and amendments made to Appendix A to part 209.

In the NPRM, FRA proposed to include as an appendix to part 230 a discussion of the agency's exercise of jurisdiction over tourist railroads. FRA has concluded that it is more logical to include this discussion in Appendix A to part 209, which already contains an agency statement of policy about its safety jurisdiction. Therefore, rather than including this jurisdictional discussion as an appendix to part 230, FRA is amending appendix A to part 209. Because this discussion will be inserted into an existing policy statement that explains the basic principles of FRA jurisdiction, it does not contain the discussion of those principles that was originally included when proposed as an appendix to part 230. FRA has also changed the discussion in ways that are intended to make it more clear.

This jurisdictional statement summarizes the policy FRA has implemented toward tourist operations for many years. FRA has explained that policy in a report to Congress ("Federal Railroad Administration Regulatory Actions Affecting Tourist Railroads") in June 1996, Congressional testimony, and in many letters to individual tourist railroads and their associations over the last several years. Several rules have contained provisions specifically concerning FRA's exercise of jurisdiction over tourist operations (e.g., 49 CFR 234.3(c)). However, until now, FRA has not published its policy in the CFR for easy reference.

49 CFR Part 230

Section-by-Section Analysis

The following section-by-section analysis discusses in more detail the changes and amendments made to the 1978 version of part 230. As an aid to readers, FRA has denominated as "new" sections of the final rule which lack a present counterpart.

Subpart A—General

In this subpart, FRA has added a series of provisions consistent with those found in its other recent regulations. Through these uniform provisions, FRA makes explicit the scope, purposes and applicability of these rules and the potential consequences of noncompliance with the rules once adopted.

Section 230.1 Purpose and Scope (New)

This section clearly defines the scope of part 230; explaining that these standards are intended to establish minimum standards for inspection and maintenance of steam locomotives used on railroads to which this part applies.

Section 230.2 Applicability (New)

As described in the "Responsibility for Compliance" discussion, the task force wanted to rewrite this part to make clear that the steam locomotive regulations would apply primarily to steam locomotive owners and/or operators. The task force's proposed applicability section read as follows: "This part applies to any entity which owns a steam locomotive or operates one under a contract, agreement or lease. This part does not apply to entities that own or operate steam locomotives over track that is less than 24 inches in gage or to entities that are considered "insular" by this agency." See Appendix A of part 209 for a current statement of the policy on FRA's exercise of jurisdiction.

Although the agency changed this language to text that is more in keeping with the purpose and language of the applicability provisions of FRA's other rules, the changes made do not conflict with the task force's recommendation that the rule clearly place primary responsibility for compliance with the rules on the owner and/or operator of the locomotive. By design, the applicability section explains the type of rail operations to which the rule will apply, not upon whom responsibility for compliance will lie. By statute, FRA has jurisdiction over all railroads (except for urban rapid transit operations not connected to the general system), but it frequently limits the reach of a particular rule to less than the entire universe of railroads, using the applicability section to clarify which operations it intends to be covered by the rule. Locomotive owners and/or operators and other parties seeking guidance on whether they must comply with this part should refer to § 230.8 Responsibility for Compliance for guidance. That section specifically explains to whom the rule applies.

Notwithstanding their elimination from the applicability section, wherever appropriate, the locomotive owner(s) and/or operator(s) are specifically identified in the rule as the party or parties best able to execute certain delineated inspection and maintenance responsibilities. Thus, the fact that the locomotive owner and/or operator are not referred to by name in the applicability provision does not mean that they may not be held primarily responsible for compliance. Section 230.2 should be viewed as describing the extent of the agency's exercise of its statutory jurisdiction in the area of steam locomotive safety, with § 230.8 providing the practical compliance guidance that the task force recommended be included in the applicability section. Accordingly, § 230.2 explains that these standards apply to all railroads that operate steam locomotives, with four categorical exceptions (three of which are considered "standard" exceptions). First, this section does not apply to railroads of less than 24" gage. This exception is not standard but is consistent with the agency's historical approach to exercising its safety jurisdiction. Railroads operating on less than 24" gage track have never been considered railroads by the Federal railroad safety laws; generally being considered miniature or imitation railroads. In the context of this rule, which clearly applies to certain operations of less than standard gage, it

is important to clarify that the smallest gage railroads are not included. Second, this section does not apply to "plant" railroads that exclusively operate freight trains on track inside an installation that is not part of the general system of transportation, this is a standard provision. Third, this section does not apply to urban rapid-transit operations that are not connected to the general system of transportation. This is also a standard provision that merely restates the statutory limit on FRA's jurisdiction for the convenience of the reader. Finally, this section excludes from its reach railroads that operate passenger trains only on track inside an insular installation—operations limited to separate enclaves in such a way that the safety of those not entering the enclaves is not affected by the operations. Insularity is destroyed, however, and the rule applies where any of the following exists on its line: (1) A public highway-rail crossing that is in use; (2) an at-grade rail crossing that is in use; (3) a bridge over a public road or commercially navigable waters; or (4) a common corridor with another railroad, i.e., where operations are conducted within 30 feet of those of any other railroad. This section, too, is standard and reflects the agency's long-standing policy on its exercise of jurisdiction over tourist and historic railroads. This language is used where FRA intends to reach tourist railroads whose operations are not over the general railroad system but affect public safety sufficiently to be covered by a particular rule. As proposed, this section includes the word "installation" in its discussion of this part's applicability to entities that operate "passenger" trains. While the agency has included this term with specific reference to passenger operations in three of its rulemakings over the past few years, the agency believes that the regulated industry may not be accustomed to seeing this term in the context of tourist railroads. It is the agency's view that an "installation" is simply a separate enclave off the general system.¹

Section 230.3 Implementation (New)

This section establishes a staggered implementation scheme. This scheme is designed to provide flexibility to those steam locomotive owners and operators

who otherwise might be adversely affected by the magnitude of changes being implemented. This implementation language was strenuously debated by the task force members. The task force's greatest concern was that steam locomotive owners and/or operators would be required to conduct an inspection equivalent to that required by this rule's § 230.17 sooner than they would be required to do so under § 230.10 of the 1978 standards. The task force was also concerned that steam locomotive owners and/or operators not be granted a "windfall" and allowed so much time under the new standards to perform required inspections that safety could be compromised. The task force's primary concern was insuring that the new inspection requirements would be applied retroactively to locomotives that had complied with §§ 230.10 and 230.11 of the 1978 standards within a certain period of time prior to the effective date of the rule. The task force had difficulty in determining what was an appropriate period of time prior to the rule's effective date in which to allow retroactive application of the new inspection standards. Under the compromise finally worked out by the task force and adopted by FRA, performance of the 1472 service day inspection, which must be conducted at the time a § 230.10 inspection would have been required under the 1978 standards, triggers the compliance requirement. Thus, with the exception of certain inspection and maintenance requirements that become effective one year from the effective date of the rule, steam locomotive owners and/or operators must begin to comply with part 230 when the 1472 service day inspection becomes due under this rule. Up until that time, however, compliance with the regulations in effect prior to the effective date of this rule will be considered to be full compliance with this part. To provide additional flexibility, however, the agency will continue to consider flue removal extension requests made under the provisions of § 230.10 of the 1978 standards for two years from the effective date of the rule. Thus, for example, a locomotive that received an inspection under § 230.10 of the 1978 standards up to five years before the date of this rule would have, with this flue extension provision, a minimum of two years from the effective date of the rule to conduct the 1472 service day inspection required by these standards. If the locomotive very recently received the inspection required by § 230.10 of the 1978 standards, the locomotive

¹ See Power Brake Regulations NPRM, 59 FR 47676 (September 16, 1994); Railroad Accident Reporting NPRM, 59 FR 42880 (August 19, 1994); and Grade Crossing Signal System Safety Final Rule, 59 FR 50086, (September 30, 1994). Subsequent publications in the Grade Crossing (GC) and Accident Reporting (AR) arenas have included this language as well. See 61 FR 30940 (AR) (6/18/96), 61 FR 31802 (GC), (6/20/96), and 61 FR 67477 (AR) (12/23/96).

owner and/or operator will have the entire period allowed under that section before having to conduct the required 1472 service day inspection.

In addition, under this section, locomotive owners and/or operators may petition the agency for "special consideration" of the rule's implementation. In order to qualify to file a petition for special consideration, the locomotive owner and/or operator must have either fully or partially satisfied the 1472 service day inspection requirements within three years prior to September 25, 1998 (the date of publication of the NPRM). If the locomotive is only in partial compliance with the requirements of this section, it will have to be in full compliance by the time the petition is actually filed. The petition must be filed within one year from the effective date of the rule and must include all the documentation necessary to establish that the locomotive is in compliance with the requirements of the 1472 service day inspection standards. The agency must respond to the petition within one year of filing. Thus, the time involved in filing a petition for special consideration and receiving FRA's response to that petition, will be the same as the two-year grace period allowed to non-petitioning locomotive owner and/or operators who utilize the available flue extension provision. If FRA does not respond in a timely fashion, the locomotive owner and/or operator awaiting the response will be granted an additional extension of up to 6 months or until the time the agency's decision is received, whichever occurs first.

The distinction between "full" and "partial" satisfaction of the 1472 service day inspection requirements is made in reference to the two-step procedure that must be complied with under subsection (a) of § 230.17. This consists of the general inspection requirements and the requirement that the FRA Form No. 4 be updated and verified at that time. A locomotive owner and/or operator who has satisfied both of these requirements within three years prior to the effective date of this rule will be able to file the petition the day the rule becomes effective. A locomotive owner and/or operator that has only satisfied one requirement, however, has only "partially" satisfied the requirements of § 230.17 and will have until the term of the petition process, one year, to satisfy the second requirement. For example, a locomotive owner and/or operator who inspected their locomotive under § 230.10 of the 1978 standards within three years prior to the effective date of this rule, but did not update and verify

the FRA Form No. 4 at that time, will have a full year to do so before submitting the application. Likewise, if the FRA Form No. 4 has been updated and verified within three years prior to the effective date of the rule but an inspection satisfying § 230.10 of the 1978 standards has not been conducted, the locomotive owner and/or operator will have one year in which to conduct the qualifying inspection before submitting an application for special consideration.

Section 230.3 also contains provisions addressing the requirements related to the filing of the petition. This section requires petitions for special consideration to be accompanied by all the locomotive records that show how many service days the locomotive has accumulated since the last inspection conducted under the 1978 standards, and the number of service days remaining before a 1472 service day inspection must be conducted under the "new" § 230.17. The task force was concerned about proving the submission and response to the petition, so they recommended, and FRA agreed to stress that these petitions should be sent by some form of registered mail to ensure a record of delivery. For its part, the agency will respond to all such petitions by registered mail within one year of receipt. In addition, this section contains provisions addressing the effect of the petition's disposition on the implementation requirements. If the agency grants the petition, the requirements will become effective upon receipt of the response letter. Likewise, if the agency denies the petition, the rule will become effective as though the petition had never been filed.

Finally, because many task force members were concerned about the problem of potential untimeliness in the agency's response, this section addresses the effect of agency silence within the one year response time period. Under this rule, the petitioner must notify the agency if a response to the petition for special consideration has not been received within the prescribed one year period. Operators at the end of their inspection cycle, who have not received a response from the agency within the one year provided, will be allowed to operate under the 1978 standards for an additional 6 months, or until they receive FRA's decision, whichever occurs first.

Section 230.4 Penalties (New)

This section incorporates the maximum penalties provided for in the Federal railroad safety laws. These penalty amounts, however, have

recently been adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-124 (4/26/96). For a more complete discussion of the agency's recent penalty adjustments see Civil Monetary Penalty Inflation Adjustment, 63 FR 11618 (March 10, 1998).

Section 230.5 Preemptive Effect (New)

This part is issued under the authority of 49 U.S.C. 20106 and 49 U.S.C. 20701-20703. FRA believes that the broad field preemption of the LBIA (49 U.S.C. 20701 *et seq.*), while the appropriate standard in the area of locomotive safety, does not preempt state regulation of those steam locomotive operations over which FRA has never exercised jurisdiction, such as insular tourist railroads and amusement rides.

Section 230.6 Waivers (New)

All waivers previously granted under part 230 that are not filed for reassessment with the FRA's Office of Safety prior to the effective date of this rule will lapse on that date. However, under the terms of this provision, the agency will review those waivers that are timely filed and notify applicants whether the waiver has been continued. The one exception to this is where the waiver granted was for a "flue extension." Those waivers automatically expire one year from the date granted.

The reason FRA has eliminated the granting of waivers under part 230 is to correct the misapplication of § 230.158 of the 1978 standards for inspection and maintenance of steam locomotive boilers and flues. Under the 1978 standards, railroads operating fewer than 5 locomotives were allowed to apply for waivers from the requirements of Subpart B—Steam Locomotives and Tenders. This section was intended to apply only to those regulations in Subpart B; in practice, it was extended to apply to Subpart A as well. Consequently, operators were often granted waivers from compliance with the provisions of Subpart A.

In addition, the agency is using this section to make clear that its waiver process, described in 49 CFR part 211, has now been centralized. As such, this section cites to part 211 of this chapter for the appropriate standards when filing petitions for waiver from the requirements of part 230.

Section 230.7 Responsibility for Compliance (New)

This section restates, in regulatory language, the provisions of Chapter 207 of Title 49 of the United States Code: commonly referred to as the Locomotive Inspection Act. This section also designates the party or parties responsible for ensuring that the requirements of part 230 are satisfied. See the discussion in section VI(A) titled "Responsibility for Compliance," above.

Section 230.8 Definitions (New)

The following is an explanation of each definition that FRA is adding or amending in this final rule.

Alteration: This definition incorporates the NBIC definition to harmonize concepts within the industry.

ANSI: This definition is non-substantive and is included for clarification purposes only.

API: This definition is non-substantive and is included for clarification purposes only.

ASME: This definition is non-substantive and is included for clarification purposes only.

Boiler Surfaces: This definition was added to make clear what areas of the boiler are referenced throughout the rule.

Break: This definition incorporates the distinction between "break" and "crack" delineated in part 229.

Code of Original Construction: This definition is non-substantive and is included for clarification purposes only.

Crack: This definition incorporates the distinction between "break" and "crack" delineated in part 229.

Dead-in-tow: This definition is intended to provide guidance as to when a non-complying steam locomotive may be moved.

Lite Locomotive: This definition is intended to provide guidance as to when a non-complying steam locomotive may be moved.

Locomotive Operator: As discussed in the liability section above, in recognition of the fact that many locomotives are owned and operated by entities other than railroad companies, FRA is making its liability standards more specific. This definition distinguishes between these relevant entities in order to make clear that a locomotive may be owned and operated by separate entities.

Locomotive Owner: As discussed in the liability section above, in recognition of the fact that many locomotives are owned and operated by entities other than railroad companies,

FRA is making its liability standards more specific. This definition distinguishes between these relevant entities in order to make clear that a locomotive may be owned and operated by separate entities.

MAWP: This definition is non-substantive and is included for clarification purposes only.

NBIC: This definition is non-substantive and is included for clarification purposes only.

NDE: This definition is non-substantive and is included for clarification purposes only.

NPS: This definition is non-substantive and is included for clarification purposes only.

Railroad: This definition incorporates the statutory definition of railroad in 49 U.S.C. Sec. 20102.

Renewal: This definition incorporates industry concepts and is not intended to have substantive effect.

Repair: This definition incorporates the NBIC definition to harmonize concepts within the industry.

Serious Injury: This definition incorporates the definition of serious injury from the "FRA Guide for preparing Accident Incident Reports" (Effective: January 1997).

Service Day: As described in the inspection section above, the agency is revising the inspection time periods throughout this part, basing them on a new "service day" concept. Service day is defined as each and every calendar day that a steam locomotive boiler has steam pressure above atmospheric pressure with fire in the firebox. Each such day will count as a "service day" for the locomotive.

Stayed Portion of the Boiler: This definition establishes a threshold for distinguishing between stayed and unstayed portions of the boiler, both of which are identified in this part. It is not intended to have substantive effect.

Steam Locomotive: This definition modifies the 1978 standard's definition of "locomotive" to make it specific to a "steam locomotive." It has been rewritten for grammatical clarity.

Unstayed Portion of the Boiler: This definition establishes a threshold for distinguishing between stayed and unstayed portions of the boiler, both of which are identified in this part. It is not intended to have substantive effect.

Wastage: This is a technical definition; included for the purpose of clarifying required minimum thicknesses and condemning limits for the boiler.

Section 230.10 Information Collection (New)

This section is included for the convenience of the reader. Imposing no new requirements upon regulated entities, it simply represents the agency's certification that it has complied with all Office of Management and Budget review requirements pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The review and approval process reflected in this provision are explained in greater detail below.

*General Inspection Requirements**Section 230.11 Repair of Non-Complying Conditions (New)*

This section adopts the requirement in part 229 that non-complying locomotives be repaired before being returned to service. In addition, it affixes the responsibility for such repairs and for approving any noncomplying conditions that are not repaired on the locomotive owner and/or operator.

Section 230.12 Movement of Non-Complying Steam Locomotives (New)

This section makes part 230 current with part 229 by incorporating the concept of movement for the purpose of repair. Under this section, locomotive owners and/or operators are allowed to move a noncomplying locomotive for the purpose of repair, after the locomotive owner and/or operator has determined that the locomotive is safe to be so moved. Upon consideration of the comments received, FRA and the task force amended this section to provide for the movement of noncomplying steam locomotive. The task force felt strongly that this provision was necessary to accommodate the operating exigencies which may occur in the course of steam locomotive operations.

Section 230.13 Daily Inspection

This provision adopts, without substantive change, the existing regulations governing the daily inspection of steam locomotives.

Section 230.14 31 Service Day Inspection (New)

This provision, while not substantively changing the inspection requirements for steam locomotives, adds a requirement that locomotive owners and/or operators notify FRA before performing a 31 service day inspection and revises the time interval within which certain inspections must be performed.

Section 230.15 92 Service Day Inspection (New)

This provision imposes no new inspection requirements for steam locomotives but revises the time frame within which certain inspections must be performed.

Section 230.16 Annual Inspection (New)

This provision makes no substantive change in the annual inspection of steam locomotive requirements, except to add a requirement that locomotive owners and/or operators notify FRA before performing annual locomotive inspections.

Section 230.17 1,472 Service Day Inspection (New)

This provision revises the time frame within which certain inspections must be performed and imposes a requirement that steam locomotive owners and/or operators complete, update, and verify the steam locomotive's FRA Form No. 4 at the time of the locomotive's 1472 service day inspection and file the FRA Form No. 4 with FRA within 30 days of completion of the inspection. See the analysis in section IX(B)(5), above.

Recordkeeping Requirements**Section 230.18 Service Days (New)**

This provision imposes a new recordkeeping requirement on the owners and/or operators of steam locomotives. Under this section, locomotive owners and/or operators are required to keep a current service day record showing the number of service days the steam locomotive has accrued since its last 31 service day, 92 service day, annual and 1472 service day inspection. Locomotive owners and/or operators are also required to file a report with FRA each January 31, detailing the number of service days each steam locomotive accrued during the preceding calendar year. Failure to file this report will result in the locomotive being considered "retired." In order to return a "retired" locomotive to service, the locomotive owner and/or operator will have to first perform a 1472 service day inspection. The agency realizes that exigencies do arise and, as such, does not intend to be totally inflexible in the enforcement of this recordkeeping requirement. Should a service day report be filed a day or two late, the agency will give the operator the benefit of the doubt and accept the report as though it had been timely filed.

While these changes impose some additional recordkeeping duties on

regulated entities, the agency believes that the additional burdens so imposed are substantially outweighed by the benefits the regulated community will realize from the new inspection time periods.

Section 230.19 Posting of FRA Form No. 1 and FRA Form No. 3

There are no new recordkeeping requirements imposed upon locomotive owners and/or operators under this section. The FRA Form No. 1, 31 service day and 92 service day inspection report required under this rule, is equivalent to the monthly inspection report formerly required under §§ 230.51 and 230.160 of the 1978 standards. The required FRA Form No. 3, annual inspection report, is equivalent to the annual inspection report formerly required under §§ 230.52 and 230.161 of the 1978 standards.

Section 230.20 Alteration and Repair Report for Steam Locomotive Boilers

This section imposes recordkeeping requirements upon locomotive owners and/or operators. FRA Form No. 19 is the alteration report regulated entities were required to file under § 230.54 of the 1978 standards. Under this rule, the locomotive owner and/or operator is required to file a FRA Form No. 19 whenever alterations that affect the information on the FRA Form No. 4 are made and/or whenever welded or riveted repairs are made to the unstayed portion of the locomotive boiler. Locomotive owners and/or operators also must make out and maintain (but not file with FRA) FRA Form No. 19s whenever welded or riveted repairs are made to stayed portions of the locomotive boiler.

Section 230.21 Steam Locomotive Number Change (New)

This section incorporates requirements originally issued by the former Interstate Commerce Commission in its "Interpretations, Rulings and Explanations on Questions Raised Regarding the Laws, Rules, and Instructions for Inspection and Testing of Steam Locomotives and Tenders and Their Appurtenances" (ICC Interpretations).

Section 230.22 Accident Reports

This section, which retains the requirements of § 230.162 of the 1978 standards, details when a railroad must report an accident involving a steam locomotive boiler and/or appurtenance, how and to whom the report must be made, and what information must be conveyed in the report.

Subpart B—Boilers and Appurtenances**Section 230.23 Responsibility for General Construction and Safe Working Pressure**

This section makes the locomotive owner and operator, both, jointly and severally responsible for the general design and construction of the locomotive boiler. Section 230.1 of the 1978 standards placed that responsibility on the "railroad company." This change, made on account of the changes which have occurred in the steam locomotive industry since the original steam rules were promulgated, places responsibility for the locomotive on the locomotive owner and/or operator, the parties in the best position to assume that responsibility. Under this rule, responsibility is affixed on the locomotive owners and operators regardless of whether they are railroad companies.

Allowable Stress**Section 230.24 Maximum Allowable Stress**

This section, while not substantively changing § 230.2 of the 1978 standards, rephrases some of the wording in order to help clarify and eliminate any ambiguities or confusion arising thereunder.

Section 230.25 Maximum Allowable Stress on Stays and Braces

Other than removing the distinction between locomotives constructed before and after 1915, which the task force and FRA both believe is no longer relevant, this section is substantially the same as § 230.3 of the 1978 standards.

Strength of Materials**Section 230.26 Tensile Strength of Shell Plates**

This section of the final rule adopts, without change, § 230.4 of the 1978 standards.

Section 230.27 Maximum Shearing Strength of Rivets

This section of the final rule adopts, without change, § 230.5 of the 1978 standards.

Section 230.28. Higher Shearing Strength of Rivets

This section of the final rule adopts, without change, § 230.6 of the 1978 standards.

Inspection and Repair**Section 230.29 Inspection and Repair**

This section combines the concepts embodied in §§ 230.7 and 230.12 of the

1978 standards. The task force recommended changing the party charged with responsibility for inspection and repair of the locomotive boiler from the "mechanical officer in charge at each point where boiler work is done" to the steam locomotive owner and/or operator. FRA agreed to make the recommended changes in this section because few steam operations still have chief mechanical officers, and the agency wanted to make "liability" as consistent as possible throughout the rule. This section also requires the locomotive owner and/or operator to remove a locomotive boiler from service whenever they, or the FRA inspector, considers it necessary due to the presence of other defects. The task force originally had some concern about FRA inspectors' exercise of discretion in this arena. However, it was agreed that the agency will act in good faith and do its best to minimize any disruption of the operator's service whenever such concerns arise. The task force also recommended that FRA allow for non-destructive testing in the investigation of any "safety concerns" identified.

This section also makes more specific the repair standard in § 230.12 of the 1978 standards, requiring that all defects disclosed be repaired in accordance with accepted industry standards. These "accepted industry standards" include established railroad practices, or NBIC or API established standards. See section IX(D), above, for a discussion of the meaning of "established railroad practices." This section also replaces the "satisfactory condition" repair standard of the 1978 standard's § 230.12 with the requirement that a locomotive boiler may not be returned to service unless it is in good condition and "safe and suitable for service."

Finally, this section requires that welded repairs to unstayed portions of the boiler made pursuant to § 230.33 be performed in accordance with an accepted national standard for boiler repairs.

Section 230.30 Lap-Joint Seam Boilers

This section clarifies and eliminates ambiguous language in § 230.13 of the 1978 standards by explaining that "examined with special care" means removing enough lagging, jacketing, flues and tubes so that a thorough inspection of the entire joint (inside and out) can be made. FRA does not intend for this section, which is otherwise unchanged from the 1978 standards, to restrict the use of modern technology which may allow a "thorough inspection" to be performed without

having to disassemble so much of the locomotive.

Section 230.31 Flues To Be Removed

This section revises the time period within which locomotive owners and/or operators must remove all flues of locomotive boilers and conduct a thorough inspection of the boiler. Section 230.10 of the 1978 standards required that flue removal and inspection be done at least once every four (4) years. This section allows the locomotive owner and/or operator to leave the superheater flues in the boiler and perform the inspection using NDE methods to assess their condition, provided two conditions are satisfied. These conditions are: (1) that the NDE testing shows that the superheater flues are safe and suitable for locomotive service; and (2) that the boiler can be entered to be cleaned and inspected without their removal. However, under this section, the locomotive owner and/or operator will still be required to remove the superheater flues if they—or the FRA inspector—believe doing so is necessary for some identifiable safety concern.

This section also deletes the provision in the 1978 standards that authorized FRA to grant extensions of the time period within which flues must be removed. The task force felt that the 15-year "drop dead" time limit for conducting the 1472 service day inspection should be the absolute maximum amount of time a steam locomotive may operate without having the flues removed. Under the 1978 standards, operators who were required to remove their locomotive flues once each four years (which could become five years with the use of "out of service credit") could receive flue removal extensions of as much as thirteen years. Since this section allows the time period between flue removals to be stretched out to a maximum of 15 years, the task force felt that no further extensions were necessary.

As discussed above in section IX(E), the task force strongly believes that operators should be encouraged to take advantage of new technologies in the use and operation of steam locomotives. By allowing the operator to leave superheater flues in the boiler as long as it could be determined that they were safe and suitable for service without removing them, the task force felt it was creating an incentive for operators to utilize the latest NDE methods in making that determination.

Section 230.32 Time and Method of Inspection

This section combines the boiler inspection requirements previously contained in §§ 230.9, 230.11, 230.15 and 230.16 of the 1978 standards, and rewrites them for clarity. The task force felt that the various inspection requirements should be consolidated into one section and made more explicit.

Section 230.33 Welded Repairs and Alterations (New)

This section specifies when welding may be done on stayed and unstayed portions of the locomotive boiler. Subsection (a) requires the locomotive owner and/or operator to obtain prior written approval of the FRA Regional Administrator before performing any welding on unstayed portions of boilers containing alloy steel, or carbon steel with a carbon content greater than .25 percent. It also requires that any welding so approved be conducted in accordance with an accepted national standard for boiler repairs. See section IX(D)(1), above, for a discussion of this standard.

Subsection (b) provides that locomotive owners and/or operators must perform welding to unstayed portions of boilers containing carbon steel not exceeding .25 percent carbon in accordance with an accepted national standard for boiler repairs. Both subsections (a) and (b) require the locomotive owner and/or operator to satisfy the reporting requirements file an FRA Form No.19, Report of Welded Repair, as discussed in § 230.20.

Subsection (c) restricts the use of weld build up for wasted areas of unstayed surfaces of the boiler. A locomotive owner and/or operator desiring to build up by weld wasted areas that exceed: (1) A total of 100 square inches; or (2) the smaller of either 25 percent of the minimum required wall thickness or ½ inch must submit a written request for approval to the FRA. This subsection also prohibits the use of weld build up for wasted sheets that have been reduced to less than 60 percent of the minimum thickness required by these rules.

Subsection (d) prohibits the installation of flush patches of any size on unstayed portions of the boiler unless the locomotive owner and/or operator has submitted a written request for prior approval to the FRA Regional Administrator.

Finally, subsection (e) allows locomotive owners and/or operators to perform welded repairs or alteration on stayed portions of the boiler in

accordance with established railroad practices or an accepted national standard for boiler repairs. In recognition of the fact that many operations successfully use their own welding procedures on stayed portions of the boiler, the task force recommended and FRA has agreed to allow locomotive owners and/or operators to use established "railroad practices" as an acceptable standard for welding on stayed portions of the boiler.

As discussed in the preamble, FRA has grave concerns about the quality of the welding being done on locomotive boilers. By enacting these changes, the agency believes that it has established standards that will improve safety while still providing operators with the flexibility critical to their business survival by allowing them to make necessary repairs without incurring unnecessary costs.

Section 230.34 Riveted Repairs and Alterations (New)

This section establishes the procedures for performing riveted repairs and alterations on both unstayed and stayed portions of the locomotive boiler. Under subsection (a), the locomotive owner and/or operator is required to receive prior written approval from the FRA Regional Administrator before making any riveted alterations to unstayed portions of the boiler. Any such riveting must be done in accordance with established railroad practices or an accepted national standard for boiler repairs. See the analysis for § 230.29, above, for a discussion of these repair standards. This subsection also requires the locomotive owner and/or operator to satisfy, at this time, the reporting requirements listed in § 230.20.

Subsections (b) and (c) establish guidelines for riveting locomotive boilers. Under these guidelines, all riveted repairs to stayed and unstayed portions of the boiler must be made in accordance with established railroad practices or an accepted national standard for boiler repairs.

Pressure Testing of Boilers

Section 230.35 Pressure Testing (New)

This section sets a minimum temperature requirement for the application of hydrostatic pressure to locomotive boilers. The temperature of the locomotive boiler must be raised to at least 70 degrees Fahrenheit anytime it is tested under hydrostatic pressure. This change, which incorporates the NBIC temperature standard, brings FRA standards in accord with NBIC

standards, a change the task force recommended and FRA supports.

Section 230.36 Hydrostatic Testing of Boilers

This section consolidates the 1978 standards for the hydrostatic testing of boilers and adds an additional requirement that the boiler temperature must be raised to between 70 and 120 degrees Fahrenheit every time the boiler is subjected to hydrostatic pressure. This change incorporates the NBIC standard for hydrostatic testing into the federal regulations for steam locomotive inspection. In its consideration of these issues, the task force members were divided over the purpose of the hydrostatic test, and the pressure at which such tests should be conducted. Many operators believe that the purpose of the hydrostatic test is merely to test the boiler for leaks—not to see if the boiler is structurally sound at the time of the test. To them, testing the boiler at the MAWP, as calculated in the FRA Form No. 4, serves the requisite safety function by disclosing leaks without unnecessarily stressing (and prematurely ruining) the boiler. Many in the agency, however, felt strongly that the purpose of the hydrostatic test is to test the boiler's integrity—to disclose weaknesses in the structure of the boiler that have not yet developed into defects. They also felt strongly that no convincing data had been presented that testing a boiler at MAWP, as specified on the FRA Form No. 4, would provide an equivalent level of safety. Because the parties could not reach a consensus on this provision, the agency has decided not to change the pressure testing standard, keeping the required pressure for hydrostatic pressure testing at 25 percent above MAWP, as specified on the FRA Form No. 4.

Section 230.37 Steam Test Following Repairs or Alterations

This section adopts § 230.20 of the 1978 standards, rewriting parts of it for greater clarity. The one substantive revision changes the pressure required for the steam test from "not less than the allowed working pressure" to "between 95 and 100 percent of the MAWP." The task force decided that setting a lower pressure limit would reduce the stress on the boiler without an accompanying reduction in safety—that 95 to 100 percent of MAWP would be adequate to disclose unsatisfactory conditions in the locomotive boiler.

Staybolts

Section 230.38 Telltale Holes

This section consolidates the 1978 standards' telltale hole provisions, §§ 230.23 and 230.26, and the "reduced body" staybolt section from the ICC Interpretations in one section. Subsection (a) retain § 230.26 of the 1978 standards but deletes, as moot, the application date. Subsection (b) is a new provision written to import the ICC interpretation for reduced body staybolts to part 230. Finally, subsection (c), derived from § 230.23 of the 1978 standards, creates a stand alone provision for clarity and to emphasize that telltale holes must be kept open at all times, except as required in § 230.41.

Section 230.39 Broken Staybolts

This section amends § 230.25 of the 1978 standards. Subsection (a) establishes the maximum number of broken staybolts allowed for each locomotive boiler. Under § 230.25 of the 1978 standards, a locomotive boiler was required to be taken out of service when it developed two (2) broken or plugged staybolts adjacent to one another in any part of the firebox or combustion chamber; when three (3) or more staybolts were broken or plugged in a circle four (4) feet in diameter, or when five (5) or more were broken or plugged in the entire boiler. This section changes this standard by requiring that a boiler be taken out of service when it develops either two (2) broken staybolts within twenty-four (24) inches of each other, as measured inside the firebox or combustion chamber on a straight line, or more than four (4) broken staybolts within the entire firebox and combustion chamber combined.

The NBIC requires boilers with one broken staybolt to be taken out of service and repaired. Although the task force wanted to comport these standards with the NBIC, they decided to recommend that FRA allow for a second broken staybolt within twenty-four (24) inches in consideration of the operational difficulties involved in immediately taking a boiler out of service when one staybolt breaks. Because prolonged exposure in a slowly progressive fail mode turns exponential as additional staybolts break, and in order to minimize the overload on staybolts in the area of the one which has broken, the task force also recommended and this section has adopted a requirement that staybolts adjacent to those that break be inspected at the time the broken staybolt is replaced.

Subsection (b), requires broken staybolts detected during the 31 service

day inspection to be replaced at that time, and broken staybolts detected between 31 service day inspections to be replaced no later than 30 days from the date of detection. The task force, although recognizing that a strict time period was required to ensure an adequate measure of safety, wanted to take into account the fact that operational realities that might prevent owners and/or operators from repairing broken staybolts immediately. This section reflects the task force consensus that 30 days is a reasonable period of time within which to make the necessary repairs to the boiler and allows owners and/or operators to plan when, within a 30-day time period, they want to take the locomotive out of service and replace the broken bolts. This subsection also sets a requirement, consistent with the task force's recommendation, that the locomotive owner and/or operator replace broken staybolts eight (8) inches in length or less with staybolts drilled with telltale holes three-sixteenths ($\frac{3}{16}$) to seven thirty-seconds ($\frac{7}{32}$) inch in diameter and not less than one and one quarter ($1\frac{1}{4}$) inches deep in each end, or that have holes three-sixteenths ($\frac{3}{16}$) to seven thirty-seconds ($\frac{7}{32}$) inch in diameter their entire length. This requirement is based on the task force's belief that drilled bolts are useful in revealing progressive failures before they reach catastrophic proportions.

Subsection (c) imports from the ICC Interpretations the definition of "broken" staybolts as those that are leaking, plugged, or missing, in the interest of consolidating and centralizing all current steam locomotive requirements.

Finally, subsection (d) prohibits the closing of broken staybolt ends by welding, forging or riveting. This is in accord with the ICC Interpretations stating that telltale holes that are leaking, plugged, riveted over, or missing, will be counted as broken staybolts. In this section, FRA has imposed a stricter standard for broken staybolts as per the task force's recommendation.

Section 230.40 Time and Method of Staybolt Testing

This section consolidates the requirements for staybolt testing formerly found in §§ 230.21, 230.22, 230.24 of the 1978 standards and the ICC Interpretations. Because the 1978 standards did not treat rigid staybolts and flexible staybolts without caps differently, this section combines these requirements into "staybolt testing" general requirements. Since the testing requirements for flexible staybolts with

caps are separate and distinct, the agency is not including them in the consolidation of testing requirements.

Section 230.21 of the 1978 standards required that staybolts be tested once a month and immediately after every hydrostatic test. In subsection (a), the agency has relaxed this requirement slightly by allowing the monthly inspection to be conducted once each thirty-one (31) service days. The requirement that staybolts be tested following each hydrostatic test is retained, but is more clearly explained. Subsection (a)(1) makes allowance for inaccessible staybolts that are drilled through their entire length. Under this provision, impediments making the staybolts inaccessible (brickwork, grate bearers, etc.) need not be removed to hammer test the staybolts. The task force members agreed that, since through-drilled staybolts would begin to leak if broken, safety would not be sacrificed by granting owners and/or operators a measure of flexibility in the testing of such staybolts.

Subsection (b) spells out the general testing requirements for all forms of staybolts. In this subsection, the task force tried to combine all the different "method of testing" provisions from the 1978 standards (§§ 230.21–230.27). The requirement that "not less than 95 percent of the MAWP" must be applied if staybolts are tested while the boiler contains water is a new one and reflects the task force's consensus view.

Section 230.41 Flexible Staybolts with Caps

This section rewrites § 230.23 of the 1978 standards for enhanced clarity and adds several new requirements.

Subsection (a) extends the time interval for removing the caps and inspecting flexible staybolts from once every two (2) years to every 5th annual inspection. This change was made in order to provide owners and/or operators additional flexibility without compromising safety.

Subsection (b) has been rewritten for clarity and to eliminate superfluous information.

Subsections (c) and (d) incorporate the provisions of § 230.23 of the 1978 standards substantially unchanged but edit it for clarity, deleting repetitious text and moving some text to more appropriate sections. For example, the 1978 requirement that the FRA Form No. 3 be kept in the railroad company's office has been relocated to § 230.19, the recordkeeping section of this rule.

Section 230.42 Location of Gauges

This section adopts § 230.28 of the 1978 standards substantively unchanged

while editing it for purposes of clarity and understanding.

Section 230.43 Gauge Siphon

This section adopts § 230.29 of the 1978 standards without any substantive change but rewrites it to enhance clarity and ease of compliance.

Section 230.44 Time of Testing

This section revises the requirements of § 230.30 of the 1978 standards in order to address the realities of modern steam locomotive operations. Today, it is common practice for steam locomotive owners and/or operators to remove gauges from their locomotives to prevent them from being stolen or vandalized. Sometimes the removed gauges are stored in conditions which may affect their calibration and accuracy. Accordingly, this section imposes a requirement that gauges must be tested prior to being installed or reapplied. In addition, for purposes of consistency with the rest of the rule, this provision extends the time for periodic testing of gauges from once every three months to whenever a 92 service day inspection is performed. Finally, as recommended by the task force, this section incorporates the requirement in § 230.30 of the 1978 standards that gauges be tested whenever any irregularity is reported.

Section 230.45 Method of Testing

This section provides a more complete description of the approved method for testing steam gauges than that found in the 1978 standards.

Section 230.46 Badge Plates

This section retains § 230.32 of the 1978 standards in principle but corrects the use of improper terminology by deleting the term "boiler head" and replacing it with the more correct term "boiler backhead."

Section 230.47 Boiler Number

This section retains § 230.33 of the 1978 standards in principle but rewrites the text for clarity and to comport with the ICC Interpretations.

Safety Relief Valves

Section 230.48 Number and Capacity

With the exception of two changes, this section retains the requirements for the number and capacity of locomotive safety relief valves found in § 230.34 of the 1978 standards. Subsection (a) increases the relieving tolerance from five (5) to six (6) percent above the MAWP. The task force recommended and FRA agreed to raise the tolerance to six percent to reflect modern testing practices. That figure was arrived at by

adding the manufacturer's tolerance for the safety valve itself (three (3) percent) and the industry standard from the ASME 1952 Code for the testing tolerance for safety valves (an additional three (3) percent). This subsection also makes clear that FRA inspectors have the authority to require proof of the relieving capacity for safety relief valves on steam locomotives.

Subsection (b) makes explicit the requirement that additional safety valve capacity must be provided if the capacity testing demonstrates the need to do so. In addition, this section acknowledges the use of the accumulation test as a method for testing safety valve capacity. However, in so doing, FRA is not expressing a preference that accumulation tests be used when determining safety relief valve capacity.

Section 230.49 Setting of Safety Relief Valves

In this section, FRA has made several changes to the requirements for setting safety relief valves provided in § 230.35 of the 1978 standards. First, this section imposes a new requirement that the individual responsible for setting the safety relief valves be "thoroughly familiar with the construction and operation of the valve being set." This competency requirement was added because the task force and FRA, while recognizing that modern safety valves have seals which are certified by certain organizations, did not want to officially require that the valves be reset by state officials. This section creates a competency standard which requires any person resetting safety valves to be thoroughly familiar with their construction and operation.

This section also revises the "opening pressures" for safety relief valves in § 230.35 of the 1978 standards by requiring that at least one of the two required safety-relief valves open at a pressure that is no greater than the MAWP. This rule changes the 1978 provision, which required that both valves be set to open at pressures not exceeding 6 pounds above MAWP. This change reflects the task force consensus that requiring one of the two safety valves to set to open at pressures not greater than MAWP would achieve a greater level of safety. However, this section does retain the 6 psi upper limit in § 230.35 of the 1978 standards for any additional safety valves utilized.

This section also revises the procedure for setting safety valves in § 230.35 of the 1978 standards. The requirement that the water level be "not above the highest gauge cock" has been changed to the equivalent requirement

that it not be "higher than $\frac{3}{4}$ of the length of the visible water glass, as measured from the bottom of the glass" consistent with the changes to § 230.37 of the 1978 standards made in this rule. See the analysis for § 230.51, below.

Finally, this section adds a new requirement that the lowest set safety relief valve pressure be indicated on a tag or label and attached to the steam gauge so that it may clearly be read while observing the gauge. Requiring this insures that the locomotive engineer and/or other crew members are provided with notice of the pressure setting of the safety relief valve, thereby allowing for easier detection of safety valve failure.

Section 230.50 Time of Testing

This section adopts the requirements of § 230.36 of the 1978 standards while increasing the inspection time period from three months to ninety-two (92) service days for consistency with rest of the inspection schedule.

Water Glasses and Gauge Cocks

Section 230.51 Number and Location

This section amends the requirements for water level indicating devices contained in § 230.37 of the 1978 standards to require that steam locomotive boilers be equipped with at least two water glasses, the lowest reading for which must be at least 3 inches above the highest part of the crown sheet. The use of gauge cocks in addition to water glasses is not prohibited, but gauge cocks are no longer mandatory. However, the requirement that any gauge cocks installed on a steam locomotive boiler must be properly located and maintained is retained. These changes reflect the task force's recommendation that water level indicator standards be modernized. The task force and FRA believe that water glasses are more reliable than gauge cocks, and easier to use since they do not require manual operation. The task force also believes that few operators know how to correctly manually operate gauge cocks anymore. The task force was also concerned that gauge cocks screwed directly into the backhead are more likely to provide highly inaccurate readings due to the phenomenon where the water rushes against the boiler backhead and creates a surge effect, generating a reading that is artificially high. This requirement comports with the NTSB's recommendation following its investigation into the boiler explosion involving the Gettysburg Railroad Company, that steam locomotive boilers be equipped with a

second water glass, and with ASME standards, which no longer require that newly constructed boilers be equipped with gauge cocks.

FRA and the task force are aware of the costs this change imposes upon steam locomotive owners and/or operators. They discussed at length the extra cost this requirement would impose upon owners and/or operators, concluding that the extra measure of safety measure afforded justifies the financial burden imposed. In addition to the enhanced safety factor, as one member of the task force pointed out, since gauge cocks are no longer being manufactured, their replacement would be extremely problematic and very costly if any could even be found. The task force was also concerned that locomotive owners and/or operators be allowed sufficient time to make any necessary changes to their locomotive boilers. Accordingly, this section implements the task force's recommendation that implementation of this provision be delayed one year to provide all affected parties with sufficient notice and sufficient time to add the second water glass.

Section 230.52 Water Glass Valves

This section adopts § 230.38 of the 1978 standards but rewrites it for the sake of clarity and to emphasize the functions the valves are designed to fulfill.

Section 230.53 Time of Cleaning

This section requires water glass valve and gauge cock spindles to be cleaned at every 31 service day inspection, and whenever testing indicates that the apparatus is malfunctioning. In addition, this section revises the time period in which this inspection must be performed. It also adds a performance standard for owners and/or operators to follow, requiring them to clean the spindles when they have indications that water glasses or gauge cocks are not functioning properly.

Section 230.54 Testing and Maintenance

This section rewrites § 230.40 of the 1978 standards for clarity. The section also explains the reasons for requiring that water glasses be tested.

Section 230.55 Tubular Type Water and Lubricator Glasses and Shields

This section revises § 230.41 of the 1978 standards. Under the revisions, tubular type water glasses must be renewed at each 92-service day inspection and water glasses must be located and maintained so that the engine crews have an unobstructed view

of the water in the glass from their proper positions in the locomotive cab.

This section is based on the task force's collective experience that water tubes get thin and develop a risk of breaking after approximately 90 service days. These water glass placement requirements complement, and give effect to the changes adopted in § 230.51 of this rule.

Section 230.56 Water Glass Lamps

This section retains § 230.42 of the 1978 standards without change, consistent with the task force's recommendation.

Injectors, Feedwater Pumps, and Flue Plugs

Section 230.57 Injectors and Feedwater Pumps

Subsection (b) of this section retains § 230.43 of the 1978 standards, and subsections (a) and (c) are new. Subsection (a) requires a steam locomotive to be equipped with at least two means of delivering water to the boiler, with—at a minimum—one of the two being a live steam injector. Subsection (b) incorporates language from the ICC Interpretations which require bracing to "avoid" vibration. The task force recommended changing "avoid" to "minimize", believing it to be a more realistic standard. Subsection (c) sets a requirement that injectors and feedwater pumps be securely braced so as to minimize vibration.

Section 230.58 Flue Plugs

This section strengthens the rules for plugging flues contained in § 230.44 of the 1978 standards. When § 230.44 of the 1978 standards was first promulgated by the former Interstate Commerce Commission, it was designed to accommodate the locomotive owner and/or operator's business concerns by allowing them to plug their flues in order to continue in operation until the nearest repair point where the flue could be repaired or replaced. The task force decided to recommend that FRA continue to allow flue plugging provided restrictions are placed on the manner in which flues may be plugged in order to minimize the risk of flue failures.

The task force was concerned because one failed flue will often be followed by additional flue failures since flues are typically replaced all at once, and are therefore exposed to similar stressors. Accordingly, this section allows only one flue to be plugged at any time and requires any such plugged flue to be repaired or replaced within 30 calendar days. In addition, the task force wanted

to distinguish between flues greater than 2¼" in OD and flues equal to or smaller than 2¼" in OD, and to prohibit the plugging of the latter. Subsection (b) of this section is largely derived from § 230.44 of the 1978 standards, however it eliminates that section's implied allowance of plugging flues at one end only, requiring instead that flues be plugged at both ends. The task force felt that plugging a flue at one end was inconsistent with the function plugging is designed to accomplish.

Fusible Plugs

Section 230.59 Fusible Plugs

This section, incorporating the provisions of § 230.14 of the 1978 standards, imposes no new inspection requirements for steam locomotives on locomotive owners and/or operators. Consistent with the comprehensive changes made to the inspection scheme in part 230, it relaxes the time frame in which fusible plugs must be removed and cleaned. It also adds the requirement that the removal be noted on the inspection report.

Washing Boilers

Section 230.60 Time of Washing

This section retains the inspection and maintenance requirements of § 230.45 of the 1978 standards. In addition, although not imposing any new inspection requirements for steam locomotives on locomotive owners and/or operators, this section does change the minimum requirement for mandatory boiler washes from once each month to every time that a 31-service day inspection is conducted.

In its review of the Gettysburg steam explosion, the NTSB recommended that the agency consider regulating water quality, specifically by imposing water treatment program requirements. The task force strenuously debated this topic and concluded the boiler wash itself was the best method for addressing water quality, especially since the regulation requires that the boiler be washed as frequently as water conditions require.

This section is based on FRA's agreement with and adoption of the task force's recommendation.

Section 230.61 Arch Tubes, Water Bar Tubes, Circulators and Thermic Siphons

This section expands the requirements of § 230.46 of the 1978 standards by requiring, in addition to removal, that the arch tubes and water bar tubes be cleaned and inspected each time the boiler is washed. In addition, this section adds condemning limits for arch tubes and water bar tubes. Both of

these additions to this section are derived from the ICC Interpretations and reflect the task force's desire to incorporate the Interpretations into this part.

Finally, this section requires a NDE evaluation of arch tubes, water bar tubes and circulators during the annual inspection in order to assess reduced wall thickness. The task force was concerned about the cost this would impose, and debated whether this requirement would prove too onerous for smaller operations. They concluded, however, that ultrasonic testing is affordable and that the increased safety levels provided by this testing justify the additional costs imposed on the locomotive owners and/or operators.

Steam Pipes

Section 230.62 Dry Pipe (New)

This section require locomotive owners and/or operators to inspect dry pipes that are subject to pressure during each annual inspection for the purpose of measuring the pipe wall thickness. It establishes a requirement that owners and/or operators remove from service any dry pipes that are no longer "suitable for the service intended."

Section 230.63 Smoke Box, Steam Pipes and Pressure Parts (New)

Under this section, locomotive owners and/or operators are required to inspect the smoke box, steam pipes and pressure parts at each annual inspection, or whenever conditions so warrant. This section requires the person performing the inspection to enter the smoke box and examine it for signs of leaks from any of its pressure parts and to examine all draft appliances.

Steam Leaks

Section 230.64 Leaks Under Lagging

This section retains the concepts of § 230.49 of the 1978 standards without substantive change while rewriting the standards for clarity and for ease of compliance.

Section 230.65 Steam Blocking View of Engine Crew

This section retains the concepts of § 230.50 of the 1978 standards without substantive change, but rewrites them for clarity and for ease of compliance.

Subpart C—Steam Locomotives and Tenders

Section 230.66 Design, Construction and Maintenance

This section retains § 230.101 of the 1978 standards with the only substantive changes being those

required to take into account the changed liability standard; see section IX(A).

Section 230.67 Responsibility for Inspection and Repairs

This section amends § 230.102 of the 1978 standards by making the locomotive owner and/or operator the party responsible for the inspection and repair of all locomotives and tenders under their control, instead of the chief mechanical officer. In addition, this section acts in conjunction with § 230.23 by delineating the standard for repairs and by requiring that a locomotive not be returned to service unless in good condition and safe and suitable for service.

Speed Indicators

Section 230.68 Speed Indicators (New)

This section requires all steam locomotives that operate at speeds in excess of 20 miles per hour over the general system of transportation to be equipped with speed indicators that are maintained to ensure proper functioning. The task force discussed (and wanted to address) the interplay between this part and part 240's engineer certification standards. Because locomotive engineers may be decertified for certain speed-related violations, the task force felt that steam locomotives that operate at more than 20 miles per hour should be equipped with speed indicators.

Ash Pans

Section 230.69 Ash Pans

This section adopts § 230.105 of the 1978 standards without substantive change, but rewrites it for the sake of clarity and for ease of compliance.

Brake and Signal Equipment

Section 230.70 Safe Condition

This section adopts § 230.105 of the 1978 standards without substantive change but rewrites it for the sake of clarity and for ease of compliance.

Section 230.71 Orifice Testing of Compressors

This section retains § 230.107 of the 1978 standards but reorganizes and rewrites it for clarity. In addition, consistent with the comprehensive changes in the inspection scheme in part 230, it lengthens the time within which compressors must be orifice-tested from once each three months, to once each 92 service days. Finally, it expands the table listing the testing criteria to include the commonly used 120 LP Westinghouse compressor.

Section 230.72. Testing Main Reservoirs

Subsection (a) of this section retains the requirements of § 230.108 of the 1978 standards but rewrites them for clarity.

Subsections (b) through (d) of this section are new. Subsection (b) incorporates part 229's allowance for drilling of certain specified welded main reservoirs. The task force felt that drilling was a good idea because it facilitates reservoir failures in a non-catastrophic manner. This section is largely derived from § 229.31 and reflects the task force's desire to harmonize these sections wherever possible. Subsection (c) is intended to encourage the use of appropriate NDE methods for testing the wall thickness of the welded main reservoirs. It also provides for NDE testing of welded main reservoirs without longitudinal lap seams rather than the more destructive hammer and hydrostatic testing otherwise required. The formula for the condemning limits for welded main reservoirs is derived from the ASME Section VIII, Div I. The spacing for the sampling points is derived from § 229.31.

Finally, under subsection (d), NDE testing of welded or riveted longitudinal lap seam main reservoirs is required. While the task force seriously debated recommending that the use of lap seam main reservoirs be prohibited, they felt that there wasn't a strong enough safety basis for justifying this action. Their concerns were further eased by the belief that lap seam main reservoirs will eventually be phased out for economic reasons.

Section 230.73 Air Gauges

This section adopts, with minor substantive changes, § 230.109 of the 1978 but reorganizes and rewrites it for clarity. Part of the comprehensive changes made to the inspection scheme in part 230, it increases the time frame for performing required air gauge testing from once each three months to the 92 service day inspection. It also adds a requirement that gauges be tested prior to reinstallation. The task force recommended that gauges that are removed be retested because they were concerned about the impacts the gauges may sustain in handling and storage while off the locomotive. The method of testing required by this section is identical to that found in § 230.109 of the 1978 standards.

Section 230.74 Time of Cleaning

This section modifies § 230.110 of the 1978 standards by broadening the scope

of the section to include all valves in the air brake system, by specifying a testing procedure, and by relaxing the time frame for conducting the inspection. The task force recommended reconciling this section, to the greatest extent possible, with § 232.10. A number of task force members were concerned about requiring this cleaning too frequently, based on their experience that the cleaning process itself can adversely affect the proper functioning of the valves. Experience has shown that once the system is opened to clean the valves, dirt can get in and be distributed throughout, seriously affecting the integrity of the system. The task force discussed various cleaning intervals. These ranged from once every six months (the 1978 standard) to once each fifth annual inspection; the task force ultimately settled on a recommended interval between cleanings of between once every 368 service days and at every second annual inspection.

Section 230.75 Stenciling Dates of Tests and Cleaning

This section retains the provisions of § 230.111 of the 1978 standards but rewrites them for clarification. In addition, the requirement that testing dates be stamped on metal tags and attached to the locomotive is deleted.

Section 230.76 Piston Travel

This section adopts § 230.112 of the 1978 standards without substantive change.

Section 230.77 Foundation Brake Gear

This section adopts § 230.113 of the 1978 standards without substantive change.

Section 230.78 Leakage

This section retains the provisions of § 230.114 of the 1978 standards without substantive change, while identifying specific inspection time periods and requirements in the rule text.

Section 230.79 Train Signal System

This section retains § 230.115 of the 1978 standards with minor changes. In addition, it recognizes other forms of "onboard communication" and relaxes the train signal system testing requirements from before each trip made to the beginning of each day the locomotive is used.

Cabs, Warning Signals, and Sanders

Section 230.80 Cabs

This section changes § 230.116 of the 1978 standards by removing all the cab curtain requirements and rewriting the standards for clarity. Subsection (a)

incorporates the general provision section of the 1978 standards while updating the requirements to track part 229's cab condition language. The task force discussed the language relating to the cab climate at length and agreed to try and draft a performance standard for the cab rather than select temperature ranges and specific environment controls. The task force also decided to delete all the cab curtain requirements because they believed that the curtains don't adequately keep temperature in the proper range, and that the performance standard in subsection (a) was a better way to achieve the desired outcome. This section's requirement that the environment not "unreasonably interfere with the engine crew's performance of duties under ordinary conditions of service" establishes a performance standard the locomotive cab climate must be in compliance with. Therefore, a cab with poor ventilation that gets so hot that it causes the engine crew to get sleepy or otherwise affects their performance of required duties would be in noncompliance with this section. The "ordinary conditions of service" language, however, takes into account those conditions that are unavoidable in steam locomotive service such as the extreme amount of heat from the locomotive boiler fire box. The task force wanted to make clear its belief that only those cab conditions that are "abnormal" for steam locomotive service should constitute noncompliance with this section. The task force wanted to move toward a "common sense" perspective on cab conditions that would simultaneously be enforceable yet not unreasonably interfere with steam locomotive operations.

Subsection (b) addresses the issue of steam pipes in the locomotive cab. This section retains most of § 230.116 of the 1978 standards but makes more specific the "double strength pipe" description. The task force recommended that the minimum standard for these pipes be specified as "schedule 80" to conform with the more common industry terminology. All other subsections of § 230.116 of the 1978 standards have been deleted as unnecessary.

Section 230.81 Cab Aprons

This section expands the requirements of § 230.117 of the 1978 standards by delineating standards for the width of the apron. Concerned about the risk of serious injury or death resulting from an individual standing on a cab apron getting caught between the locomotive and tender, the task force wanted to incorporate the ICC Interpretations regarding apron width.

Requiring cab aprons be of a minimum width eliminates the danger of the apron dropping between the locomotive and tender if a knuckle breaks or the drawbar becomes disconnected and the safety chains are stretched taut.

Section 230.82 Fire Doors

This section eliminates the requirement in § 230.118 of the 1978 standards that all locomotives have mechanically operated fire doors. The task force decided to recommend doing so because some smaller locomotives cannot be equipped with them. The task force considered making the mechanically operated fire door requirement contingent upon the weight of the locomotive, and the agency requested—but did not receive—comments on this issue. Because no comments were received on this issue, FRA has decided to simply eliminate the requirement that all steam locomotives be equipped with mechanically operated fire doors. However, this section does not prohibit the use of such mechanically operated fire doors.

In addition, the task force recommended and FRA has agreed to the deletion of subsections (b) and (c) of § 230.118 of the 1978 standards, relating to stokers.

Section 230.83 Cylinder Cocks

This section retain § 230.119 of the 1978 standards without substantive change, but edits it for clarity and ease of compliance.

Section 230.84 Sanders

This section retains § 230.120 of the 1978 standards without substantive change, but rewrites it for clarity and, consistent with the changes to the pre-departure inspection concept made in this rule relaxes the inspection time period from at the beginning of each trip to the beginning of each day the locomotive is used.

Section 230.85 Audible Warning Device

This section modernizes § 230.121 of the 1978 standards by replacing its whistle requirement with a requirement that steam locomotives be equipped with audible warning devices. The decibel thresholds and the methodology for measuring the sound level are directly derived from § 229.129, which specifies the standards for audible warning devices for locomotives other than steam locomotives.

Lights

Section 230.86 Required Illumination

This section retains the requirements in §§ 230.129 and 230.131 of the 1978 standards but consolidates and edits them for clarity. In addition, this section eliminates the distinction made in the 1978 standards between locomotives in yard service and those in road service. FRA has done so, consistent with the task force's recommendation, since any justification for differentiating between road and yard locomotives disappeared when the nature of steam locomotive operations changed.

Section 230.87 Cab Lights

While retaining § 230.132 of the 1978 standards essentially unchanged, this section extends the coverage to all locomotives, instead of merely those used between sunset and sunrise. The task force recommended doing so in order to address those operating circumstances that might arise during "daylight" hours, making it difficult, if not impossible, for the engine crew to observe unlit control instruments, gauges, and meters.

Throttle and Reversing Gear

Section 230.88 Throttles

This section restates the provisions of § 230.156 of the 1978 standards without substantive change.

Section 230.89 Reverse Gear

This section retains parts of § 230.157 of the 1978 standards but reorganizes and rewrites it for clarity and ease of compliance. Subsection (a) retains the general language that appears before subsection 230.157(a) of the 1978 standards. However, based on the task force's experience that many steam locomotives in service today operate safely without power-operated reverse gear, subsections (a) and (b) of the 1978 standards have been deleted. As the task force observed, power-operated reverse gears can be dangerous as well. The task force considered attaching a weight restriction to this requirement but concluded that the problem would be self-regulating since it would be impractical to move certain locomotives with manual reverse operating gear. Subsections (b) and (c) are derived from subsection 230.157(c) of the 1978 standards.

Draw Gear and Draft Systems

Section 230.90 Draw Gear Between Steam Locomotive and Tender

Subsection (a) of this section retains most of the requirements of subsection § 230.122(a) of the 1978 standards

unchanged but adds a requirement that NDE testing of draw pins and drawbars be done during every annual inspection. This section also requires that an additional NDE testing method be used when a visual inspection fails to disclose any defects. The task force, wishing to balance industry's concerns about requiring this test too frequently with safety considerations, recommended FRA require the use of better technology as a condition for extending the inspection time-period from three months to one year. This section adopts the task force's recommendation.

Subsection (b) of this section modifies the 1978 standards requirements for safety bars or chains and their relative strength. Some task force members took issue with the reference in the 1978 standards to "two or more safety bars or safety chains," observing that some locomotives are designed with one (1) safety bar. The consensus was that the old rule addressed those instances where smaller draw bars take the place of safety chains and not the double drawbar design whereby the drawbar that normally bears no load is, in fact, a safety bar. In addition, this section incorporates the ICC interpretation of the 1978 standard's "ample strength" as requiring that the combined strength of safety chains or bars and their fastenings be at least 50 percent of the strength of the drawbar and its connections.

Subsections (c), (d), and (e) of this section retain subsections (c), (d), and (e) of § 230.122 of the 1978 standards without change.

Section 230.91 Chafing Irons

This section retains the requirements of § 230.123 of the 1978 standards without substantive change but edits it for clarity and for ease of compliance.

Section 230.92 Draw Gear and Draft Systems

This section retains the requirements of § 230.124 of the 1978 standards without substantive change but expands it to cover couplers as well.

Driving Gear

Section 230.93 Pistons and Piston Rods

This section basically retains the requirements of § 230.127 of the 1978 standards but revises it by eliminating the stamping requirement for rods and by adding standards for fasteners. The task force debated whether or not a mechanism for tracing materials should be retained, concluding that part 230 should not require it. The task force discussed issuing a "recommended

practices" handbook for steam locomotive operators (not part of this rule) in which traceability of materials would be discussed.

Section 230.94 Crossheads

This section retains the requirements of § 230.125 of the 1978 standards without substantive change but edits them for clarity and ease of compliance.

Section 230.95 Guides

This section retains the requirements of § 230.126 of the 1978 standards without substantive change.

Section 230.96 Main, Side, and Valve Motion Rods

Subsection (a) of this section retains the requirements in subsection (a) of § 230.128 of the 1978 standards without substantive change but edits them for clarity.

Subsection (b) of this section revises § 230.128 of the 1978 standards to expressly allow welding of main, side and valve motion rods, subject to FRA approval of requests to do so. The task force debated how to best regulate the welding methodology and concluded that requiring the welding in accordance with an accepted national standard was the easiest and most thorough way to do so. The task force concluded that this section should be in conformity with § 230.33 of these proposed standards. See the analysis of welding concerns in that section which mirrors the task force's discussion of this subsection.

Subsection (c) of this section incorporates subsection (c) of § 230.128 of the 1978 standards in its entirety and, for clarity, adds a sentence to address floating bushings.

Subsection (d) of this section retains the requirements of subsection (d) of § 230.128 of the 1978 standards without change.

Subsection (e) of this section retains the requirements of subsection (e) of § 230.128 of the 1978 standards but edits it for the sake of clarity.

Subsection (f) of this section retain the requirements in subsection (f) of § 230.128 of the 1978 standards without change.

Subsection (g) of this section retains the requirements of subsection (g) of § 230.128 of the 1978 standards without change.

This section, in accordance with the elimination of any distinction between road and yard service, deletes the requirements found in subsections (h) and (i) of § 230.128 of the 1978 standards. As discussed previously, FRA believes that the justification for treating these types of service differently no longer exists.

Section 230.97 Crank Pins

Subsection (a) of this section changes the requirements of § 230.136 of the 1978 standards, eliminating the stamping requirement, consistent with § 230.92 of this proposal. The task force felt very strongly that there was no need to have the application date stamped on the pin, since there is no apparent reason for anyone to need to know the application date.

This subsection also expands the prohibition for shimming or prick punching to include a ban on "securing the fit of a loose crank pin by shimming, prick punching, or welding."

Subsection (b) of this section adopts the requirements of subsection (b) of § 230.136 of the 1978 standards essentially as is except for changing the word "bolts" to "fasteners." This change is non-substantive and reflects the acceptable use of other mechanisms as fasteners.

Running Gear

Section 230.98 Driving, Trailing, and Engine Truck Axles

This section retains the requirements of § 230.133 of the 1978 standards with minor substantive changes: editing and reorganizing it for clarity and for ease of compliance. This section also relaxes the wear allowance on secondary driving axles. The task force decided to recommend making this change in order to bring the regulation in line with their own operational experiences.

Section 230.99 Tender Truck Axles

This section retains the requirements of § 230.134 of the 1978 standards without substantive change.

Section 230.100 Defects in Tender Truck Axles and Journals

This section retains the requirements of § 230.135 of the 1978 standards without substantive change.

Section 230.101 Steam Locomotive Driving Journal Boxes

This section retains the requirements of § 230.137 of the 1978 standards without substantive change but reorganizes and edits the requirements for clarity and for ease of compliance.

Section 230.102 Tender Plain Bearing Journal Boxes (New)

This section establishes condemning limits for plain bearing journal boxes, consistent with the task force's recommendation. The task force's recommendations were based on its collaborative efforts to identify those issues that could affect the operational integrity/function of the journal.

Section 230.103 Tender Roller Bearing Journal Boxes (New)

This section imposes maintenance requirements for tender roller bearing journal boxes, consistent with the task force's recommendation. The task force felt that imposing specific condemning limits for roller bearing journal boxes was unnecessary, believing that the performance standard "safe and suitable" would suffice.

Section 230.104 Driving Box Shoes and Wedges

This section adopts the provisions of § 230.138 of the 1978 standards without change.

Section 230.105 Lateral Motion

This section adopts the provisions of § 230.140 of the 1978 standards without change.

Trucks and Frames and Equalizing System**Section 230.106 Steam Locomotive Frame**

This section adopts the provisions of § 230.139 of the 1978 but expands upon them by allowing locomotive owners and/or operators to operate steam locomotives with broken frames, provided the frames are properly patched or secured in a way that restores the rigidity of the frame.

Section 230.107 Tender Frame and Body

This section adopts the provisions of § 230.152 of the 1978 standards and adds a section that establishes condemning limits for tender frames, consistent with the task force's recommendation.

Section 230.108 Steam Locomotive Leading and Trailing Trucks

This section retains the requirements of § 230.143 of the 1978 standards but, consistent with the task force's recommendations, modifies them to require that all centering devices not permit lost motion in excess of 1/2 inch.

Section 230.109 Tender Truck

This section adopts the provisions of § 230.155 of the 1978 standards while adding condemning defects for springs and a "safe and suitable" requirement for truck centering devices (where the tender is so equipped).

Section 230.110 Pilots

This section retains the requirements in § 230.141 of the 1978 standards without change but adds language to make clear that minimum and maximum clearances of the pilot above

the rail must be measured on tangent level track.

Section 230.111 Spring Rigging

This section adopts the requirements in § 230.142 of the 1978 standards with minor revisions. This section changes the 1978 standards to allow the adjusting of load weights by shifting weights from one pair of wheels to another and the repair of broken springs within the condemning limits for spring rigging by clipping, provided the clips can be secured so as to stay in place.

Wheels and Tires**Section 230.112 Wheels and Tires**

This section retains and consolidates the 1978 standards of §§ 230.144, 230.150, and 230.151. Subsections (a), (b), and (c) adopt the requirements of § 230.144 with a few modifications. Subsection (a) changes "pressed" to "mounted." This change was made based on the task force's recommendation that the rule take "official" notice of the process of shrinking wheels onto the axle. It was felt that acknowledgment of this practice is not sufficiently provided by using the term "pressed." Subsection (b), add a sentence to address the issue of gage for track that is less than standard gage. The figures used were derived from back to back measurement. The task force debated whether to recommend that FRA include standards for "wide-flange" wheels but concluded that the agency should wait to see if the use of "wide-flange" wheels becomes more prevalent before addressing the issue. FRA's agrees with and has adopted that recommendation. Finally, subsection (c) retains the requirements in subsection (c) of § 230.144 of the 1978 standards without change.

Subsections (d) and (e), although new, are derived from §§ 230.150 and 230.151 of the 1978 standards. Subsection (d) adopts the provisions of § 230.151 of the 1978 standards without substantive change but rewrites them for enhanced clarity. Subsection (e) consolidates the standards found in § 230.150(d) and (e) of the 1978 standards but edits them for clarity and ease of compliance.

Section 230.113 Wheels and Tire Defects

This section retains the requirements in §§ 230.145, 230.146, and 230.149 of the 1978 standards but consolidates and edits them to make the standards more specific, to eliminate redundancies, and to enhance clarity.

Section 230.114 Wheel Centers

This section combines §§ 230.147 and 230.148 of the 1978 standards but

rewrites them to make the standards more specific and to address the issue of welding on wheel centers. The task force recommended that welding on wheel centers be allowed in accordance with § 229.75(m) of the 1978 standards. This section is based on FRA's adoption of that recommendation.

Steam Locomotive Tanks**Section 230.115 Feed Water Tanks**

This section adopts the requirements of § 230.153 of the 1978 standards, largely without change, but does some rewriting to enhance clarity and make the requirements easier to comply with. Subsection (a) of this section changes § 230.153 of the 1978 rule by requiring that all locomotives, regardless of the date of their manufacture or method of use, be equipped with a water level measurement device capable of being read from the cab or tender deck of the locomotive. The task force felt that this could be done at a relatively low cost and would eliminate the need for the locomotive operator to climb atop the tender tank to check the water level. In addition, this section extends the time period for inspecting feed water tanks from once each month to once each 92 service days, consistent with the other changes made in the inspection scheme of this rule.

Section 230.116 Oil Tanks

This section retains § 230.154 of the 1978 standards without substantive change but rewrites it to enhance clarity.

Appendices

FRA has included four appendices to this rule. A brief description for each is provided below.

Appendix A—Inspection Requirements

FRA is providing a simple reference guide for those persons who will be conducting inspections required under these regulations in this appendix. This reference guide does not modify the specific requirements found in the particular sections.

Appendix B—Drawings and Diagrams

This appendix provides—for informational purposes only—a series of drawings and diagrams that are cross referenced to various sections of the rule. Each drawing or diagram visually demonstrates how the rule language should be applied. For example, one drawing depicts shows how a measuring device should be used to take accurate measurements of objects such as wheels to determine the size of flanges, flat spots, and broken rims for compliance purposes.

Appendix C—Inspection Forms

This appendix contains examples of the six forms being issued by FRA for the purpose of recording compliance with the inspection and repair activities in this rule. Use of these forms is mandatory since FRA is not allowing individual operators to create their own forms for recording this data. FRA will make every effort to insure that these forms are readily available to those parties required to use them.

Appendix D—Schedule of Civil Penalties

This appendix contains a penalty schedule similar to those that FRA has issued for its other regulations. FRA suggests that those consulting this appendix read FRA's current policy statement concerning the manner in which the agency enforces the rail safety laws. This policy statement is contained in Appendix A to 49 CFR part 209.

In addition, FRA is amending its Statement of Agency Policy in Appendix A of part 209 to include a summary of its exercise of jurisdiction over tourist railroads. FRA had proposed that this summary become an appendix to part 230. However, inserting the summary in FRA's broad discussion of its jurisdiction in part 209 is more logical.

Regulatory Impact**A. Executive Order 12866 and DOT Regulatory Policies and Procedures**

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a Regulatory Impact Analysis (RIA) addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of this rule. For a twenty year period the Present Value (PV) of the potential societal benefits is approximately \$11.5 million and the PV of the estimated quantified costs is approximately \$1.6 million. A majority of the costs will result from the transition from the former rule to this rule. A majority of the savings will

result from the changes in the inspection frequencies under this rule's requirements.

FRA anticipates that this rule will not only reduce the federally mandated burden for the average steam locomotive owner/operator, but will also reduce the risk involved in steam locomotive operations. The PV of the net benefits is \$9.94 million.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590.

FRA has published an interim policy which formally establishes "small entities" as being railroads which meet the line haulage revenue requirements of a Class III railroad. For other entities, the same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposed to use this alternative definition of "small entity" for this rulemaking during the Notice of Proposed Rulemaking, and requested comments from the public on its use. No comments were received.

This RFA concludes, and FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. The significance of such impact on the potentially affected small entities varies according to the current level of maintenance and inspection that a steam locomotive receives. Thus, an owner and/or operator of a steam locomotive which has only been marginally maintained could be significantly impacted by this rule. In order to determine the significance of the economic impact FRA requested comments to the docket that would have provided additional data on the economic impact imposed by this rulemaking. FRA received no comments or additional data.

For this rulemaking there are potentially 150 steam locomotives that fall under the FRA's jurisdiction which could be affected. These locomotives are owned by 82 operators. FRA estimates that somewhere between 85 and 95 percent of these operators are small

entities. These operators primarily use their steam locomotives in a tourist, historic, excursion, scenic, or museum railway operations. Since this regulation is primarily being imposed on small entities, readers interested in further details about the impacts on these entities beyond those noted in the RFA, should review the final rule's Regulatory Impact Analysis (RIA) which is also in the docket.

The impacts that this regulation would have on the affected steam locomotive operators will vary for the 82 different operators. The impact will be inversely proportional to the level of inspection, maintenance and repair that each steam locomotive has received prior to the implementation of this rule. Thus, steam locomotives that have been inspected, maintained and repaired properly should be impacted less than one's that have not. FRA estimates that the Present Value (PV) of the average cost of this rule, per steam locomotive, is approximately \$10,700 over twenty years. One of the more significant economic impacts that will affect all steam locomotives is the cost from the transition from the former regulation to the final rule. A revision which could impact a small quantity of steam locomotives significantly each year is the requirement for replacing broken staybolts. New equipment requirements, such as a second water glass, total less than \$50,000 for all affected steam locomotives over the twenty year period.

Since this final rule impacts primarily small entities, most of the provisions in it were formed with the recognition that small operations would have to be burdened with its implementation and cost. In other words, all provisions of this rule considered the potential impact to small entities when consensus was being formed on the rule-text. Because of this consideration, all requirements for specific equipment (*i.e.*, cab lights, water glass *etc.*) allow the operators to have one year from the effective date of the final rule to implement these requirements.

The largest impact and the greatest savings occur when a steam locomotive transitions from the former regulation to the final rule. Therefore, implementation for this is phased-in gradually. This requirement provides steam locomotive owners and operators the flexibility necessary to bring their operations into compliance with the requirements of this final rule.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to Section 312 of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104-121), FRA is issuing a Small Entity Compliance Guide to summarize the requirements of this rule. The Guide will be made available to all affected small entities to assist them in understanding the actions necessary to comply with the rule. The Guide will in

no way alter the requirements of the rule but will be a tool to assist small entities in the day-to-day application of those requirements.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been

submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.3—Implementation: Interim Flue Extensions	82 owners/operators.	30 letters	30 minutes	15	\$450
Petitions for Special Consideration	82 owners/operators.	30 petitions	1 hour	30	1,020
Agency Silence	82 owners/operators.	1 notification	1 hour	1	30
230.6—Waivers	82 owners/operators.	2 waiver letters	1 hour	2	60
Grant of waiver filed for reassessment	82 owners/operators.	2 waiver letters	1 hour	2	60
230.12—Conditions for movement of Noncomplying Locomotives.	82 owners/operators.	10 tags	6 minutes	1	30
230.13—Inspection Reports: Recordkeeping	82 owners/operators.	3,650 forms	2 minutes	122	3,660
230.14—31 Service Day Inspection	82 owners/operators.	100 reports	20 minutes	33	990
FRA Notification	82 owners/operators.	2 notifications	5 minutes	.17	5
230.15—92 Day Service Inspection	82 owners/operators.	100 reports	20 minutes	33	990
230.16—Annual Inspection	82 owners/operators.	100 reports	30 minutes	50	1,500
FRA Notification	82 owners/operators.	100 notifications	5 minutes	8	240
230.17—1472 Service Day Inspection (Form No. 4).	82 owners/operators.	15 forms	30 minutes	8	240
Recordkeeping (FRA Form 3)	82 owners/operators.	15 reports	15 minutes	4	120
230.18—Service Day Report (FRA Form No. 5): Recordkeeping.	82 owners/operators.	150 reports	15 minutes	38	1,140
230.19—Posting of Copy: Recordkeeping	82 owners/operators.	300 forms	1 minute	5	150
230.20—Alteration Reports for Steam Locomotive Boilers (FRA Form No. 19).	82 owners/operators.	5 reports	1 hour	5	150
230.21—Steam Locomotive Number Change	82 owners/operators.	5 documents	2 minutes	.17	5
230.33—Welded Repairs and Alterations	82 owners/operators.	5 letters	50 minutes	1	30
Wastage and Flush Patches	82 owners/operators.	2 letters	10 minutes	2	60
230.34—Riveted Repairs and Alterations	82 owners/operators.	37 requests	5 minutes	3	90
230.41—Flexible Staybolts with Caps: Recordkeeping.	82 owners/operators.	10 entries	1 minute	.17	5
230.46—Badge Plates: Recordkeeping	82 owners/operators.	1 report	30 minutes	.50	15
230.47—Boiler Number: Recordkeeping	82 owners/operators.	1 report	15 minutes	.25	8
230.49 Setting of Safety Relief Valves	150 steam locomotives.	38 tags/labels	1 minute	1	30
230.75—Stenciling Dates of Tests and Cleaning: Recordkeeping.	82 owners/operators.	54 tests	1 minute	1	30
230.96—Main, Side, Valve Rods	82 owners/operators.	1 letter	10 minutes	.17	5
230.98—Driving, Trailing, and Engine Truck Axles: Journal Diameter Stamped.	82 owner/operators	1 stamp	15 minutes	.25	8
230.116—Oil Tanks	82 owners/operators.	150 signs	1 minute	3	90

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicited comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202-493-6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, comment addressed to OMB is best assured of having full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Preemption of state regulation in the area of locomotive safety occurs as a result of the LBIA itself rather than through

FRA's issuance of a rule. Therefore, this rule, by itself, is not likely to increase the preemptive effect of the LBIA.

In developing this rule through the Railroad Safety Advisory Committee (which includes representatives of State organizations), FRA has fulfilled the objectives of consultation under Executive Order 13132 on Federalism. State representatives participated in the full RSAC's vote to recommend the proposed rule to the Administrator. FRA has taken care in the rule to explain that the agency believes that statutory preemption will not apply to insular tourist railroads over which FRA has never exercised jurisdiction.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any 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 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * * detailing the effect on State, local and tribal governments and the private sector." The final rule issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement was not required.

G. Public Procedure

In accordance with Executive Order 12866, FRA provided 60 days for comments. FRA believes that a 60 day comment period was appropriate to allow parties with interests not represented on the Tourist and Historic Working Group of the Railroad Safety Advisory Committee to comment on this rule. As noted earlier, FRA had not originally scheduled a public hearing, but held one in Corpus Christi, Texas on February 4, 1999, in response to timely received written requests to do so. FRA solicited written comments on all aspects of this rule and changes to this rule were made in response to

comments received in response to this notice.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Enforcement, Hazardous materials transportation, Penalties, Railroad safety.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements, Steam locomotives.

The Rule

In consideration of the foregoing, FRA is amending Chapter II, Subtitle B of Title 49 of the Code of Federal Regulations as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20104, 20107, 20111, 20902, 21301-21311.

2. Appendix A to part 209 is amended by inserting, just before the last paragraph in the section headed, "The Extent and Exercise of FRA's Safety Jurisdiction," the following:

Appendix A to Part 209—Interim Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

THE EXTENT AND EXERCISE OF FRA'S SAFETY JURISDICTION

* * * * *

FRA exercises jurisdiction over tourist, scenic, and excursion railroad operations whether or not they are conducted on the general railroad system. There are two exceptions: (1) operations of less than 24-inch gage (which, historically, have never been considered railroads under the Federal railroad safety laws); and (2) operations that are off the general system and "insular" (defined below).

Insularity is an issue only with regard to tourist operations over trackage outside of the general system used exclusively for such operations. FRA considers a tourist operation to be insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser would be affected by the operation. A tourist operation will not be considered insular if one or more of the following exists on its line:

- A public highway-rail crossing that is in use;
- An at-grade rail crossing that is in use;
- A bridge over a public road or waters used for commercial navigation; or
- A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

When tourist operations are conducted on the general system, FRA exercises jurisdiction over them, and all of FRA's pertinent regulations apply to those operations unless a waiver is granted or a rule specifically excepts such operations (e.g., the passenger equipment safety standards contain an exception for these operations, 49 CFR 238.3(c)(3), even if conducted on the general system). When a tourist operation is conducted only on track used exclusively for that purpose it is not part of the general system. The fact that a tourist operation has a switch that connects it to the general system does not make the tourist operation part of the general system if the tourist trains do not enter the general system and the general system railroad does not use the tourist operation's trackage for any purpose other than delivering or picking up shipments to or from the tourist operation itself.

If a tourist operation off the general system is insular, FRA does not exercise jurisdiction over it, and none of FRA's rules apply. If, however, such an operation is not insular, FRA exercises jurisdiction over the operation, and some of FRA's rules (i.e., those that specifically apply beyond the general system to such operations) will apply. For example, FRA's rules on accident reporting, steam locomotives, and grade crossing signals apply to these non-insular tourist operations (see 49 CFR 225.3, 230.2 and 234.3), as do all of FRA's procedural rules (49 CFR parts 209, 211, and 216) and the Federal railroad safety statutes themselves.

In drafting safety rules, FRA has a specific obligation to consider financial, operational, or other factors that may be unique to tourist operations. 49 U.S.C. 20103(f). Accordingly, FRA is careful to consider those factors in determining whether any particular rule will apply to tourist operations. Therefore, although FRA asserts jurisdiction quite broadly over these operations, we work to ensure that the rules we issue are appropriate to their somewhat special circumstances.

* * * * *

3. Part 230 is revised to read as follows:

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

Subpart A—General

Sec.

- 230.1 Purpose and scope.
- 230.2 Applicability.
- 230.3 Implementation.
- 230.4 Penalties.
- 230.5 Preemptive effect.
- 230.6 Waivers.
- 230.7 Responsibility for compliance.
- 230.8 Definitions.
- 230.9 Information collection.

General Inspection Requirements

- 230.11 Repair of non-complying conditions.
- 230.12 Movement of non-complying steam locomotives.
- 230.13 Daily inspection.
- 230.14 Thirty-one (31) service day inspection.

- 230.15 Ninety-two (92) service day inspection.
- 230.16 Annual inspection.
- 230.17 One thousand four hundred seventy-two (1472) service day inspection.

Recordkeeping Requirements

- 230.18 Service days.
- 230.19 Posting of FRA Form No. 1 and FRA Form No. 3.
- 230.20 Alteration and repair report for steam locomotive boilers.
- 230.21 Steam locomotive number change.
- 230.22 Accident reports.

Subpart B—Boilers and Appurtenances

- 230.23 Responsibility for general construction and safe working pressure.

Allowable Stress

- 230.24 Maximum allowable stress.
- 230.25 Maximum allowable stress on stays and braces.

Strength of Materials

- 230.26 Tensile strength of shell plates.
- 230.27 Maximum shearing strength of rivets.
- 230.28 Higher shearing strength of rivets.

Inspection and Repair

- 230.29 Inspection and repair.
- 230.30 Lap-joint seam boilers.
- 230.31 Flues to be removed.
- 230.32 Time and method of inspection.
- 230.33 Welded repairs and alterations.
- 230.34 Riveted repairs and alterations.

Pressure Testing of Boilers

- 230.35 Pressure testing.
- 230.36 Hydrostatic testing of boilers.
- 230.37 Steam test following repairs or alterations.

Staybolts

- 230.38 Telltale holes.
- 230.39 Broken staybolts.
- 230.40 Time and method of staybolt testing.
- 230.41 Flexible staybolts with caps.

Steam Gauges

- 230.42 Location of gauges.
- 230.43 Gauge siphon.
- 230.44 Time of testing.
- 230.45 Method of testing.
- 230.46 Badge plates.
- 230.47 Boiler number.

Safety Relief Valves

- 230.48 Number and capacity.
- 230.49 Setting of safety relief valves.
- 230.50 Time of testing.

Water Glasses and Gauge Cocks

- 230.51 Number and location.
- 230.52 Water glass valves.
- 230.53 Time of cleaning.
- 230.54 Testing and maintenance.
- 230.55 Tubular type water and lubricator glasses and shields.
- 230.56 Water glass lamps.

Injectors, Feedwater Pumps, and Flue Plugs

- 230.57 Injectors and feedwater pumps.
- 230.58 Flue plugs.

Fusible Plugs

- 230.59 Fusible plugs.

Washing Boilers

- 230.60 Time of washing.
- 230.61 Arch tubes, water bar tubes, circulators and thermic siphons.

Steam Pipes

- 230.62 Dry pipe.
- 230.63 Smoke box, steam pipes and pressure parts.

Steam Leaks

- 230.64 Leaks under lagging.
- 230.65 Steam blocking view of engine crew.

Subpart C—Steam Locomotives and Tenders

- 230.66 Design, construction, and maintenance.
- 230.67 Responsibility for inspection and repairs.

Speed Indicators

- 230.68 Speed indicators.

Ash Pans

- 230.69 Ash pans.

Brake and Signal Equipment

- 230.70 Safe condition.
- 230.71 Orifice testing of compressors.
- 230.72 Testing main reservoirs.
- 230.73 Air gauges.
- 230.74 Time of cleaning.
- 230.75 Stenciling dates of tests and cleaning.
- 230.76 Piston travel.
- 230.77 Foundation brake gear.
- 230.78 Leakage.
- 230.79 Train signal system.

Cabs, Warning Signals, Sanders and Lights

- 230.80 Cabs.
- 230.81 Cab aprons.
- 230.82 Fire doors.
- 230.83 Cylinder cocks.
- 230.84 Sanders.
- 230.85 Audible warning device.
- 230.86 Required illumination.
- 230.87 Cab lights.

Throttles and Reversing Gear

- 230.88 Throttles.
- 230.89 Reverse gear.

Draw Gear and Draft Systems

- 230.90 Draw gear between locomotive and tender.
- 230.91 Chafing irons.
- 230.92 Draw gear and draft systems.

Driving Gear

- 230.93 Pistons and piston rods.
- 230.94 Crossheads.
- 230.95 Guides.
- 230.96 Main, side and valve motion rods.
- 230.97 Crank pins.

Running Gear

- 230.98 Driving, trailing, and engine truck axles.
- 230.99 Tender truck axles.
- 230.100 Defects in tender truck axles and journals.
- 230.101 Steam locomotive driving journal boxes.
- 230.102 Tender plain bearing journal boxes.

- 230.103 Tender roller bearing journal boxes.
- 230.104 Driving box shoes and wedges.
- 230.105 Lateral motion.

Trucks, Frames and Equalizing System

- 230.106 Steam locomotive frame.
- 230.107 Tender frame and body.
- 230.108 Steam locomotive leading and trailing trucks.
- 230.109 Tender trucks.
- 230.110 Pilots.
- 230.111 Spring rigging.

Wheels and Tires

- 230.112 Wheels and tires.
- 230.113 Wheels and tire defects.
- 230.114 Wheel centers.

Steam Locomotive Tanks

- 230.115 Feed water tanks.
- 230.116 Oil tanks.

Appendix A to Part 230—Inspection Requirements**Appendix B to Part 230—Diagrams and Drawings****Appendix C to Part 230—FRA Inspection Forms****Appendix D to Part 230—Civil Penalty Schedule**

Authority: 49 U.S.C. 20103, 20701, 20702; 49 CFR 1.49.

Subpart A—General**§ 230.1 Purpose and scope.**

This part prescribes minimum Federal safety standards for all steam-propelled locomotives operated on railroads to which this part applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 230.2 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads that operate steam locomotives.

(b) This part does not apply to:

- (1) A railroad with track gage of less than 24 inches;
- (2) A railroad that operates exclusively freight trains and does so only on track inside an installation that is not part of the general system of transportation;
- (3) Rapid transit operations in an urban area that are not connected to the general system of transportation; or
- (4) A railroad that operates passenger trains and does so only on track inside an installation that is insular, i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be

affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

- (i) A public highway-rail crossing that is in use;
- (ii) An at-grade rail crossing that is in use;
- (iii) A bridge over a public road or waters used for commercial navigation; or
- (iv) A common corridor with another railroad, i.e., its operations are conducted within 30 feet of those of any other railroad.

(c) See appendix A of part 209 for a current statement of the FRA's policy on its exercise of jurisdiction.

§ 230.3 Implementation.

Except as provided in paragraphs (a) through (c) of this section, the locomotive owner and/or operator shall perform a 1472 service day inspection that meets the requirements of § 230.17 when the locomotive's flues would be required to be removed pursuant to § 230.10, of the regulations in effect prior to January 18, 2000. (See 49 CFR parts 200–999, revised October 1, 1978) At the time the locomotive owner and/or operator completes this inspection, it must begin to comply with the rest of the provisions of this part. Up until such time, and except as provided in paragraphs (a) through (c) of this section, compliance with the regulations in effect prior to January 18, 2000 (See 49 CFR parts 200–999, revised October 1, 1978) will constitute full compliance with this part. Any interested person may obtain the October 1, 1978 revision of 49 CFR parts 200–999 by contacting the Federal Railroad Administration, Office of Chief Counsel, 400 7th Street, SW, Washington, DC 20590.

(a) One year after January 18, 2000. The following sections of this part must be complied with by January 18, 2001: §§ 230.7, 230.51, 230.57, 230.68, 230.70, 230.85, 230.87, 230.115, and 230.116.

(b) *Interim flue removal extensions.* FRA will continue to consider requests for flue removal extensions under the provisions of § 230.10 of the regulations in effect prior to January 18, 2000 (See 49 CFR parts 200–999, revised October 1, 1978) until January 18, 2002.

(c) *Petition for special consideration.* The locomotive owner or operator may petition FRA for special consideration of this part's implementation with respect to any locomotive that has either fully or partially satisfied the requirements of § 230.17 within the three (3) year period prior to September 25, 1998—provided the locomotive is in

full compliance with § 230.17 by the time the petition is actually filed.¹

(1) *Petition process.* Petitions must be filed by January 18, 2001 and must be accompanied by all relevant documentation to be considered, including a FRA Form No. 4 (see appendix C of this part) that has been calculated in accordance with § 230.17, and all records that demonstrate the number of days the locomotive has been in service. Based upon the documentation provided, FRA will calculate the number of "service days" the locomotive has accrued and will notify the petitioner of the number of service days that remain in the locomotive's 1472 service day cycle. Petitions should be sent to FRA by some form of registered mail to ensure a record of delivery. FRA will investigate these petitions and will respond to these petitions within one year of their receipt. FRA will send its response by some form of registered mail to ensure that a record of delivery is created. In its response, FRA may grant the petition or deny it. If FRA grants the petition, the entirety of the revised requirements will become effective upon receipt of FRA's response, unless FRA's response indicates otherwise. If FRA denies the petition, the rule will become effective as provided in the first paragraph of this section.

(2) *FRA silence.* Anyone who does not receive a response within one year of the date they filed their petition, whether through administrative or postal error, must notify FRA that the response has not been received. The notification should be provided to FRA by some form of registered mail to ensure a record of delivery. Upon receipt of this notification, FRA will ensure that a response is either issued, or re-issued, as soon as possible. In the interim, however, any operator who is at the end of their inspection cycle under the rules in effect prior to January 18, 2000 (See 49 CFR parts 200–999, revised October 1, 1978) will be allowed to remain in service without conducting the required inspection under § 230.17 for an additional six months, or until they receive FRA's decision, whichever occurs first.

¹ **Note:** As an example, where a locomotive has received a proper boiler inspection after September 25, 1995 pursuant to §§ 230.10 and 230.11 of the regulations in effect prior to January 18, 2000 but has not had its FRA Form No. 4 updated, the locomotive owner or operator may update and verify the FRA Form No. 4 for that locomotive, and submit a timely petition that requests retroactive credit for the boiler inspection. (See 49 CFR parts 200–999, revised October 1, 1978.)

§ 230.4 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A of part 209 for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 230.5 Preemptive effect.

The Locomotive Boiler Inspection Act (49 U.S.C. 20701–20703) preempts all State laws or regulations concerning locomotive safety. *Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605 (1926). However, FRA believes Congress did not intend to preempt State laws or regulations concerning rail operations over which FRA does not exercise jurisdiction. Therefore, in issuing this part, it is FRA's intent that State laws or regulations applicable to those rail operations to which this part does not apply (*i.e.*, insular tourist operations) not be preempted.

§ 230.6 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator of FRA for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

(d) All waivers of every form and type from any requirement of any order or regulation implementing the Locomotive Boiler Inspection Act, 36 Stat. 913, as amended, 49 U.S.C. 20702,

applicable to one or more steam locomotives, shall lapse on January 18, 2000 unless a copy of the grant of waiver is filed for reassessment prior to that date with the Office of Safety, Federal Railroad Administration, 400 Seventh Street, Washington, DC 20590. FRA will review the waiver and notify the applicant whether the waiver has been continued.

§ 230.7 Responsibility for compliance.

(a) The locomotive owner and/or operator is directly responsible for ensuring that all requirements of this part are satisfied, and is the entity primarily responsible for compliance with this part.

(b) Although the duties imposed by this part are generally stated in terms of the duties of a railroad or a steam locomotive owner and/or operator, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

(c) Chapter 207 of Title 49 of the United States Codes makes it unlawful for any railroad to use or permit to be used on its line any steam locomotive or tender unless the entire steam locomotive or tender and its parts and appurtenances are in proper condition and safe to operate in the service to which they are put, without unnecessary danger of personal injury and have been inspected and tested as required by this part.

§ 230.8 Definitions.

As used in this part, the terms listed in this section have the following definitions:

Administrator. The Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alteration. Any change to the boiler which affects its pressure retention capability. Rating changes are considered alterations.

ANSI. American National Standards Institute.

API. American Petroleum Institute.

ASME. American Society of Mechanical Engineers.

Boiler surfaces. The boiler interior is all the space inside a boiler occupied by water or steam under pressure, and all associated surfaces inside that space exposed to that water and steam. The boiler exterior is the opposite surface of all components directly exposed to the boiler interior. This includes the fire side of the firebox sheets.

Break. A fracture resulting in complete separation into parts.

Code of original construction. The manufacturer's or industry code in effect when the boiler was constructed.

If the exact code is not known, the closest contemporary code may be used provided it does not pre-date the construction date of the boiler.

Crack. A fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

Dead locomotive. A locomotive unable to produce tractive effort.

Fire. Anything that produces products of combustion that heat transferring components of the locomotive are exposed to.

FRA. The Federal Railroad Administration.

Locomotive operator. Person or entity which operates, but which does not necessarily own, one or more steam locomotives. This term means, for purposes of inspection and maintenance responsibility, the entity responsible for the day-to-day operation of the steam locomotive, or the delegate thereof. This entity may be a railroad or a person or persons who operate a steam locomotive under contract for a railroad.

Locomotive owner. Person or entity which owns, but which does not necessarily operate, one or more steam locomotives that is operated on a railroad to which this part applies. For purposes of inspection and maintenance responsibility, this term includes that entity's delegate as well.

MAWP. Maximum allowable working pressure as specified by the steam locomotive specification FRA Form No. 4. (See appendix C of this part.)

NBIC. National Board Inspection Code published by the National Board of Boiler and Pressure Vessel Inspectors.

NDE. Non-destructive Examination.

NPS. Nominal Pipe Size.

Person. An entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad. Any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and high speed ground transportation

systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Renewal. Replacement in kind with a newly manufactured or remanufactured (restored to original tolerances) component. Materials shall be suitable for the service intended.

Repair. Any work which results in a restoration in kind.

Serious injury. An injury that results in the amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or the confinement in a hospital for a period of more than 24 consecutive hours.

Service day. Any calendar day that the boiler has steam pressure above atmospheric pressure with fire in the firebox. In the case of a fireless steam locomotive, any calendar day that the boiler has steam pressure above atmospheric pressure.

Stayed portion of the boiler. That portion of the boiler designed to require support to retain internal pressure by the addition of strength members, such as staybolts, braces, diagonal stays, tubes, etc.

Steam locomotive. A self-propelled unit of equipment powered by steam that is either designed or used for moving other equipment. This includes a self-propelled unit designed or used to carry freight and/or passenger traffic.

Unstayed Portion of the Boiler. That portion of the boiler designed to be self-supported in retaining internal pressure without additional strength members such as staybolts, braces, diagonal stays, tubes, etc.

Wastage. A reduction in the thickness of a mechanical component, such as a pipe or sheet.

§ 230.9 Information collection.

(a) [Reserved].

(b) The information collection requirements are found in the following sections: §§ 230.3, 230.12 through 230.21, 230.33, 230.34, 230.41, 230.46, 230.47, 230.75, 230.96, 230.98, and 230.116.

§ 230.10 [Reserved]

General Inspection Requirements

§ 230.11 Repair of non-complying conditions.

The steam locomotive owner and/or operator shall repair any steam locomotive that fails to comply with the conditions of this part, and shall approve any such repairs made, before

placing the locomotive back into service.

§ 230.12 Movement of non-complying steam locomotives.

(a) *General limitations on movement.* A steam locomotive with one or more non-complying conditions may be moved only as a lite steam locomotive or a steam locomotive in tow, except as provided in paragraph (b) of this section. Cars essential to the movement of the steam locomotive and tender(s), including tool cars and a bunk car, may accompany lite movements.

(b) *Conditions for movement.* Prior to movement, the steam locomotive owner and/or operator shall determine that it is safe to move the locomotive, determine the maximum speed and other restrictions necessary for safely conducting the movement, and notify in writing the engineer in charge of the defective steam locomotive and, if towed, the engineer in charge of the towing locomotive consist, as well as all other crew members in the cabs, of the presence of the non-complying steam locomotive and the maximum speed and other movement restrictions. In addition, a tag bearing the words "non-complying locomotive" shall be securely attached to each defective steam locomotive and shall contain the following information:

- (1) The steam locomotive number;
- (2) The name of the inspecting entity;
- (3) The inspection location and date;
- (4) The nature of the defect;
- (5) Movement restrictions, if any;
- (6) The destination; and
- (7) The signature of the person making the determinations required by this paragraph (b).

(c) *Yard movements.* A non-complying steam locomotive may be moved lite or dead within a yard at speeds not in excess of 10 miles per hour without meeting the requirements of paragraph (b) of this section if the movement is solely for the purpose of repair. The locomotive owner and/or operator is responsible for ensuring that the movement may be safely made.

(d) *Non-complying conditions developed en route.* The locomotive owner and/or operator may continue in use a steam locomotive that develops a non-complying condition en route until the next daily inspection or the nearest forward point where the repairs necessary to bring it into compliance can be made, whichever is earlier. Before continuing en route, the steam locomotive owner and/or operator shall determine that it is safe to move the steam locomotive, determine the maximum speed and other restrictions necessary for safely conducting the

movement, and notify in writing the engineer in charge of the defective steam locomotive and, if towed, the engineer in charge of the towing steam locomotive consist, as well as all other crew members in the cabs, of the presence of the non-complying steam locomotive and the maximum speed and other movement restrictions.

(e) *Special notice for repair.* Nothing in this section authorizes the movement of a steam locomotive subject to a Special Notice for Repair unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 230.13 Daily inspection.

(a) *General.* An individual competent to conduct the inspection shall inspect each steam locomotive and its tender each day that they are offered for use to determine that they are safe and suitable for service. The daily inspection shall be conducted to comply with all sections of this part, and a daily inspection report filed, by an individual competent to conduct the inspection. See appendices A and B of this part.

(b) *Pre-departure.* At the beginning of each day the steam locomotive is used, an individual competent to do so shall, together with the daily inspection required in paragraph (a) of this section, inspect the steam locomotive and its tender and appurtenances to ensure that they are safe and suitable for service, paying special attention to the following items:

- (1) Water glasses and gauge cocks;
- (2) Boiler feedwater delivery systems, such as injectors and feedwater pumps; and
- (3) Air compressors and governors, and the air brake system.

(c) *Inspection reports.* The results of the daily inspection shall be entered on an FRA Form No. 2 (See appendix C of this part) which shall contain, at a minimum, the name of the railroad, the initials and number of the steam locomotive, the place, date and time of the inspection, the signature of the employee making the inspection, a description of the non-complying conditions disclosed by the inspection, conditions found in non-compliance during the day and repaired and the signature of the person who repaired the non-conforming conditions. This report shall be filed even if no non-complying conditions are detected. A competent individual shall sign the report, certifying that all non-complying conditions were repaired before the steam locomotive is operated. This report shall be filed and retained for at least 92 days at the location designated

by the steam locomotive owner and/or operator.

§ 230.14 Thirty-one (31) service day inspection.

(a) *General.* An individual competent to conduct the inspection shall perform the 31 service day inspection after the steam locomotive has accrued 31 service days. This inspection shall consist of all 31 service day inspection items and all daily inspection items. See appendix A of this part. Days in service shall be counted, recorded and readily available for inspection when requested by an FRA inspector.

(b) *FRA notification.* FRA Regional Administrators or their delegate(s) may require a steam locomotive owner or operator to provide FRA with timely notification before performing a 31 service day inspection. If the Regional Administrator or their delegate indicates their desire to be present for the 31 service day inspection, the steam locomotive owner and/or operator shall provide them a scheduled date and location for inspection. Once scheduled, the inspection must be performed at the time and place specified, unless the Regional Administrator and the steam locomotive owner and/or operator mutually agree to reschedule. If the Regional Administrator requests the inspection be performed on another date but the steam locomotive owner and/or operator and the Regional Administrator are unable to agree on a date for rescheduling, the inspection may be performed as scheduled.

(c) *Filing inspection reports.* Within 10 days of conducting the 31 service day inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 1), in the place where the steam locomotive is maintained and with the FRA Regional Administrator for that region. When the report of annual inspection (FRA Form No. 3), is filed, the FRA Form No. 1 does not have to be filed until the next 31 service day inspection. (See Appendix B of this part.)

§ 230.15 Ninety-two (92) service day inspection.

(a) *General.* An individual competent to conduct the inspection shall perform the 92 service day inspection after the steam locomotive has accrued 92 "service-days." This inspection shall include all daily, all 31 service day, and all 92 service day inspection items. See appendix A of this part. Days in service shall be counted, recorded, and readily available for inspection when requested by an FRA inspector.

(b) *Filing inspection reports.* Within 10 days of conducting the 92 service day inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 1), in the place the locomotive is maintained and with the FRA Regional Administrator for that region.

When the report of annual inspection (FRA Form No. 3), is filed, the FRA Form No. 1 does not have to be filed until the next 92 service day inspection. (See appendix C of this part.)

§ 230.16 Annual inspection.

(a) *General.* (1) An individual competent to conduct the inspection shall perform the annual inspection after 368 calendar days have elapsed from the time of the previous annual inspection. This inspection shall include all daily, all 31 service day, all 92 service day, and all annual inspection items. (See appendix B of this part.)

(2) *Fifth annual inspection.* An individual competent to do so shall perform a flexible staybolt and cap inspection in accordance with § 230.41 at each fifth annual inspection.

(b) *FRA notification.* FRA Regional Administrators shall be provided written notice at least one month prior to an annual inspection and shall be afforded an opportunity to be present. If the Regional Administrator or their delegate indicates a desire to be present, the steam locomotive owner and/or operator will provide a scheduled date and location for the inspection. Once scheduled, the inspection must be performed at the time and place specified, unless the Regional Administrator and the steam locomotive owner and/or operator mutually agree to reschedule. If the Regional Administrator requests the inspection be performed on another date but the steam locomotive owner and/or operator and the Regional Administrator are unable to agree on a date for rescheduling, the inspection may be performed as scheduled.

(c) *Filing inspection reports.* Within 10 days of completing the annual inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 3), in the place where the steam locomotive is maintained and with the FRA Regional Administrator for that region. (See appendix A of this part.)

§ 230.17 One thousand four hundred seventy-two (1472) service day inspection.

(a) *General.* Before any steam locomotive is initially put in service or

brought out of retirement, and after every 1472 service days or 15 years, whichever is earlier, an individual competent to conduct the inspection shall inspect the entire boiler. In the case of a new locomotive or a locomotive being brought out of retirement, the initial 15 year period shall begin on the day that the locomotive is placed in service or 365 calendar days after the first flue tube is installed in the locomotive, whichever comes first. This 1472 service day inspection shall include all annual, and 5th annual, inspection requirements, as well as any items required by the steam locomotive owner and/or operator or the FRA inspector. At this time, the locomotive owner and/or operator shall complete, update and verify the locomotive specification card (FRA Form No. 4), to reflect the condition of the boiler at the time of this inspection. See appendices A and B of this part.

(b) *Filing inspection reports.* Within 30 days of completing the 1472 service day inspection, the steam locomotive owner and/or operator shall, for each steam locomotive inspected, file in the place where the steam locomotive is maintained and with the FRA Regional Administrator for that region a report of inspection (FRA Form No. 3), and a completed FRA Form No. 4. See appendix C of this part.

Recordkeeping Requirements

§ 230.18 Service days.

(a) *Service day record.* For every steam locomotive currently in service, the steam locomotive owner and/or operator shall have available, and be able to show an FRA inspector upon request, a current copy of the service day record that contains the number of service days the steam locomotive has accrued since the last 31, 92, Annual and 1472 service day inspections.

(b) *Service day report.* By the 31st of every January, every steam locomotive owner and/or operator shall file a service day report, FRA Form No. 5, with the Regional Administrator accounting for the days the steam locomotive was in service from January 1 through December 31st of the preceding year. If the steam locomotive was in service zero (0) days during that period, a report must still be filed to prevent the steam locomotive from being considered retired by FRA. (See appendix B of this part.)

(c) *Retirement where no service day reports filed.* Where the steam locomotive owner and/or operator does not file the required service day report for a steam locomotive, that steam locomotive may be considered retired

by FRA. The steam locomotive owner and/or operator must complete all 1472 service day inspection items to return a retired steam locomotive to service.

§ 230.19 Posting of FRA Form No. 1 and FRA Form No. 3.

(a) *FRA Form No. 1.* The steam locomotive owner and/or operator shall place a copy of the 31 and 92 service day inspection report (FRA Form No. 1), properly filled out, under transparent cover in a conspicuous place in the cab of the steam locomotive before the inspected boiler is put into service. This FRA Form No. 1 will not be required for the first 31 service days following an annual inspection and the posting of an FRA Form No. 3. (See appendix B of this part.)

(b) *FRA Form No. 3.* In addition to the FRA Form No. 1, the steam locomotive owner and/or operator shall also maintain in the cab a current copy of FRA Form No. 3 in the manner described in paragraph (a) of this section. (See appendix C of this part.)

§ 230.20 Alteration and repair report for steam locomotive boilers.

(a) *Alterations.* When an alteration is made to a steam locomotive boiler, the steam locomotive owner and/or operator shall file an alteration report (FRA Form No. 19), detailing the changes to the locomotive with the FRA Regional Administrator within 30 days from the date the work was completed. This form shall be attached to, and maintained with, the FRA Form No. 4 until such time as a new FRA Form No. 4 reflecting the alteration is submitted to the Regional Administrator. Alteration reports shall be filed and maintained for the life of the boiler. (See appendix B of this part.)

(b) *Welded and riveted repairs to unstayed portions of the boiler.* Whenever welded or riveted repairs are performed on unstayed portions of a steam locomotive boiler, the steam locomotive owner and/or operator shall file with the FRA Regional Administrator, within 30 days from the time the work was completed, a repair report, FRA Form No. 19, that details the work done to the steam locomotive. Repair reports shall be filed and maintained for the life of the boiler. (See appendix B of this part.)

(c) *Welded and riveted repairs to stayed portions of the boiler.* Whenever welded or riveted repairs are performed on stayed portions of a steam locomotive boiler, the steam locomotive owner and/or operator shall complete a repair report (FRA Form No. 19), detailing the work done. Repair reports

shall be maintained for the life of the boiler. (See appendix C of this part.)

§ 230.21 Steam locomotive number change.

When a steam locomotive number is changed, the steam locomotive owner and/or operator must reflect the change in the upper right-hand corner of all documentation related to the steam locomotive by showing the old and new numbers:

Old No. 000
New No. XXX.

§ 230.22 Accident reports.

In the case of an accident due to failure, from any cause, of a steam locomotive boiler or any part or appurtenance thereof, resulting in serious injury or death to one or more persons, the railroad on whose line the accident occurred shall immediately make a telephone report of the accident by calling the National Response Center (toll free) at Area Code 800-424-0201. The report shall state the nature of the accident, the number of persons killed or seriously injured, the place at which it occurred, and the location where the steam locomotive may be inspected. Confirmation of this report shall be immediately mailed to the Associate Administrator for Safety, Federal Railroad Administration, Washington, DC 20590, and contain a detailed report of the accident, including, to the extent known, the causes and a complete list of the casualties.

Subpart B—Boilers and Appurtenances

§ 230.23 Responsibility for general construction and safe working pressure.

The steam locomotive owner and operator are responsible for the general design and construction of the steam locomotive boilers under their control. The steam locomotive owner shall establish the safe working pressure for each steam locomotive boiler, after giving full consideration to the general design, workmanship, age, and overall condition of the complete boiler unit. The condition of the boiler unit shall be determined by, among other factors, the minimum thickness of the shell plates, the lowest tensile strength of the plates, the efficiency of the longitudinal joint, the inside diameter of the course, and the maximum allowable stress value allowed. The steam locomotive operator shall not place the steam locomotive in service before ensuring that the steam locomotive's safe working pressure has been established.

Allowable Stress

§ 230.24 Maximum allowable stress.

(a) *Maximum allowable stress value.* The maximum allowable stress value on any component of a steam locomotive boiler shall not exceed ¼ of the ultimate tensile strength of its material.

(b) *Safety factor.* When it is necessary to use the code of original construction in boiler calculations, the safety factor value shall not be less than 4.

§ 230.25 Maximum allowable stress on stays and braces.

The maximum allowable stress per square inch of net cross sectional area on fire box and combustion chamber stays shall be 7,500 psi. The maximum allowable stress per square inch of net cross sectional area on round, rectangular, or gusset braces shall be 9,000 psi.

Strength of Materials

§ 230.26 Tensile strength of shell plates.

When the tensile strength of steel or wrought-iron shell plates is not known, it shall be taken at 50,000 psi for steel and 45,000 psi for wrought iron.

§ 230.27 Maximum shearing strength of rivets.

The maximum shearing strength of rivets per square inch of cross sectional area shall be taken as follows:

Rivets	Pounds per square inch
Iron Rivets in Single Shear	38,000
Iron Rivets in Double Shear	76,000
Steel Rivets in Single Shear	44,000
Steel Rivets in Double Shear	88,000

§ 230.28 Higher shearing strength of rivets.

A higher shearing strength may be used for rivets when it can be shown through testing that the rivet material used is of such quality as to justify a higher allowable shearing strength.

Inspection and Repair

§ 230.29 Inspection and repair.

(a) *Responsibility.* The steam locomotive owner and/or operator shall inspect and repair all steam locomotive boilers and appurtenances under their control. They shall immediately remove from service any boiler that has developed cracks in the barrel. The steam locomotive owner and/or operator shall also remove the boiler from service whenever either of them, or the FRA inspector, considers it necessary due to other defects.

(b) *Repair standards.* (1) All defects disclosed by inspection shall be repaired in accordance with accepted industry standards—which may include established railroad practices, or NBIC or API established standards—before the steam locomotive is returned to service. The steam locomotive owner and/or operator shall not return the steam locomotive boiler or appurtenances to service unless they are in good condition and safe and suitable for service.

(2) Any welding to unstayed portions of the boiler made pursuant to § 230.33 shall be made in accordance with an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall not return the steam locomotive boiler or appurtenances to service unless they are in good condition and safe and suitable for service.

§ 230.30 Lap-joint seam boilers.

Every boiler having lap-joint longitudinal seams without reinforcing plates shall have sufficient lagging, jacketing, flues, and tubes removed at every annual inspection so that an inspection of the entire joint, inside and out, can be made, taking special care to detect grooving or cracks at the edges of the seams.

§ 230.31 Flues to be removed.

(a) *Inspection of the boiler interior.* During the 1472 service day inspection, the steam locomotive owner and/or operator shall remove all flues of steam locomotive boilers in service, except as provided in paragraph (b) of this section, for the purpose of inspecting the entire interior of the boiler and its bracing. After removing the flues, the steam locomotive owner and/or operator shall enter the boiler to remove scale from the interior and thoroughly clean and inspect it.

(b) *NDE testing.* If the boiler can be thoroughly cleaned and inspected without removing the superheater flues, and it can be shown through appropriate NDE testing methods that they are safe and suitable for service, their removal may not be required at this time. Their removal may be required, however, if the FRA inspector, or the steam locomotive owner and/or operator, considers it necessary due to identifiable safety concerns.

§ 230.32 Time and method of inspection.

(a) *Time of inspection.* The entire boiler shall completely be inspected at the 1472 service day inspection. The jacket, lagging and any other components interfering with the provision of inspection access shall be

removed at this time. Those portions of the boiler that are exposed and able to be inspected as required by the daily, 31 service day, annual and fifth annual inspections shall be inspected at those times. The interior of the boiler also shall be inspected at each annual inspection, after the completion of any hydrostatic test above MAWP, and whenever a sufficient number of flues are removed to allow examination. The jacket, lagging and any other components shall also be removed to provide inspection access whenever the FRA inspector, or the steam locomotive owner and/or operator, considers it necessary due to identifiable safety concerns.

(b) *Method of inspection.*—(1) *Entire boiler.* During the 1472 service day inspection, the entire boiler shall be examined for cracks, pitting, grooving, or indications of overheating and for damage where mud has collected, or heavy scale formed. The edges of plates, all laps, seams, and points where cracks and defects are likely to develop, shall be thoroughly inspected. Rivets shall be inspected for corrosion and looseness.

(2) *Boiler interior.* When inspecting the boiler interior, it must be seen that braces and stays are taut, that pins are properly secured in place, and that each is in condition to support its proportion of the load. Washout plugs shall be removed for access and visual inspection of the water side of the firebox sheets. Washout plug threads, sleeves and threaded openings shall be examined at this time.

(3) *Boiler exterior.* A thorough inspection shall be made of the entire exterior of the boiler while under hydrostatic pressure.

§ 230.33 Welded repairs and alterations.

(a) *Unstayed portions of the boiler containing alloy steel or carbon steel with a carbon content over 0.25 percent.* Prior to welding on unstayed portions of the boiler, the steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator. If the approval is granted, the steam locomotive owner and/or operator shall perform any welding to unstayed portions of the boiler in accordance with an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(b) *Unstayed portions of the boiler containing carbon steel not exceeding 0.25 percent carbon.* The steam locomotive owner and/or operator shall perform any welding to unstayed portions of the boiler in accordance with an accepted national standard for

boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(c) *Wastage.* The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator before performing weld build up on wasted areas of unstayed surfaces of the boiler that exceed a total of 100 square inches or the smaller of 25 percent of minimum required wall thickness or 1/2 inch. Wasted sheets shall not be repaired by weld build up if the wasted sheet has been reduced to less than 60 percent of the minimum required thickness as required by this part.

(d) *Flush patches.* The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator for the installation of flush patches of any size on unstayed portions of the boiler.

(e) *Stayed portions of the boiler.* The steam locomotive owner and/or operator shall perform welded repairs or alterations on stayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy the reporting requirements in § 230.20 at this time.

§ 230.34 Riveted repairs and alterations.

(a) *Alterations to unstayed portions of the boiler.* Prior to making riveted alterations on unstayed portions of the boiler, the steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator. If approval is granted, the steam locomotive owner and/or operator shall perform any riveting to unstayed portions of the boiler in accordance with established railroad practices or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(b) *Repairs to unstayed portions of the boiler.* The steam locomotive owner and/or operator shall perform any riveted repairs to unstayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(c) *Repairs to stayed portions of the boiler.* The steam locomotive owner and/or operator shall perform riveted repairs or alterations on stayed portions of the boiler in accordance with established railroad practices or an accepted national standard for boiler

repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

Pressure Testing of Boilers

§ 230.35 Pressure testing.

The temperature of the steam locomotive boiler shall be raised to at least 70 deg. F any time hydrostatic pressure is applied to the boiler.

§ 230.36 Hydrostatic testing of boilers.

(a) *Time of test.* The locomotive owner and/or operator shall hydrostatically test every boiler at the following times:

(1) During the 1472 service day inspection, and at every annual inspection thereafter;

(2) After making any alteration to the boiler;

(3) After installing a flush patch on an unstayed portion of the boiler; and

(4) After any riveting on an unstayed portion of the boiler.

(b) *Method of testing.* The metal temperature of the boiler shall be between 70 degrees Fahrenheit and 120 degrees Fahrenheit each time it is subjected to any hydrostatic pressure. Hydrostatic testing required by these rules shall be conducted at 25 percent above the MAWP.

(c) *Internal inspection.* An internal inspection of the boiler shall be conducted following any hydrostatic test where the pressure exceeds MAWP.

§ 230.37 Steam test following repairs or alterations.

Upon completion of any repair or alteration, the locomotive owner and/or operator shall conduct a steam test of the boiler with steam pressure raised to between 95 percent and 100 percent of the MAWP. At this time, the boiler shall be inspected to ensure that it is in a safe and suitable condition for service.

Staybolts

§ 230.38 Telltale holes.

(a) *Staybolts less than 8 inches long.* All staybolts shorter than 8 inches, except flexible bolts, shall have telltale holes $\frac{3}{16}$ inch to $\frac{7}{32}$ inch diameter and at least $1\frac{1}{4}$ inches deep in the outer end.

(b) *Reduced body staybolts.* On reduced body staybolts, the telltale hole shall extend beyond the fillet and into the reduced section of the staybolt. Staybolts may have through telltale holes.

(c) *Telltale holes kept open.* All telltale holes, except as provided for in § 230.41, must be kept open at all times.

§ 230.39 Broken staybolts.

(a) *Maximum allowable number of broken staybolts.* No boiler shall be allowed to remain in service with two broken staybolts located within 24 inches of each other, as measured inside the firebox or combustion chamber on a straight line. No boiler shall be allowed to remain in service with more than 4 broken staybolts inside the entire firebox and combustion chamber, combined.

(b) *Staybolt replacement.* Broken staybolts must be replaced during the 31 service day inspection, if detected at that time. Broken staybolts detected in between 31 service day inspections must be replaced no later than 30 calendar days from the time of detection. When staybolts 8 inches or less in length are replaced, they shall be replaced with bolts that have telltale holes $\frac{3}{16}$ inch to $\frac{7}{32}$ inch in diameter and at least $1\frac{1}{4}$ inches deep at each end, or that have telltale holes $\frac{3}{16}$ inch to $\frac{7}{32}$ inch in diameter their entire length. At the time of replacement of broken staybolts, adjacent staybolts shall be inspected.

(c) *Assessment of broken staybolts.* Telltale holes leaking, plugged, or missing shall be counted as broken staybolts.

(d) *Prohibited methods of closing telltale holes.* Welding, forging, or riveting broken staybolt ends is prohibited as a method of closing telltale holes.

§ 230.40 Time and method of staybolt testing.

(a) *Time of hammer testing.*—(1) General. All staybolts shall be hammer tested at every 31 service day inspection, except as provided in paragraph (a)(2) of this section. All staybolts also shall be hammer tested under hydrostatic pressure any time hydrostatic pressure above the MAWP specified on the boiler specification form (FRA Form No. 4), is applied to the boiler. (See appendix B of this part.)

(2) Exception for inaccessible staybolts. The removal of brickwork or grate bearers for the purpose of hammer testing staybolts during each 31 service day inspection will not be required if the staybolts behind these structural impediments have a telltale hole $\frac{3}{16}$ inch to $\frac{7}{32}$ inch in diameter their entire length. Whenever the brickwork or grate bearers are removed for any other reason, however, the bolts shall be inspected at that time.

(b) *Method of hammer testing.* If staybolts are tested while the boiler contains water, the hydrostatic pressure must be not less than 95 percent of the MAWP. The steam locomotive owner

and/or operator shall tap each bolt with a hammer and determine broken bolts from the sound or the vibration of the sheet. Whenever staybolts are tested while the boiler is not under pressure, such as during the 31 service day inspection, the staybolt test must be made with all the water drained from the boiler.

§ 230.41 Flexible staybolts with caps.

(a) *General.* Flexible staybolts with caps shall have their caps removed during every 5th annual inspection for the purpose of inspecting the bolts for breakage, except as provided in paragraph (b) of this section.

(b) *Drilled flexible staybolts.* For flexible staybolts that have telltale holes between $\frac{3}{16}$ inch and $\frac{7}{32}$ inch in diameter, and which extend the entire length of the bolt and into the head not less than one third of the diameter of the head, the steam locomotive owner and/or operator need not remove the staybolt caps if it can be established, by an electrical or other suitable method, that the telltale holes are open their entire length. Any leakage from these telltale holes during the hydrostatic test indicates that the bolt is broken and must be replaced. Before the steam locomotive is placed in service, the inner ends of all telltale holes shall be closed with a fireproof porous material that will keep the telltale holes free of foreign matter and permit steam or water to exit the telltale hole when the bolt is broken or fractured.

(c) *Recordkeeping.* The removal of flexible staybolt caps and other tests shall be reported on FRA Form No. 3. (See appendix B of this part.)

(d) *Testing at request of FRA inspector.* Staybolt caps also shall be removed, or any of the tests in this section made, whenever the FRA inspector or the steam locomotive owner and/or operator considers it necessary due to identifiable safety concerns about the condition of staybolts, staybolt caps or staybolt sleeves.

Steam Gauges

§ 230.42 Location of gauges.

Every boiler shall have at least one steam gauge which will correctly indicate the working pressure. The gauge shall be positioned so that it will be kept reasonably cool and can conveniently be read by the engine crew.

§ 230.43 Gauge siphon.

The steam gauge supply pipe shall have a siphon on it of ample capacity to prevent steam from entering the gauge. The supply pipe shall directly

enter the boiler and be maintained steam tight. The supply pipe and its connections shall be cleaned each time the gauge is tested.

§ 230.44 Time of testing.

Steam gauges shall be tested prior to being installed or being reapplied, during the 92 service day inspection, and whenever any irregularity is reported.

§ 230.45 Method of testing.

Steam gauges shall be compared with an accurate test gauge or dead weight tester. While under test load at the MAWP of the boiler to which the gauge will be applied, the gauge shall be set to read that pressure as accurately as the physical limitations of the gauge will allow. Under test the gauge shall read within the manufacturer's tolerance at all points on the gauge up to 25 percent above the allowed pressure. If the manufacturer's tolerance is not known, the gauge must read within 2 percent full scale accuracy at all points on the gauge up to 25 percent above allowed pressure.

§ 230.46 Badge plates.

A metal badge plate showing the allowed steam pressure shall be attached to the boiler backhead in the cab. If boiler backhead is lagged, the lagging and jacket shall be cut away so that the plate can be seen.

§ 230.47 Boiler number.

(a) *Generally.* The builder's number of the boiler, if known, shall be stamped on the steam dome or manhole flange. If the builder's number cannot be obtained, an assigned number, which shall be used in making out specification cards, shall be stamped on the steam dome or manhole flange.

(b) *Numbers after January 10, 1912.* Numbers which are stamped after January 10, 1912 shall be located on the front side of the steam dome or manhole flange at the upper edge of the vertical surface, oriented in a horizontal manner, and have figures at least $\frac{3}{8}$ inch high.

(c) *Name of manufacturer or owner.* The number shall be preceded by the name of the manufacturer if the original number is known or the name of the steam locomotive owner if a new number is assigned.

Safety Relief Valves

§ 230.48 Number and capacity.

(a) *Number and capacity.* Every boiler shall be equipped with at least two safety relief valves, suitable for the service intended, that are capable of preventing an accumulation of pressure

greater than 6 percent above the MAWP under any conditions of service. An FRA inspector may require verification of sufficient safety valve relieving capacity.

(b) *Determination of capacity.* Safety relief valve capacity may be determined by making an accumulation test with the fire in good, bright condition and all steam outlets closed. Additional safety relief valve capacity shall be provided if the safety relief valves allow an excess pressure of more than 6 percent above the MAWP during this test.

§ 230.49 Setting of safety relief valves.

(a) *Qualifications of individual who adjusts.* Safety relief valves shall be set and adjusted by a competent person who is thoroughly familiar with the construction and operation of the valve being set.

(b) *Opening pressures.* At least one safety relief valve shall be set to open at a pressure not exceeding the MAWP. Safety relief valves shall be set to open at pressures not exceeding 6 psi above the MAWP.

(c) *Setting procedures.* When setting safety relief valves, two steam gauges shall be used, one of which must be so located that it will be in full view of the persons engaged in setting such valves; and if the pressure indicated by the gauges varies more than 3 psi they shall be removed from the boiler, tested, and corrected before the safety relief valves are set. Gauges shall in all cases be tested immediately before the safety relief valves are set or any change made in the setting. When setting safety relief valves, the water level shall not be higher than $\frac{3}{4}$ of the length of the visible water glass, as measured from the bottom of the glass.

(d) *Labeling of lowest set pressure.* The set pressure of the lowest safety relief valve shall be indicated on a tag or label attached to the steam gauge so that it may be clearly read while observing the steam gauge.

§ 230.50 Time of testing.

All safety relief valves shall be tested, and adjusted if necessary, under steam at every 92 service day inspection, and also whenever any irregularity is reported.

Water Glasses and Gauge Cocks

§ 230.51 Number and location.

Every boiler shall be equipped with at least two water glasses. The lowest reading of the water glasses shall not be less than 3 inches above the highest part of the crown sheet. If gauge cocks are used, the reading of the lowest gauge cock shall not be less than 3 inches

above the highest part of the crown sheet.

§ 230.52 Water glass valves.

All water glasses shall be equipped with no more than two valves capable of isolating the water glass from the boiler. They shall also be equipped with a drain valve capable of evacuating the glass when it is so isolated.

§ 230.53 Time of cleaning.

The spindles of all water glass valves and of all gauge cocks shall be removed and valves and cocks thoroughly cleaned of scale and sediment at every 31 service day inspection, and when testing indicates that the apparatus may be malfunctioning. In addition, the top and bottom passages of the water column shall be cleaned and inspected at each annual inspection.

§ 230.54 Testing and maintenance.

(a) *Testing.* All water glasses must be blown out, all gauge cocks must be tested, and all passages verified to be open at the beginning of each day the locomotive is used, and as often as necessary to ensure proper functioning.

(b) *Maintenance.* Gauge cocks, water column drain valves, and water glass valves must be maintained in such condition that they can easily be opened and closed by hand, without the aid of a wrench or other tool.

§ 230.55 Tubular type water and lubricator glasses and shields.

(a) *Water glasses.* Tubular type water glasses shall be renewed at each 92 service day inspection.

(b) *Shields.* All tubular water glasses and lubricator glasses must be equipped with a safe and suitable shield which will prevent the glass from flying in case of breakage. This shield shall be properly maintained.

(c) *Location and maintenance.* Water glasses and water glass shields shall be so located, constructed, and maintained that the engine crew can at all times have an unobstructed view of the water in the glass from their proper positions in the cab.

§ 230.56 Water glass lamps.

All water glasses must be supplied with a suitable lamp properly located to enable the engine crew to easily see the water in the glass.

Injectors, Feedwater Pumps, and Flue Plugs

§ 230.57 Injectors and feedwater pumps.

(a) *Water delivery systems required.* Each steam locomotive must be equipped with at least two means of delivering water to the boiler, at least one of which is a live steam injector.

(b) *Maintenance and testing.* Injectors and feedwater pumps must be kept in good condition, free from scale, and must be tested at the beginning of each day the locomotive is used, and as often as conditions require, to ensure that they are delivering water to the boiler. Boiler checks, delivery pipes, feed water pipes, tank hose and tank valves must be kept in good condition, free from leaks and from foreign substances that would obstruct the flow of water.

(c) *Bracing.* Injectors, feedwater pumps, and all associated piping shall be securely braced so as to minimize vibration.

§ 230.58 Flue plugs.

(a) *When plugging is permitted.* Flues greater than 2¼ inches in outside diameter (OD) shall not be plugged. Flues 2¼ inches in outside diameter (OD) or smaller may be plugged following failure, provided only one flue is plugged at any one time. Plugs must be removed and proper repairs made no later than 30 days from the time the plug is applied.

(b) *Method of plugging.* When used, flue plugs must be made of steel. The flue must be plugged at both ends. Plugs must be tied together by means of a steel rod not less than 5⁄8 inch in diameter.

Fusible Plugs

§ 230.59 Fusible plugs.

If boilers are equipped with fusible plugs, the plugs shall be removed and cleaned of scale each time the boiler is washed but not less frequently than during every 31 service day inspection. Their removal shall be noted on the FRA Form No. 1 or FRA Form No. 3. (See appendix B of this part.)

Washing Boilers

§ 230.60 Time of washing.

(a) *Frequency of washing.* All boilers shall thoroughly be washed as often as the water conditions require, but not less frequently than at each 31 service day inspection. The date of the boiler wash shall be noted on the FRA Form No. 1 or FRA Form No. 3. (See appendix B of this part.)

(b) *Plug removal.* All washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs and water bar plugs must be removed whenever locomotive boilers are washed.

(c) *Plug maintenance.* All washout plugs, washout plug sleeves and threaded openings shall be maintained in a safe and suitable condition for service and shall be examined for defects each time the plugs are removed.

(d) *Fusible plugs cleaned.* Fusible plugs shall be cleaned in accordance with § 230.59.

§ 230.61 Arch tubes, water bar tubes, circulators and thermic siphons.

(a) *Frequency of cleaning.* Each time the boiler is washed, arch tubes and water bar tubes shall thoroughly be cleaned mechanically, washed, and inspected. Circulators and thermic siphons shall thoroughly be cleaned, washed and inspected.

(b) *Defects.* Arch tubes and water bar tubes found blistered, bulged, or otherwise defective shall be renewed. Circulators and thermic siphons found blistered, bulged or otherwise defective shall be either repaired or renewed.

(c) *Method of examination.* Arch tubes, water bar tubes and circulators shall be examined using an appropriate NDE method that accurately measures wall thickness at each annual inspection. All arch brick shall be removed for this inspection. If any are found with wall thickness reduced below that required to render them safe and suitable for the service intended at the MAWP specified on the boiler specification FRA Form No. 4, they must be replaced or repaired. (See appendix B of this part.)

Steam Pipes

§ 230.62 Dry pipe.

Dry pipes subject to pressure shall be examined at each annual inspection to measure wall thickness. Dry pipes with wall thickness reduced below that required to render the pipe suitable for the service intended at the MAWP must be replaced or repaired.

§ 230.63 Smoke box, steam pipes and pressure parts.

The smoke box, steam pipes and pressure parts shall be inspected at each annual inspection, or any other time that conditions warrant. The individual conducting the inspection must enter the smoke box to conduct the inspection, looking for signs of leaks from any of the pressure parts therein and examining all draft appliances.

Steam Leaks

§ 230.64 Leaks under lagging.

The steam locomotive owner and/or operator shall take out of service at once any boiler that has developed a leak under the lagging due to a crack in the shell, or to any other condition which may reduce safety. Pursuant to § 230.29, the boiler must be repaired before being returned to service.

§ 230.65 Steam blocking view of engine crew.

The steam locomotive owner and/or operator shall keep the boiler, and its piping and appurtenances, in such repair that they do not emit steam in a

manner that obscures the engine crew's vision.

Subpart C—Steam Locomotives and Tenders

§ 230.66 Design, construction, and maintenance.

The steam locomotive owner and operator are responsible for the general design, construction and maintenance of the steam locomotives and tenders under their control.

§ 230.67 Responsibility for inspection and repairs.

The steam locomotive owner and/or operator shall inspect and repair all steam locomotives and tenders under their control. All defects disclosed by any inspection shall be repaired in accordance with accepted industry standards, which may include established railroad practices, before the steam locomotive or tender is returned to service. The steam locomotive owner and/or operator shall not return the steam locomotive or tender to service unless they are in good condition and safe and suitable for service.

Speed Indicators

§ 230.68 Speed indicators.

Steam locomotives that operate at speeds in excess of 20 miles per hour over the general system of railroad transportation shall be equipped with speed indicators. Where equipped, speed indicators shall be maintained to ensure accurate functioning.

Ash Pans

§ 230.69 Ash pans.

Ash pans shall be securely supported from mud-rings or frames with no part less than 2½ inches above the rail. Their operating mechanism shall be so arranged that they may be safely operated and securely closed.

Brake and Signal Equipment

§ 230.70 Safe condition.

(a) *Pre-departure inspection.* At the beginning of each day the locomotive is used, the steam locomotive operator shall ensure that:

(1) The brakes on the steam locomotive and tender are in safe and suitable condition for service;

(2) The air compressor or compressors are in condition to provide an ample supply of air for the locomotive service intended;

(3) The devices for regulating all pressures are properly performing their functions;

(4) The brake valves work properly in all positions; and

(5) The water has been drained from the air-brake system.

(b) *Brake pipe valve required.* Each steam locomotive shall have a brake pipe valve attached to the front of the tender, the rear of the back cab wall, or adjacent to the exit of a vestibuled cab.

The words "Emergency Brake Valve" shall be clearly displayed near the valve.

§ 230.71 Orifice testing of compressors.

(a) *Frequency of testing.* The compressor or compressors shall be tested for capacity by orifice test as

often as conditions may require, but not less frequently than once every 92 service days.

(b) *Orifice testing criteria.* (1) Compressors in common use, as listed in the following table, shall have orifice test criteria as follows:

Make	Compressor size	Single strokes per minute	Diameter of orifice (in inches)	Air pressure maintained (in pounds)
Westinghouse	9½	120	1¼/64	60
Westinghouse	11	100	¾/16	60
Westinghouse	150 CFM 8½ CC	100	9/32	60
Westinghouse	120 CFM 8½	100	15/64	60
New York	2a	120	5/32	60
New York	6a	100	13/64	60
New York	5b	100	15/64	60

Note: This table shall be used for altitudes to and including 1,000 feet. For altitudes over 1,000 feet the speed of compressor may be increased 5 single strokes per minute for each 1,000 feet increase in altitude.

(2) For compressors not listed in the table in paragraph (b)(1) of this section, the air pressure to be maintained shall be no less than 80 percent of the manufacturer's rated capacity for the compressor.

§ 230.72 Testing main reservoirs.

(a) *Hammer and hydrostatic testing.* Except as described in paragraphs (b) through (d) of this section, every main reservoir, except those cast integrally with the frame, shall be hammer and hydrostatically tested during each annual inspection. The reservoir shall be hammer tested while empty and with no pressure applied. If no defective areas are detected, a hydrostatic test of MAWP shall be applied.

(b) *Drilling of main reservoirs.* (1) Only welded main reservoir originally constructed to withstand at least five times the MAWP may be drilled over its entire surface with telltale holes that are 3/16 of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the following formula:

$$D = (.6PR / (S - .6P))$$

Where:

D = Extreme depth of telltale holes in inches but in no case less than one-sixteenth inch;
P = certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi; and
R = inside radius of the reservoir in inches.

(2) One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. When main reservoirs are drilled as described in paragraph (b)(1) of this section, the hydrostatic and hammer tests described

in paragraph (a) of this section are not required during the annual inspection. Whenever any telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service.

(c) *Welded main reservoirs without longitudinal lap seams.* For welded main reservoirs that do not have longitudinal lap seams, an appropriate NDE method that can measure the wall thickness of the reservoir may be used instead of the hammer test and hydrostatic test required in paragraph (a) of this section. The spacing of the sampling points for wall thickness shall not be greater than 12 inches longitudinally and circumferentially. The reservoir shall permanently be withdrawn from service where the NDE testing reveals wall thickness less than the value determined by the following formula:

$$t = (PR / (S - .6P))$$

Where:

t = Minimum value for wall thickness;
P = Certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi, or 10,000 psi if the tensile strength is unknown; and
R = Inside radius of the reservoir in inches.

(d) *Welded or riveted longitudinal lap seam main reservoirs.* (1) For welded or riveted longitudinal lap seam main reservoirs, an appropriate NDE method that can measure wall thickness of the reservoir shall be used instead of, or in addition to, the hammer test and hydrostatic test. The spacing of the sampling points for wall thickness shall not be greater than 12 inches longitudinally and circumferentially. Particular care shall be taken to measure along the longitudinal seam on both

plates at an interval of no more than 6 inches longitudinally. The reservoir shall be withdrawn permanently from service where NDE testing reveals wall thickness less than the value determined by the following formula:

$$t = (PR / (0.5S - 0.6P))$$

Where:

t = Minimum value for wall thickness;
P = Certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi, or 10,000 psi if the tensile strength of steel is unknown; and
R = Inside radius of the reservoir in inches.

(2) Repairs of reservoirs with reduced wall thickness are prohibited.

§ 230.73 Air gauges.

(a) *Location.* Air gauges shall be so located that they may be conveniently read by the engineer from his or her usual position in the cab. No air gauge may be more than 3 psi in error.

(b) *Frequency of testing.* Air gauges shall be tested prior to reapplication following removal, as well as during the 92 service day inspection and whenever any irregularity is reported.

(c) *Method of testing.* Air gauges shall be tested using an accurate test gauge or dead weight tester designed for this purpose.

§ 230.74 Time of cleaning.

All valves in the air brake system, including related dirt collectors and filters, shall be cleaned and tested in accordance with accepted brake equipment manufacturer's specifications, or as often as conditions require to maintain them in a safe and suitable condition for service, but not less frequently than after 368 service

days or during the second annual inspection, whichever occurs first.

§ 230.75 Stenciling dates of tests and cleaning.

The date of testing and cleaning and the initials of the shop or station at which the work is done, shall legibly be stenciled in a conspicuous place on the tested parts or placed on a card displayed under a transparent cover in the cab of the steam locomotive.

§ 230.76 Piston travel.

(a) *Minimum piston travel.* The minimum piston travel shall be sufficient to provide proper brake shoe clearance when the brakes are released.

(b) *Maximum piston travel.* The maximum piston travel when steam locomotive is standing shall be as follows:

Type of wheel brake	Maximum piston travel (in inches)
Cam Type Driving Wheel Brake	3½
Other forms of Driving Wheel Brake	6
Engine Truck Brake	8
Tender Brake	9

§ 230.77 Foundation brake gear.

(a) *Maintenance.* Foundation brake gear shall be maintained in a safe and suitable condition for service. Levers, rods, brake beams, hangers, and pins shall be of ample strength, and shall not be fouled in any way which will affect the proper operation of the brake. All pins shall be properly secured in place with cotter pine, split keys, or nuts. Brake shoes must be properly applied and kept approximately in line with the tread of the wheel.

(b) *Distance above the rails.* No part of the foundation brake gear of the steam locomotive or tender shall be less than 2½ inches above the rails.

§ 230.78 Leakage.

(a) *Main reservoirs and related piping.* Leakage from main reservoir and related piping shall be tested at every 92 service day inspection and shall not exceed an average of 3 psi per minute in a test of 3 minutes duration that is made after the pressure has been reduced to 60 percent of the maximum operating pressure.

(b) *Brake cylinders.* Leakage from brake cylinders shall be tested at every 92 service day inspection. With a full service application from maximum brake pipe pressure, and with communication to the brake cylinders closed, the brakes on the steam locomotive and tender must remain applied for a minimum of 5 minutes.

(c) *Brake pipes.* Steam locomotive brake pipe leakage shall be tested at the beginning of each day the locomotive is used, and shall not exceed 5 psi per minute.

§ 230.79 Train signal system.

Where utilized, the train signal system, or any other form of on-board communication, shall be tested and known to be in safe and suitable condition for service at the beginning of each day the locomotive is used.

Cabs, Warning Signals, Sanders and Lights

§ 230.80 Cabs.

(a) *General provisions.* Cabs shall be securely attached or braced and maintained in a safe and suitable condition for service. Cab windows of steam locomotives shall provide an undistorted view of the track and signals for the crew from their normal position in the cab. Cab floors shall be kept free of tripping or slipping hazards. The cab climate shall be maintained to provide an environment that does not unreasonably interfere with the engine crew's performance of their duties under ordinary conditions of service.

(b) *Steam pipes.* Steam pipes shall not be fastened to the cab. New construction or renewals made of iron or steel pipe greater than ½ inch NPS that are subject to boiler pressure in cabs shall have a minimum wall thickness equivalent to schedule 80 pipe, with properly rated valves and fittings. Live steam heating radiators must not be fastened to the cab. Exhaust steam radiators may be fastened to the cab.

(c) *Oil-burning steam locomotives.* If the cab is enclosed, oil burning steam locomotives that take air for combustion through the fire-door opening shall have a suitable conduit extending from the fire-door to the outside of the cab.

§ 230.81 Cab aprons.

(a) *General provisions.* Cab aprons shall be of proper length and width to ensure safety. Cab aprons shall be securely hinged, maintained in a safe and suitable condition for service, and roughened, or other provision made, to afford secure footing.

(b) *Width of apron.* The cab apron shall be of a sufficient width to prevent, when the drawbar is disconnected and the safety chains or the safety bars are taut, the apron from dropping between the steam locomotive and tender.

§ 230.82 Fire doors.

(a) *General provisions.* Each steam locomotive shall have a fire door which shall latch securely when closed and which shall be maintained in a safe and

suitable condition for service. Fire doors on all oil-burning locomotives shall be latched securely with a pin or key.

(b) *Mechanically operated fire doors.* Mechanically operated fire doors shall be so constructed and maintained that they may be operated by pressure of the foot on a pedal, or other suitable appliance, located on the floor of the cab or tender at a suitable distance from the fire door, so that they may be conveniently operated by the person firing the steam locomotive.

(c) *Hand-operated doors.* Hand operated fire doors shall be so constructed and maintained that they may be conveniently operated by the person firing the steam locomotive.

§ 230.83 Cylinder cocks.

Each steam locomotive shall be equipped with cylinder cocks which can be operated from the cab of the steam locomotive. All cylinder cocks shall be maintained in a safe and suitable condition for service.

§ 230.84 Sanders.

Steam locomotives shall be equipped with operable sanders that deposit sand on the rail head in front of a set of driving wheels. Sanders shall be tested at the beginning of each day the locomotive is used.

§ 230.85 Audible warning device.

(a) *General provisions.* Each steam locomotive shall be equipped with an audible warning device that produces a minimum sound level of 96db(A) at 100 feet in front of the steam locomotive in its direction of travel. The device shall be arranged so that it may conveniently be operated by the engineer from his or her normal position in the cab.

(b) *Method of measurement.* Measurement of the sound level shall be made using a sound level meter conforming, at a minimum, to the requirements of ANSI S1.4-1971, Type 2, and set to an A-weighted slow response. While the steam locomotive is on level, tangent track, the microphone shall be positioned 4 feet above the ground at the center line of the track and shall be oriented with respect to the sound source in accordance with the microphone manufacturer's recommendations.

§ 230.86 Required illumination.

(a) *General provisions.* Each steam locomotive used between sunset and sunrise shall be equipped with an operable headlight that provides illumination sufficient for a steam locomotive engineer in the cab to see, in a clear atmosphere, a dark object as large as a man of average size standing

at least 800 feet ahead and in front of such headlight. If a steam locomotive is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also be equipped on its rear end with an operable headlight that is capable of providing the illumination described in this paragraph (a).

(b) *Dimming device.* Such headlights shall be provided with a device whereby the light from same may be diminished in yards and at stations or when meeting trains.

(c) *Where multiple locomotives utilized.* When two or more locomotives are used in the same train, the leading locomotive only will be required to display a headlight.

§ 230.87 Cab lights.

Each steam locomotive shall have cab lights that sufficiently illuminate the control instruments, meters and gauges to allow the engine crew to make accurate readings from their usual and proper positions in the cab. These lights shall be so located and constructed that the light will shine only on those parts requiring illumination and does not interfere with the engine crew's vision of the track and signals. Each steam locomotive shall also have a conveniently located additional lamp that can be readily turned on and off by the persons operating the steam locomotive and that provides sufficient illumination to read train orders and timetables.

Throttle and Reversing Gear

§ 230.88 Throttles.

Throttles shall be maintained in safe and suitable condition for service, and efficient means shall be provided to hold the throttle lever in any desired position.

§ 230.89 Reverse gear.

(a) *General provisions.* Reverse gear, reverse levers, and quadrants shall be maintained in a safe and suitable condition for service. Reverse lever latch shall be so arranged that it can be easily disengaged, and provided with a spring which will keep it firmly seated in quadrant. Proper counterbalance shall be provided for the valve gear.

(b) *Air-operated power reverse gear.* Steam locomotives that are equipped with air operated power reverse gear shall be equipped with a connection whereby such gear may be operated by steam or by an auxiliary supply of air in case of failure of the main reservoir air pressure. The operating valve handle for such connection shall be conveniently located in the cab of the locomotive and

shall be plainly marked. If an independent air reservoir is used as the source of the auxiliary supply for the reverse gear, it shall be provided with means to automatically prevent loss of pressure in event of failure of the main reservoir air pressure.

(c) *Power reverse gear reservoirs.* Power reverse gear reservoirs, if provided, must be equipped with the means to automatically prevent the loss of pressure in the event of a failure of main air pressure and have storage capacity for not less than one complete operating cycle of control equipment.

Draw Gear and Draft Systems

§ 230.90 Draw gear between steam locomotive and tender.

(a) *Maintenance and testing.* The draw gear between the steam locomotive and tender, together with the pins and fastenings, shall be maintained in safe and suitable condition for service. The pins and drawbar shall be removed and tested for defects using an appropriate NDE method at every annual inspection. Where visual inspection does not disclose any defects, an additional NDE testing method shall be employed. Suitable means for securing the drawbar pins in place shall be provided. Inverted drawbar pins shall be held in place by plate or stirrup.

(b) *Safety bars and chains generally.* One or more safety bar(s) or two or more safety chains shall be provided between the steam locomotive and tender. The combined strength of the safety chains or safety bar(s) and their fastenings shall be not less than 50 percent of the strength of the drawbar and its connections. These shall be maintained in safe and suitable condition for service, and inspected at the same time draw gear is inspected.

(c) *Minimum length of safety chains or bars.* Safety chains or safety bar(s) shall be of the minimum length consistent with the curvature of the railroad on which the steam locomotive is operated.

(d) *Lost motion.* Lost motion between steam locomotives and tenders not equipped with spring buffers shall be kept to a minimum and shall not exceed 1/2 inch.

(e) *Spring buffers.* When spring buffers are used between steam locomotives and tenders the spring shall be applied with not less than 3/4 inch compression, and shall at all times be under sufficient compression to keep the chafing faces in contact.

§ 230.91 Chafing irons.

Chafing irons that permit proper curving shall be securely attached to the steam locomotive and tender, and shall

be maintained to permit lateral and vertical movement.

§ 230.92 Draw gear and draft systems.

Couplers, draft gear and attachments on steam locomotives and tenders shall be securely fastened, and maintained in safe and suitable condition for service.

Driving Gear

§ 230.93 Pistons and piston rods.

(a) *Maintenance and testing.* Pistons and piston rods shall be maintained in safe and suitable condition for service. Piston rods shall be inspected for cracks each time they are removed, and shall be renewed if found defective.

(b) *Fasteners.* Fasteners (keys, nuts, etc.) shall be kept tight and shall have some means to prevent them from loosening or falling out of place.

§ 230.94 Crossheads.

Crossheads shall be maintained in a safe and suitable condition for service, with not more than 1/4 inch vertical or 5/16 inch lateral clearance between crossheads and guides.

§ 230.95 Guides.

Guides shall be securely fastened and maintained in a safe and suitable condition for service.

§ 230.96 Main, side, and valve motion rods.

(a) *General.* Main, side or valve motion rods developing cracks or becoming otherwise defective shall be removed from service immediately and repaired or renewed.

(b) *Repairs.* Repairs, and welding of main, side or valve motion rods shall be made in accordance with an accepted national standard. The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator prior to welding defective main rods, side rods, and valve gear components.

(c) *Bearings and bushings.* Bearings and bushings shall so fit the rods as to be in a safe and suitable condition for service, and means shall be provided to prevent bushings from turning in the rod. Straps shall fit and be securely bolted to rods. Floating bushings need not be provided with means to prevent bushings from turning.

(d) *Side motion of rods.* The total amount of side motion of each rod on its crank pin shall not exceed 1/4 inch.

(e) *Oil and grease cups.* Oil and grease cups shall be securely attached to rods, and grease cup plugs shall be equipped with a suitable fastening that will prevent them from being ejected.

(f) *Main rod bearings.* The bore of main rod bearings shall not exceed pin

diameters more than $\frac{3}{32}$ inch at front or back end. The total lost motion at both ends shall not exceed $\frac{5}{32}$ inch.

(g) *Side rod bearings.* The bore of side rod bearings shall not exceed pin diameters more than $\frac{5}{32}$ inch on main pin nor more than $\frac{3}{16}$ inch on other pins.

§ 230.97 Crank pins.

(a) *General provisions.* Crank pins shall be securely applied. Securing the fit of a loose crank pin by shimming, prick punching, or welding is not permitted.

(b) *Maintenance.* Crank pin collars and collar fasteners shall be maintained in a safe and suitable condition for service.

Running Gear

§ 230.98 Driving, trailing, and engine truck axles.

(a) *Condemning defects.* Driving, trailing, and engine truck axles with any of the following defects shall be removed from service immediately and repaired (see appendix A of this part for inspection requirements):

- (1) Bent axle;
- (2) Cut journals that cannot be made to run cool without turning;
- (3) Transverse seams in iron or steel axles;
- (4) Seams in axles causing journals to run hot;
- (5) Axles that are unsafe on account of usage, accident or derailment;

(6) Any axle worn $\frac{1}{2}$ inch or more in diameter below the original/new journal diameter, except as provided in paragraph (a)(7) of this section;

(7) Any driving axles other than main driving axles with an original or new diameter greater than 6 inches that are worn $\frac{3}{4}$ inch or more in diameter below the original/new diameter.

(b) *Journal diameter stamped.* For steam locomotives with plain bearings, the original/new journal diameter shall be stamped on one end of the axle no later than January 18, 2005.

§ 230.99 Tender truck axles.

The minimum diameters of axles for various axle loads shall be as follows:

Axle load (in pounds)	Minimum diameter of journal (in inches)	Minimum diameter of wheel seat (in inches)	Minimum diameter of center (in inches)
50000	$5\frac{1}{2}$	$7\frac{3}{8}$	$6\frac{7}{16}$
38000	5	$6\frac{3}{4}$	$5\frac{7}{8}$
31000	$4\frac{1}{2}$	$6\frac{1}{4}$	$5\frac{5}{16}$
22000	$3\frac{3}{4}$	5	$4\frac{3}{8}$
15000	$3\frac{1}{4}$	$4\frac{5}{8}$	$3\frac{7}{8}$

§ 230.100 Defects in tender truck axles and journals.

(a) *Tender truck axle condemning defects.* Tender truck axles with any of the following defects shall be removed from service immediately and repaired:

- (1) Axles that are bent;
- (2) Collars that are broken, cracked, or worn to $\frac{1}{4}$ inch or less in thickness;
- (3) Truck axles that are unsafe on account of usage, accident, or derailment;

(4) A fillet in the back shoulder that is worn out; or

(5) A gouge between the wheel seats that is more than $\frac{1}{8}$ of an inch in depth.

(b) *Tender truck journal condemning defects.* Tender truck journals with any of the following defects shall be removed from service immediately and repaired:

- (1) Cut journals that cannot be made to run cool without turning;
- (2) Seams in axles causing journals to run hot;
- (3) Overheating, as evidenced by pronounced blue black discoloration;
- (4) Transverse seams in journals of iron or steel axles; or
- (5) Journal surfaces having any of the following:
 - (i) A circumferential score;
 - (ii) Corrugation;
 - (iii) Pitting;
 - (iv) Rust;
 - (v) Etching.

§ 230.101 Steam locomotive driving journal boxes.

(a) *Driving journal boxes.* Driving journal boxes shall be maintained in a safe and suitable condition for service. Not more than one shim may be used between the box and bearing.

(b) *Broken bearings.* Broken bearings shall be renewed.

(c) *Loose bearings.* Loose bearings shall be repaired or renewed.

§ 230.102 Tender plain bearing journal boxes.

Plain bearing journal boxes with the following defects shall be removed from service immediately and repaired:

- (a) A box that does not contain visible free oil;
- (b) A box lid that is missing, broken, or open except to receive servicing;
- (c) A box containing foreign matter, such as dirt, sand, or coal dust that can reasonably be expected to damage the bearing; or have a detrimental effect on the lubrication of the journal and bearing;

(d) A lubricating pad that:

- (1) Is missing;
- (2) Is not in contact with the journal;
- (3) Has a tear extending half the length or width of the pad, or more, except by design;

(4) Shows evidence of having been scorched, burned, or glazed;

(5) Contains decaying or deteriorated fabric that impairs proper lubrication of the pad;

(6) Has an exposed center core (except by design); or

(7) Has metal parts contacting the journal;

(e) A plain bearing that:

- (1) Is missing, cracked, broken;
- (2) Has a bearing liner loose;
- (3) Has a broken out piece; or
- (4) Has indications of having been overheated, as evidenced by:

(i) Melted babbitt;

(ii) Smoke from hot oil; or

(iii) Journal surface damage; or

(f) A plain bearing wedge that:

- (1) Is missing, cracked or broken; or
- (2) Is not located in its design position.

§ 230.103 Tender roller bearing journal boxes.

Tender roller bearing journal boxes shall be maintained in a safe and suitable condition.

§ 230.104 Driving box shoes and wedges.

Driving box shoes and wedges shall be maintained in a safe and suitable condition for service.

§ 230.105 Lateral motion.

(a) *Condemning limits.* The total lateral motion or play between the hubs of the wheels and the boxes on any pair of wheels shall not exceed the following limits:

	Inches
Engine truck wheels (with swing centers)	1

	Inches
Engine truck wheels (with rigid centers)	1½
Trailing truck wheels	1
Driving wheels	¾

(b) *Limits increased.* These limits may be increased on steam locomotives operating on track where the curvature exceeds 20 degrees when it can be shown that conditions require additional lateral motion.

(c) *Non-interference with other parts.* The lateral motion shall in all cases be kept within such limits that the driving wheels, rods, or crank pins will not interfere with other parts of the steam locomotive.

Trucks, Frames and Equalizing System

§ 230.106 Steam locomotive frame.

(a) *Maintenance and inspection.* Frames, decks, plates, tailpieces, pedestals, and braces shall be maintained in a safe and suitable condition for service, and shall be cleaned and thoroughly inspected as often as necessary to maintain in a safe and suitable condition for service with cleaning intervals, in any case, not to exceed every 1472 service days.

(b) *Broken frames.* Broken frames properly patched or secured by clamps or other suitable means which restores the rigidity of the frame are permitted.

§ 230.107 Tender frame and body.

(a) *Maintenance.* Tender frames shall be maintained in a safe and suitable condition for service.

(b) *Height difference.* The difference in height between the deck on the tender and the cab floor or deck on the steam locomotive shall not exceed 1½ inches.

(c) *Gangway minimum width.* The minimum width of the gangway between steam locomotive and tender, while standing on tangent track, shall be 16 inches.

(d) *Tender frame condemning defects.* A tender frame with any of the following defects shall be removed from service immediately and repaired:

(1) Portions of the tender frame or body (except wheels) that have less than a 2½ inches clearance from the top of rail;

(2) Tender center sill that is broken, cracked more than 6 inches, or permanently bent or buckled more than 2½ inches in any six foot length;

(3) Tender coupler carrier that is broken or missing;

(4) Tender center plate, any portion of which is missing or broken or that is not properly secured; or

(5) Tender that has a broken side sill, crossbearer, or body bolster.

§ 230.108 Steam locomotive leading and trailing trucks.

(a) *Maintenance.* Trucks shall be maintained in safe and suitable condition for service. Center plates shall fit properly, and the male center plate shall extend into the female center plate not less than ¾ inch. All centering devices shall be properly maintained and shall not permit lost motion in excess of ½ inch.

(b) *Safety chain required.* A suitable safety chain shall be provided at each front corner of all four wheel engine trucks.

(c) *Clearance required.* All parts of trucks shall have sufficient clearance to prevent them from interfering with any other part of the steam locomotive.

§ 230.109 Tender trucks.

(a) *Tender truck frames.* A tender truck frame shall not be broken, or have a crack in a stress area that affects its structural integrity. Tender truck center plates shall be securely fastened, maintained in a safe and suitable condition for service, and provided with a center pin properly secured. The male center plate must extend into the female center plate at least ¾ inch. Shims may be used between truck center plates.

(b) *Tender truck bolsters.* Truck bolsters shall be maintained approximately level.

(c) *Condemning defects for springs or spring rigging.* Springs or spring rigging with any of the following defects shall be taken out of service immediately and renewed or properly repaired:

(1) An elliptical spring with its top (long) leaf or any other five leaves in the entire spring pack broken;

(2) A broken coil spring or saddle;

(3) A coil spring that is fully compressed;

(4) A broken or cracked equalizer, hanger, bolt, gib or pin;

(5) A broken coil spring saddle; and

(6) A semi-elliptical spring with a top (long) leaf broken or two leaves in the top half broken, or any three leaves in the entire spring broken.

(d) *Tender securing arrangement.* Where equipped, tender devices and/or securing arrangements intended to prevent the truck and tender body from separating in case of derailment shall be maintained in a safe and suitable condition for service.

(e) *Side bearings and truck centering devices.* Where equipped, side bearings and truck centering devices shall be maintained in a safe and suitable condition for service.

(f) *Friction side bearings.* Friction side bearings shall not be run in contact, and shall not be considered to be in contact if there is clearance between them on

either side when measured on tangent level track.

(g) *Side bearings.* All rear trucks shall be equipped with side bearings. When the spread of side bearings is 50 inches, their maximum clearance shall be ¾ inch on each side for rear trucks and ¾ inch on each side for front trucks, where used. When the spread of the side bearings is increased, the maximum clearance shall be increased proportionately.

§ 230.110 Pilots.

(a) *General provisions.* Pilots shall be securely attached, properly braced, and maintained in a safe and suitable condition for service.

(b) *Minimum and maximum clearance.* The minimum clearance of pilot above the rail shall be 3 inches and the maximum clearance shall be 6 inches measured on tangent level track.

§ 230.111 Spring rigging.

(a) *Arrangement of springs and equalizers.* Springs and equalizers shall be arranged to ensure the proper distribution of weight to the various wheels of the steam locomotive, maintained approximately level and in a safe and suitable condition for service. Adjusting weights by shifting weights from one pair of wheels to another is permissible.

(b) *Spring or spring rigging condemning defects.* Springs or spring rigging with any of the following defects shall be removed from service immediately and renewed or properly repaired:

(1) Top leaf broken or two leaves in top half or any three leaves in spring broken. (The long side of a spring to be considered the top.) Broken springs not exceeding these requirements may be repaired by applying clips providing the clips can be made to remain in place;

(2) Any spring with leaves excessively shifting in the band;

(3) Broken coil springs; or

(4) Broken driving box saddle, equalizer, hanger, bolt, or pin.

Wheels and Tires

§ 230.112 Wheels and tires.

(a) *Mounting.* Wheels shall be securely mounted on axles. Prick punching or shimming the wheel fit will not be permitted. The diameter of wheels on the same axle shall not vary more than ⅜ inch.

(b) *Gage.* Wheels used on standard gage track will be out of gage if the inside gage of flanges, measured on base line is less than 53 inches or more than 53⅜ inches. Wheels used on less than standard gage track will be out of gage if the inside gage of flanges, measured

on base line, is less than the relevant track gage less 3½ inches or more than the relevant track gage less 3⅞ inches.

(c) *Flange distance variance.* The distance back to back of flanges of wheels mounted on the same axle shall not vary more than ¼ inch.

(d) *Tire thickness.* Wheels may not have tires with a minimum thickness

less than that indicated in the table in this paragraph (d). When retaining rings are used, measurements of tires to be taken from the outside circumference of the ring, and the minimum thickness of tires may be as much below the limits specified earlier in this paragraph (d) as the tires extend between the retaining

rings, provided it does not reduce the thickness of the tire to less than 1⅛ inches from the throat of flange to the counterbore for the retaining rings. The required minimum thickness for tires, by wheel center diameter and weight per axle, is as follows:

Weight per axle (weight on drivers divided by number of pairs of driving wheels)	Diameter of wheel center (inches)	Minimum thickness (inches)
30,000 pounds and under	44 and under	1¼
	Over 44 to 50	1⅞
	Over 50 to 56	1⅜
	Over 56 to 62	1⅞
	Over 62 to 68	1½
	Over 68 to 74	1⅞
	Over 74	1⅝
Over 30,000 to 35,000 pounds	44 and under	1⅞
	Over 44 to 50	1⅜
	Over 50 to 56	1⅞
	Over 56 to 62	1½
	Over 62 to 68	1⅞
	Over 68 to 74	1⅝
	Over 74	1⅞
Over 35,000 to 40,000 pounds	44 and under	1⅜
	Over 44 to 50	1⅞
	Over 50 to 56	1½
	Over 56 to 62	1⅞
	Over 62 to 68	1⅝
	Over 68 to 74	1⅞
	Over 74	1¾
Over 40,000 to 45,000 pounds	44 and under	1⅞
	Over 44 to 50	1½
	Over 50 to 56	1⅞
	Over 56 to 62	1⅝
	Over 62 to 68	1⅞
	Over 68 to 74	1¾
	Over 74	1⅞
Over 45,000 to 50,000 pounds	44 and under	1½
	Over 44 to 50	1⅞
	Over 50 to 56	1⅝
	Over 56 to 62	1⅞
	Over 62 to 68	1¾
	Over 68 to 74	1⅞
	Over 74	1⅞
Over 50,000 to 55,000 pounds	44 and under	1⅞
	Over 44 to 50	1⅝
	Over 50 to 56	1⅞
	Over 56 to 62	1¾
	Over 62 to 68	1⅞
	Over 68 to 74	1⅞
	Over 74	1⅞
Over 55,000 pounds	44 and under	1⅝
	Over 44 to 50	1⅞
	Over 50 to 56	1¾
	Over 56 to 62	1⅞
	Over 62 to 68	1⅞
	Over 68 to 74	1⅞
	Over 74	2

(e) *Tire width.* Flanged tires shall be no less than 5½ inches wide for standard gage and no less than 5 inches wide for narrow gage. Plain tires shall be no less than 6 inches wide for standard gage and no less than 5½ inches wide for narrow gage.

§ 230.113 Wheels and tire defects.

Steam locomotive and tender wheels or tires developing any of the defects listed in this section shall be removed from service immediately and repaired. Except as provided in § 230.114, welding on wheels and tires is prohibited. A wheel that has been

welded is a welded wheel for the life of the wheel.

(a) *Cracks or breaks.* Wheels and tires may not have a crack or break in the flange, tread, rim, plate, hub or brackets.

(b) *Flat spots.* Wheels and tires may not have a single flat spot that is 2½ inches or more in length, or two

adjoining spots that are each two or more inches in length.

(c) *Chipped flange.* Wheels and tires may not have a gouge or chip in the flange that is more than 1½ inches in length and ½ inch in width.

(d) *Broken rims.* Wheels and tires may not have a circumferentially broken rim if the tread, measured from the flange at a point ⅝ inch above the tread, is less than ¾ inches in width.

(e) *Shelled-out spots.* Wheels and tires may not have a shelled-out spot 2½ inches or more in length, or two adjoining spots that are each two or more inches in length, or so numerous as to endanger the safety of the wheel.

(f) *Seams.* Wheels and tires may not have a seam running lengthwise that is within ¾ inches of the flange.

(g) *Worn flanges.* Wheels and tires may not have a flange worn to a ⅛ inch thickness or less, as measured at a point ⅜ inch above the tread.

(h) *Worn treads.* Wheels and tires may not have a tread worn hollow ⅝ inch or more.

(i) *Flange height.* Wheels and tires may not have a flange height of less than 1 inch nor more than 1½ inches, as measured from the tread to the top of the flange.

(j) *Rim thickness.* Wheels may not have rims less than 1 inch thick.

(k) *Wheel diameter.* Wheels may not have wheel diameter variance, for wheels on the same axle or in the same driving wheel base, greater than ⅜ inch, when all tires are turned or new tires applied to driving and trailing wheels. When a single tire is applied, the diameter must not vary more than ⅜ inch from that of the opposite wheel on the same axle. When a single pair of tires is applied the diameter must be within ⅜ inch of the average diameter of the wheels in the driving wheel base to which they are applied.

§ 230.114 Wheel centers.

(a) *Filling blocks and shims.* Driving and trailing wheel centers with divided rims shall be properly fitted with iron or steel filling blocks before the tires are applied, and such filling blocks shall be properly maintained. When shims are inserted between the tire and the wheel center, not more than two thicknesses of shims may be used, one of which must extend entirely around the wheel. The shim which extends entirely around the wheel may be in three or four pieces, providing they do not lap.

(b) *Wheel center condemning defects.* Wheel centers with any of the following defects shall be removed from service immediately and repaired:

- (1) Wheels centers loose on axle;
- (2) Broken or defective tire fastenings;

(3) Broken or cracked hubs, plates, bolts or spokes, except as provided in paragraph (b)(4) of this section; or

(4) Driving or trailing wheel center with three adjacent spokes or 25 percent or more of the spokes in the wheel broken.

(c) *Wheel center repairs.* Wheel centers may be repaired by welding or brazing provided that the defect can properly be so repaired and, following the repair, the crankpin and axle shall remain tight in the wheel. Banding of the hub is permitted.

(d) *Counterbalance maintenance.* Wheel counterbalances shall be maintained in a safe and suitable condition for service.

Steam Locomotive Tanks

§ 230.115 Feed water tanks.

(a) *General provisions.* Tanks shall be maintained free from leaks, and in safe and suitable condition for service. Suitable screens must be provided for tank wells or tank hose and shall be maintained in a manner that allows the unobstructed flow of water. Feed water tanks shall be equipped with a device that permits the measurement of the quantity of water in the tender feed water tank from the cab or tender deck of the steam locomotive. Such device shall be properly maintained.

(b) *Inspection frequency.* As often as conditions warrant but not less frequently than every 92 service days, the interior of the tank shall be inspected, and cleaned if necessary.

(c) *Top of tender.* Top of tender behind fuel space shall be kept clean, and means provided to carry off excess water. Suitable covers shall be provided for filling holes.

§ 230.116 Oil tanks.

The oil tanks on oil burning steam locomotives shall be maintained free from leaks. The oil supply pipe shall be equipped with a safety cut-off device that:

- (a) Is located adjacent to the fuel supply tank or in another safe location;
- (b) Closes automatically when tripped and that can be reset without hazard; and
- (c) Can be hand operated from clearly marked locations, one inside the cab and one accessible from the ground on each exterior side of the steam locomotive.

Appendix A to Part 230—Inspection Requirements

The lists in this appendix are intended as guidance only. Adherence to this list does not relieve the steam locomotive owner and/or operator of responsibility for either: (1) Completing the inspection and maintenance

requirements described in this part; or (2) ensuring that the steam locomotive, tender and its parts and appurtenances are safe and suitable for service.

Daily Inspection Requirements; § 230.13

1. Observance of lifting pressure of the lowest safety valve.
2. Testing of water glasses and gauge cocks.*
3. Inspection of tubular water glass shields.
4. Inspection of all cab lamps.*
5. Inspection of boiler feedwater delivery systems.*
6. Inspection of lagging for indication of leaks.
7. Inspection for leaks obstructing vision of engine crew.
8. Observance of compressor(s) and governor to ascertain proper operation.*
9. Inspection of brake and signal equipment.*
10. Inspection of brake cylinders for piston travel.
11. Inspection of foundation brake gear.
12. Inspection of sanders.*
13. Inspection of draw gear and chafing irons.
14. Inspection of draft gear.
15. Inspection of crossheads and guides.
16. Inspection of piston rods and fasteners.
17. Inspection of main, side, and valve motion rods.
18. Inspection of headlights and classification lamps.*
19. Inspection of running gear.
20. Inspection of tender frames and tanks.
21. Inspection of tender trucks for amount of side bearing clearance.

Note: All items marked (*) should be checked at the beginning of each day the locomotive is used.

31 Service Day Inspection Requirements; § 230.14

1. Washing of boiler.
2. Cleaning and inspection of water glass valves and gauge cocks.
3. Cleaning, washing and inspection of arch tubes, water bar tubes, circulators and siphons.
4. Removal and inspection of all washout and water tube plugs.
5. Testing of all staybolts.
6. Removal, cleaning and inspection of fusible plugs (if any).

92 Service Day Inspection Requirements; § 230.15

1. Removal and testing of all air and steam gauges.
2. Cleaning of steam gauge siphon pipe.
3. Renewal of tubular water glasses.
4. Testing and adjusting of safety relief valves.
5. Testing of main reservoir and brake cylinder leakage.
6. Entering and inspection of tender tank interior.

Annual Inspection Requirements; § 230.16

1. Testing of thickness of arch and water bar tubes (arch brick to be removed)
2. Hydrostatic testing of boiler.
3. Testing of all staybolts.
4. Interior inspection of boiler.

- 5. Thickness verification of dry pipes.
- 6. Smoke box inspection.
- 7. Main reservoir hammer or UT testing and hydrostatic testing (for non-welded and drilled main reservoirs)
- 8. Removal and inspection of steam locomotive drawbar(s) and pins (NDE testing other than merely visual)
- 9. Inspection of longitudinal lap joint boiler seams.

- 5 Year Inspection Requirements; § 230.16*
- 1. Inspection of flexible staybolt caps and sleeves.
- 1472 Service Day Inspection Requirements; § 230.17*
- 1. Removal of boiler flues (as necessary) and cleaning of boiler interior.

- 2. Removal of jacket and lagging and inspection of boiler interior and exterior.
- 3. Hydrostatic testing of boiler.
- 4. Thickness verification (boiler survey) and recomputation and update of steam locomotive specification card, (FRA Form No. 4).

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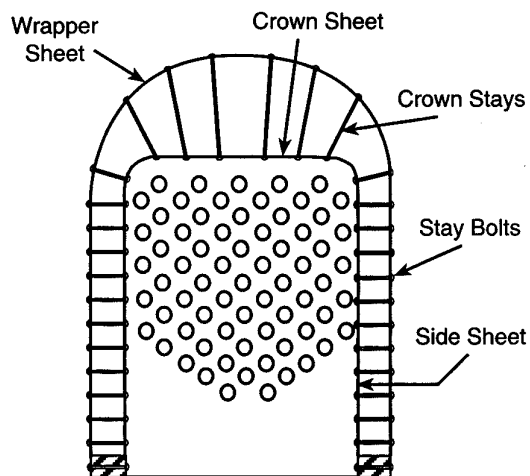
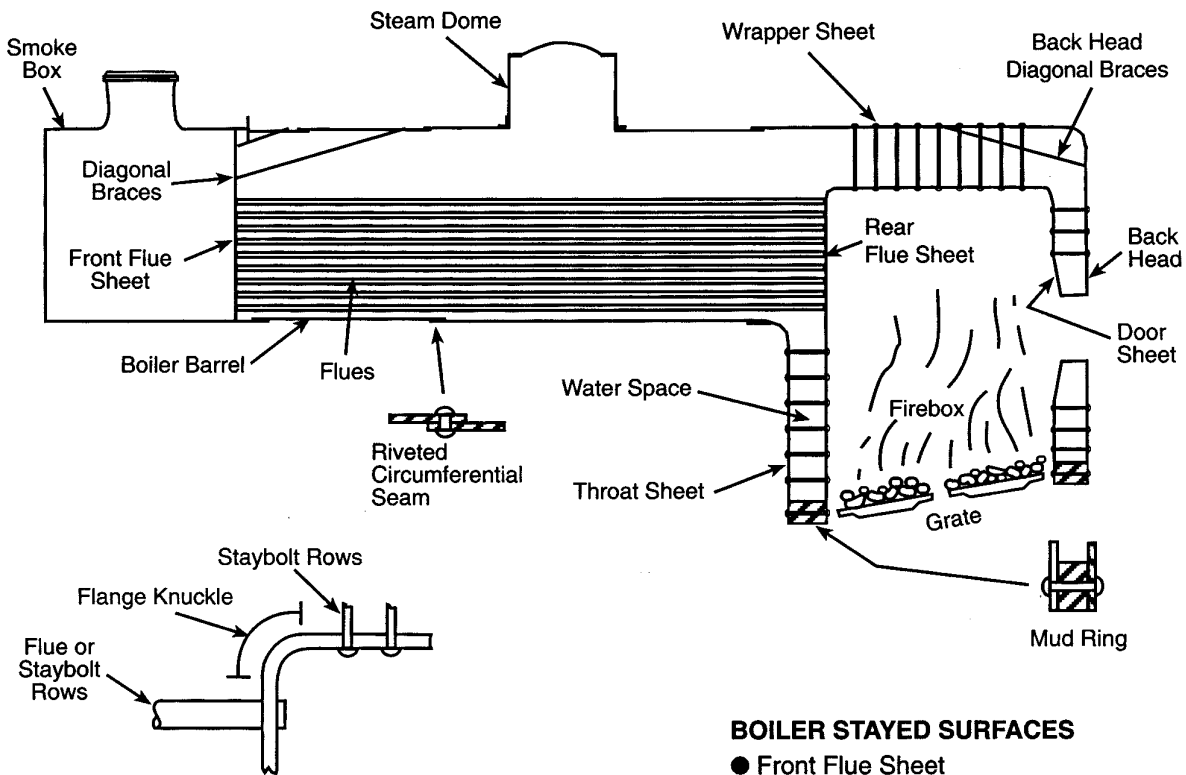
Appendix B to Part 230—Diagrams and Drawings

Reference 230.8

Drawing 1

BOILER: STAYED AND UNSTAYED SURFACES

Section Through Locomotive Boiler



SECTION THROUGH FIREBOX

BOILER STAYED SURFACES

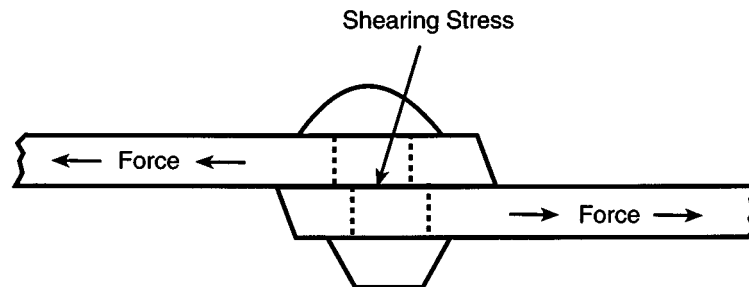
- Front Flue Sheet
- Rear Flue Sheet
- Wrapper Sheet
- Door Sheet
- Side Sheets
- Crown Sheet
- Throat Sheet
- Back Head
- Stayed Section of Thermic Syphons

BOILER UNSTAYED SURFACES

- Boiler Barrel
- Steam Dome
- Arch Tubes
- Thermic Syphon Neck
- Firebox Circulators
- Knuckle Section of Flanged Sheet

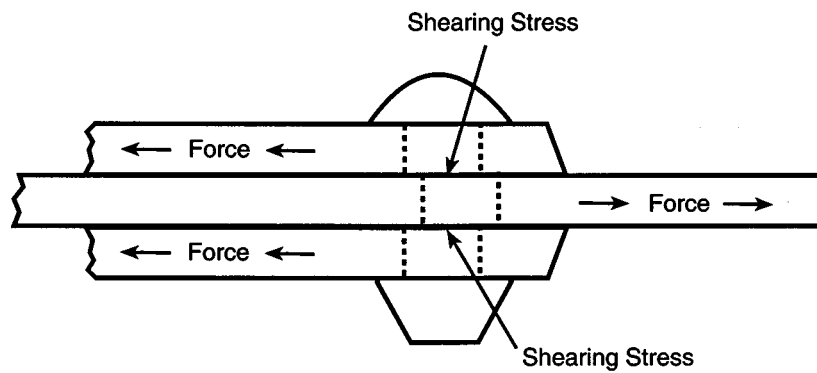
Reference 230.27
Drawing 2

RIVET IN SINGLE SHEAR



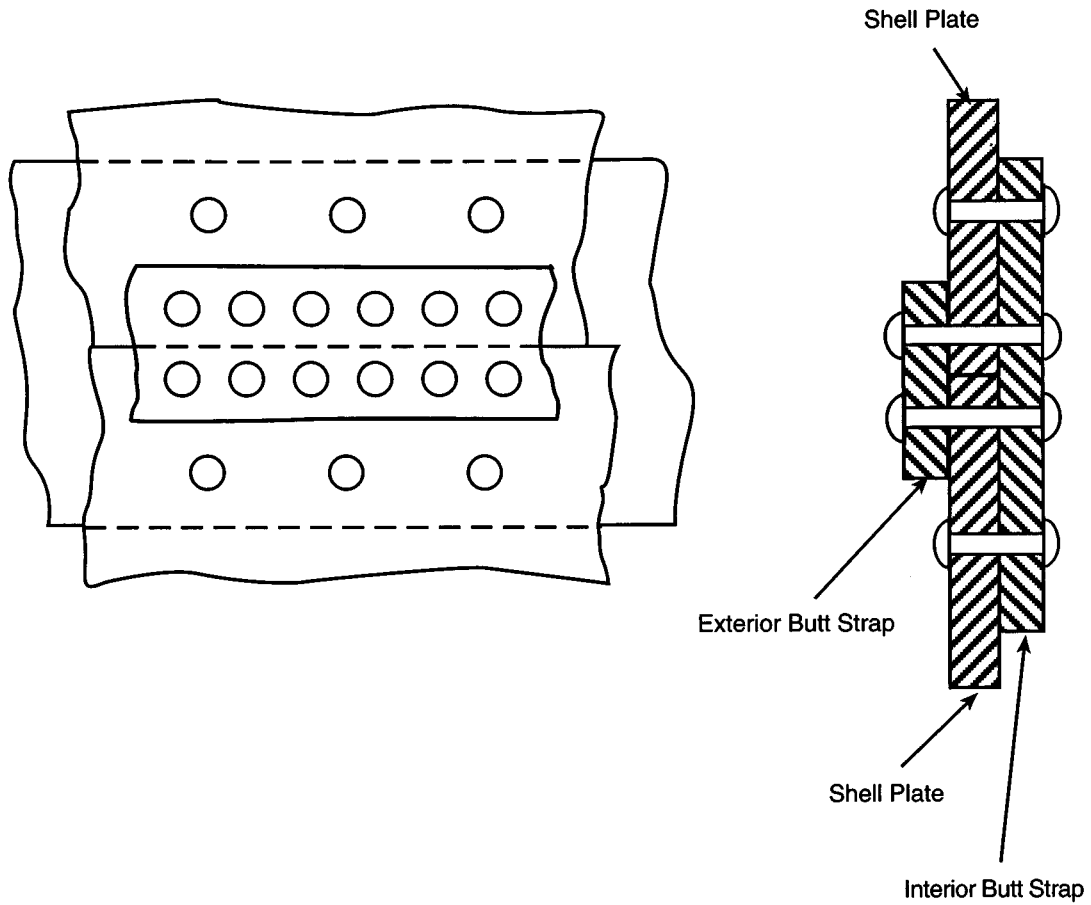
Reference 230.27
Drawing 3

RIVET IN DOUBLE SHEAR



Reference 230.34(b)
Drawing 4

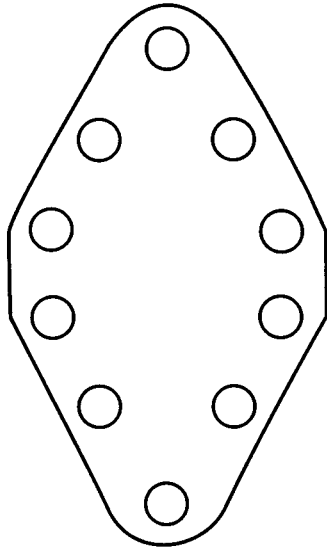
RIVETED BUTT SEAM



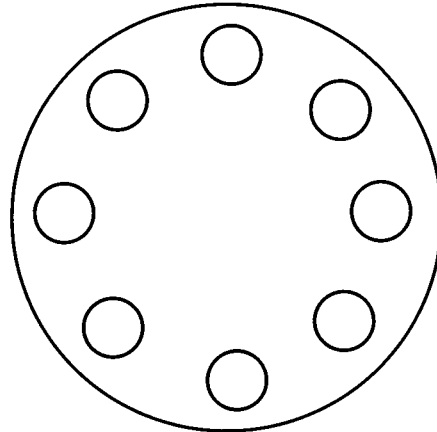
Reference 230.34(a)
Drawing 5

RIVETED BOILER PATCH

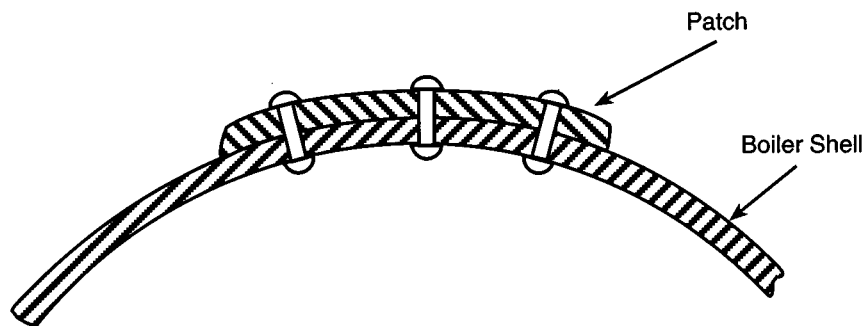
Diagonal Riveted Patch



Circular Riveted Patch



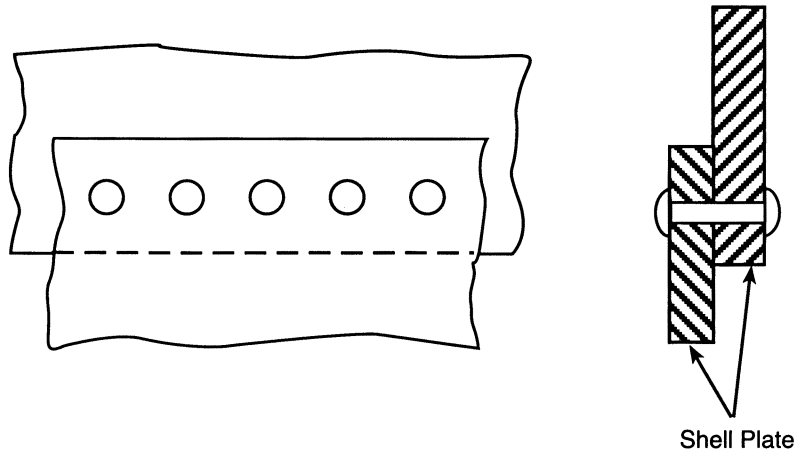
Typical Riveted Patch Installation



Patch may be installed on Boiler Shell Interior or Exterior

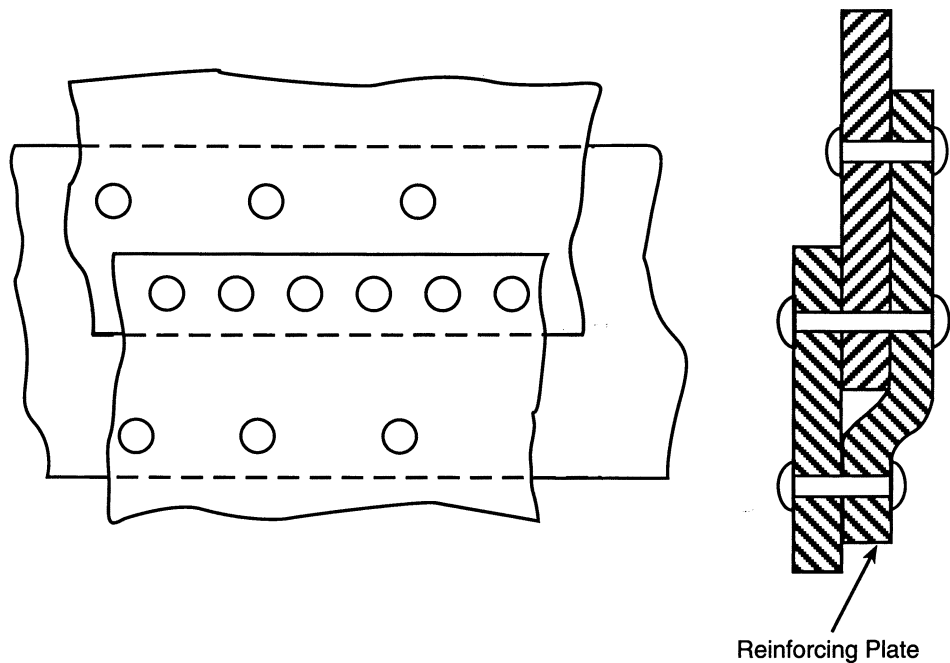
Reference 230.30
Drawing 6

RIVETED LAP SEAM



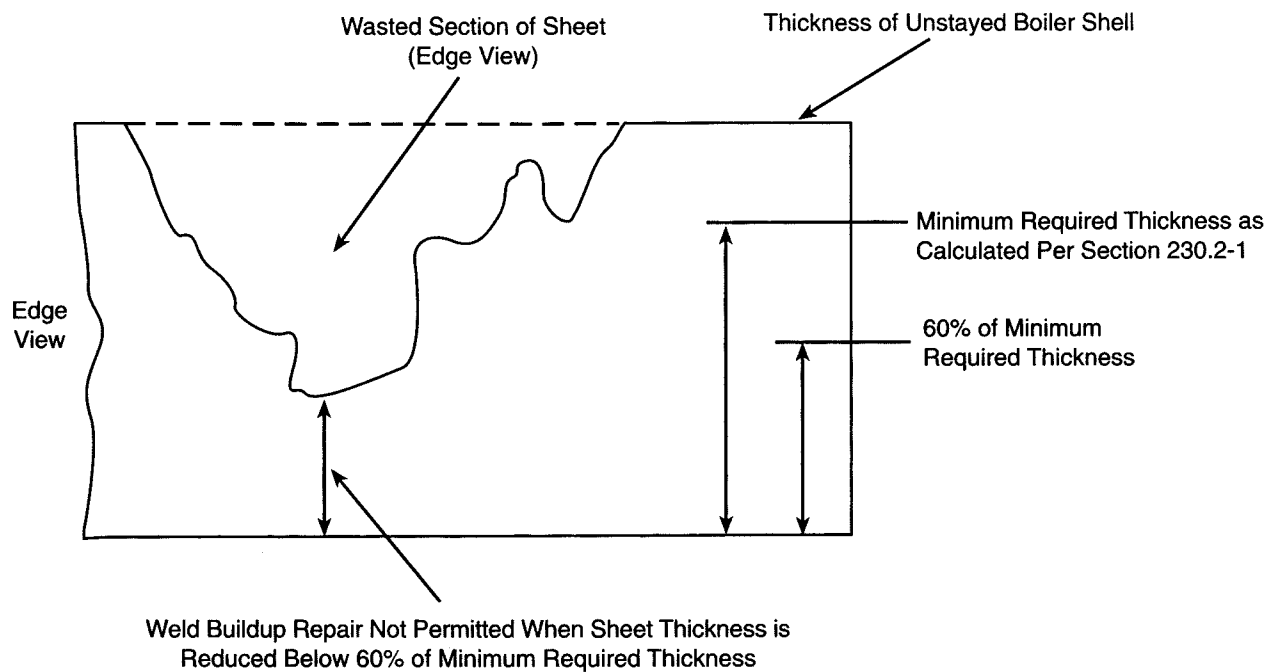
Reference 230.30
Drawing 7

RIVETED LAP SEAM WITH REINFORCING PLATE



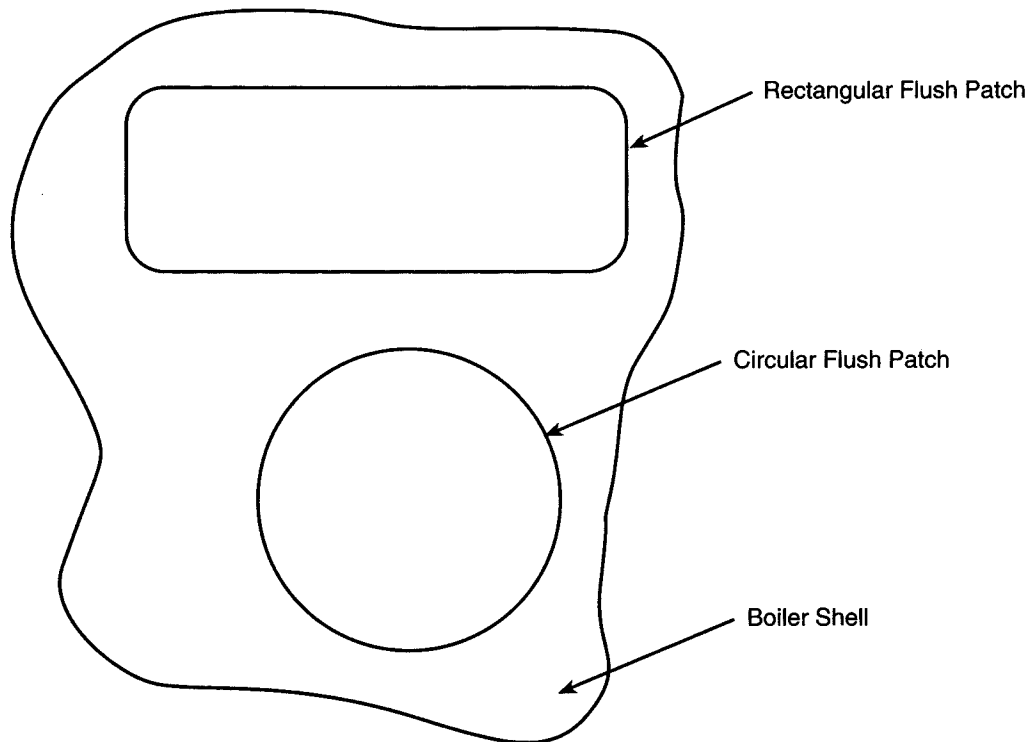
Reference 230.33(c)
Drawing 8

WELD BUILDUP REPAIR OF WASTED UNSTAYED BOILER SHEET

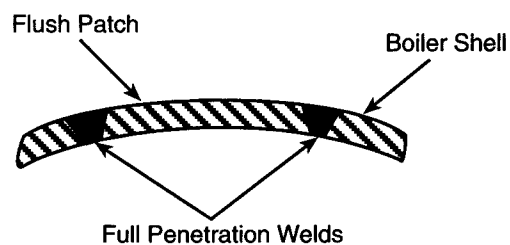


Reference 230.33(d)
Drawing 9

FLUSH PATCHES ON UNSTAYED SECTION OF BOILER SHELL

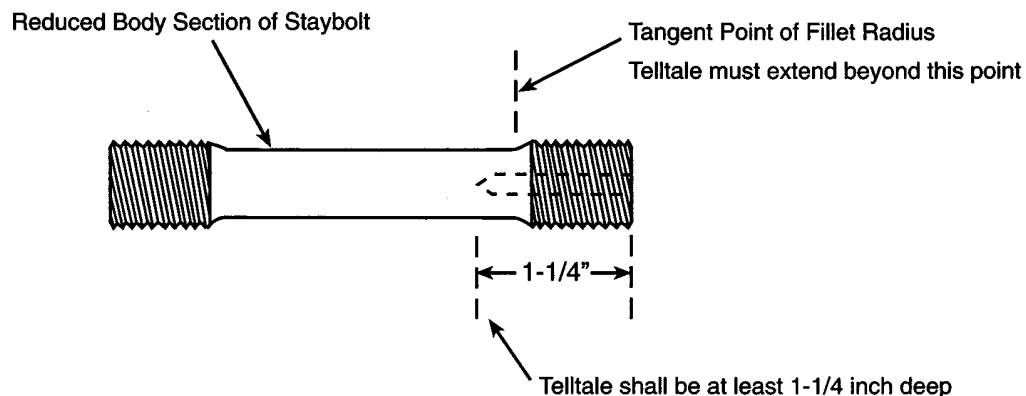


Typical Flush Patch Installation



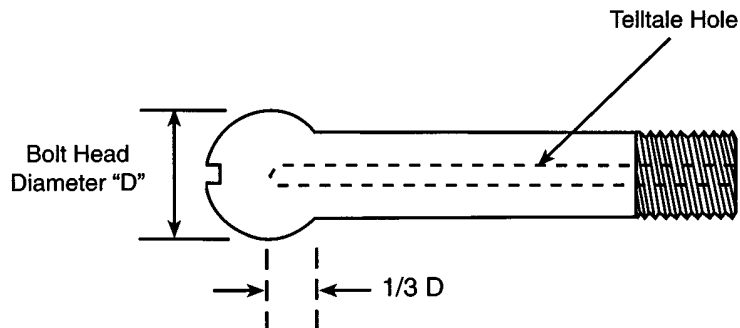
Reference 230.38(b)
Drawing 10

ARRANGEMENT OF TELLTALE HOLE IN REDUCED-BODY STAYBOLT



Reference 230.41(b)
Drawing 11

ARRANGEMENT OF TELLTALE HOLE IN HOLLOW FLEXIBLE STAYBOLT

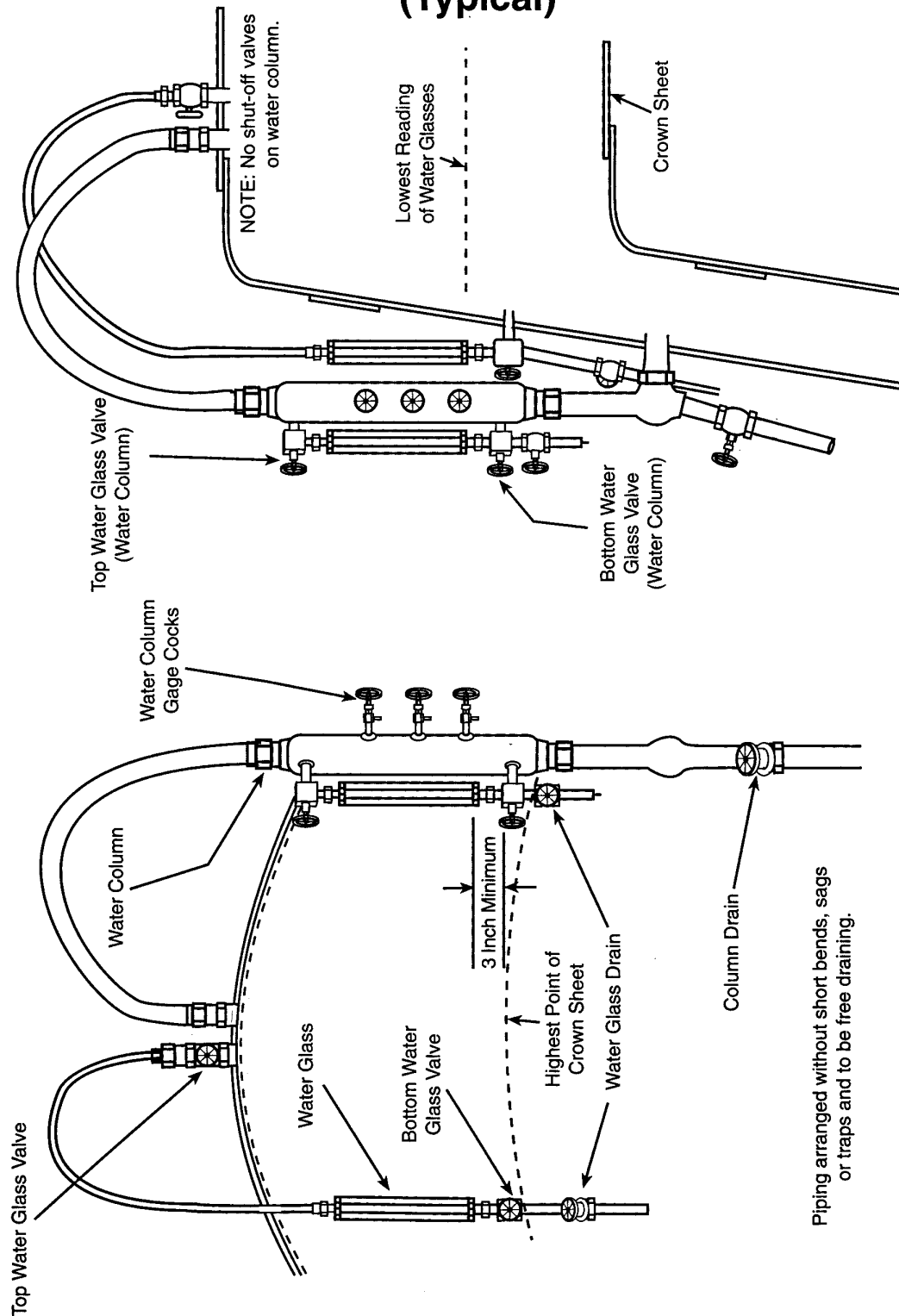


Minimum Telltale Hole Depth into Bolt Head
To Equal 1/3 of Bolt Head Diameter (1/3 D)

Reference 230.51

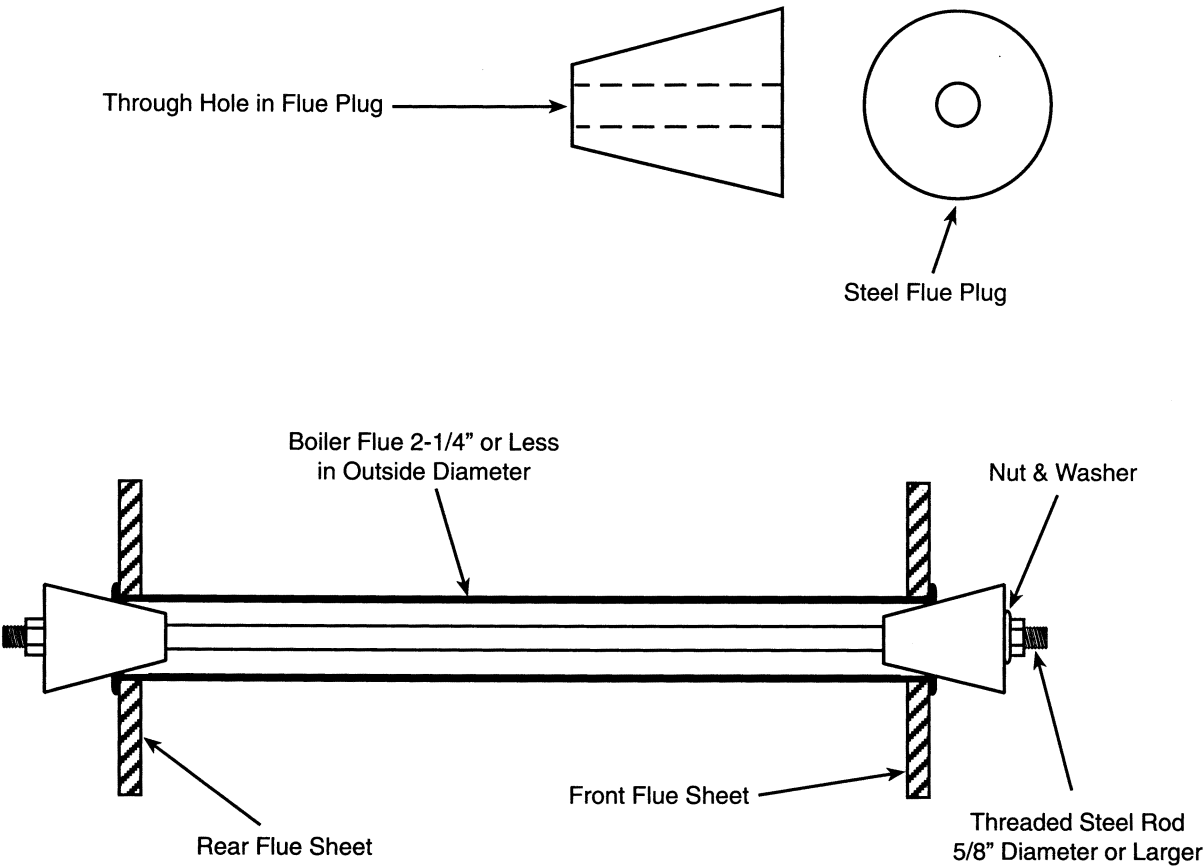
Drawing 12

GENERAL ARRANGEMENT OF WATER GLASS AND WATER COLUMN VALVES (Typical)



Reference 230.58(b)
Drawing 13

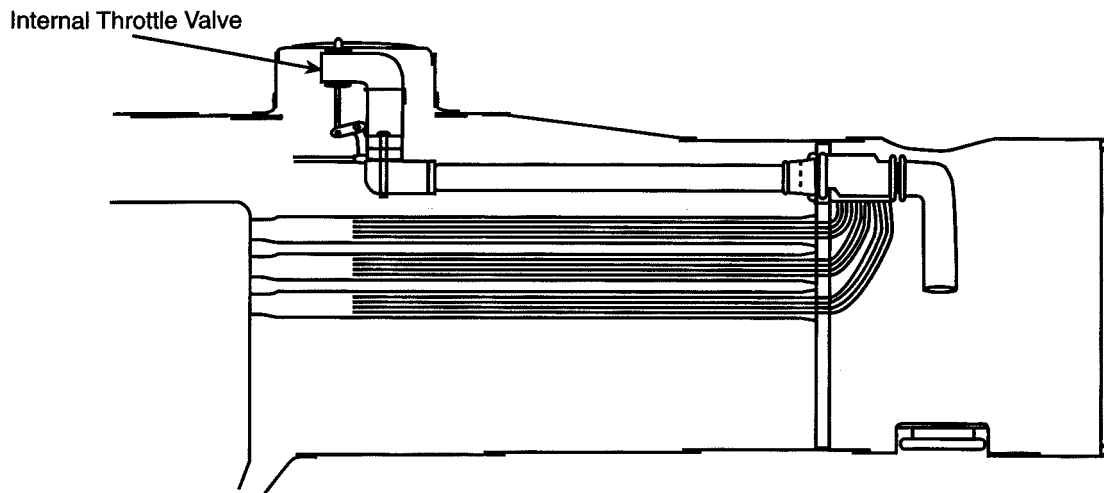
INSTALLATION OF FLUE PLUG



Reference 230.62
Drawing 14

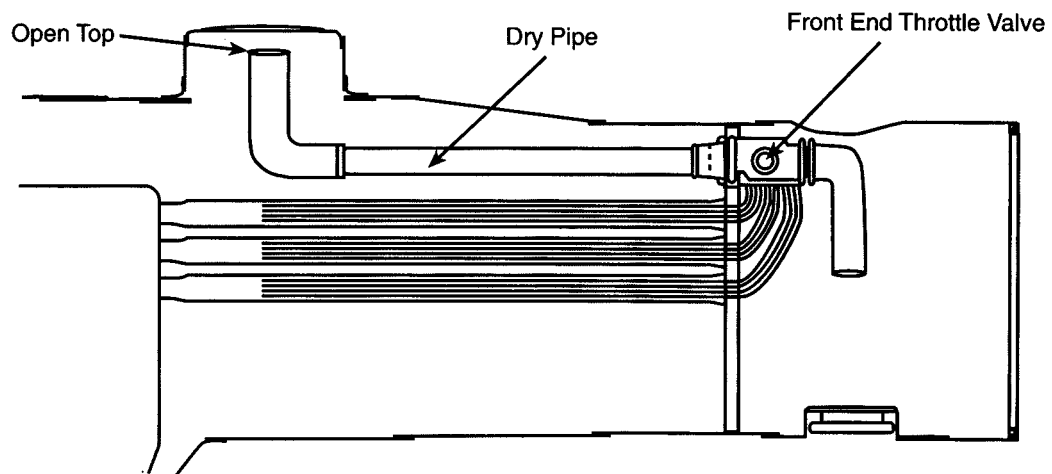
DRY PIPE

Arrangement of Dry Pipe Subject to Pressure



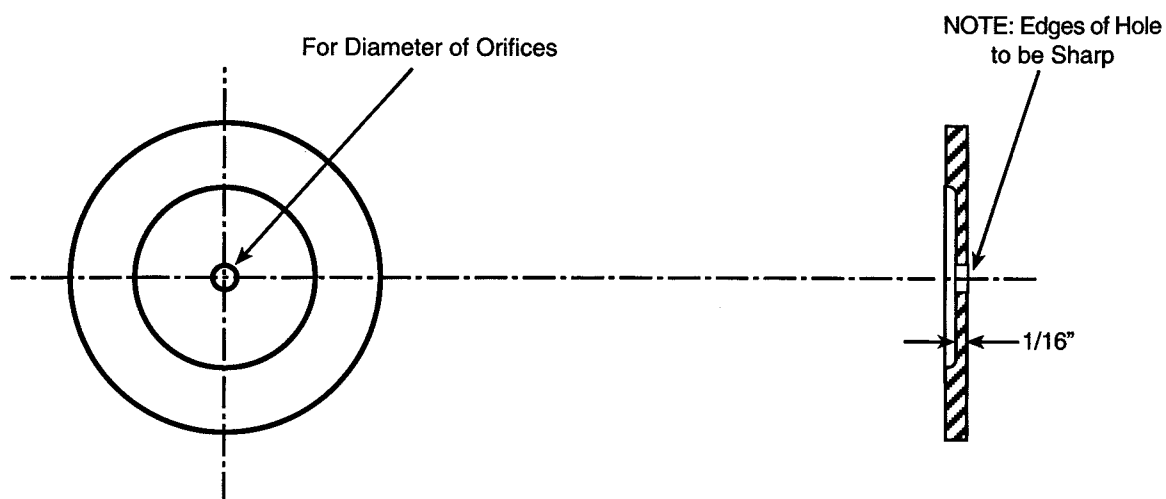
Reference 230.62
Drawing 15

Arrangement of Dry Pipe Not Subject to Pressure



Reference 230.71(b)
Drawing 16

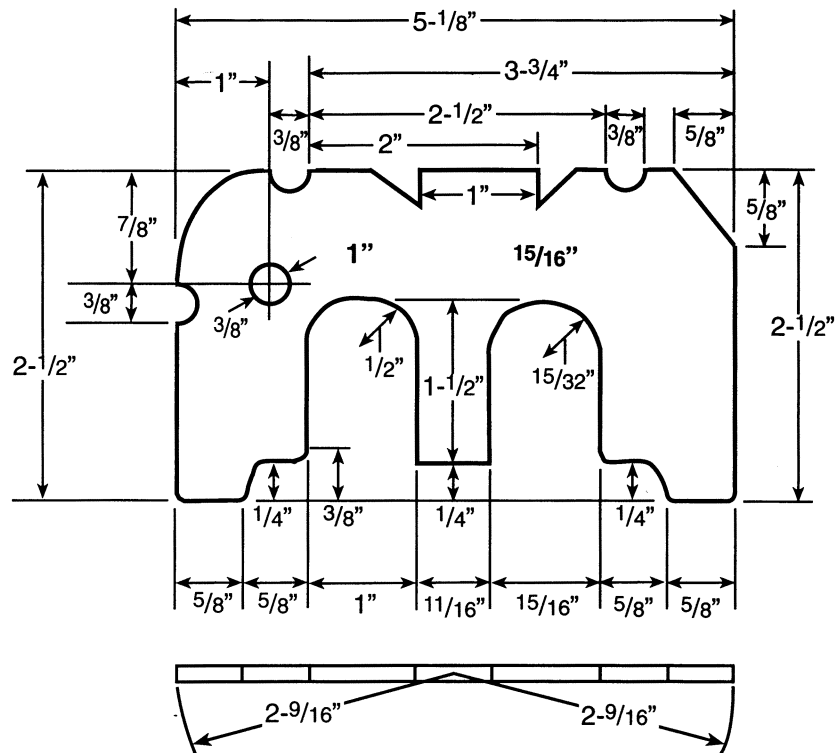
ORIFICE



Reference 230.113
Drawing 17

WHEEL DEFECT GAUGE

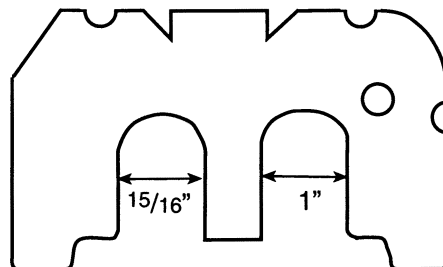
This gauge to be used in determining flat spots, worn flanges, and broken rims.



Reference 230.113
Drawing 18

WHEEL DEFECT GAUGE

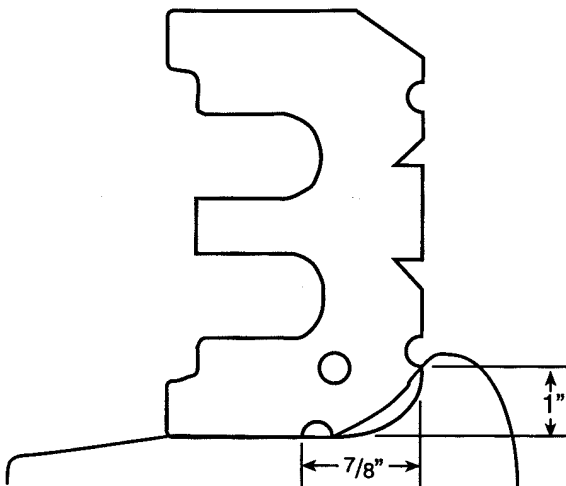
Method of gauging worn Flanges.



Reference 230.113
Drawing 19

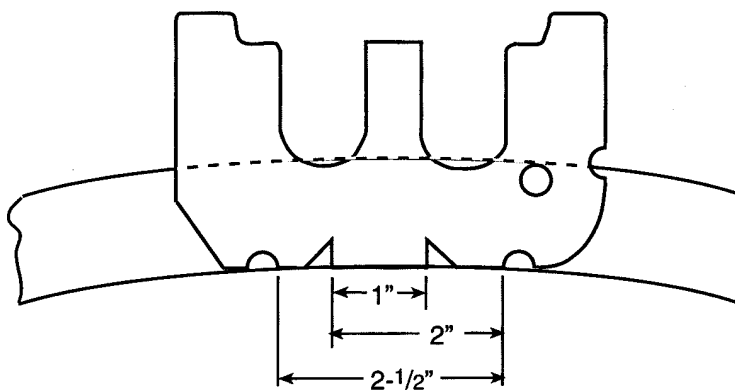
WHEEL DEFECT GAUGE

Method of gauging worn flanges.



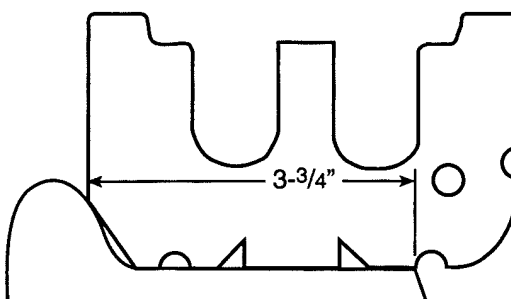
Reference 230.113
Drawing 20

Method of gauging shelled and flat spots.



Reference 230.113
Drawing 21

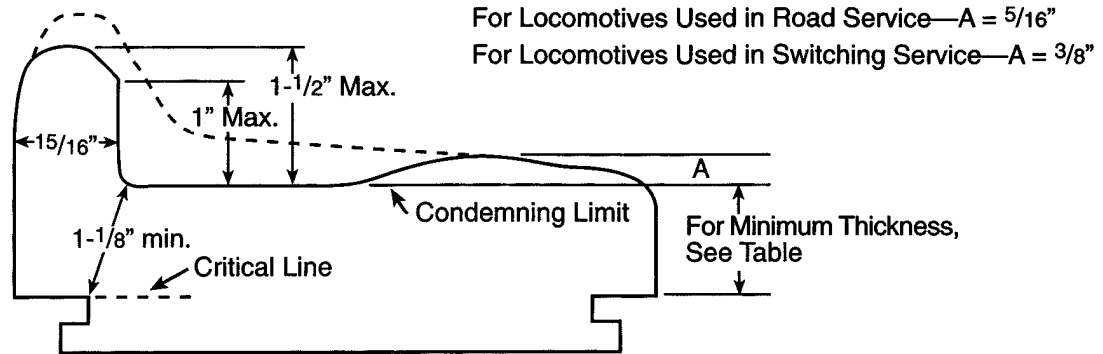
Method of gauging broken rims.



Reference 230.112
Drawing 22

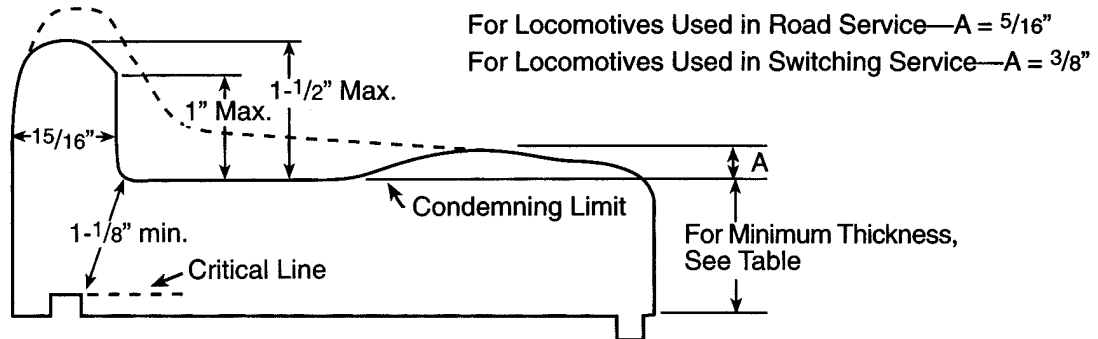
STEEL TIRE

Retaining ring type fastening. Driving and trailing wheels.



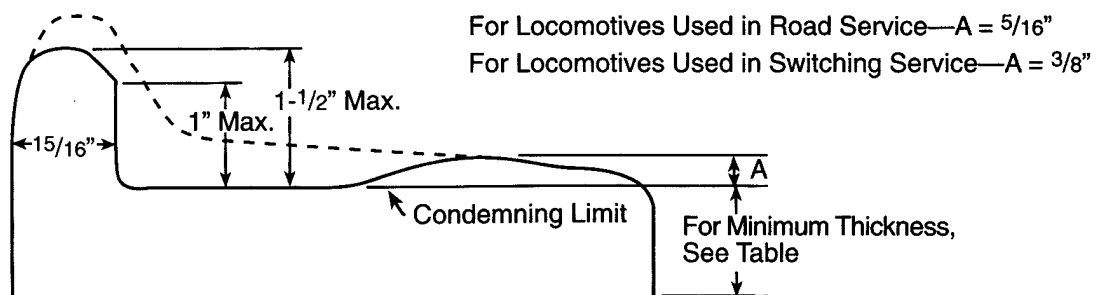
Reference 230.112
Drawing 23

Shrinkage fastening with shoulder and retaining segments. Driving and trailing wheels.



Reference 230.112
Drawing 24

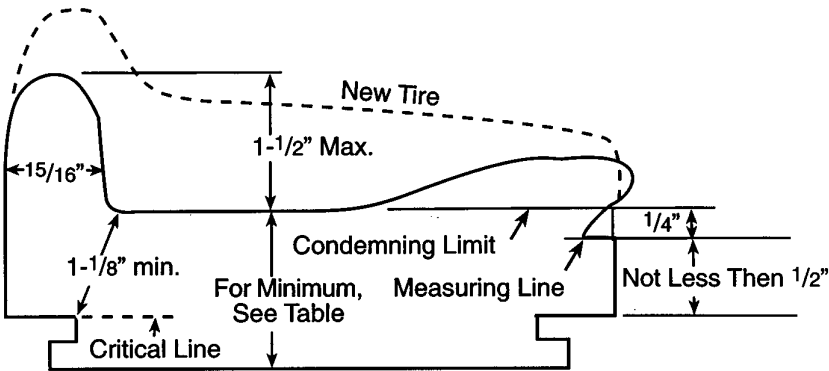
Shrinkage fastening. Driving and trailing wheels.



Reference 230.112
Drawing 25

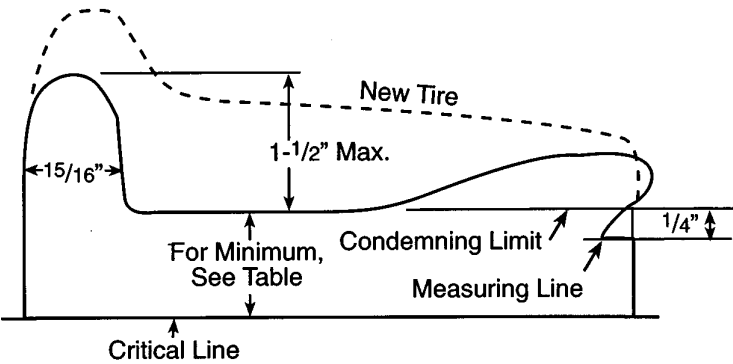
STEEL TIRE

Retaining ring type fastening. Minimum thickness for steel tires. Engine and tender.



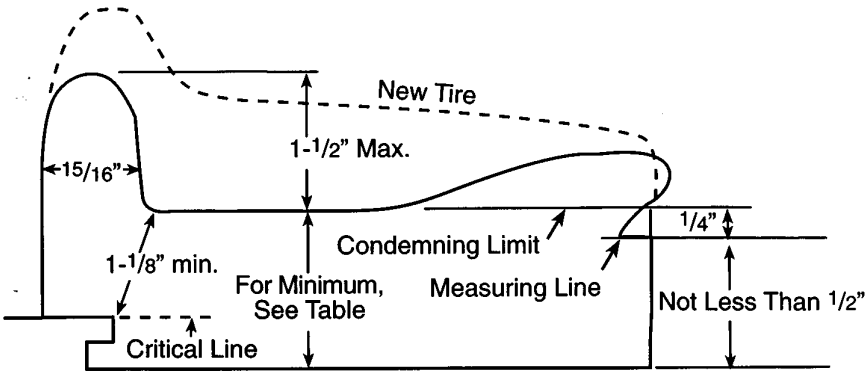
Reference 230.112
Drawing 26

Shrinkage fastening only. Minimum thickness for steel tires. Engine and tender.



Reference 230.112
Drawing 27

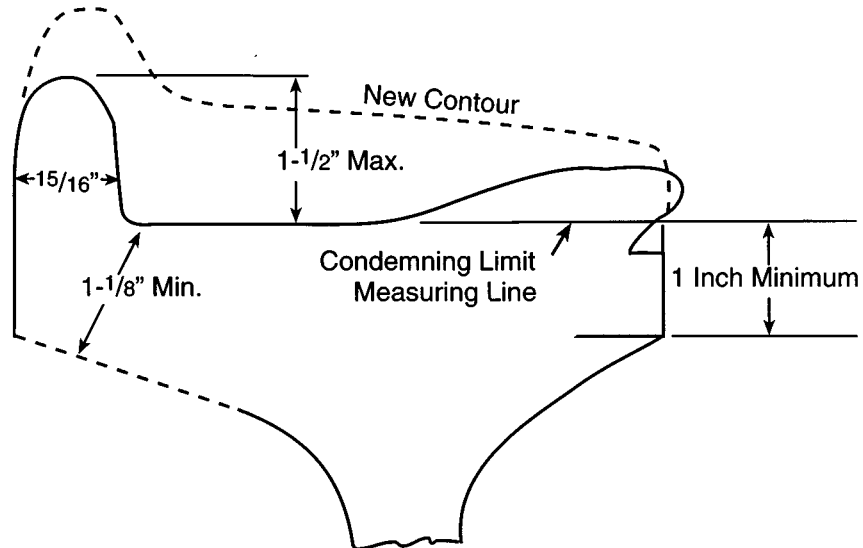
Retaining ring fastening. Minimum thickness for steel tires. Engine and tender.



Reference 230.113(j)
Drawing 28

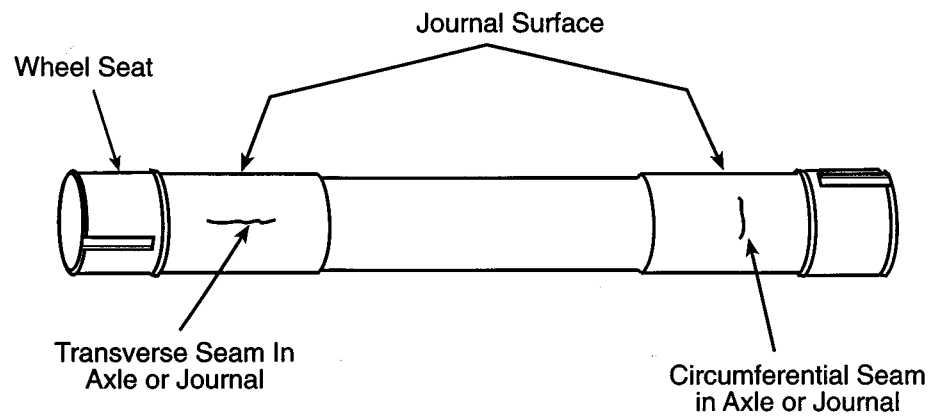
STEEL WHEELS

Minimum thickness of rim. Engine and tender truck wheels.



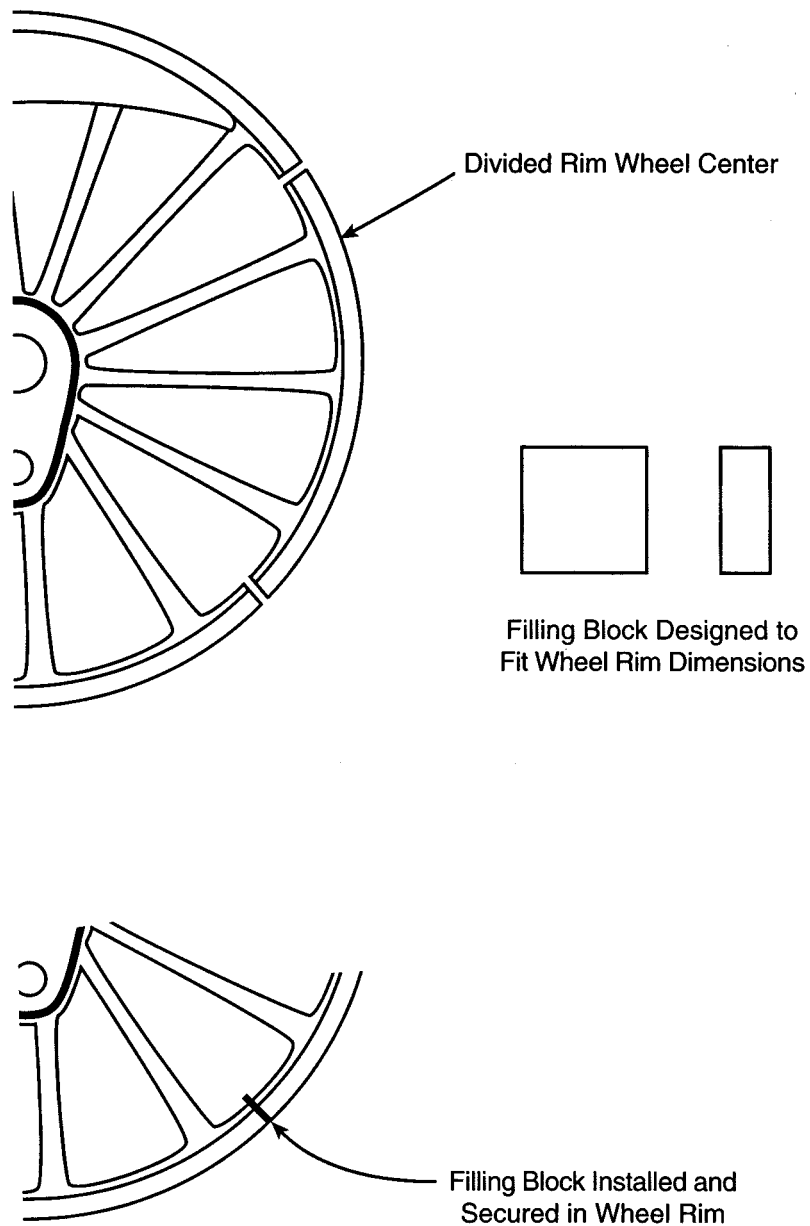
Reference 230.98
Drawing 29

SEAMS IN AXLES



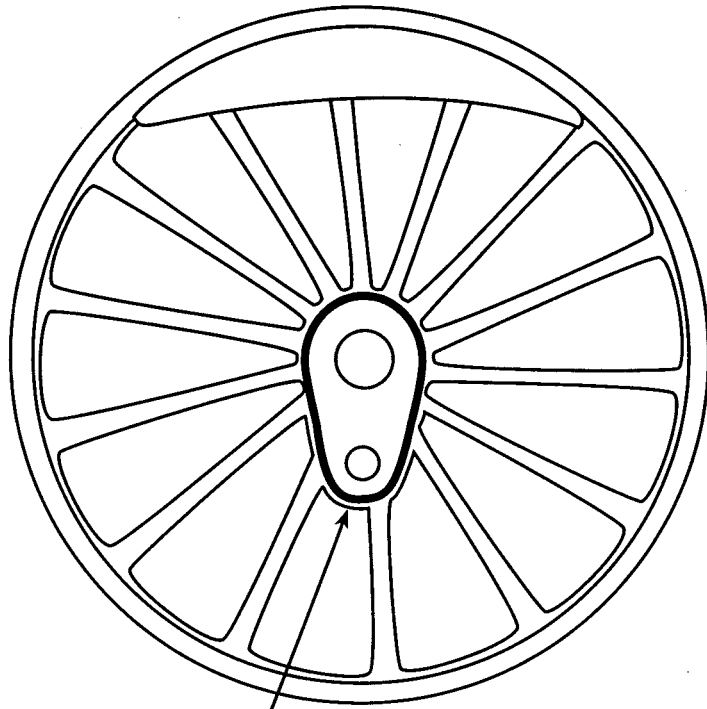
Reference 230.114(a)
Drawing 30

FILLING BLOCK FOR DIVIDED-RIM WHEEL CENTER



Reference 230.114(c)
Drawing 31

BANDED WHEEL HUB



Steel Band Applied to Repair
Cracked Wheel Hub

Appendix C - FRA Inspection Forms**Form No. 1****31 and 92 Service Day Inspection Report**

Date of _____ Owner _____ Locomotive Initials _____
 Inspection _____ Operator _____ Locomotive No. _____

31 and 92 Service Day Requirements

Instructions: Non-complying conditions shall be repaired and this report approved before the locomotive is returned to service. Where condition is called for, enter either: (1) **Good** - No defects which could be discovered by a reasonable inspection; (2) **Fair** - Functioning less than optimally but safe and suitable and not in violation of the regulations; or (3) **Poor** - Not in compliance with the regulations. In any case N/A means - not applicable.

Was boiler washed? _____	Were steam leaks repaired? _____
Were water gauge and valve passages cleaned? _____	Condition of draft system and draw gear. _____
Were gauge cock passages cleaned? _____	Condition of running gear. _____
Were all washout plugs removed and inspected? _____	Condition of driving gear. _____
Were arch tubes, circulators, siphons and water bar tubes cleaned and inspected? _____	Condition of spring/equalizing system. _____
Were fusible plugs removed, cleaned & inspected? _____	Condition of tender running gear. _____
Were staybolts hammer tested? _____	Condition of brake equipment. _____
Were all broken staybolts replaced? _____	Were injectors tested and in good condition? _____
	Was feedwater pump tested and in good condition? _____

92 Service Day Requirements

Date of previous 92 Service Day Inspection _____	Were tubular water glasses renewed? _____
Safety relief valves pop at _____ psi _____ psi _____ psi	Were air compressor(s) orifice tested? _____
Were all steam gauges tested? _____	Was main reservoir tested for leakage? _____
Were all air brake gauges tested? _____	Were brake cylinders tested for leakage? _____
Were steam gauge siphon pipe(s) cleaned? _____	Was tender tank entered and inspected? _____
If no 92 Service Day Inspection is done, enter number of service days used since last 92 Service Day Insp. _____	

INSPECTOR

The above work has been performed and the report is approved. _____

OFFICER IN CHARGE_____
INSPECTOR

Form No. 3**Annual Inspection Report**

Date of _____ Owner _____ Locomotive Initials _____
 Inspection _____ Operator _____ Locomotive No. _____

Instructions: Non-complying conditions shall be repaired and this report approved before the locomotive is returned to service. Where condition is called for, enter either: (1) **Good** - No defects which could be discovered by a reasonable inspection; (2) **Fair** - Functioning less than optimally but safe and suitable and not in violation of the regulations; or (3) **Poor** - Not in compliance with the regulations. In any case N/A means - not applicable.

Boiler hydrostatically tested to _____ psi, at a water temperature of _____ degrees F.
 Was boiler washed? _____ Were steam gauge siphon pipe(s) cleaned? _____
 Were water gauge and valve passages cleaned? _____ Were steam leaks repaired? _____
 Were gauge cock passages cleaned? _____ Were tubular water glasses renewed? _____
 Were all washout plugs removed and inspected? _____ Were fusible plugs removed, cleaned & inspected? _____
 Were arch tubes, circulators, siphons and water bar tubes Flexi caps removed on (date) _____
 cleaned and inspected? _____ Were all air brake gauges tested? _____
 Thickness of arch tubes _____; Water bar tubes _____ Main reservoir hydro _____ psi, hammer _____
 Dry pipe thickness _____; Circulator thickness _____ NDE _____, Drilled _____
 Were water column passages cleaned and inspected? _____ Were brake cylinders tested for leakage. _____
 Was boiler entered and inspected? _____ Was main reservoir tested for leakage. _____
 Were drilled flexible staybolt telltale holes tested? _____ Were air compressor(s) orifice tested? _____
 Were staybolts hammer tested? _____ Condition of driving gear. _____
 Were all broken staybolts replaced? _____ Condition of running gear. _____
 Were longitudinal lap seams inspected? _____ Condition of draft system and draw gear. _____
 Was smoke box entered and inspected? _____ Condition of spring/equalizing system. _____
 Safety relief valves pop at _____ psi _____ psi _____ Condition of brake equipment. _____
 Were injectors tested and in good condition? _____ Condition of tender running gear. _____
 Was feedwater pump tested and in good condition? _____ Was tender tank entered and inspected? _____
 Were all steam gauges tested? _____

INSPECTOR

The above work has been performed and the report is approved. _____

OFFICER IN CHARGE

INSPECTOR

Locomotive Air Brake Cleaning, Testing and Inspection Record

EQUIPMENT	SERVICE PERIOD	Previous Inspection	Current Annual Date	Inspection Date	Inspection Date	Inspection Date	Inspection Date	Notes
AIR COMPRESSOR ORIFICE TEST	92 service day							
AIR GAUGES	92 service day							
MAIN RESERVOIR LEAKAGE	92 service day							
BRAKE CYLINDER LEAKAGE	92 service day							
FILTERS	Annual Inspection							
DIRT COLLECTORS	Annual Inspection							
MAIN RESERVOIR HYDRO, HAMMER, NDE	Annual Inspection							
BRAKE VALVES	368 service days or second							

FRA Form 4

BOILER SPECIFICATION CARD

Locomotive No. _____; Boiler No. _____; Date built _____
 Boiler built by: _____
 Owned by: _____
 Operated by: _____
 Type of boiler: _____; Dome, where located: _____

BOILER SURVEY DATA

Where condition is called for, use: **New** - New material at the time of the boiler survey; **Good** - Little or no wear and/or corrosion; **Fair** - Obvious wear and/or corrosion.

Boiler Shell Sheets

Material:	Type of Material (wrought iron, carbon steel, or alloy steel)	Carbon Content	Condition
1st course (front)	_____	_____	_____
2nd course	_____	_____	_____
3rd course	_____	_____	_____
Rivets	_____	n/a	n/a

Documentation of how material was determined shall be attached to this form.

Measurements:	At Seam	Thinnest	ID	ID
Front flue sheet, thickness	n/a	_____	_____	_____
1st course, thickness	_____	_____	_____	_____
2nd course, thickness	_____	_____	_____	_____
3rd course, thickness	_____	_____	_____	_____

When courses are not cylindrical give ID at each end

Is boiler shell circular at all points? _____

If shell is flattened, state location and amount _____

Are all flattened areas of shell stayed adequately for the pressure allowed by this form? _____

Water Space at Mud Ring: Sides _____, Front _____, Back _____

Width of water space at sides of fire box measured at center line of boiler: Front _____, Back _____

Firebox and Wrapper Sheets

Firebox sheets:	Thickness	Material	Condition
Rear flue sheet	_____	_____	_____
Crown	_____	_____	_____
Sides	_____	_____	_____
Door	_____	_____	_____
Combustion chamber	_____	_____	_____
Inside throat	_____	_____	_____
Wrapper sheets:			
Throat	_____	_____	_____
Back head	_____	_____	_____
Roof	_____	_____	_____
Sides	_____	_____	_____

Steam Dome

Dome is made of _____ pieces (not including seam welts, if any), Top opening diameter _____
 Middle cylindrical portion - ID _____, Opening in boiler shell, longitudinally - _____

Dome sheets:	Thickness	Material	Condition
Base	_____	_____	_____
Middle cylindrical portion	_____	_____	_____
Top	_____	_____	_____
Lid	_____	_____	_____
Boiler shell liner for steam dome opening:	_____	_____	_____
Is liner part of longitudinal seam?	_____		

Arch Tubes, Flues, Circulators, Thermic Siphons, Water Bar Tubes, Superheaters, and Dry Pipe

Arch tubes: OD _____, wall thickness _____; number _____; condition _____

Flues:

OD _____, wall thickness _____, length _____; number _____; condition _____
 OD _____, wall thickness _____, length _____; number _____; condition _____
 OD _____, wall thickness _____, length _____; number _____; condition _____

Circulators: OD _____, wall thickness _____; number _____; condition _____

Thermic siphons: number _____; plate thickness _____; condition _____
 neck OD _____, neck thickness _____; condition _____

Water bar tubes: OD _____, wall thickness _____

Superheater units directly connected to boiler with no intervening valve:

Type _____, Tube OD _____, wall thickness _____; number _____; condition _____

Dry pipe subject to pressure:

OD _____, wall thickness _____, material _____; condition _____

Stay Bolts, Crown Bar Rivets, and Braces**Stay bolts:**

Smallest crown stay diameter _____, avg. spacing _____ X _____; condition _____
 Smallest stay bolt diameter _____, avg. spacing _____ X _____; condition _____
 Smallest combustion chamber stay bolt dia. _____,
 avg. spacing _____ X _____; condition _____

Measurement at smallest diameter**Crown bar bolts & rivets:**

Roof sheet rivets, smallest dia. _____, ave. spacing _____ X _____; condition _____
 Roof sheet bolts, smallest dia. _____, ave. spacing _____ X _____; condition _____
 Crown sheet rivets, smallest dia. _____, ave. spacing _____ X _____; condition _____
 Crown sheet bolts, smallest dia. _____, ave. spacing _____ X _____; condition _____

Braces:	Total Cross Sectional Area of Braces			
	Number	Total Area Stayed	Actual	Equivalent Direct Stay
Backhead	_____	_____	_____	_____
Throat sheet	_____	_____	_____	_____
Front tube sheet	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Safety Valves, Heating Surface, and Grate Area

Safety valves:	Total number of safety valves on locomotive _____	
Valve Size	Manufacturer	No. valves of this size and manufacture
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Heating Surface:

Heating surface, as part of a circulating system in contact on one side with water or wet steam being heated and on the other side with gas or refractory being cooled, shall be measured on the side receiving heat.

Firebox and Combustion Chamber	_____	square feet
Flue Sheets (less flue ID areas)	_____	square feet
Flues	_____	square feet
Circulators	_____	square feet
Arch Tubes	_____	square feet
Thermic Siphons	_____	square feet
Water Bar Tubes	_____	square feet
Superheaters (front end throttle only)	_____	square feet
Other	_____	square feet
Total Heating Surface	_____	square feet

Grate area: _____ square feet

Water Level Indicators, Fusible Plugs, and Low Water Alarms

Height of lowest reading of gauge glasses above crown sheet: _____

Height of lowest reading of gauge cocks above crown sheet: _____

Is boiler equipped with fusible plug(s)? _____, number _____

Is boiler equipped with low water alarm(s)? _____, number _____

Calculations**Staybolt stresses:**

Stay bolt under greatest load, maximum stress _____ psi
 Location _____

Crown stay under greatest load, maximum stress _____ psi
 Location _____

Combustion chamber stay bolt under greatest load, maximum stress _____ psi
 Location _____

Braces:

Round or rectangular brace under greatest load, maximum stress _____ psi
 Location _____

Gusset brace under greatest load, maximum stress _____ psi
 Location _____

Boiler shell plate tension:

Greatest tension on net section of plate in longitudinal seam _____ psi
 Location (course #) _____ ; Seam Efficiency _____

Boiler plate and components, minimum thickness required @ tensile strength:

Front tube sheet	_____ @ _____	Rear flue sheet	_____ @ _____
1st course at seam	_____ @ _____	1st course not at seam	_____ @ _____
2nd course at seam	_____ @ _____	2nd course not at seam	_____ @ _____
3rd course at seam	_____ @ _____	3rd course not at seam	_____ @ _____
Roof sheet	_____ @ _____	Crown sheet	_____ @ _____
Side wrapper sheets	_____ @ _____	Firebox side sheets	_____ @ _____
Back head	_____ @ _____	Door sheet	_____ @ _____
Throat sheet	_____ @ _____	Inside throat sheet	_____ @ _____
Combustion chamber	_____ @ _____	Dome, top	_____ @ _____
Dome, middle	_____ @ _____	Dome, base	_____ @ _____
Arch tubes	_____ @ _____	Dome, lid	_____ @ _____
Water bar tubes	_____ @ _____	Thermic siphons	_____ @ _____
Dry pipe	_____ @ _____	Circulators	_____ @ _____

If tensile strength used is greater than 50,000 psi for steel or greater than 45,000 psi for wrought iron, supporting documentation must be furnished.

Boiler Steam Generating Capacity: _____ pounds per hour

The following may be used as a guide for estimating steaming capacity:

Pounds of Steam Per Hour Per Square Foot of Heating Surface:

Hand fired	8 lbs. per hr.
Stoker fired	10 lbs. per hr.
Oil, gas or pulverized fuel fired	14 lbs. per hr.

Record of Alterations

Date of Alteration[illegible]

Record of Waivers

Waiver No.	Section No. Affected	Scope and Content of Waiver

Calculations done by: _____; Verified by: _____

Data used to verify the foregoing specifications is current and accurate. Based upon the information contained in this document and all necessary calculations, this boiler of Locomotive (Initial & number)_____ is safe for a working pressure of _____psi.

_____ Date _____; _____ Date _____

Locomotive Owner

Locomotive Operator

Make working sketch here or attach drawing of longitudinal and circumferential seams used in shell of boiler, indicating on which courses used and give calculated efficiency of weakest longitudinal seam.

Form No. 5**Locomotive Service Day Record**

Locomotive Initial and No. _____ owned by _____ and operated by _____ was placed in service following a 1472 Service Day Inspection on (start date) _____. This locomotive shall not be operated after (date) _____, or it shall not be operated after it has accumulated 1472 service days from the above start date, whichever comes first, at which time it shall be due for a 1472 Service Day Inspection.

	Year											
Serv. days since last insp.												
Annual Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
92 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
92 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
92 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
31 Service Day Date												
Serv. days since last insp.												
Annual Date												
TOTAL												

A copy of this record shall be filed with the Regional Administrator after 31 December and prior to 31 January of each year.

Signed _____ Officer in Charge

FRA Form 19

Report of
ALTERATION ☐
or
Welded or Riveted REPAIR ☐

Locomotive Initials _____ Locomotive No. _____; Boiler No. _____;

Owned by _____

Operated by _____

Date work completed _____

Description of work: _____

Stress Calculations: _____

Remarks: _____

Attach drawings used in the repair or alteration or make drawings on back of this form.

Work done by: _____;

Certified by: _____

Appendix D to Part 230—Civil Penalty Schedule

Section	Violation	Willful violation
Subpart A—General		
230.11 Repair of non-complying conditions:		
(a) Failure to repair non-complying steam locomotive prior to use in service	\$1,000	\$2,500
(b) Failure of owner and/or operator to approve repairs made prior to use of steam locomotive	1,000	1,500
230.12 Movement of non-complying steam locomotive:	(¹)	(¹)
230.13 Daily inspection:		
(a) (b):		
(1) Inspection overdue	1,500	3,000
(2) Inspection not performed by qualified person	1,000	1,500
(c) Inspection report not made, improperly executed or not retained	1,000	1,500
230.14 Thirty-one service day inspection:		
(a):		
(1) Inspection overdue	1,500	3,000
(2) Inspection not performed by qualified person		
(b) Failure to notify FRA	1,000	1,500
(c) Inspection report not made, improperly executed, not properly filed	1,000	1,500
230.15 Ninety-two service day inspection:		
(a):		
(1) Inspection overdue	1,500	3,000
(2) Inspection not performed by qualified person	1,000	1,500
(b) Inspection report not made, improperly executed, not properly filed	1,000	1,500
230.16 Annual inspection:		
(a):		
(1) Inspection overdue	1,500	3,000
(2) Inspection not performed by qualified person	1,000	1,500
(b) Failure to notify FRA	1,000	1,500
(c) Inspection report not made, improperly executed, not properly filed	1,000	1,500
230.17 One thousand four hundred seventy-two service day inspection:		
(a):		
(1) Inspection overdue	1,500	3,000
(2) Inspection not performed by qualified person	1,250	2,000
(b) Inspection report not made, improperly executed, not properly maintained, not properly filed	1,000	1,500
230.18 Service days:		
(a) Service day record not available for inspection	1,000	1,500
(b) Failure to file service day report with FRA Regional Administrator	1,000	1,500
(c) Failure to complete all 1,472 service day inspection items prior to returning retired steam locomotive to service	1,500	3,000
230.19 Posting of forms:		
(a) FRA Form No. 1:		
(1) FRA Form No. 1 not properly filled out	1,000	1,500
(2) FRA Form No. 1 not properly displayed	1,000	1,500
(b) FRA Form No. 3:		
(1) FRA Form No. 3 not properly filled out	1,000	1,500
(2) FRA Form No. 3 not properly displayed	1,000	1,500
230.20 Alteration and repair reports:		
(a) Alterations:		
(1) Failure to properly file FRA Form No. 19 with FRA Regional Administrator	1,000	1,500
(2) FRA Form No. 19 not properly filled out	1,000	1,500
(3) FRA Form No. 19 not properly maintained	1,000	1,500
(b) Repairs to unstayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	1,000	1,500
(2) FRA Form No. 19 not properly maintained	1,000	1,500
(c) Repairs to stayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	1,000	1,500
(2) FRA Form No. 19 not properly maintained	1,000	1,500
230.21 Failure to properly document steam locomotive number Change	1,000	1,500
Subpart B—Boilers and Appurtenances		
230.22 Failure to properly report accident resulting from failure of steam locomotive boiler or part or appurtenance thereof	1,500	2,500
230.23 Responsibility for general construction and safe working pressure:		
(a) Failure to properly establish safe working pressure for steam locomotive boiler	5,000	10,000
(b) Placing steam locomotive in service before safe working pressure for boiler has been established	5,000	10,000
230.24 Maximum allowable stress values on boiler components:		
(a) Use of materials not of sufficient tensile strength	1,000	2,000
(b) Use of a safety factor value of less than 4 when using the code of original construction in boiler calculations	2,000	4,000
230.25 Maximum allowable stresses on stays and braces:		
(a) Exceeding allowable stress values on fire box and/or combustion chamber	1,000	2,000
(b) Exceeding allowable stress values on round, rectangular or gusset braces	1,000	2,000
230.29 Inspection and repair:		

Section	Violation	Willful violation
(a):		
(1) Failure of owner and/or operator to inspect and repair any steam locomotive boiler and/or appurtenance under control thereof	1,500	3,000
(2) Failure to remove steam locomotive from service when considered necessary to do so	2,500	5,000
(b):		
(1) Failure of perform repairs in accordance with accepted industry standards	2,000	4,000
(2) Owner and/or operator returning steam locomotive boiler and/or appurtenances to service before they are in good condition and safe and suitable for service	2,000	4,000
230.30 Lap-joint seam boilers, Failure to properly inspect	2,000	4,000
230.31 Flues to be removed:		
(a):		
(1) Failure to remove all flues when inspecting boiler	1,500	3,000
(2) Failure to enter boiler and clean and inspect	1,500	3,000
(b) Failure to remove superheater flues when deemed necessary to do so	1,000	2,000
230.32 Time and method of inspection:		
(a) Failure to perform 1,472 service day inspection when required to do so	1,500	3,000
(b) Failure to properly inspect boiler during 1,472 service day inspection	1,500	3,000
230.33 Welded repairs and alterations:		
(a) Failure to obtain permission before welding on unstayed portions of boiler containing alloy or carbon steel with carbon content over .25 percent carbon	1,500	3,000
(b) Failure to perform welding on unstayed portions of boiler containing carbon steel not exceeding .25 percent carbon in accordance with a nationally accepted standard for boiler repairs	1,500	3,000
(c):		
(1) Failure to submit written request for approval before performing weld buildup on wasted areas of unstayed boiler surfaces that exceed 100 square inches or the smaller of 25 percent of minimum required wall thickness or 1/2 inch	1,500	3,000
(2) Repairing wasted sheets	1,500	3,000
230.34 Riveted repairs and alterations:		
(a) Failure to obtain approval before making riveted alterations on unstayed portions of the boiler; failure to do riveting in accordance with established railroad practices or accepted national standards for boiler repairs	1,500	3,000
(b) Failure to perform riveted repairs on unstayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	1,500	3,000
(c) Failure to perform riveted repairs on stayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	1,000	2,000
230.35 Failure to raise temperature of steam locomotive boiler to 70 degrees F. before applying hydrostatic pressure to the boiler	1,000	2,000
230.36 Hydrostatic testing of boilers:		
(a) Failure to perform hydrostatic test of boiler as required	1,500	3,000
(b) Failure to properly perform hydrostatic test	1,500	3,000
(c) Failure to properly inspect boiler after conducting hydrostatic test above MAWP	1,500	3,000
230.37 Failure to perform proper steam test or inspection of boiler after completion of repair or alteration to boiler ..	1,000	2,000
230.38 Telltale holes:		
(a) Failure to have telltale holes as required in staybolts	1,000	2,000
(b) Failure to have proper telltale holes in reduced body staybolts	1,000	2,000
(c) Failure to keep telltales holes when so required	1,000	2,000
230.39 Broken staybolts:		
(a) Boiler in service with excess number of broken staybolts	1,500	3,000
(b) Failure to replace staybolts when required to do so; to properly replace staybolts when so required; to inspect adjacent staybolts when replacing broken staybolts	1,500	3,000
(c) Failure to count leaking, plugged, or missing telltale holes as broken staybolts	1,500	3,000
(d) Closing telltale holes by prohibited means	1,500	3,000
230.40 Time and method of staybolt testing:		
(a) Failure to hammer test staybolts when so required	1,000	2,000
(b) Failure to properly hammer test staybolts	1,000	2,000
230.41 Flexible staybolts with caps:		
(a) Failure to inspect flexible staybolts as required	1,000	2,000
(b) Failure to replace broken flexible staybolts; failure to close inner ends of telltale holes as required	1,000	2,000
(c) Failure to report removal of flexible staybolts caps and other tests on FRA Form No. 3 when so required	1,000	2,000
(d) Failure to remove staybolt caps or otherwise test when FRA inspector or steam locomotive owner and/or operator consider it necessary to do so	1,000	2,000
230.42 Failure to have accurate boiler steam gauge where engine crew can conveniently read	2,000	4,000
230.43 Failure to have gauge siphon of proper capacity on steam gauge supply pipe; failure to properly clean, maintain the steam gauge supply pipe	1,000	2,000
230.44 Failure to test steam gauge when so required	1,000	2,000
230.45 Failure to properly test and/or set steam gauge	1,000	2,000
230.46 Failure to attach to boiler backhead metal badge plate showing allowable steam pressure	1,000	1,500
230.47 Boiler Number:		
(a) (b) (c) Failure to stamp builder's number on boiler when number is known	1,000	1,500
230.48 Number and capacity of safety relief valves:		
(a) Failure to equip steam locomotive boiler with proper safety relief valves	2,500	5,000
(b) Failure to provide additional safety relief valve capacity when so required	3,000	6,000
230.49 Setting of safety relief valves:		
(a) Safety relief valve(s) set and/or adjusted by person not competent to do so	2,500	5,000

Section	Violation	Willful violation
(b) Safety relief valve(s) not set to open at prescribed pressure(s)	2,500	5,000
(c) Safety relief valve(s) not properly set	3,000	6,000
(d) Set pressure of lowest safety relief valve not properly indicated	1,000	2,000
230.50 Failure to test and adjust safety relief valves when required to do so	1,500	3,000
230.51 Failure to equip steam locomotive boiler with at least 2 properly installed water glasses	1,000	2,000
230.52 Failure to properly equip water glasses	2,000	4,000
230.53 Failure to properly clean water glass valves and/or gauge cocks when required to do so	1,000	2,000
230.54 Testing and maintenance:		
(a) Failure to properly test water glasses and/or gauge cocks	1,000	2,000
(b) Failure to properly maintain gauge cocks, water column drain valves, and/or water glass valves	1,500	3,000
230.55 Tubular type water and lubricator glasses and shields:		
(a) Failure to renew tubular type water glasses as required	1,000	2,000
(b) Failure to properly shield tubular water glasses and/or lubricator glasses	1,000	2,000
(c) Failure to properly locate and/or maintain water glasses and/or water glass shields	1,000	2,000
230.56 Failure to equip water glass with suitable lamp	1,000	2,000
230.57 Injectors and feedwater pumps:		
(a) Failure to equip steam locomotive with proper means for delivering water to the boiler	3,000	6,000
(b) Failure to properly test and/or maintain injectors, feedwater pumps, boiler checks, delivery pipes, feed water pipes, tank hose, tank valves	2,500	5,000
(c) Failure to properly brace injectors, feedwater pumps, and/or associated piping	1,000	2,000
230.58 Flue plugs:		
(a) Plugging flue plugs when not otherwise permitted	1,000	2,000
(b) Improperly plugging flue plugs, when otherwise permitted	1,000	2,000
230.59 Failure to remove and properly clean fusible boiler plugs when required to do so; failure to properly note removal	1,500	3,000
230.60 Time of washing:		
(a) Failure to thoroughly wash boiler when required to do so	1,000	2,000
(b) Failure to remove washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs, water bar plugs when washing locomotive boiler	1,500	3,000
(c) Failure to examine and/or properly maintain washout plugs washout plug sleeves, threaded openings	1,500	3,000
(d) Failure to clean fusible plugs when required to do so	1,500	3,000
230.61 Arch tubes, water bar tubes, circulators and thermic siphons:		
(a) Failure to clean, wash, inspect arch tubes, water bar tubes, circulators and thermic siphons as required	1,000	2,000
(b) Failure to renew arch tubes, water bar tubes; failure to repair or renew circulators, thermic siphons when required	1,500	3,000
(c) Failure to properly inspect and/or replace as necessary arch tubes, water bar tubes, circulators	1,500	3,000
230.62 Failure to properly inspect and/or repair or replace as necessary dry pipes subject to pressure	2,500	5,000
230.63 Failure to properly inspect smoke box, steam pipes, pressure parts when required to do so	1,500	3,000
230.64 Failure to remove from service steam locomotive boiler leaking under lagging from condition which may reduce safety and/or repair the boiler before returning to service	1,500	3,000
230.65 Failure to keep steam locomotive boiler, piping, appurtenances in repair so steam does not obscure vision	1,000	2,000
230.66 Failure to properly oversee general design, construction, maintenance of steam locomotive(s) and tender(s)	1,000	2,000
230.67 Failure to ensure all steam locomotives and tenders are properly inspected and repaired and/or all defects are properly repaired and steam locomotive and/or tender are in good condition, safe and suitable for service before being returned to service	2,500	5,000
230.68 Failure to equip steam locomotive that operates in excess of 20 miles per hour over the general system with speed indicator maintained to ensure accurate functioning	1,000	1,500
230.69 Failure to equip steam locomotive with properly supported ash pan with operating mechanism that may be safely operated and securely closed	1,000	2,000
230.70 Safe condition:		
(a) Failure to perform proper pre-departure inspection when so required	1,000	2,000
(b) Failure to properly equip steam locomotive with brake pipe valve clearly identified as "Emergency Brake Valve"	1,000	2,000
230.71 Orifice testing of air compressors:		
(a)(b):		
Failure to properly test and/or maintain air compressor(s) capacity	1,000	2,000
230.72 Testing main reservoirs:		
(a) Failure to properly test main reservoir(s) when required	1,000	2,000
(b) Impermissibly or improperly drilling main reservoir	1,000	2,000
(c) Impermissibly using NDE method to measure wall thickness of main reservoir	1,000	2,000
(d) Failure to use appropriate method of NDE testing of wall thickness of welded or riveted longitudinal lap seam main reservoir(s); failure to withdraw main reservoir(s) from service when testing reveals insufficient wall thickness	1,500	3,000
230.73 Air gauges:		
(a) Failure to equip steam locomotive with properly located air gauge(s) that are no more than 3 psi in error	1,000	1,500
(b) Failure to test air gauge(s) when so required	1,000	1,500
(c) Failure to properly test air gauge(s)	1,000	1,500
230.74 Failure to properly clean and/or test all air brake valves, related dirt collectors, filters when required to do so	1,000	1,500
230.75 Failure to properly stencil or display date of testing and cleaning and initials of shop or station performing work	1,000	1,500
230.76 Piston travel:		

Section	Violation	Willful violation
(a) Insufficient minimum piston travel	1,000	1,500
(b) Excessive piston travel when steam locomotive is stationary	1,000	2,000
230.77 Foundation brake gear:		
(a) Failure to properly maintain foundation brake gear	1,000	2,000
(b) Foundation brake gear less than 2.5 inches above rail	1,000	2,000
230.78 Leakage:		
(a):		
(1) Failure to test for leakage from main reservoir or related piping as required	1,000	1,500
(2) Failure to repair excessive leakage from main reservoir or related piping leakage	1,000	2,000
(b) Failure to test for brake cylinder as required	1,000	1,500
(c):		
(1) Failure to test for leakage from steam locomotive brake pipe as required	1,000	2,000
(2) Failure to repair excessive brake pipe leakage	1,000	2,000
230.79 Train signal system:		
(1) Failure to test the train signal system or other form of on-board communication as required	1,000	1,500
(2) Failure to repair train signal system or other on-board communication when not safe or suitable for service	1,000	1,500
230.80 Cabs:		
(a) Steam locomotive cab not safe and suitable for service	1,000	2,000
(b) Steam pipes: Construction, attachment	1,000	2,000
(c) Oil-burning steam locomotive, cab-enclosed	1,000	1,500
230.81 Cab aprons:		
(a) Cab apron, general provisions	1,000	1,500
(b) Cab apron, insufficient width	1,000	1,500
230.82 Fire doors:		
(a) Safe and suitable for service, general provisions	1,000	2,000
(b) Construction and maintenance of mechanically operated fire doors	1,000	2,000
(c) Construction and maintenance of hand-operated fire doors	1,000	2,000
230.83 Cylinder cocks:		
(1) Failure to properly equip with cylinder cocks	1,000	1,500
(2) Failure to properly maintain cylinder cocks	1,000	1,500
230.84 Sanders:		
(1) Inoperable sanders	1,000	1,500
(2) Failure to test sanders	1,000	1,500
230.85 Audible warning devices:		
(a) General provisions	1,000	1,500
(b) Sound level measurements, Failure to properly take	1,000	1,500
230.86 Required illumination:		
(a) General provisions	1,000	1,500
(b) Dimming device, Failure to properly equip with	1,000	1,500
(c) Multiple locomotives, Failure of lead locomotive to display headlight	1,000	1,500
230.87 Cab lights: Failure to properly equip with	1,000	2,000
230.88 Throttles: Failure to properly maintain, equip	1,000	2,000
230.89 Reverse gear:		
(a) General provisions	1,000	2,000
(b) Air-operated power reverse gear	1,000	2,000
(c) Power reverse gear reservoirs	1,000	2,000
230.90 Draw gear and draft systems:		
(a) Maintenance and testing	1,000	1,500
(b) Safety bars and chains, general	1,000	1,500
(c) Safety bars and chains, minimum length	1,000	1,500
(d) Lost motion between steam locomotive and tender	1,000	1,500
(e) Spring buffers: Improper application, compression	1,000	1,500
230.91 Chafing irons: Improper application, maintenance	1,000	1,500
230.92 Draw gear, draft systems: Improperly maintained, fastened	1,000	1,500
230.93 Pistons and piston rods:		
(a) Failure to properly inspect, maintain, renew	1,000	2,000
(b) Fasteners: Failure to keep tight, properly equip	1,000	2,000
230.94 Crossheads: Improperly maintained, excess clearance	1,000	2,000
230.95 Guides: Failure to securely fasten, properly maintain	1,000	2,000
230.96 Main, side, valve motion rods:		
(a) General	1,000	2,000
(b) Repairs.		
(1) Failure to make in accordance with accepted national standard	1,000	2,000
(2) Failure to submit written request for approval prior to welding	1,000	2,000
(c) Bearings and bushings	1,000	1,500
(d) Rod side motion: Excessive motion	1,000	1,500
(e) Oil, grease cups: Failure to securely fasten, properly equip	1,000	1,500
(f) Main rod bearings:		
(1) excessive bore	1,000	1,500
(2) excessive lost motion	1,000	1,500
(g) Side rod bearings, excessive bore	1,000	1,500
230.97 Crank pins:		

Section	Violation	Willful violation
(a) General provisions	1,000	2,000
(b) Maintenance: Failure to maintain in safe, suitable condition	1,000	2,000
230.98 Driving, trailing, engine truck axles:		
(a) Condemning defects	1,000	2,000
(b) Journal diameter: Failure to stamp on end of axle	750	1,000
230.99 Tender truck axle: Insufficient diameter	1,000	2,000
230.100 Defects in tender truck axles and journals:		
(a) Tender truck axle condemning defects	1,000	2,000
(b) Tender truck journal condemning defects	1,000	2,000
230.101 Steam locomotive driving journal boxes:		
(a) Driving journal boxes: Failure to properly maintain	1,000	2,000
(b) Broken bearings: Failure to renew	1,000	2,000
(c) Loose bearings: Failure to repair or renew	1,000	2,000
230.102 Tender plain bearing journal boxes: Failure to repair	1,000	1,500
230.103 Tender roller bearing journal boxes: Failure to properly maintain	1,000	1,500
230.104 Driving box shoes and wedges: Failure to properly maintain	1,000	1,500
230.105 Lateral motion:		
(a) Condemning limits: Total lateral motion in excess of	1,000	1,500
(b) Limits exceeded, failure to demonstrate conditions require additional lateral motion	1,000	1,500
(c) Interferes with other parts of steam locomotive	1,000	1,500
230.106 Steam locomotive frame:		
(a) Failure to properly inspect and/or maintain	1,000	2,000
(b) Broken frames, not properly patched or secured	2,500	5,000
230.107 Tender frame and body:		
(a) Failure to properly maintain	1,000	1,500
(b) Height difference between tender deck and steam locomotive cab floor or deck excessive	1,000	1,500
(c) Gangway minimum width excessive	1,000	1,500
(d) Tender frame condemning defects	1,500	3,000
230.108 Steam locomotive leading and trailing trucks:		
(a) Failure to properly maintain	1,000	1,500
(b) Safety chain, suitable safety chain not provided	1,000	1,500
(c) Insufficient truck clearance	1,000	2,000
230.109 Tender trucks:		
(a):		
(1) Tender truck frames	1,000	2,000
(2) Tender truck center plate	1,000	2,000
(b) Tender truck bolsters: Failure to properly maintain	1,500	3,000
(c) Condemning defects, springs and/or spring rigging	1,000	2,000
(d) Truck securing arrangement: Not properly maintained	1,000	1,500
(e) Side bearings, truck centering devices	1,000	2,000
(f) Friction side bearings: Run in contact	1,000	2,000
(g):		
(1) Side bearings, failure to equip rear trucks with	1,000	2,000
(2) Insufficient clearance of	1,000	2,000
230.110 Pilots:		
(a) General provisions	1,000	1,500
(b) Clearance, insufficient or excessive	1,000	1,500
230.111 Spring rigging:		
(a) Arrangement of springs and equalizers	1,000	2,000
(b) Spring or spring rigging condemning defects	1,000	2,000
230.112 Wheels and tires:		
(a) Improperly Mounted, excess variance in axle diameter	1,500	3,000
(b) Out of gage	1,000	2,000
(c) Flange distance variance, excessive	1,000	2,000
(d) Tire thickness, insufficient	1,000	2,000
(e) Tire width, insufficient	1,000	2,000
230.113 Wheels and tire defects:		
(1) Failure to repair	1,000	2,000
(2) Welding on, except as otherwise provided for	1,500	3,000
(a) Cracks or breaks in	1,000	2,000
(b) Flat spots	1,000	2,000
(c) Chipped flange	1,000	2,000
(d) Broken rim	1,000	2,000
(e) Shelled-out spots	1,000	2,000
(f) Seams	1,000	2,000
(g) Worn flanges, excessive wear	1,000	2,000
(h) Worn treads, excessive wear	1,000	2,000
(i) Flange height, insufficient or excessive	1,000	2,000
(j) Rim thickness, insufficient	1,000	2,000
(k) Wheel diameter, excessive variance	1,000	2,000
230.114 Wheel centers:		
(a) Filling blocks and shims	1,000	2,000
(b) Wheel center condemning limits, failure to repair	1,000	2,000

Section	Violation	Willful violation
(c) Wheel center repairs	1,000	2,000
(d) Counterbalance maintenance	1,000	2,000
230.115 Feed water tanks:		
(a) General provisions	1,000	2,000
(b) Inspection frequency, failure to inspect as required	1,000	1,500
(c) Top of tender: Improperly maintained and/or equipped	1,000	1,500
230.116 Oil tanks:		
(1) Failure to properly maintain	2,500	5,000
(2) Failure to equip with complying safety cut-off device	5,000	7,500

¹ Failure to observe any condition for movement set forth in § 230.12 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 230.12 will result in the lapse of any affected waiver.

Issued in Washington, D.C. on September 30, 1999.

Jolene M. Molitoris,

Administrator.

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Trademark**

Wednesday
November 17, 1999

Part IV

**Department of
Education**

English Literacy and Civics Education
Demonstration Grants; Inviting
Applications for New Awards for Fiscal
Year 1999 Funds; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.191]

English Literacy and Civics Education Demonstration Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999 Funds

Note to Applicants: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition. These grants are authorized by Title II, section 243 of the Workforce Investment Act of 1998 (20 U.S.C. 9253).

Purpose of program: The purpose of the English Literacy (EL) and Civics Education (EL/Civics education) program is to support projects that demonstrate effective practices in providing, and increasing access to, English literacy programs linked to civics education.

Eligible applicants: Postsecondary educational institutions, and public or private organizations and agencies are eligible to receive grants under this program. A group of eligible entities, such as a consortium, is also eligible to receive a grant if the group follows the procedures for group applications in 34 CFR 75.127–129 of EDGAR.

Deadline for transmittal of Applications: January 18, 2000.

Note: See information on Technical Assistance Workshops under "Supplementary Information."

Deadline for Intergovernmental Review: March 16, 2000.

Estimated Available Funds: \$7,000,000.

Note: The Secretary intends to reserve up to \$200,000 from these funds for technical assistance and evaluation activities.

Estimated Range of Awards: \$180,000–\$350,000 each year.

Estimated Average Size of Awards: \$265,000.

Estimated Number of Awards: 20 to 25.

Project Period: Up to 36 months.

Please note that applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will determine at the time of the initial award the funding levels for each year of the grant award.

Note: The Department of Education is not bound by any estimates in this notice.

Page Limits: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application.

An applicant must limit the application narrative to the equivalent of not more than 30 double-spaced pages, or 40 double-spaced pages for a group application. Information concerning the standards for page size and text is found in the Instructions for the Application Narrative in the Appendix to this notice. Applicants should note that if an application narrative exceeds these page limits, the application will not be reviewed.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86.

SUPPLEMENTARY INFORMATION: To become full participants in American life and to be successful as workers, parents and family members, and citizens, adults in the United States must be able to read and communicate in English. Evidence indicates that individuals with limited English proficiency are eager to learn English and the other skills needed to succeed in U.S. society. English literacy instruction is the fastest growing component of adult education, with enrollment in English literacy classes having increased 105 percent over the past 10 years.

In addition to learning English, to participate fully in American life, individuals must be able to understand and navigate governmental, educational, and workplace systems and key American institutions, such as banking and health care. The increasing number of individuals seeking citizenship has stimulated growth and interest in citizenship preparation classes. Many adults with limited proficiency in English, including migrant adults, have never attended high school in the United States and therefore have limited or no institutional civics education experience. The General Accounting Office estimates that high school dropout rates among migrant and seasonal farm workers range from 45 to 90 percent. Additionally, the U.S. Department of Education's Office of Migrant Education reports that an increasing proportion of migrant workers are Hispanic, and, according to the National Center for Education Statistics, in 1997 the Hispanic population had the highest high school dropout rate of 25 percent.

The growing demand for English literacy and civics education programs and services surpasses the availability of instruction. Some States have long waiting lists for these programs, and others simply turn away learners because there are no available classes.

The demand for English literacy programs can be attributed in part to immigration and welfare reform efforts. Citizenship naturalizations have reached record highs, and applicants for citizenship must meet strict English literacy and civics requirements. Because of welfare reform efforts, several States are now providing employment-related English classes that help learners increase their English language skills while improving job-related skills. Although Federal and State grants for adult education programs provide funding for English literacy programs, citizenship classes, and related educational activities, additional services are needed to meet the high and increasing demand for English literacy and civics education programs.

Research on teaching adults with limited English proficiency indicates that the use of a variety of instructional methods is effective in achieving successful outcomes. Such methods include the use of trained teachers and a variety of instructional teaching methods in contexts such as family and workplace that focus on meaningful activities that meet the language, literacy, and cultural needs of students. Diversity in teaching methods and support services has helped programs improve quality, provide more access to instruction, and increase learner and program outcomes to improve accountability. Some States have replicated and disseminated promising and effective practices, but there is a need for additional models of effective EL/Civics education programs and services.

Description of Program

The EL/Civics education program is authorized under section 243 of the Adult Education and Family Literacy Act, which authorizes the Secretary to carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide, including grants to support demonstration programs.

The EL/Civics education program provides financial assistance to establish or expand projects that demonstrate effective practices in providing English literacy programs that incorporate civics education and related support services into an integrated and coordinated program for individuals of limited English proficiency.

Grants may be used to support a variety of activities and costs related to English language and civics education instruction, including the costs of staff and instructors, materials, staff training, and support services such as child care

and transportation costs for program participants.

Under this program, the Secretary is especially interested in receiving applications that propose projects in the following areas:

(a) Projects that demonstrate successful partnerships with local agencies, organizations, or institutions, such as institutions of higher education, community-based organizations, and local education agencies, in providing EL/civics education and related support services.

(b) Projects that demonstrate effective innovative approaches in providing EL/civics instruction, such as integrating technology into curriculum, establishing work- or community-based instruction sites, and providing flexible scheduling of classes and services.

(c) Projects that demonstrate effective strategies for professional development opportunities to help teachers develop networks to share ideas and best practices, promote effective use of technology, and develop contextualized and content-based curricula linked to appropriate assessments.

(d) Projects that demonstrate development of effective materials, such as curricula and assessment instruments, that address emerging areas in EL/Civics education, such as preparation for citizenship interviews, the naturalization process, life skills curricula, employability skills from a cross-cultural perspective, and learning disabilities.

Applicants should note that applications must include, for the overall project and each budget year, project goals, measurable objectives and outcomes, and performance measures and indicators of success in meeting the goals and objectives. If appropriate, these measures should include the performance measures described under Title II of WIA, such as the educational achievement of learners and the number of learners who earned secondary school credentials or obtained or retained employment. Other measures may include the number who prepared for and passed the citizenship test.

Technical Assistance Workshops

We will hold technical assistance workshops, including a satellite teleconference, to assist applicants in preparing grant applications for the EL/Civics education program. The dates, times, locations, and other information about the workshops will be announced in the **Federal Register** and on the web page of the U.S. Department of Education, Office of Vocational and Adult Education at the following sites: <http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/offices/OVAE>

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the priorities in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new or substantially revised program from this requirement. The EL/Civics education program was funded for the first time under the Emergency Supplemental Appropriations Act of 1999 (Public Law 106-31). As this competition is the first competition under the program, it therefore qualifies as a new competitive grants program. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comments with respect to the competitive priorities. The competitive priorities will apply only to the fiscal year 1999 grant competition.

Competitive Priorities: The Secretary will give preference to applications that meet one or both of the competitive priorities in the next two paragraphs. (34 CFR 75.105 (b)(2)(iii) and (c)(2)(i))

Competitive Priority 1—Projects that serve areas with a significant unmet demand for EL/civics education programs as demonstrated by indicators such as waiting lists for programs, growth in the number of individuals with limited English proficiency in a community, a large concentration of adults in unserved or underserved language groups, and limited accessibility to nontraditional class schedules and locations. The Secretary will award three additional points to an application that meets this priority. These points would be in addition to any points the applicant earns under the selection criteria.

Competitive Priority 2—Projects that provide a non-federal contribution in cash or in kind of 25 percent of the cost of activities assisted under each year of the grant. The Secretary will award two additional points to an application that meets this priority. These points would be in addition to any points the applicant earns under the selection criteria.

Definition: In addition to definitions in the statute and EDGAR, the following definition applies:

Civics education means an educational program that emphasizes contextualized instruction on the rights and responsibilities of citizenship,

naturalization procedures, civic participation, and U.S. history and government to help students acquire the skills and knowledge to become active and informed parents, workers, and community members.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for grants under this competition. In all instances where the word “project” appears in the selection criteria, the reference to an EL/civics education program should be made.

(2) The maximum composite score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

(a) **Need for project.** (15 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) **Significance.** (20 points) (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(iii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) **Quality of the project design.** (25 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved

by the proposed project are clearly specified and measurable.

(ii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(d) *Quality of project personnel.* (10 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor:

(i) The qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of resources.* (5 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(ii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the management plan.* (10 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within

budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(g) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: In accordance with EDGAR 34 CFR 75.118, 75.590, 75.720, and 80.40, grant recipients must submit an annual performance report that provides the most current performance and financial expenditure information on project activities, including the recipient's progress in achieving the objectives in its approved application. If a recipient fails to submit a performance report that meets these requirements, the Secretary denies continued funding for the grant.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive Order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB Web site at the following address: <http://www.whitehouse.gov/omb/grants>.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.191, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202—0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice. PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *Do Not Send Applications to the Above Address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.191), Washington, DC 20202—4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.191), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains all required forms and instructions, including instructions for preparing the application narrative, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, a list of relevant definitions from the authorizing statute and EDGAR, and a checklist for applicants.

To apply for an award under this competition, your application must be organized in the following order and include the following four parts. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424, Exp. 06/30/2001) and instructions.

Part II: Budget Information-Non-Construction Programs (ED Form No. 524) and instructions. An applicant for a multi-year project must provide a budget narrative that provides budget information for each budget period of the proposed project period.

Part III: Application Narrative. Notice to All Applicants.

Part IV: Assurances and Certifications:

- a. Assurances-Non-Construction Programs (Standard Form 424B).

- b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and instructions.

- c. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion-Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. All applicants are required to submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as "original" or "copy". To aid with the review of applications, the Department encourages applicants to submit three additional paper copies and one electronic copy (in Department of Education standard program format) of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received.

FOR FURTHER INFORMATION CONTACT:

Rebecca Moak or Ursula Lord, EL/Civics Education Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4428, Switzer Building, Washington, DC 20202-7240. Telephone: (202) 260-9279 (Rebecca Moak) or (202) 205-9233 (Ursula Lord). E-mail: rebecca_moak@ed.gov or ursula_lord@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable

Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office at (202) 512-1530 or, toll free, at 1-888-293-6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

Program Authority: 20 U.S.C. 9253.

Dated: November 12, 1999.

Robert Muller,

Acting Assistant Secretary for Vocational and Adult Education.

Appendix—Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the application narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

Applicants should note the page limits for the application narrative stated in this notice under "Page Limits". The following standards apply: (1) A "page" is 8.5" x 11" (one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to the cover sheet, the one-page abstract, budget section, appendices, and forms and assurances. However, all of the application narrative must be included in the narrative section. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be reviewed.

1. Begin with a one-page Abstract summarizing the proposed EL/Civics education project, including a short description of the population to be served by the project and, if available, data on project participants' educational attainment and race/ethnicity. Also include a description of project objectives and activities.

2. Include a table of contents listing the parts of the narrative in the order of the

selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

3. Describe how the applicant meets the competitive priorities, if applicable.

4. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

5. Provide the following in response to the attached "Notice to all Applicants": (1) A reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

6. If the application is from a group, attach the group's agreement. When applying for funds as a group, such as a consortium, individual eligible applicants must enter into an agreement signed by all members of the group. The group's agreement must detail the activities each member of the group plans to perform, and must bind each member to every statement and assurance made in the group's application. The designated applicant must submit the group's agreement with its application.

7. Applicants may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the competition. Note that the Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

8. Attach copies of all required assurances and forms.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 1830-0540, (Expiration Date: 09-30-2000). The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: EL/Civics Education Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of

Education, 400 Maryland Avenue, SW., Washington, DC 20202-7240.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance (ED 424).

2. Budget Information—Non-Construction Programs ED Form No. 524) and budget narrative.

3. Application Narrative, including information that addresses section 427 of the General Education Provisions Act (see the section entitled "NOTICE TO ALL APPLICANTS"), and relevant appendices.

4. Group agreement, if applicable.

5. Assurances—Non-Construction Programs (SF 242B).

6. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

7. Disclosure of Lobbying Activities (Standard Form LLL).

Relevant Definitions

Sec. 203, Definitions, Title II, Workforce Investment Act of 1998:

1. *English literacy program*—The term "English literacy program" means a program of instruction designed to help individuals of limited English proficiency achieve competence in the English language.

2. *Individual of limited English proficiency*—The term "individual of limited English proficiency" means an adult or out-of-school youth who has limited ability in speaking, reading, writing, or understanding the English language, and—

(A) whose native language is a language other than English; or

(B) who lives in a family or community environment where a language other than English is the dominant language.

3. *Literacy*—The term "literacy" means an individual's ability to read, write, and speak in English, compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

4. *Postsecondary educational institution*—The term "postsecondary educational institution" means—

(A) an institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor's degree;

(B) a tribally controlled community college; or

(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level.

EDGAR Part 77, Definitions:

5. *Private*, as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

6. *Public*, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

Notice to all Applicants

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. All APPLICANTS FOR NEW AWARDS INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only or projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special need. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access

or participation in the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal Funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

- (1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.
- (2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.
- (3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach"

efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

BILLING CODE 4000-01-U

Application for Federal Education Assistance



Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

Organizational Unit

City

State

County

ZIP Code + 4

2. Applicant's D-U-N-S Number: _____

Title: English Literacy/Civics Education program

3. Catalog of Federal Domestic Assistance #: 84.191 →

4. Project Director: _____

6. Type of Applicant (Enter appropriate letter in the box.) _____

Address: _____

A - State H - Independent School District
B - County I - Public College or University
C - Municipal J - Private, Non-Profit College or University
D - Township K - Indian Tribe
E - Interstate L - Individual
F - Intermunicipal M - Private, Profit-Making Organization
G - Special District N - Other (Specify): _____

City _____ State _____ Zip code + 4 _____

Tel. #: () _____ - _____ Fax #: () _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

☐ PreApplication ☐ Application
☐ Construction ☐ Construction
☐ Non-Construction ☒ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes (Date made available to the Executive Order 12372 process for review): ____/____/____

☐ No (If "No," check appropriate box below.)

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates: ____/____/____ Start Date: ____/____/____ End Date: ____/____/____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: _____ b. Assurance of Compliance #: _____

OR

c. IRB approval date: ____ Full IRB or
____ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal \$ _____ .00

b. Applicant \$ _____ .00

c. State \$ _____ .00

d. Local \$ _____ .00

e. Other \$ _____ .00

f. Program Income \$ _____ .00

g. TOTAL \$ _____ .00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title: _____

c. Tel. #: () _____ - _____ Fax #: () _____ - _____

d. E-Mail Address: _____

e. Signature of Authorized Representative

Date: ____/____/____

ED 424 (rev 1.12.99)

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: <http://www.dnb.com/dbis/aboutdb/intlduns.htm>.

3. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested.

4. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

6. Type of Applicant. Enter the appropriate letter in the box provided.

7. Novice Applicant. Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. Type of Submission. Self-explanatory.

9. Executive Order 12372. Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

10. Proposed Project Dates. Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. Human Subjects. Check "Yes" or "No". If research activities involving human subjects are *not* planned *at any time* during the proposed project period, check "No." The remaining parts of item 11 are then not applicable.

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of

human subjects, *are* planned *at any time* during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "Protection of Human Subjects in Research" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.

If *some or all* of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue when the remaining parts of item 11, as noted below. In addition, follow the instructions "Protection of Human Subjects in Research" attached to this form to prepare the six-point narrative about the nonexempt activities. Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter "Pending" in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. If the applicant organization does not have on file with GPOS or OPRR an

approved Assurance of Compliance that covers the proposed research activity, enter "None" in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. Estimated Funding. Amount request or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding use totals and show breakdown using same categories as item 13.

14. Certification. To be signed by the authorized representatives of the applicant. A copy of the governing body's authorization for you to sign this application as official representatives must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed filed.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651. If you have comments

or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, DC 20202-4725.

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants About the Narrative Information That Must Be Provided if Research Activities Involving Human Subjects Are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, (all research activities are exempt), provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. "Exemptions," below. The Narrative must be succinct. Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations (some or all of the research activities are nonexempt), address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data

will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a Research Activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported

under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a Human Subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could

reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be

maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are

consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, DC, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at <http://ocfo.ed.gov/humansub.htm>.

BILLING CODE 4000-01-u

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

		U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS		OMB Control Number 1880--538		
				Expiration Date: 10/31/99		
Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
SECTION A - BUDGET SUMMARY U.S. DEPARTMENT OF EDUCATION FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.					
SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS							
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)	
1. Personnel							
2. Fringe Benefits							
3. Travel							
4. Equipment							
5. Supplies							
6. Contractual							
7. Construction							
8. Other							
9. Total Direct Costs (lines 1-8)							
10. Indirect Costs							
11. Training Stipends							
12. Total Costs (lines 9-11)							
SECTION C - OTHER BUDGET INFORMATION (see instructions)							

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

Instructions for ED Form 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary, U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the

applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary, Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions

are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information, Pay Attention to Applicable Program Specific Instructions, If Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-U

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

**2. DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

**3. DRUG-FREE WORKPLACE
(GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

**Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion -- Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled A Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PRAWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make a payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known, for example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative

agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Note: According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

State Single Point of Contact

(As of April 22, 1999)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

ARIZONA

Ms. Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, jonis@ep.state.az.us

ARKANSAS

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206, tlcopeland@dfa.state.ar.us

CALIFORNIA

Grant Coordination, State Clearinghouse, Office of Planning and Research, 1400 10th Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018, No e-mail address

DELAWARE

Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661, No e-mail address

DISTRICT OF COLUMBIA

Mr. Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W.—Suite 1200, Washington, DC 20005, Telephone: (202) 727–1700 (direct), FAX: (202) 727–6537 (secretary), FAX: (202) 727–1617, No e-mail address

FLORIDA

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Ms. Cherie Trainor, (850) 414–5495, cherie.trainor@dca.state.fl.us

GEORGIA

Ms. Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington, Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, ssda@mail.opb.state.ga.us

ILLINOIS

Ms. Virginia Bova, Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3-400, Chicago, IL 60601, Telephone: (312) 814-6028, FAX: (312) 814-1800

INDIANA

Ms. Allison Becker, State Budget Agency, 212 State House, Indianapolis, Indiana 46204-2796, Telephone: (317) 232-7221 (direct line), FAX: (317) 233-3323, No e-mail address

IOWA

Mr. Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242-4719, FAX: (515) 242-4809, steve.mccann@ided.state.is.us

KENTUCKY

Mr. Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564-2611, , FAX: (502) 564-0437, kgoldmkgosmith@mail.state.ky.us, sbrewer@mail.state.ky.us

MAINE

Ms. Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287-3261, FAX: (207) 287-6489, joyce.benson@state.me.us

MARYLAND

Ms. Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201-2365, Telephone: (410) 767-4490, FAX: (410) 767-4480, linda@mail.op.state.md.us

MICHIGAN

Mr. Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961-4266, FAX: (313) 961-4869, pfaff@semcog.org

MISSISSIPPI

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201-3087, Telephone:

(601) 359-6762, FAX: (601) 359-6758, No e-mail address

MISSOURI

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, Room 915, Jefferson City, Missouri 65102, Telephone: (573) 751-4834, FAX: (573) 522-4395, pohl__@mail.oe.state.mo.us

NEVADA

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89710, Telephone: (702) 684-0222, FAX: (702) 684-0260, Contact: Ms. Heather Elliot, (702) 684-0209, helliot@govmail.state.nv.us

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mr. Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271-4991, FAX: (603) 271-1728, No e-mail address

NEW MEXICO

Mr. Nick Mandell, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827-4991, FAX: (505) 827-4984, No e-mail address

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474-1605, FAX: (518) 486-1217, No e-mail address

NORTH CAROLINA

Ms. Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603-8003, Telephone: (919) 733-7232, FAX: (919) 733-9571, jeanette_furney@mail.doa.state.nc.us

NORTH DAKOTA

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505-0170, Telephone: (701) 328-2094, FAX: (701) 328-2308, No e-mail address

RHODE ISLAND

Mr. Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol

Hill, 4th Floor, Providence, Rhode Island 02908-5870, Telephone: (401) 222-1220 (secretary), FAX: (401) 222-2093 (direct), knelson@planning.state.ri.us

SOUTH CAROLINA

Ms. Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th floor, Columbia, South Carolina 29201, Telephone: (803) 734-0494, FAX: (803) 734-0645, No e-mail address

TEXAS

Mr. Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463-1771, FAX: (512) 936-2681, tadams@governor.state.tx.us

UTAH

Ms. Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538-1535 (direct), FAX: (801) 538-1547, cwright@state.ut.us

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558-4010, FAX: (304) 558-3248, fcutlip@wvdo.org

WISCONSIN

Mr. Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266-0267, FAX: (608) 267-6931, sjt@doa.state.wi.us

WYOMING

Ms. Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777-5492, FAX: (307) 777-3696, sross1@missc.state.wy.us

Territories

GUAM*

Mr. Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932,

*Guam and the Virgin Islands are not confirmed.

Telephone: (671) 475-9411 or 9412,
FAX: (671) 472-2825

PUERTO RICO

Ms. Elsa Luis, Director, Federal
Proposals Division, 1100 17th Street,
NW, Suite 800 Washington, DC
20036, Telephone: (202) 778-0750,
FAX: (202) 530-5559

NORTH MARIANA ISLANDS

Mr. Alvaro A. Santos, Executive Officer,
Office of Management and Budget,
Office of the Governor, Saipan, MP
96950, Telephone: (670) 664-2256,
FAX: (670) 664-2272

Contact person: Ms. Jacoba T. Seman,
Federal Programs Coordinator,
Telephone: (670) 664-2289, FAX: (670)
664-2272.

VIRGIN ISLANDS*

Nellon Bowry, Director, Office of
Management and Budget, #41
Norregade Emancipation Garden
Station, Second Floor, Saint Thomas,
Virgin Islands 00802

*Please direct all questions and
correspondence about
intergovernmental review to: Linda
Clarke, Telephone: (809) 774-0750,
FAX: (809) 776-0069.*

Note: This list is based on the most current
information provided by the States.

Information on any changes or apparent
errors should be provided to Sherron Duncan
at the Office of Management and Budget
(202) 395-3914 and to the State in question.
Changes to the list will only be made upon
formal notification by the State. The list is
updated every six months and is also
published biannually in the Catalog of
Federal Domestic Assistance. The last
changes made were to Delaware, Indiana,
Missouri, New Mexico, Puerto Rico, Rhode
Island, Utah, and Wisconsin.

[FR Doc. 99-30031 Filed 11-16-99; 8:45 am]

BILLING CODE 4000-01-U

**Revised
Federal
Register**

**Wednesday
November 17, 1999**

Part V

**Department of
Education**

**National Assessment of Educational
Progress (NAEP)—Secondary Analysis
Program; Notice**

DEPARTMENT OF EDUCATION

[CFDA No. 84.902B]

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice inviting applications for new awards for fiscal year (FY) 2000**Purpose of Program**

To encourage the preparation of reports that would not otherwise be available and that apply new approaches to the analysis and reporting of the NAEP and NAEP High School Transcript Studies data. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

For FY 2000, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Public or private organizations and consortia of organizations.

Applications Available: November 22, 1999.

Deadline for Transmittal of Applications: January 19, 2000.

Available Funds: \$700,000.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: \$15,000—\$100,000.

Estimated Average Size of Awards: \$85,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$100,000 for a single budget period of 18 months. The Assistant Secretary for the Office of Educational Research and Improvement (OERI) may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 7–9.

Project Period: Up to 18 months.

Note: The Department is not bound by any estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit Part III to

the equivalent of no more than 60 pages, using the following standards:

- A 'page' is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except for those provisions of Part 75 noted in 34 CFR 700.5 (a)), 77, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR Part 700.

Priorities

We are particularly interested in applications that meet one or more of the following invitational priorities.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets the priorities a competitive or absolute preference over other applications.

Invitational Priority 1

Projects that use NAEP achievement data alone or in combination with other data sets to assist policy makers and educators who make decisions about curriculum and instruction.

Invitational Priority 2

Projects designed to assist States in analyzing, interpreting and reporting their State-level NAEP results.

Invitational Priority 3

Projects that include the development of analytic procedures that improve precision with which NAEP estimates group and subgroup performance.

Invitational Priority 4

Projects that develop improved sampling procedures for national or State-level NAEP.

Invitational Priority 5

Projects to analyze and report data using statistical software developed by the project to permit more advanced analytic techniques to be readily applied to NAEP data.

FOR FURTHER INFORMATION OR

APPLICATIONS CONTACT: Alex Sedlacek, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404B, Washington, DC 20208–5653. Telephone: (202) 219–1734. E-mail: alex_sedlacek@ed.gov If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION OR APPLICATIONS CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting the program person listed under **FOR FURTHER INFORMATION OR APPLICATIONS CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 9010.

Dated: November 12, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–30063 Filed 11–16–99; 8:45 am]

BILLING CODE 4000–01–P

Regulation

**Wednesday
November 17, 1999**

Part VI

**Department of
Education**

**Bilingual Education: Program
Development and Implementation Grants
Program; Notice Inviting Applications for
New Awards for Fiscal Year (FY) 2000**

DEPARTMENT OF EDUCATION

[CFDA No.: 84.288S]

Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program

The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: (1) One or more local educational agencies (LEAs), (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: January 7, 2000.

Deadline for Intergovernmental Review: March 8, 2000.

Available funds: \$22.1 million.

The Administration has requested \$22.1 million for this program for FY 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: \$100,000–\$175,000.

Estimated Average Size of Awards: \$150,000.

Estimated Number of Awards: 147.

Project Period: 36 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing inservice training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials and academic or career counseling to limited English proficient students.

Priorities:*Competitive Priority*

The Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Invitational Priorities

The Secretary is particularly interested in applications that meet one

or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Invitational Priority 4—Safe and Drug-Free Schools

Projects that contribute to the creation and maintenance of a safe and drug-free learning environment for limited English proficient students by being made an integral part of a comprehensive school safety plan.

Information on developing and implementing a comprehensive school safety plan is found in the 1998 Annual Report on School Safety prepared by the U.S. Departments of Education and Justice and available at the Department of Education's Internet site at <http://www.ed.gov/pubs/AnnSchoolRept98/>

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria—(1) *Need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;
(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(D) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(2)(i), (ii), (xii), (xvi), (xviii), and (xix)).

(3) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to

be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210 (d)(1), (2), (3)(i), (v) and (vii))

(4) *Proficiency in English and another language.* (3 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1))

(5) *Quality of project personnel.* (7 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii))

(6) *Adequacy of resources.* (7 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate,

the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1), (2), (iv), (v) and (vi))

(7) *Quality of the management plan.* (13 points) (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1), (2)(i), (iv) and (v))

(8) *Quality of project evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the

activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)–(3))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB Web site at the following address:

<http://www.whitehouse.gov/omb/grants>

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.288S, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its

completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #84.288S),
Washington, DC 20202–4725 or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #84.288S), Room
#3633, Regional Office Building #3,
7th and D Streets, SW., Washington,
DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions,

plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Assurances—Non-Construction Programs (SF 424B) and instructions.

l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as “original” or “copy.” No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT:

Cecile Kreins, U.S. Department of Education, 400 Maryland Avenue, SW., room 5611, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–5568. Jim Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., room 5622, Switzer Building, Washington, DC

20202-6510. Telephone: 202-205-5426. Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5619, Switzer Building, Washington, DC 20202-6510. Telephone: 202-205-9717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

<http://www.access.gpo.gov/nara/index.html>

Program Authority: 20 U.S.C. 7422

Dated: November 12, 1999.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885-0538 (Expiration Date: 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for*

improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., room 5605, Switzer Building, Washington, D.C. 20202-6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Abstract

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the

order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Empowerment Zone/Enterprise Community Priority

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone=s or Community=s comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Additional Guidance

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103-382) requires all

applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. **APPLICANTS THAT DO NOT SUBMIT A COPY OF THEIR APPLICATION TO THEIR STATE EDUCATIONAL AGENCY IN ACCORDANCE WITH THESE STATUTORY AND REGULATORY REQUIREMENTS WILL NOT BE CONSIDERED FOR FUNDING.**

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;

Section B—Documentation of consultation with nonprofit private school officials;

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Assurances—Non-Construction Programs Form (SF 424B).

8. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80-0013).

9. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80-0014) (if applicable).

10. Disclosure of Lobbying Activities Form (SF LLL).

11. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled *Notice to All Applicants*.)

12. One-page abstract.

13. Table of Contents.

14. Application narrative, not to exceed 35 pages.

15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000-01-P

Application for Federal Education Assistance



Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

Organizational Unit

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number: | | | | | | | | | |

Title: _____

3. Catalog of Federal Domestic Assistance #: 84. | 2 | 8 | 8 | S | | →

PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANT

4. Project Director: _____

6. Type of Applicant (Enter appropriate letter in the box.) | | | |

Address: _____

City _____ State _____ Zip code + 4 _____

Tel. #: () _____ - _____ Fax #: () _____ - _____

E-Mail Address: _____

A - State H - Independent School District
B - County I - Public College or University
C - Municipal J - Private, Non-Profit College or University
D - Township K - Indian Tribe
E - Interstate L - Individual
F - Intermunicipal M - Private, Profit-Making Organization
G - Special District N - Other (Specify): _____

5. Is the applicant delinquent on any Federal debt? ____ Yes ____ No
(If "Yes," attach an explanation.)

7. Novice Applicant ____ Yes ____ No

Application Information

8. Type of Submission:

-PreApplication -Application
____ Construction ____ Construction
____ Non-Construction ____ Non-Construction

11. Are any research activities involving human subjects planned at any time during the proposed project period? ____ Yes ____ No
a. If "Yes," Exemption(s) #: _____ b. Assurance of Compliance #: _____

9. Is application subject to review by Executive Order 12372 process?
____ Yes (Date made available to the Executive Order 12372 process for review): ____/____/____

____ No (If "No," check appropriate box below.)
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

OR

c. IRB approval date: ____ Full IRB or
____ Expedited Review

12. Descriptive Title of Applicant's Project:

10. Proposed Project Dates: ____/____/____ Start Date: ____ End Date: ____

Estimated Funding

13a. Federal \$ _____.00
b. Applicant \$ _____.00
c. State \$ _____.00
d. Local \$ _____.00
e. Other \$ _____.00
f. Program Income \$ _____.00
g. TOTAL \$ _____.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title: _____

c. Tel. #: () _____ - _____ Fax #: () _____ - _____

d. E-Mail Address: _____

e. Signature of Authorized Representative

Date: ____/____/____

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.
2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: <http://www.dnb.com/dbis/aboutdb/intlduns.htm>.
3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.
4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.
5. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."
6. **Type of Applicant.** Enter the appropriate letter in the box provided.
7. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."
8. **Type of Submission.** Self-explanatory.
9. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."
10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).
11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check "No." **The remaining parts of item 11 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six

exemption categories listed in "Protection of Human Subjects in Research" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in "Protection of Human Subjects in Research" attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter "Pending" in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance** that covers the proposed research activity, enter "None" in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of

the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

- 14. Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. "Exemptions," below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment"** and insert this attachment immediately following the ED 424 face page.

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) *If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met.* (2) *If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an

individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or

federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at <http://ocfo.ed.gov/humansub.htm>.

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers

that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

- (1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.
- (2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.
- (3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

 U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS		OMB Control Number 1880--538				
Name of Institution/Organization		Expiration Date: 10/31/99				
		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
SECTION A - BUDGET SUMMARY U.S. DEPARTMENT OF EDUCATION FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

Name of Institution/Organization		SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS					Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.	
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)		
1. Personnel								
2. Fringe Benefits								
3. Travel								
4. Equipment								
5. Supplies								
6. Contractual								
7. Construction								
8. Other								
9. Total Direct Costs (lines 1-8)								
10. Indirect Costs								
11. Training Stipends								
12. Total Costs (lines 9-11)								
SECTION C - OTHER BUDGET INFORMATION (see instructions)								

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

**Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion -- Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled A Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee Tier _____, if Known: Congressional District, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Federal Use Only		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

STATE SINGLE POINT OF CONTACT

(As of April 22, 1999)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

ARIZONA

Ms. Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280-1315
FAX: (602) 280-8144
jonis@ep.state.az.us

ARKANSAS

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682-1074
FAX: (501) 682-5206
tlcopeland@dfa.state.ar.us

CALIFORNIA

Grants Coordination
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This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "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.R. 441/P.L. 106-95

Nursing Relief for Disadvantaged Areas Act of 1999 (Nov. 12, 1999; 113 Stat. 1312)

H.R. 609/P.L. 106-96

To amend the Export Apple and Pear Act to limit the applicability of the Act to apples. (Nov. 12, 1999; 113 Stat. 1321)

H.R. 915/P.L. 106-97

To authorize a cost of living adjustment in the pay of administrative law judges. (Nov. 12, 1999; 113 Stat. 1322)

H.R. 974/P.L. 106-98

District of Columbia College Access Act of 1999 (Nov. 12, 1999; 113 Stat. 1323)

H.R. 2303/P.L. 106-99

History of the House Awareness and Preservation Act (Nov. 12, 1999; 113 Stat. 1330)

H.R. 3122/P.L. 106-100

To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch. (Nov. 12, 1999; 113 Stat. 1332)

H.J. Res. 54/P.L. 106-101

Granting the consent of Congress to the Missouri-Nebraska Boundary Compact. (Nov. 12, 1999; 113 Stat. 1333)

S. 900/P.L. 106-102

Gramm-Leach-Bliley Act (Nov. 12, 1999; 113 Stat. 1338)

H.R. 348/P.L. 106-103

To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs. (Nov. 13, 1999; 113 Stat. 1482)

H.R. 3061/P.L. 106-104

To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act. (Nov. 13, 1999; 113 Stat. 1483)

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