12–1–99
Vol. 64 No. 230
Pages 67147–67468

Federal Register

Wednesday
December 1, 1999

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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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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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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM158; Special Conditions No. 25–152–SC]

Special Conditions: Boeing Model 767–400ER; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 767–400ER airplane. This airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions provide the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Massoud Sadeghi, FAA, Transport Airplane Directorate, Aircraft Certification Service, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (425) 227–2117 or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1997, the Boeing Commercial Airplane Group applied for an amendment to Type Certificate No. A1NM to include the new Model 767–400ER, a derivative of the Model 767–200/300 series airplanes. The Model 767–400ER is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport airplane. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 375, and a maximum takeoff weight of 450,000 pounds (204,120 kg). Each engine will be capable of delivering 62,000 pounds of thrust. The flight controls are unchanged beyond those changes deemed necessary to accommodate the stretched configuration.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 767–400ER airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A1NM include 14 CFR part 25, as amended by Amendments 25–1 through 25–45 with a few exceptions, and certain other later amended sections of part 25 that are not relevant to these special conditions. Except for certain earlier amended sections of part 25 that are not relevant to these special conditions, Boeing has chosen to comply with part 25 as amended by Amendments 25–1 through 25–89, the applicable regulations in effect on the date of application.

In addition to the applicable airworthiness regulations and special conditions, the Model 767–400ER must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the Model 767–400ER because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 767–400ER airplane will utilize electrical and electronic systems that perform critical functions, including the following: primary electronic flight displays and full authority digital engine controls (FADEC). These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model 767–400ER. The Model 767–400 requires that new technology electrical and electronic systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane and the use of composite material in the airplane structure, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions would be applicable initially to the Model 767–400ER airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of proposed special conditions No. 25–99–06–SC was published in the **Federal Register** on July 21, 1999 (64 FR 39095). One comment in support of the special condition was received.

Conclusion

This action affects certain design features only on the Model 767–400ER. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing 767–400ER series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 17, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–31185 Filed 11–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 990813222–9309–02]

RIN 0625–AA55

Extend Production Incentive Benefits to Jewelry Manufacturers in the U.S. Insular Possessions

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This action amends the Departments' regulations governing duty-exemption allocations and duty-refund benefits for watch producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) due to the enactment of Pub. L. 106–36. This law amends additional U.S. notes to chapter 71 of the Harmonized Tariff Schedule of the United States (''HTSUS'') to provide a duty-refund benefit for any article of jewelry within heading 7113 which is the product of the Virgin Islands, Guam, American Samoa or the Northern Mariana Islands in accordance with the new provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The rule amends the regulations by changing Title 15 CFR part 303 to include jewelry, creating a Subpart A for the current insular watch and watch movement regulations and a Subpart B for the new regulations pertaining to jewelry duty-refund benefits authorized by Pub. L. 106–36.

EFFECTIVE DATE: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: We published proposed regulatory revisions on August 27, 1999 (64 FR 46872) and invited comments. Referring to the requirement in the proposed section 303.16(a)(5) that a new jewelry firm be ''completely separate from and not associated with, by way of ownership or control'' with other jewelry program participants in a territory, one commenter suggested that we replace ''ownership or control'' with ''ownership and control''. The commenter hoped to be free to have, as

a new jewelry firm, a non-controlling association with another firm in the territory.

The Departments agree that the language ''completely separate from and not associated with, by way of ownership or control'' may be too restrictive and might have the effect of discouraging widespread participation in the expanded benefits enacted by Congress. A mere association, whether by way of overlapping ownership or of family relationships, may not necessarily disqualify otherwise qualified new firm applicants.

The change suggested by the applicant, however, would not remove this perceived difficulty because both terms in the phrase ''ownership and control'' are modified by the unexceptionable ''completely separate from.'' Nevertheless, in order to evaluate the unique circumstances of each applicant, we have revised the proposed language to include new terminology borrowed from existing fair trade law regulations. The final language will enable the Secretaries to make case-by-case determinations and ensure that the purpose of the restrictions, to prevent circumvention of the statutory 750,000 unit benefit ceiling and the declining duty-refund benefits received after the first 300,000 units, is observed in all instances.

The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the HTSUS, as amended by Pub. L. 94–241 (90 Stat 263) (1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (''CNMI''). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with Section 303.14 of the regulations (15 CFR 303.14) and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. (*See also* 19 CFR 7.2(a)). The law provides that during the first two years, beginning August 9, 1999 (45 days after the date of enactment), jewelry that is assembled in the territories shall be treated as a product of such territories. Thereafter, in order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

The law specifies, in addition, that watch producer benefits shall not to be diminished as a consequence of extending duty-refund benefits to jewelry manufacturers. In the event that the aggregate amount of the calculated duty refunds for both watches and jewelry exceeds the total amount available under Pub. L. 97–446, as amended by Pub. L. 103–465, the watch producers shall receive their calculated amounts; the jewelry producers would then receive amounts proportionately reduced from the remainder.

Under the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed for 30 days because this rule relieves a restriction by making insular jewelry producers eligible to receive a duty-refund benefit similar to the duty-refund benefit insular watch producers receive.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. This rulemaking will not affect the five watch companies currently participating in the insular possessions watch program because Pub. L. 106–36 does not allow watch producers' benefits to be reduced as a consequence of extending benefits to jewelry manufacturers. We expect up to five jewelry companies to set up production facilities in the insular possessions in response to the extension to them of existing incentives by Pub. L. 106–36. However, as with watch producers, the duty refund benefit per company does not apply to shipments exceeding 750,000 units of jewelry into the United States per year. The last Census of Manufacturers statistics (1992) indicate that there are 2,180 precious jewelry manufacturers located in the U.S. employing 32,300 employees. Because the insular jewelry industry would represent such a small percentage of the existing U.S. industry and because there is a limit on the benefit extended to insular jewelry producers, the regulations will not have a significant adverse impact on any small business entities. We expect a positive impact in the form of new jobs in the small U.S. insular economies. No comments were received on this certification.

Paperwork Reduction Act

This rulemaking involves new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 which have been approved under OMB control number 0625–0040 and 0625–0134. The extension of the insular watch program to include the jewelry benefit will require the use of three of the current forms, modified to accommodate jewelry. The public reporting burden for these collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Form ITA–334P, the annual application, would be completed once a year by each jewelry producer and requires one burden hour. Form ITA–360P, the certificate of refund, would also be used once a year and is completed by the Department of Commerce and imposes no burden hours. Form ITA–361P, the request for refund of duties, would normally be used once or twice a year per jewelry producer and takes about 10 minutes to complete.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866

It has been determined that the rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, The Departments amend 15 CFR part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 is revised to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 127,167.

2. Revise the heading for part 303 to read as set forth above.

3. Designate § 303.1 through 303.14 as subpart A and add a subpart heading as set forth below.

Subpart A—Watches and Watch Movements

4. Add subpart B to read as follows:

Subpart B—Jewelry

Sec.

Subpart B—Jewelry

§ 303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior (''the Secretaries'') under Pub. L. 106–36, enacted 25 June 1999 which substantially amended Pub. L. 97–446, enacted 12 January 1983, amended by Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, amended by Pub. L. 94–241, enacted 24 March 1976, and amended by Pub. L. 103–465, enacted 8 December 1994.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on watches and watch movements and parts (except discrete watch cases) imported into the customs territory of the United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of the Treasury (*see* 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106–36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106–36, enacted on 25 June 1999.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Secretaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (*see* paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the U.S. Customs Service requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of jewelry* means a single article, pair (example: earrings, cufflinks), subassembly or component which is contained in HTSUS heading 7113.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam,

American Samoa and the Northern Mariana Islands).

(9) *Creditable wages* means all wages—up to the amount per person of $38,650—paid to permanent residents of the territories employed in the firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the U.S. Customs Service's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages. Excluded, however, are wages paid for special services rendered to the firm by accountants, lawyers, or other professional personnel plus any wages paid for the assembly of dutiable jewelry or the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. Wages paid to persons engaged in production of jewelry that has entered the U.S. both duty-free and duty-paid may be credited proportionately *provided* the firm maintains production and payroll records adequate for the Departments' verification of the creditable wages portion (*see* Sec. 303.17(b)).

(10) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(b) *Forms.*

(1) *ITA—334P* ''Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.'' The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund.

(2) *ITA—360P* ''Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements.'' This document authorizes a territorial jewelry producer to request the refund of duties on imports of watches, watch movements and parts therefor, with certain exceptions, up to a specified value. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(3) *ITA—361P* ''Request for Refund of Duties on Watches and Watch Movements.'' This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party (*see* Sec. 303.19(c)).

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625–0040. The information collection requirements in paragraphs (b) (2) and (3) were approved under control number 0625–0134.)

§ 303. 17 Annual jewelry application.

(a) Form ITA–334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, and production records;

(7) Records on purchases of components and sales of jewelry, including proof of payment; and

(8) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b) of this section, shall be retained for a period of two years following their creation.

§ 303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (a) of this section have been or are being met.

(c) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (a) of this section shall secure the Departments' approval in advance of the sale or transfer of the business. The request for approval shall specify which of the certifications specified in paragraph (a) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) Certificates of Entitlement, Form ITA–360, shall be issued before March 1 of each year.

(2) Certificates shall not be issued to more than one jewelry company in the territories owned or controlled by the same corporate entity.

(b) *Security and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Department of Commerce when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in paragraph (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing a Form ITA–361P (*see* Sec. 303.16(b)(3)) and the instructions on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on watch movements, watches, and parts therefor. Duties on watch cases not containing a movement and on articles containing any material which is the product of a country with respect to which Column 2 rates of duty apply may not be refunded. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the U.S. Customs Service, U.S. Department of the Treasury, govern the refund of duties under 19 CFR 7.4. If the Departments receive information from the Customs Service that a producer has made unauthorized use of any official form, they may cancel the affected certificate.

(3) The territorial producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (*see* paragraph (b) of this section).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an ''interested party'' within the meaning of § 303.21 of this part.

§ 303.20 Duty refund.

(a) Territorial jewelry producers are entitled to duty refund certificates only for jewelry that they produce which is provided for in heading 7113, HTSUS, is a product of a territory and otherwise meets the requirements for duty-free entry under General Note 3 (a)(iv), HTSUS, and 19 CFR 7.3.

(1) An article of jewelry is considered to be a product of a territory if:

(i) The article is wholly the growth or product of the territory; or

(ii) The article became a new and different article of commerce as a result of production or manufacture performed in the territories.

(2) *Two-year exception.* Any article of jewelry provided for in heading 7113, HTSUS, entered or withdrawn from warehouse for consumption during the two-year period beginning August 9, 1999, that is assembled in a territory shall be considered a product of the insular possessions. At the expiration of the two-year period, only jewelry which satisfies either of the criteria set forth in paragraph (a)(1) of this section shall be considered a product of an insular possession.

(b) Calculation of the value of production incentive certificates. (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped free of duty into the United States multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 times a factor of 80%; plus

(iv) Incremental shipments up to 750,000 units times a factor of 75%.

(2) The Departments may make adjustments for these data in the manner set forth in § 303.17(c).

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision, which shall be final, to the petitioner by registered, certified or express mail.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Ferdinand Aranza,

Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 99–30971 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–DS–P 4310–93–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2015

Implementation of Tariff-Rate Quota for Imports of Sugar-Containing Products

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides for export certificates to accompany imports of certain sugar-containing products under the tariff-rate quota for sugar-containing products established as a result of the Uruguay Round Agreements.

DATES: Effective Date: Interim rule effective on January 31, 2000.

Comments: Comments must be received by January 31, 2000.

ADDRESSES: Comments may be sent to Sharon Bomer Lauritsen, Director of Agricultural Affairs and Technical Barriers to Trade, Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Bomer Lauritsen, Director of Agricultural Affairs and Technical Barriers to Trade, Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508; telephone: (202) 395–3167.

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, the President, by Presidential Proclamation No. 6763, has established a tariff-quota for sugar-containing products. (Under a tariff-rate quota, the United States applies one tariff rate, known as the ''in-quota tariff rate,'' to imports of a product up to a particular amount, known as the ''in-quota quantity,'' and a different, higher tariff rate, known as the ''over-quota tariff rate,'' to imports of the product in excess of that amount.) The United States has assigned Canada a particular share of the in-quota quantity. Sugar-containing products from Mexico may enter the United States under a separate tariff-rate quota established under the North American Free Trade Agreement.

Pursuant to Presidential Proclamation No. 7235, October 7, 1999, the United States Trade Representative is delegated authority under section 404(a) of the URAA to take such action as may be necessary in implementing the tariff-rate quotas for sugar-containing products to ensure that imports do not disrupt the orderly marketing of commodities in the United States.

As part of the implementation of the tariff-rate quotas, the United States is offering exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their sugar-containing product exports to the United States. Using export certificates assures an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, and in this ensures that imports do not disrupt the orderly marketing of sugar-containing products in the United States. However, a country does not need to participate in the export certificate program to receive its in-quota tariff rate for its share of the in-quota quantity.

In Annex 17 of the December 4, 1998, Record of Understanding between the Governments of the United States of America and Canada regarding Areas of Agricultural Trade, the United States agreed to require an export permit issued by the Government of Canada as a condition for eligibility for the in-quota duty for certain sugar-containing products of Canadian origin for which the exporter or importer is claiming preferential tariff treatment on entry into the United States.

Under the interim rule, a country wishing to avail itself of export certificates must notify USTR, provide the necessary supporting information, and otherwise satisfy USTR that the country is a participating country. (USTR intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country.) In light of the request by the Government of Canada to participate in the export certificate program, the United States will require as a condition of eligibility for the in-quota duty that all sugar-containing products entered into the United States from Canada be accompanied by an export certificate issued by the Government of Canada. The United States Customs Service will then be responsible for ensuring that no imports of sugar-containing products from that country are counted against Canada's in-quota allocation unless there is a proper export certificate issued for that sugar-containing product.

The United States Customs Service will separately issue regulations governing Customs implementation of this rule.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to USTR. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. After the comment period closes, USTR will publish in the **Federal Register** a final rule on this subject, together with a discussion of comments received and any amendments made to the interim rule as a result of the comments.

To simplify the processing and consideration of comments, commenters are encouraged to submit documents in electronic form accompanied by an original and one paper copy. All documents submitted in electronic form should be on DOS formatted 3.5″ diskettes, and should be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). No regulatory flexibility analysis is required for this rule since neither 5 U.S.C. 553 nor any other provision of law requires publication of a general notice of proposed rulemaking with respect to this rule. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

List of Subjects in 15 CFR Part 2015

Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Sugar.

For the reasons set out in the preamble, 15 CFR is amended by adding the following new part 2015 to read as follows:

PART 2015—IMPLEMENTATION OF TARIFF-RATE QUOTAS FOR SUGAR-CONTAINING PRODUCTS

Sec.

Authority: Sec. 404, Pub. L. 103–465, 108 Stat. 4809; Proclamation 6763, 3 CFR, 1994 Comp., p. 147; Proclamation 7235, 64 FR 55611, October 13, 1999.

§ 2015.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for sugar-containing products established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465). In particular, this party provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under a tariff-rate quota has chosen to use export certificates.

§ 2015.2 Definitions.

For the purpose of this subpart, the following terms shall have the following meanings:

(a) *In-quota sugar-containing products* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 8 to chapter 17 of the HTS that is entered under the in-quota rate of duty.

(b) *Allocated country* means a country to which an allocation of a particular quantity of sugar-containing products has been assigned.

(c) *Enter* or *Entered* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating Country* means any allocated country that USTR has determined is, and has notified the U.S. Customs Service as being, eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

§ 2915.3 Export certificates.

(a) To claim the in-quota rate of duty on sugar-containing products of a participating country, the United States importer must make a declaration to the United States Customs Service, in the form and manner determined by the United States Customs Service, that a valid export certificate is in effect with respect to those sugar-containing products.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the party to whom the certificate is issued, the product description and quantity, shipment date, and the quota year for which the export certificate is in effect;

(3) Have a distinct and uniquely identifiable number; and

(4) Be used in the quota year for which it is in effect.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–30808 Filed 11–30–99; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 100]

Staff Accounting Bulletin No. 100

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses views of the staff regarding the accounting for and disclosure of certain expenses commonly reported in connection with exit activities and business combinations. This includes accrual of exit and employee termination costs pursuant to Emerging Issues Task Force (EITF) Issues No. 94–3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring)*, and No. 95–3, *Recognition of Liabilities in Connection with a Purchase Business Combination*, and the recognition of impairment charges pursuant to Accounting Principles Board (APB) Opinion No. 17, *Intangible Assets*, and Statement of Financial Accounting Standards (SFAS) No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of*.

DATES: Effective November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Jacobsen, Paul Kepple, or Eric Casey, Office of the Chief Accountant (202–942–4400), Robert Bayless, Division of Corporation Finance (202–942–2960), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; electronic addresses: JacobsenE@sec.gov; KeppleP@sec.gov; CaseyE@sec.gov; BaylessR@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: November 24, 1999.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 100 to the table found in Subpart B.

STAFF ACCOUNTING BULLETIN NO. 100

1. Amend Section A of Topic 2 of the Staff Accounting Bulletin Series to add new subsection 9. *Liabilities Assumed in a Purchase Business Combination.* Revise the title of Section P of Topic 5 to *Restructuring Charges*, designate the current section P as subsection 3 of Section P of Topic 5, *Income Statement Presentation of Restructuring Charges*, deleting the first paragraph under that subsection, and renumbering Questions 1, 2, and 3 in that subsection to be Questions 13, 14, and 15. Add new subsection 1. *Characteristics of an Exit Plan to Section P of Topic 5.* Add new subsection 2. *Characteristics of an Exit Cost to Section P of Topic 5.* Add new subsection 4. *Disclosures.* to Section P of Topic 5. Furthermore, add new Sections BB. *Inventory Valuation Allowances* and CC. *Impairments* to Topic 5.

TOPIC 2: BUSINESS COMBINATIONS

A. *Purchase Method*

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8. Business Combinations Prior to an Initial Public Offering

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9. Liabilities Assumed in a Purchase Business Combination

Facts: Company A acquires Company Z in a business combination accounted for as a purchase. Company Z has recorded liabilities for contingencies such as product warranties and environmental costs.

Question: Are there circumstances in which it is appropriate for Company A to adjust Company Z's carrying value for these liabilities in the purchase price allocation?

Interpretive Response: Yes. Accounting Principles Board Opinion No. 16, *Business Combinations*, requires that receivables, liabilities, and accruals be recorded in the purchase price allocation at their fair value, typically the present value of amounts to be received or paid, determined using appropriate current market interest rates. In some cases, fair value is readily determinable from contemporaneous arms-length transactions involving substantially identical assets or liabilities, or from amounts quoted by a third party to purchase the assets or assume the liabilities. More frequently, fair values are based on estimations of the underlying cash flows to be received or paid, discounted to their present value using appropriate current market interest rates.

The historical accounting by Company Z for receivables or liabilities may often be premised on estimates of the amounts to be received or paid. Amounts recorded by Company A in its purchase price allocation may be expected to differ from Company Z's historical carrying values due, at least, to the effects of the acquirer's discounting, including differences in interest rates. Estimation of probable losses and future cash flows involves judgment, and companies A and Z may

differ in their systematic approaches to such estimation. Nevertheless, assuming that both companies employ a methodology that appropriately considers all relevant facts and circumstances affecting cash flows, the staff believes that the two estimates of undiscounted cash inflows and outflows should not differ by an amount that is material to the financial statements of Company Z, unless Company A will settle the liability in a manner demonstrably different from the manner in which Company Z had planned to do so (for example, settlement of the warranty obligation through outsourcing versus an internal service department). But the source of other differences in the estimates of the undiscounted cash flows to be received or paid should be investigated and reconciled. If those estimates of undiscounted cash flows are materially different, an accounting error in Company Z's historical financial statements may be present, or Company A may be unaware of important information underlying Company Z's estimates that also is relevant to an estimate of fair value.

The staff is not suggesting that an acquiring company should record assumed liabilities at amounts that reflect an unreasonable estimate. If Company Z's financial statements as of the acquisition date are not fairly stated in accordance with generally accepted accounting principles (GAAP) because of an improperly recorded liability, that liability should not serve as a basis for recording assumed amounts. That is, the correction of a seller's erroneous application of GAAP should not occur through the purchase price allocation. Rather, Company Z's financial statements should be restated to reflect an appropriate amount, with the resultant adjustment being applied to the historical income statement of Company Z for the period(s) in which the trends, events, or changes in operations and conditions that gave rise to the needed change in the liability occurred. It would also be inappropriate for Company Z to report the amount of any necessary adjustment in the period just prior to the acquisition, unless that is the period in which the trends, events, or changes in operations and conditions occurred. The staff would expect that such trends, events, and changes would be disclosed in Management's Discussion and Analysis in the appropriate period(s) if their effect was material to a company's financial position, results of operations or cash flows.

In summary, the staff believes that purchase price adjustments necessary to record liabilities and loss accruals at fair value typically are required, while merely adding an additional ''cushion'' of 10 or 20 or 30 percent to such account balances is not appropriate. To arrive at those fair values, the undiscounted cash flows must be projected, period by period, based on historical experience and discounted at the appropriate current market discount rate.

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TOPIC 5: MISCELLANEOUS ACCOUNTING

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P. *Restructuring Charges*

The term ''restructuring charge'' is not defined in the existing authoritative literature. While the events or transactions triggering the recognition [1] of what are often identified as restructuring charges vary, these charges typically result from the consolidation and/or relocation of operations, or the disposition or abandonment of operations or productive assets. Restructuring charges may be incurred in connection with a business combination, a change in an enterprise's strategic plan, or a managerial response to declines in demand, increasing costs, or other environmental factors.

Some types of restructuring charges, such as ''exit costs,'' as defined in Emerging Issues Task Force [2] (EITF) Issue No. 94–3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)* (EITF 94–3), are recognized as liabilities and charged to operations when management commits to a restructuring plan, while other types of restructuring charges contemplated by the plan may not be recognized until they are actually incurred. The circumstances in which the intended actions of management result in the recognition of a liability are identified in either EITF 94–3 or EITF Issue No. 95–3, *Recognition of Liabilities in Connection with a Purchase Business Combination* (EITF 95–3), collectively referred to as the ''Consensuses.''

1. *Characteristics of an Exit Plan*

Accrual of certain involuntary employee termination benefits and exit costs under the Consensuses requires a commitment by the company to a termination or exit plan (hereinafter collectively referred to as an exit plan) that specifically identifies all significant actions to be taken.[3] Not all plans qualify under the Consensuses as a basis for recognizing a liability for exit costs or involuntary employee termination benefits.

Facts: Prior to year end, senior management of a company approves a plan to exit certain activities and terminate employees involuntarily. Approval by the board of directors is required by the Company's policies to implement the exit plan, but is not obtained until after year end.

Question 1: Would it be appropriate for the company to accrue exit costs and involuntary employee termination benefits as of year end pursuant to the Consensuses?

Interpretive Response: No. The Consensuses do not permit accrual of exit costs or involuntary employee termination benefits prior to the date the company is committed to an exit plan by management having the appropriate level of authority (the commitment date). The staff believes that if the Company's policies require board of directors' approval, or management elects to seek board of directors' approval, the appropriate level of authority needed to commit the company under the Consensuses would be that of the board of directors. If board of directors' approval is neither required nor sought, the appropriate level of authority would be at a level below the board of directors (e.g., chief executive officer). The appropriate level of authority would be a division or branch manager if that manager can and will commit the enterprise to incur particular exit costs or involuntary employee termination benefits without additional ratification or budget authorization.

Facts: Corporate management is developing an exit plan which will include involuntary employee terminations, plant shutdowns, and

[1] The Financial Accounting Standards Board (FASB) has on its agenda currently three projects which are expected to improve existing financial reporting with regard to certain aspects of liability recognition and presentation, including the recognition or nonrecognition of constructive obligations. In the interim, pending completion of the FASB's efforts to improve financial reporting in this area, the staff is providing interpretive guidance regarding the existing accounting requirements for exit costs. The staff will reconsider the guidance provided herein upon completion of the FASB's projects.

[2] The Emerging Issues Task Force is a private sector body established by the FASB. The Commission's Chief Accountant participates in the body's deliberations.

[3] Registrants should refer to the Consensuses for their specific requirements. Registrants are reminded that they are required at the commitment date to account for those types of costs (exit, termination, etc.) falling within the scope of the Consensuses that are incurred in connection with a qualifying exit plan in accordance with the Consensuses. That is, applying the Consensuses (being Level C GAAP per AU411.16) is not optional.

asset dispositions associated with the consolidation and reduction of operations in several of its business units. Senior management of the company has set a target of reducing its North American distribution costs by 50 percent within two years. However, the exit plan is in the development stage, with only initial cost estimates having been developed. The corporate management team currently is developing the more detailed plans, significant actions, and related budgets for which individual business units and plant managers will be held accountable and be required to execute. The more detailed plans will set forth how, when, and by whom the cost reductions will be achieved.

Question 2: Does the staff believe that exit costs may be accrued prior to the completion of a more detailed exit plan?

Interpretive Response: No. The EITF set restrictive standards for plan specificity when it stated in EITF 94–3, ''The exit plan *specifically identifies all significant actions* to be taken to complete the exit plan . . . *and the period of time to complete the exit plan indicates that significant changes to the exit plan are not likely* (emphasis added).'' Consistent with the intent of the EITF, and to minimize the opportunities for earnings management, the staff believes that a liability for exit costs arising from a discretionary management action should be accrued only if the discretionary action is part of a comprehensive plan that has been rigorously developed and thoroughly supported.

In assessing whether an exit plan has sufficient detail, the staff would expect generally that a company's exit plan would be at least comparable in terms of the level of detail and precision of estimation to other operating and capital budgets the company prepares, such as annual business unit budgets. The absence of controls and procedures to detect, explain and, if necessary, correct variances or adjust accounting accruals would indicate that the plan lacked the authenticity and management commitment necessary for it to serve as a basis for recognizing a liability for exit costs.

The staff also believes that as a prerequisite to accruing exit costs at the commitment date, the company must be able to estimate reliably [4] the nature, timing, and amount of the exit costs associated with the significant actions it has specifically identified. Factors the staff believes should be considered when determining whether exit costs can be estimated reliably include whether:

- The estimate reflects the most likely expected outcome given all the information currently available to management;
- The exit plan identifies all significant actions expected to be taken;
- The exit plan includes an expected timetable for completing those actions;
- The plan is the one that will be used to evaluate the performance of those responsible for executing the plan and for making periodic comparisons of planned versus actual results and variances;
- *All significant actions* are documented in the plan in sufficient detail, including but not limited to details such as, geographic locations, estimated costs, expected cash flows, *etc.*;
- The components used in making the detailed calculation in the plan and arriving at the estimated liability (for example, per person costs, number of people, *etc.*) have a reasonably supportable basis; and
- The key assumptions used in developing the plan have a reasonably supportable basis.

Repeated material changes in the nature, timing, or amount of the estimated exit costs and involuntary termination benefits subsequent to the commitment date may also indicate an inability to make reliable estimates.

Facts: Company A operates five hundred retail outlets and has identified the specific location of 80 out of 100 stores which it intends to close pursuant to a store consolidation plan. The exit plan for the 80 stores identifies all significant actions and related costs in budget line item detail, such as lease termination costs, involuntary employee termination costs, store closure costs, subcontractor costs (where appropriate), *etc.* for each facility, as well as all other information specifically enumerated by the Consensuses. Management believes that the average cost to close the additional 20 stores will approximate the average cost of closing the 80 identified stores.

Question 3: Assuming that all other provisions of EITF 94–3 have been met, may Company A recognize a liability at the commitment date for the exit costs and involuntary termination benefits associated with all 100 stores?

Interpretive Response: No. While recognition of estimated exit costs and involuntary termination benefits for the 80 identified stores is appropriate, the staff believes that Company A has not met the requirements in EITF 94–3 for the 20 stores yet to be identified. The staff believes that all exit costs and involuntary termination benefits should be identified by specific property location and that no higher level of identification or aggregation (*e.g.,* country, region, state, county, *etc.*) is appropriate under the guidance in EITF 94–3. If and when Company A identifies the specific locations of other stores, the involuntary termination benefits, the exit costs, and the exit plan associated with those stores should be evaluated and accounted for as a new exit plan under the Consensuses rather than a revision of the exit plan for the 80 stores.

Although Company A may be unable to specifically identify significant actions to be taken to complete some parts of the exit plan (and so recognizing a liability currently under the Consensuses is not appropriate), management should consider its disclosure obligations under the Commission's rules and regulations regarding its future plans, including those obligations relating to Management's Discussion and Analysis (MD&A).

Question 4: If Company A decides not to close one of the stores in a period following the quarter in which it recognized a liability for exit costs and involuntary employee termination benefits for the 80 identified stores, may Company A leave the accrued exit costs and involuntary employee termination benefits for that store on its balance sheet in anticipation of costs expected to be incurred when other stores are identified for closing?

Interpretive Response: No. Exit costs and involuntary employee termination benefits accrued for the store should be reversed. At each balance sheet date (annual or interim), exit cost and involuntary employee termination benefits accruals should be evaluated to ensure that any accrued amount no longer needed for its originally intended purpose is reversed in a timely manner. When an exit, termination, or other loss accrual is no longer appropriate, reversal of the liability should be recorded through the same income statement line item that was used when the liability was initially recorded. Generally accepted accounting principles (GAAP) do not permit unused or excess liability accruals to be retained as general accruals, used for purposes other than that for which the liability was established initially, or returned to earnings over time and in small amounts. Furthermore, costs actually incurred in connection with an exit plan should be charged to the exit accrual only to the extent those costs

[4] See FASB Concept Statement No. 2, *Qualitative Characterisitics of Accounting Information* and FASB Concept Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, paragraph 63.

were specifically included in the original estimation of the accrual. Costs incurred in connection with an exit plan but not specifically contemplated in the original estimate of the liability for exit costs and involuntary employee termination benefits should be charged to operating expense in the period incurred, or the period that the exit cost or involuntary termination benefit qualifies for accrual under EITF 94–3, with appropriate explanation in MD&A.

Companies should have appropriate internal accounting controls with respect to exit, termination, or other loss accruals and the related expenses. These controls must ensure the company is in compliance with Section 13(b) of the Securities Exchange Act of 1934 and provide a reasonable basis for ensuring adjustments required by GAAP (increases or decreases) with respect to such liabilities are made on a timely basis.

Question 5: The Consensuses require that the exit plan begin as soon as possible after the commitment date and that the time needed to complete it indicates that significant changes in the plan (due to changing market conditions or other external factors, for example) are unlikely. What factors may indicate that an exit plan will not begin or be executed within a period of time that significant changes in the plan are unlikely?

Interpretive Response: Based on the staff's experience, a number of factors may indicate that an exit plan might not begin or be executed within a period of time that is short enough to allow a company to appropriately conclude that significant changes in the exit plan are unlikely (and consequently, that recognizing a liability pursuant to the Consensuses would not be appropriate), including:

1. Where all significant actions to be undertaken pursuant to the plan have not been identified with sufficient specificity or are not reasonably estimable,

2. Where it is likely that execution of the plan will be delayed due to events or circumstances that are reasonably likely to occur, or

3. Where a company lacks the internal controls or information needed to monitor effectively the activities being performed, compare the costs incurred to the plan, and make adjustments to the plan on a timely basis.

Facts: In the first quarter of 2000, a company develops a strategic plan to restructure four divisions during the next three years. The exit plan will be implemented one division at a time.

Question 6: May the company recognize a liability for the exit costs and involuntary employee termination benefits for all four divisions in the first quarter of 2000?

Interpretive Response: The Consensuses contemplate completion of an exit plan within a time period that indicates that significant changes in the exit plan are unlikely. In order to satisfy that condition, the staff believes that management must be able to make reasonable estimates of the exit costs and involuntary employee termination benefits, and that those estimates would not be likely to change materially within that time period. Today's dynamic and constantly changing business environment often affects a company's ability to identify exit activities to be undertaken and estimate exit costs and involuntary employee termination benefits to be incurred after the commitment date with sufficient precision and specificity to permit the accrual of those costs at the commitment date [5] under the Consensuses. Thus, the staff generally believes that the further out an exit activity is from the commitment date, the greater the risk that either all or part of the exit plan will be materially revised in response to events or circumstances that are reasonably likely to occur. Furthermore, the staff also observes that many of the illustrative examples in EITF 94–3 assume completion of significant actions within one year of the commitment date.[6] Therefore, the staff believes that a rebuttable presumption exists that the exit plan should be completed and the exit costs and involuntary employee termination benefits incurred within one year from the commitment date.

The staff recognizes, however, that an exit plan might not be completed within one year of the commitment date due to circumstances outside the company's control. Circumstances outside the company's control would include, for example, legal or contractual restrictions on the company's ability to complete the exit plan, such as existing union contracts or enacted legal restrictions concerning the length of notice required to involuntarily terminate employees. In such circumstances, management should have appropriate evidence and support for concluding that execution of its plan will not be materially affected by intervening developments and that reasonable estimates of the nature, timing, and amount of exit costs and involuntary employee termination benefits can be made so far in advance.

Facts: As of the balance sheet date, Company A's exit plan provides only that it will terminate involuntarily a certain number of employees within certain grades and classes of employees in connection with consolidation of 10 facilities in Europe. The specific grades of employees to be terminated involuntarily have not been identified at the balance sheet date. Company A has not made any announcement regarding its exit or termination plans. The involuntary termination benefits are expected to vary based on the grade and class of employee as well as the country in which the worker is employed.

Question 7: Assuming that the board of directors of Company A approves the exit and termination plans in the condition described above by year end, in the staff's view, may Company A recognize a liability at the balance sheet date for the costs it expects to incur to terminate involuntarily certain grades of employees within certain classes of employees pursuant to the Consensuses?

Interpretive Response: No. In order to recognize a liability for the cost to terminate employees involuntarily, the Consensuses require that the exit plan must specifically identify (a) the benefit formula to be used for determining individual employee involuntary termination payments, (b) the number of employees to be involuntarily terminated, and (c) the employees' job classifications or functions and locations.

Furthermore, the EITF considered notification to be an essential element obligating the employer to fulfill its commitment, giving rise to a liability. Therefore, the employees within the classifications or functions at risk of being involuntarily terminated must also be notified of the pending involuntary termination prior to the balance sheet date. The notification must include the provisions of the involuntary termination benefit formula in sufficient detail such that each employee would be able to calculate the severance benefit to be received if terminated involuntarily.

In this example, Company A has not met the notification requirements of the

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[5] For purposes of EITF 95–3, the date the plan is finalized, not to exceed one year from consummation.

[6] A one-year period is also consistent with Accounting Principles Board Opinion (APB) No. 30, *Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions* (APB 30), SAB No. 93, *Accounting and Disclosures Regarding Discontinued Operations,* FASB Statement of Financial Accounting Standards No. 38, *Accounting for Preacquisition Contingencies of Purchased Enterprises,* EITF Issue No. 87–11, *Allocation of Purchase Price to Assets to Be Sold* and Statement on Auditing Standards No. 59, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern.*

Consensuses, nor does it appear that Company A has finalized the information called for under (a), (b), or (c) referred to above.[7]

2. *Characteristics of Exit Costs*

Under the Consensuses, an exit cost is a cost that results from a plan to exit an activity pursuant to a qualified exit plan and that meets all of the following conditions:

1. The cost is not associated with or does not benefit activities that will be continued.

2. The cost is not associated with or is not incurred to generate revenues after the commitment date.

3. The cost meets one of the following criteria:

a. It is incremental to other costs incurred in the company's conduct of its activities prior to the commitment date and will be incurred as a direct result of the exit plan; or

b. The cost will be incurred under a contractual obligation that existed prior to the commitment date and will either continue after the exit plan is completed with no economic benefit to the company or be a penalty to cancel the contractual obligation.

FASB Concept Statement No. 6, *Elements of Financial Statements* (SFAC 6), paragraphs 35 to 43 and FASB Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (SFAS 5) provide guidance for when to recognize liabilities in general and loss contingencies in particular. Registrants should not analogize to the Consensuses for costs that are outside the scope of the Consensuses. Moreover, to fall within the scope of the Consensuses, a cost cannot be associated with or benefit continuing activities.

Facts: For existing customers of a product line or service that is to be discontinued, a company is developing a plan to transition the customers over the next year to a new product line or service.

Question 8: May the costs the company expects to incur to complete this transition be recognized as a liability for exit costs pursuant to the Consensuses as of the date the company commits to a plan to transition these existing customers?

Interpretive Response: No. The costs are being incurred in order to benefit future periods through the retention of customers, and with the expectation of generating future revenues. The staff believes that the costs to transition the customers may not be recognized as a liability for exit costs under the Consensuses and should be recognized and expensed as incurred in operating income.

Facts: A franchiser announces a franchisee cash incentive program in order to induce its franchisees to upgrade their equipment over the next year. The franchiser is not contractually obligated to make any payments to individual franchisees until the franchisees accept the offer and incur ''qualifying'' costs to upgrade their equipment, which costs are reimbursable by the franchiser.

Question 9: May the franchiser accrue the estimated cost of the incentive program at the date it announces the plan pursuant to the Consensuses?

Interpretive Response: No. The franchiser is incurring the cost in order to benefit continuing activities and with the expectation of indirect future economic benefit. Therefore, the staff believes that these are not exit costs. Furthermore, considering the definition and characteristics of a liability as provided in paragraphs 35 through 43 of SFAC 6 and SFAS 5, costs such as the above should not be accrued until the franchiser becomes contractually obligated to make such payments.

Facts: Company A licenses technology from Company B on a perpetual, exclusive basis, paying an annual royalty of 10 percent of sales. Prior to the balance sheet date, the board of directors of Company A approves a plan to renegotiate terms of the royalty arrangement. In exchange for reducing the annual royalty rate from 10 percent of all sales to 5 percent of the first $20 million in annual sales, Company A will propose to pay Company B a nonrecurring, lump-sum payment of $5 million. Although internally committed to the plan, as of the balance sheet date, Company A has not yet approached Company B regarding renegotiating the royalty terms of the technology license.

Question 10: May Company A recognize a liability at the balance sheet date pursuant to the Consensuses for its estimate of the cost to modify the royalty arrangement as well as the estimated nonrecurring, lump-sum payment by the company?

Interpretive Response: No. The lump-sum payment is outside the scope of exit costs contemplated by the Consensuses because it is being incurred to modify terms of an existing and continuing relationship. The staff does not believe that the modification of an executory contract (for example, license and royalty, purchase or sales commitments, servicing, *etc.*) represents the ''exiting'' of one contract and the initiation of a new, unrelated contract.[8] In addition, the staff notes that, although the board of directors of Company A has committed to a plan, Company B has not agreed to the terms under which it would accept modification of the royalty arrangement. Under these facts and circumstances, it does not appear to the staff that Company A would have a basis upon which to reasonably estimate the costs of changing the arrangement.

Under these facts and circumstances, the staff believes that any costs to modify the contract would not fall within the scope of the Consensuses. Furthermore, GAAP would not permit recognition of liabilities for costs associated with modifying the contract prior to their being incurred.

Facts: A company, in responding to significant staffing shortages, hires an executive search firm, agreeing to pay the firm a fixed fee for each successful recruitment. In addition, the company commits to pay the relocation costs of future employees recruited by the executive search firm.

Question 11: May the company accrue the estimated fees to be paid to the executive search firm as well as the estimated cost to relocate new employees at the date the company engages the firm and commits to the plan to pay relocation costs?

Interpretive Response: No. Such costs are being incurred to benefit continuing activities, are not necessarily incremental to other costs incurred by the company in the normal course of business, and do not represent obligations of the company at the date the company engages the executive search firm. That is, the staff believes that these costs are neither exit nor integration costs that will be incurred as a result of a purchase business combination and thus, they do not fall within the scope of the Consensuses.[9]

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[7] While recognizing a liability at the commitment date pursuant to the Consensuses would not be appropriate, registrants are reminded to consider the requirements of FASB Statement of Financial Accounting Standards No. 88, *Employers Accounting for Settlements and Curtailments of Defined Pension Plans and for Termination Benefits* and FASB Statement of Financial Accounting Standards No. 112, *Employer's Accounting for Postemployment Benefits* for those involuntary termination benefits that may be payable pursuant to pre-existing contractual arrangements (*e.g.,* union contracts) or regulatory requirements (*e.g.,* national labor laws).

[8] The staff observes that not all contract terminations are exit activities within the scope of the Consensuses. The applicability of the Consensuses depends on the particular facts and circumstances surrounding the termination.

[9] For employee relocation costs incurred relative to employees of a company acquired in a business combination accounted for under the purchase method, registrants are reminded to consider the requirements of EITF 95–3.

Rather, the fees to be paid to the executive search firm and the relocation costs should be recognized as liabilities as and when the services are provided.

Question 12: May the company accrue as an exit cost at the balance sheet date an asset impairment in accordance with the Consensuses for facilities it expects to close or dispose of?

Interpretive Response: No. The Consensuses address recognition of liabilities associated with exit plans and not recognition of losses associated with asset impairments. That is, the recognition of losses on asset impairments, even in connection with exit plans, does not fall within the scope of the Consensuses. The closure and disposition or abandonment of a registrant's own long-lived assets, such as manufacturing plants, not constituting a business segment in accordance with APB 30, would be accounted for in accordance with SFAS 121, with any losses on asset impairment being charged to operating income.[10]

3. *Income Statement Presentation of Restructuring Charges*

Facts: Because restructuring charges typically do not relate to ''a single separate major line of business or class of customer,'' [11] they do not qualify for presentation as losses on the disposal of a discontinued operation. Additionally, since the charges are not both unusual and infrequent [12] they are not presented in the income statement as extraordinary items.

Question 13. * * *

Question 14. * * *

Question 15. * * *

4. *Disclosures*

Beginning with the period in which the exit plan is committed to, the Consensuses require disclosure, in *all* periods, *including interim* periods, until the exit plan is completed, of the following:

1. The amount of involuntary termination benefits accrued and charged to expense and their income statement classification.

2. The number of employees to be terminated.

3. A description of the employee group(s) to be terminated.

4. The actual amount of involuntary termination benefits paid and charged against the liability and the number of employees actually terminated pursuant to the exit plan.

5. Where the activities that will not be continued are significant to the enterprise's revenue or operating results or if the exit costs recognized at the commitment date are material:

a. A description of the major actions comprising the exit plan, activities that will not be continued, including the method of disposition, and the anticipated date of completion.

b. A description of the type and amount of exit costs recognized as liabilities and their income statement classification.[13]

c. A description of the type and amount of exit costs paid and charged against the liability.

d. The revenue and net operating income or losses from activities that will not be continued if those activities have separately identifiable operations for all periods presented.

6. The amount of any adjustment(s) to the liability account and whether the corresponding entry was recorded as an adjustment of the cost of an acquiree or included in the determination of net income for the period.

7. Where an acquirer has not finalized the plan to exit an activity or involuntarily terminate (relocate) employees of the acquiree as of the balance sheet date, a description of any unresolved issues, the types of additional liabilities that may result in a change to the purchase price allocation, and how any adjustments will be reported.[14]

Question 16: What specific disclosures about restructuring charges has the staff requested to fulfill the disclosure requirements of the Consensuses and Management's Discussion and Analysis (MD&A)?

Interpretive Response: The staff often has requested greater disaggregation and more precise labeling when exit and involuntary termination costs are grouped in a note or income statement line item with items unrelated to the exit plan.[15] For the reader's understanding, the staff has requested that discretionary, or decision-dependent, costs of a period, such as exit costs, be disclosed and explained in MD&A separately. Also to improve transparency, the staff has requested disclosure of the nature and amounts of additional types of exit costs and other types of restructuring charges [16] that appear quantitatively or qualitatively material, and requested that losses relating to asset impairments be identified separately from charges based on estimates of future cash expenditures.

The staff frequently reminds registrants that in periods subsequent to the commitment date that material changes and activity in the liability balances of each significant type of exit cost and involuntary employee termination benefits (either as a result of expenditures or changes in/reversals of estimates) should be disclosed in the footnotes to the interim and annual financial statements and discussed in MD&A. In the event a company recognized liabilities for exit costs and involuntary employee termination benefits relating to multiple exit plans, the staff believes presentation of separate information for each individual exit plan that has a material effect on the balance sheet, results of operations or cash flows generally is appropriate.

For material exit or involuntary employee termination costs related to an acquired business, the staff has requested disclosure in either MD&A or the financial statements of—

a. When the registrant began formulating exit plans for which accrual may be necessary,

b. The types and amounts of liabilities recognized for exit costs and involuntary employee termination benefits and included in the acquisition cost allocation, and

c. Any unresolved contingencies or purchase price allocation issues and the types of additional liabilities that may result in an adjustment of the acquisition cost allocation.

The staff has noted that the economic or other events that cause a registrant to consider and/or adopt an exit plan or

[10] Where an acquirer intends, at the consummation date, to dispose of certain of an acquiree's long-lived assets, registrants are reminded to consider the requirements of APB 16, EITF Issue No. 87–11, and EITF Issue No. 90–6 in allocating the purchase price to and subsequently accounting for such assets held for disposal.

[11] See APB 30, paragraph 13.

[12] See APB 30, paragraph 20.

[13] Registrants should refer to EITF Issue No. 96–9, *Classification of Inventory Markdowns and Other Costs Associated with a Restructuring* for additional comments as to income statement presentation. For example, the staff believes that inventory writedowns should be classified in the income statement as a component of cost of goods sold.

[14] Registrants are reminded of the requirements in FASB Statement No. 38, paragraph 4(b) and SAB Topic 2–A (7). The staff believes that the allocation period should not extend beyond the minimum reasonable period necessary to gather the information that the registrant has arranged to obtain for purposes of the estimate, and in any event usually should not exceed one year.

[15] EITF 94–3 requires that the effect of recognizing a liability for exit costs should be presented in income from continuing operations and not net of taxes. Refer to EITF 94–3 for additional guidance regarding the income statement presentation.

[16] Examples of common components of exit costs and other types of restructuring charges which should be considered for separate disclosure include, but are not limited to, involuntary employee terminations and related costs, changes in valuation of current assets such as inventory writedowns, long term asset disposals, adjustments for warranties and product returns, leasehold termination payments, and other facility exit costs, among others.

that impair the carrying amount of assets, generally occur over time. Accordingly, the staff believes that as those events and the resulting trends and uncertainties evolve, they often will meet the requirement for disclosure pursuant to the Commission's MD&A rules prior to the period in which the exit costs and liabilities are recorded pursuant to GAAP. Whether or not currently recognizable in the financial statements, material exit or involuntary termination costs that affect a known trend, demand, commitment, event, or uncertainty to management, should be disclosed in MD&A. The staff believes that MD&A should include discussion of the events and decisions which gave rise to the exit costs and exit plan, and the likely effects of management's plans on financial position, future operating results and liquidity unless it is determined that a material effect is not reasonably likely to occur. Registrants should identify the periods in which material cash outlays are anticipated and the expected source of their funding. Registrants should also discuss material revisions to exit plans, exit costs, or the timing of the plan's execution, including the nature and reasons for the revisions.

The staff believes that the expected effects on future earnings and cash flows resulting from the exit plan (for example, reduced depreciation, reduced employee expense, *etc.*) should be quantified and disclosed, along with the initial period in which those effects are expected to be realized. This includes whether the cost savings are expected to be offset by anticipated increases in other expenses or reduced revenues. This discussion should clearly identify the income statement line items to be impacted (for example, cost of sales; marketing; selling, general and administrative expenses; *etc.*). In later periods if actual savings anticipated by the exit plan are not achieved as expected or are achieved in periods other than as expected, MD&A should discuss that outcome, its reasons, and its likely effects on future operating results and liquidity.

The staff often finds that, because of the discretionary nature of exit plans and the components thereof, presenting and analyzing material exit and involuntary termination charges in tabular form, with the related liability balances and activity (*e.g.*, beginning balance, new charges, cash payments, other adjustments with explanations, and ending balances) from balance sheet date to balance sheet date, is necessary to explain fully the components and effects of significant restructuring charges. The staff believes that such a tabular analysis aids a financial statement user's ability to disaggregate the restructuring charge by income statement line item in which the costs would have otherwise been recognized, absent the restructuring plan (for example, cost of sales; selling, general, and administrative; *etc.*).

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A.A. * * *

B.B. *Inventory Valuation Allowances*

Facts: Accounting Research Bulletin No. 43 (ARB 43), Chapter 4, Statement 5, specifies that: ''A departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical obsolescence, changes in price levels, or other causes, the difference should be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as market.''

Footnote 2 to that same chapter indicates that ''In the case of goods which have been written down below cost at the close of a fiscal period, such reduced amount is to be considered the cost for subsequent accounting purposes.''

Lastly, Accounting Principles Board Opinion No. 20, *Accounting Changes*, provides ''inventory obsolescence'' as one of the items subject to estimation and changes in estimates under the guidance in paragraphs 10–11 and 31–33 of that standard.

Question: Does the write-down of inventory to the lower of cost or market, as required by ARB 43, create a new cost basis for the inventory or may a subsequent change in facts and circumstances allow for restoration of inventory value, not to exceed original historical cost?

Interpretive Response: Based on ARB 43, footnote 2, the staff believes that a write-down of inventory to the lower of cost or market at the close of a fiscal period creates a new cost basis that subsequently cannot be marked up based on changes in underlying facts and circumstances.[17]

C.C. *Impairments*

Standards for recognizing and measuring impairment of the carrying amount of long-lived assets, certain identifiable intangibles, and goodwill related to those assets to be held and used are found in Statement of Financial Accounting Standards No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of* (SFAS 121). Additional guidance related to goodwill impairment is also provided in Accounting Principles Board (APB) Opinion No. 17, *Intangible Assets* (APB 17). The FASB currently has active projects addressing both SFAS 121 and APB 17 issues. The staff will reconsider the guidance provided below upon completion of those projects.

Facts: Company X has mainframe computers that are to be abandoned in six to nine months as replacement computers are put in place. The mainframe computers were placed in service in January 19X0 and were being depreciated on a straight-line basis over seven years. No salvage value had been projected at the end of seven years and the original cost of the computers was $8,400. The board of directors, with the appropriate authority, approved the abandonment of the computers in March 19X3 when the computers had a remaining carrying value of $4,600. No proceeds are expected upon abandonment. Abandonment cannot occur prior to the receipt and installation of replacement computers, which is expected prior to the end of 19X3. Management had begun reevaluating its mainframe computer capabilities in January 19X2 and had included in its 19X3 capital expenditures budget an estimated amount for new mainframe computers. The 19X3 capital expenditures budget had been prepared by management in August 19X2, had been discussed with the company's board of directors in September 19X2 and was formally approved by the board of directors in March 19X3. Management had also begun soliciting bids for new mainframe computers beginning in the fall of 19X2. The mainframe computers, when grouped with assets at the lowest level of identifiable cash flows, were not impaired on a ''held and used'' basis throughout this time period. Management had not adjusted the original estimated useful life of the computers (seven years) since 19X0.

Question 1: Company X proposes to recognize an impairment charge under SFAS 121 for the carrying value of the mainframe computers of $4,600 in March 19X3. Does Company X meet the requirements in SFAS 121 to classify the mainframe computer assets as ''to be disposed of?''

Interpretive Response: No. SFAS 121, paragraph 15, provides that when management, having the authority to approve the action, has committed to a plan to dispose of the assets, whether by

[17] See also disclosure requirements for inventory balances in Rule 5–02–6 of Regulation S–X.

sale or abandonment, the assets to be disposed of should be reported at the lower of carrying amount or fair value less cost to sell. The staff believes that registrants must also consider the criteria in APB Opinion No. 30, *Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions* (APB 30), paragraph 14, and Emerging Issues Task Force Issue No. 94–3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring)* (EITF 94–3) to determine whether a plan is sufficiently robust to designate the assets as assets to be disposed of. APB 30 and EITF 94–3 require a plan to have the following characteristics:

- Prior to the date of the financial statements, management having the appropriate level of authority approves and commits the enterprise to a formal plan of disposal, whether by sale or abandonment;
- The plan specifically identifies all major assets to be disposed of, significant actions to be taken to complete the plan, including the method of disposition and location of those activities, and the expected date of completion;
- There is an active program to find a buyer if disposal is to be by sale;
- Management can estimate proceeds to be realized on disposal;
- Actions required by the plan will begin as soon as possible after the commitment date; and
- The period of time to complete the plan indicates that significant changes to the plan are not likely.

The staff believes that a necessary condition of a plan to dispose of assets in use is that management have the current ability to remove the assets from operations. For example, the staff believes that the above fact pattern would not qualify as a plan of disposal under SFAS 121 in March 19X3 because the mainframe computer assets cannot be taken out of service and abandoned prior to installing the new, but not yet available, mainframe computers. The operational requirement to continue to use the assets is indicative that the assets are still held for use. The staff does not intend this guidance to mean that assets to be sold must be removed from service in order to be designated as assets held for disposal. Rather, the company must be able to remove the assets from service upon identification of a buyer or receipt of an acceptable bid, but the assets can otherwise remain in service provided the criterion in SFAS 121 has been met. If a buyer is found and an acceptable offer is received, but the assets must be retained by the seller for some period due to ongoing operational needs, the criterion for ''to be disposed of'' treatment has not been met.

The staff also believes that an active program to find a buyer exists only if the marketing effort commenced promptly after the commitment date and continued unabated until the sale was accomplished.

Question 2: Would the staff accept an adjustment to write down the carrying value of the computers to reflect a ''normalized depreciation'' rate for the period from March 19X3 through actual abandonment (*e.g.*, December 19X3)? Normalized depreciation would represent the amount of depreciation otherwise expected to be recognized during that period without adjustment of the asset's useful life, or $1,000 ($100/month for ten months) in the example fact pattern.

Interpretive Response: No. Whether the mainframe computers are viewed as ''to be disposed of'' or ''held and used'' at March 19X3, there is no basis under SFAS 121 to write down an asset to an amount that would subsequently result in a ''normalized depreciation'' charge through the disposal date. For an asset that meets the requirements to be classified as ''to be disposed of'' under SFAS 121, paragraph 15 of that standard requires the asset to be valued at the lower of carrying amount or fair value less cost to sell. For assets that are classified as ''held and used'' under SFAS 121, an assessment must first be made as to whether the asset is impaired. Paragraph 6 of SFAS 121 indicates that an impairment loss should be recognized only if the sum of the expected future cash flows (undiscounted and without interest charges) is less than the carrying amount of the asset(s) grouped at the lowest level of identifiable cash flows. If an impairment loss is to be recognized for an asset to be ''held and used,'' it is measured as the amount by which the carrying amount of the asset exceeds the fair value of the asset. The staff would object to a write down of long-lived assets to a ''normalized depreciation'' value as representing an acceptable alternative to the approaches required in SFAS 121.

The staff also believes that registrants must continually evaluate the appropriateness of useful lives assigned to long-lived assets, including identifiable intangible assets and goodwill.[18] In the above fact pattern, management had contemplated removal of the mainframe computers beginning in January 19X2 and, more formally, in August 19X2 as part of compiling the 19X3 capital expenditures budget. At those times, at a minimum, management should have reevaluated the original useful life assigned to the computers to determine whether a seven year amortization period remained appropriate given the company's current facts and circumstances, including ongoing technological changes in the market place. This reevaluation process should have continued at the time of the September 19X2 board of directors' meeting to discuss capital expenditure plans and, further, as the company pursued mainframe computer bids. Given the contemporaneous evidence that management's best estimate during much of 19X2 was that the current mainframe computers would be removed from service in 19X3, the depreciable life of the computers should have been adjusted prior to 19X3 to reflect this new estimate. The staff does not view the recognition of an impairment charge to be an acceptable substitute for choosing the appropriate initial amortization or depreciation period or subsequently adjusting this period as company or industry conditions change. The staff's view applies also to selection of, and changes to, estimated residual values. Consequently, the staff may challenge impairment charges for which the timely evaluation of useful life and residual value cannot be demonstrated.

Question 3: Although the carrying amount of goodwill related to assets to be held and used must be assessed for impairment in conformity with SFAS 121, paragraph 107 of that standard observes that cost of goodwill that is not identified with impaired assets (*i.e.,* ''enterprise level'') continues to be accounted for under APB 17. Companies are required by paragraph 31 of APB 17 to evaluate continually whether events and circumstances warrant revised estimates of useful lives or recognition of a charge-off of carrying amounts. APB 17 does not specify a particular quantitative methodology for measuring the existence or extent of an impairment. What methodologies are acceptable for determining impairment of ''enterprise level'' goodwill under APB 17?

Interpretive Response: Several methodologies have evolved for measuring impairment of enterprise level goodwill under APB 17. These

[18] See APB 17, paragraph 31, and SFAS 121, paragraph 6 and footnote 1.

methodologies appear to fall within three general categories: market value method, undiscounted cash flows methods, and discounted cash flows methods. A market value method compares the enterprise's net book value to the value indicated by the market price of its equity securities; if net book value exceeds market capitalization, the excess carrying amount of goodwill is written off. Cash flow methods employ forecasts of the enterprise's future cash flows, with comparison of the enterprise's net book value to (a) aggregate cash flow, or (b) the present value of those cash flows. The staff has observed variations in practice with respect to when a registrant will recognize an impairment of the carrying amount of enterprise goodwill depending on which of these methods is applied, how an enterprise's capitalization will be considered in cash flow forecasts, and how the discount rate is selected.

Regardless of the method used and the diversity in application of some of those methods, the staff believes that the evaluation of enterprise level goodwill cannot occur at a level which does not include all of the operations which benefit directly from that acquired intangible. If an acquired business has been managed as a separate business unit, the business unit may be the appropriate level to evaluate the related goodwill. In contrast, if the acquired business has been fully integrated into the registrant's operations, evaluation of the purchased goodwill would be appropriate only at the level of the registrant as a whole.

Question 4: A registrant's method of assessing and measuring the impairment of enterprise level goodwill under APB 17 is an accounting policy subject to APB Opinion No. 22, *Disclosure of Accounting Policies* (APB 22).[19] What disclosures would the staff expect regarding the method selected?

Interpretive Response: Until diversity in practice is reduced, a company that reports material amounts of unamortized cost of goodwill or that recognizes material amounts of goodwill amortization should describe the manner in which the carrying amount of enterprise level goodwill is assessed for recoverability and how and when any impairment would be measured. Materiality is to be assessed based on the relationship of the unamortized asset balance to other financial position measurements (including shareholders' equity) or of the relationship of the amortization expense to income statement measurements.

The staff believes that the policy adopted by the company, and the description of that policy included in the financial statements, should be explicit and refer to objective, rather than discretionary, factors. The staff would expect the following to be addressed:

- What conditions would trigger an impairment assessment of the carrying amount of enterprise level goodwill;
- What method—market value, discounted or undiscounted cash flows—would be used to measure an impairment;
- How the method would be implemented, including how interest charges would be considered in the assessment, how the discount rate would be selected, and other significant aspects of the policy.

When there is a change in the method used to assess the carrying value of goodwill, the Commission's rules[20] require a preferability letter from the company's auditors. The staff does not believe that it would be appropriate to rely on the guidance in SFAS 121 concerning impairments of long-lived assets to justify preferability of changes in the method of evaluating impairment of the carrying amount of enterprise level goodwill. For example, a company that previously changed from an undiscounted cash flow method to assess recoverability of enterprise level goodwill to a method that uses discounted cash flow could not justify a change back to an undiscounted cash flow method by reference to SFAS 121. The staff believes that, generally, a discounted cash flows approach is preferable to an undiscounted cash flows approach and a market value approach is preferable to using a discounted cash flows approach, assuming that market value is reliably determinable.

The staff believes that an impairment triggered by a change in accounting policy should be treated as a change in accounting principle inseparable from a change in estimate.[21] The impairment charge should be presented as a change in estimate within operating income (or loss) and not as the cumulative effect of a change in accounting principle.

Facts: Company A acquires 100 percent of Company B in a purchase business combination, with Company B becoming a wholly owned subsidiary of Company A. The acquisition cost of $1,000 is pushed down to Company B's financial records, resulting in an allocation of $300 to fixed assets, $600 to goodwill, and $100 to other net assets. The fixed assets are composed entirely of four manufacturing facilities.

Two years after the acquisition, Company A commits to a reorganization plan that calls for the relocation of Company B's manufacturing operations to facilities separately owned and operated by Company A. Company B's line of products will continue to be marketed. There will be no reduction in the level of output of Company B's products as a result of the relocation, nor will there be any diminution in expected profitability in future years. That level of profitability is expected to recover the remaining cost of the unamortized goodwill. Company A has committed to dispose of the manufacturing facilities of Company B and has met all of the criteria necessary to classify those assets as ''to be disposed of'' under SFAS 121. Company A expects to realize $200 in net proceeds from the sale of the four manufacturing facilities. The current carrying amounts for the facilities and goodwill are $280 and $480, respectively, which are not impaired on a ''held and used'' basis.

Question 5: Is it appropriate to recognize an impairment loss of $560 ($280+$480 − $200) based on the excess of the carrying amount of goodwill and fixed assets over net sales proceeds?

Interpretive Response: No. An impairment loss can be recognized only for the $80 loss ($280 − $200) on the sale of the facilities. Paragraph 123 of SFAS 121 indicates that goodwill related to assets to be disposed of by an entity should be accounted for under the provisions of APB 17, paragraph 32, which states:

''Ordinarily goodwill and similar intangible assets cannot be disposed of apart from the enterprise as a whole. However, a large segment or separable group of assets of an acquired company or the entire acquired company may be sold or otherwise liquidated, and all or a portion of the unamortized cost of the goodwill recognized in the acquisition should be included in the cost of the assets sold.''

In the above fact pattern, the staff believes that the operations and business of Company B, which supported the initial premium resulting in the recognition of goodwill, were not diminished by the disposition of solely physical facilities. The underlying operations, customer relationships, future revenue streams, and business outlook remained intact and, as a result, the staff believes that it is inappropriate to treat the disposition of manufacturing

[19] See also APB Opinion No. 12, *Omnibus Opinion—1967,* regarding disclosure requirements for depreciable assets.

[20] See Rule 10–01(b)(6) of Regulation S–X.

[21] See paragraph 32 of APB Opinion No. 20, *Accounting* Changes.

facilities as if the business itself had been disposed of. The staff would object to the allocation of goodwill to the disposed manufacturing facilities.

Paragraph 19 of SFAS 121 requires disclosure of the results of operations of assets held for disposal. If revenues attributable to assets to be disposed of, that remain in operation for some period of time prior to their disposal, cannot be segregated because substantially the same revenues will continue after the assets are disposed of, the amount of the benefit from suspending depreciation, in accordance with SFAS 121, paragraph 16, should be disclosed. The effect associated with assets held for disposal should be discussed in Management's Discussion and Analysis (MD&A), if material.

Facts: Assume the same fact pattern as for Question 5, except that the four manufacturing facilities will be shut down, but not disposed of or abandoned. The four manufacturing facilities do not meet the criteria necessary to be classified as ''to be disposed of'' under SFAS 121 but are impaired on a ''held and used'' basis under SFAS 121. Company A intends to retain the four facilities in case the need arises in the future for further manufacturing capacity.

Question 6: Would the staff object to the company's proposal to recognize an impairment loss based on the excess of the carrying amount of goodwill and fixed assets over fair value?

Interpretive Response: Yes. Paragraph 12 of SFAS 121 specifies:

''If an asset being tested for recoverability was acquired in a business combination accounted for using the purchase method, the goodwill that arose in that transaction shall be accounted for as part of the asset grouping * * * in determining recoverability. If some but not all of the assets acquired in that transaction are being tested, goodwill shall be allocated to the assets being tested for recoverability on a pro rata basis using the relative fair values of the long-lived assets and identifiable intangibles acquired at the acquisition date unless there is evidence to suggest that some other method of associating the goodwill with those assets is more appropriate.''

In the above fact pattern, the staff believes that it is inappropriate to allocate the carrying amount of the goodwill balance to the four facilities being evaluated for impairment. In this instance, the goodwill that existed at the time Company B was acquired principally was the result of a customer base, marketing activities, existing product lines and new products being developed. It did not relate to the fixed assets but, rather, the ongoing operations of the business, which have not been reduced in any way. The goodwill represents the inherent value of the going concern element of Company B and the ability of the entity to generate a return in excess of the return that could be generated on the acquired assets individually, all of which are still in place. The staff contrasts this scenario with one where facilities are eliminated in conjunction with a subsequent decision to abandon the product or business line housed in those facilitites. If the revenue producing activity and the facilities had been acquired in a business combination giving rise to recognition of goodwill, a portion of goodwill should be allocated to the facilities based on their relative fair value, unless another allocation method is more appropriate.

Question 7: Has the staff expressed any views with respect to company-determined estimates of cash flows used for assessing and measuring impairment of assets under SFAS 121?

Interpretive Response: In providing guidance on the development of cash flows for purposes of applying the provisions of SFAS 121, paragraph 9 of that standard indicates that estimates of expected future cash flows should be the best estimate based on reasonable and supportable assumptions and projections. Additionally, paragraph 9 indicates that all available evidence should be considered in developing estimates of expected future cash flows and that the weight given to the evidence should be commensurate with the extent to which the evidence can be verified objectively.

The staff recognizes that various factors, including management's judgments and assumptions about the business plans and strategies, affect the development of future cash flow projections for purposes of applying SFAS 121. The staff, however, cautions registrants that the judgments and assumptions made for purposes of applying SFAS 121 must be consistent with other financial statement calculations and disclosures and disclosures in MD&A. The staff also expects that forecasts made for purposes of applying SFAS 121 be consistent with other forward-looking information prepared by the company, such as that used for internal budgets, incentive compensation plans, discussions with lenders or third parties, and/or reporting to management or the board of directors.

For example, the staff has reviewed a fact pattern where a registrant developed cash flow projections for purposes of applying the provisions of SFAS 121 using one set of assumptions and utilized a second, more conservative set of assumptions for purposes of determining whether deferred tax valuation allowances were necessary when applying the provisions of Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes.* In this case, the staff objected to the use of inconsistent assumptions.

In addition to disclosure of key assumptions used in the development of cash flow projections, the staff also has required discussion in MD&A of the implications of assumptions. For example, do the projections indicate that a company is likely to violate debt covenants in the future? What are the ramifications to the cash flow projections used in the impairment analysis? If growth rates used in the impairment analysis are lower than those used by outside analysts, has the company had discussions with the analysts regarding their overly optimistic projections? Has the company appropriately informed the market and its shareholders of its reduced expectations for the future that are sufficient to cause an impairment charge? The staff believes that cash flow projections used in the impairment analysis must be both internally consistent with the company's other projections and externally consistent with financial statement and other public disclosures.

* * * * *

[FR Doc. 99–31160 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2000. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2000 maximum guaranteed benefit

amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to ''$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200].'' This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $56,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2000. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $56,700/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2000 is $3,221.59 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2000. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,221.59 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2000 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 2000 maximum guaranteeable benefit amounts for the information of the public, general notice of proposed rulemaking is not required.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. The appendix to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
* * *	* *
2000	3,221.59

PART 4011—DISCLOSURE TO PARTICIPANTS

3. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

4. Appendix B to part 4011 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
*	*	*	*		*	*		*
2000	$3,221.59	$38,659.08	$2,545.06	$30,540.72	$2,094.03	$25,128.36	$1,449.72	$17,396.64

Issued in Washington, DC, this 19th day of November, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–31044 Filed 11–30–99; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table that applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 2000, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (*i.e.,* the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–99 with Table I–00 in order to provide an updated correlation, appropriate for calendar year 2000, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–00 will be used to value benefits in plans with valuation dates during calendar year 2000.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2000, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2000.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–99 and adding in its place Table I–00 to read as follows:

Appendix D to Part 4044—Tables Used to Determine Expected Retirement Age

TABLE I–00—SELECTION OF RETIREMENT RATE CATEGORY

(For Plans with valuation dates after December 31, 1999, and before January 1, 2001)

Participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at URA is less than—	Medium [2] if monthly benefit at URA is		High [3] if monthly benefit at URA is greater than—
		From	To	
2001	430	430	1,814	1,814
2002	440	440	1,856	1,856
2003	450	450	1,899	1,899
2004	461	461	1,942	1,942
2005	471	471	1,987	1,987
2006	482	482	2,033	2,033
2007	493	493	2,080	2,080
2008	504	504	2,127	2,127
2009	516	516	2,176	2,176
2010 or later	528	528	2,226	2,226

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, DC, this 19th day of November, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–31043 Filed 11–30–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 287

[DISA Instruction 630–225–8]

Defense Information Systems Agency Freedom of Information Act Program

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Final rule.

SUMMARY: This part applies to the Department of Defense, Defense Information Systems Agency and the Office of the Manager, National Communications System (OMNCS). The regulation provides guidance on the implementation of the ''Freedom of Information Act Program'' within the Defense Information Systems Agency and the OMNCS. It was written to comply with the Freedom of Information Act, as amended by the ''Electronic Freedom of Information Act'' amendments of 1996.

EFFECTIVE DATE: November 30, 1999.

ADDRESSES: Defense Information Systems Agency, Attn: RGC (FOIA Officer), 701 South Courthouse Road, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Robin M. Berger, (703) 607–6515.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 287 is not a significant regulatory action. The rule does not:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part would provide guidance on the implementation of the Freedom of Information Act Program within the Defense Information Systems Agency and the Office of the Manager, National Communications System (OMNCS). It was written to comply with the Freedom of Information Act, as amended by the Electronic Freedom of Information Act amendments of 1996.

Public Law 104–13, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This part would provide guidance on the implementation of the Freedom of Information Act Program within the Defense Information Systems Agency and the Office of the Manager, National Communications System (OMNCS). It was written to comply with the Freedom of Information Act, as amended by the Electronic Freedom of Information Act amendments of 1996.

List of Subjects in 32 CFR Part 287

Freedom of information.

Accordingly, 32 CFR part 287 is revised to read as follows:

PART 287—DEFENSE INFORMATION SYSTEMS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

Authority: 5 U.S.C. 552.

§ 287.1 Purpose.

This part assigns responsibilities for the Freedom of Information Act (FOIA) Program for DISA.

§ 287.2 Applicability.

This part applies to DISA and the Office of the Manager, National Communications System (OMNCS).

§ 287.3 Authority.

This part is published in accordance with (IAW) the authority contained in 32 CFR part 286. It supplements 32 CFR part 286 to accommodate specific requirements of the DISA FOIA Program. However, 32 CFR part 286 takes precedence and shall be used for all issues not covered by this part.

§ 287.4 Duties of the FOIA officer.

The DISA FOIA Officer, located at DISA Headquarters, 701 S. Courthouse Road, Arlington, Virginia, is vested with the authority, within DISA, to release documentation for all requests of Agency records received by DISA directorates and field activities. The DISA FOIA Officer will:

(a) Make the materials described in 32 CFR 286.7 available for public inspection and reproduction. (A current index of this material will be maintained in accordance with 32 CFR 286.8).

(b) Establish education and training programs for all DISA employees who contribute to the DISA FOIA Program.

(c) Respond to all requests for records from private persons IAW 32 CFR part 286 whether the requests are received directly by DISA Headquarters or by DISA field activities. Coordinate proposed releases with the General Counsel in any case in which the release is, or may be, controversial. Coordinate all proposed denials with the General Counsel.

(d) Be the DISA principal point of contact for coordination with the Directorate for Freedom of Information and Security Review (DFOISR) Washington Headquarters Services, reference FOIA issues.

(e) Ensure the cooperation of DISA with DFOISR in fulfilling the responsibilities of monitoring the FOIA Program.

(f) Coordinate cases of significance with DFOISR, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(g) Advise DFOISR prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record or when circumstances suggest a potential public controversy.

(h) Ensure completion of the annual reporting requirement contained in 32 CFR part 286.

§ 287.5 Responsibilities

(a) *Deputy Directors, Headquarters, DISA; Commanders and Chiefs of DISA Field Activities; and the Deputy Manager, NCS.* These individuals will furnish the FOIA Officer, when requested, with DISA documentary material, which qualifies as a record IAW 32 CFR part 286, for the purpose of responding to FOIA requests.

(b) *Chief of Staff.* The Chief of Staff will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or civilian employees of DISA. (This will be coordinated with the General Counsel.)

(c) *General Counsel.* The General Counsel or, in his or her absence, the Deputy General Counsel, is vested with the authority to deny, in whole or in part, a FOIA request received by DISA. The General Counsel will:

(1) Make the decision to deny a record in whole or in part; to deny a fee category claim; to deny a request for waiver or reduction in fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing; or to confirm that no records were located during the initial search IAW 5 U.S.C. 552, as supplemented by the guidance provided in 32 CFR part 286

(2) Inform the person denied the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA, via written correspondence.

(3) Review any appeal the public may consider adverse in nature and ensure that the basis for the determination by the Director, DISA, be in writing, state the reasons for the denial, and inform the requester of his or her right to a judicial review in the appropriate U.S. District Court.

(4) Arrange for the publication of this part in the **Federal Register**.

(d) Chief, Legal Counsel, Defense Information Technology Contracting Organization (DITCO). The Chief Legal Counsel, DITCO, or, in his or her absence, the Deputy Legal Counsel, DITCO, is vested with same authority and responsibilities, for DITCO, as stated in paragraph (c) of this section.

(e) Administrator, Defense Technical Information Center (DTIC). The Administrator, DTIC, is vested with the same authority and responsibilities, for DTIC, as stated in paragraph (c) of this section.

§ 287.6 Duties of the DITCO and the DTIC FOIA officers.

(a) *DITCO FOIA Officer.* The DITCO FOIA Officer, located at 2300 East Drive, Scott AFB, IL 62225, is vested with the authority, within DITCO, to release documentation for all requests of records received by DITCO and its field activities, as stated in § 287.4 (a), (b), and (c) and assist the DISA FOIA officer in carrying out the duties stated in § 287.4 (d) and (h).

(b) *DTIC FOIA Officer.* The DTIC FOIA Officer, located at 8725 John J. Kingman Road, Suite 0944, Ft. Belvoir, VA 22060, is vested with the authority, within DTIC, to release documentation for all requests of records within DTIC, as stated in § 287.4 (a), (b), and (c) and assist the DISA FOIA officer in carrying out the duties stated in § 287.4 (d) and (h).

§ 287.7 Fees.

Fees charged to the requester are contained in 32 CFR part 286.

§ 287.8. Appeal rights.

All appeals should be addressed to the Director, DISA, and be postmarked no later than 60 days after the date of the initial denial letter.

§ 287.9. Reports.

An annual report will be furnished to the FOIA Officer by the field activities by 15 October IAW 32 CFR part 286.

§ 287.10 Questions.

Questions on both the substance and procedures of the FOIA and the DISA implementation thereof should be addressed to the FOIA Officer by the most expeditious means possible, including telephone calls, faxes, and electronic mail. FOIA requests should be addressed as follows: Defense Information Systems Agency, 701 S. Courthouse Road, Arlington, VA 22204–2199, Attn: RGC. Calls should be made to (703) 607–6515. Faxed requests should be addressed to the FOIA Officer at (703) 607–4344. Electronic mail requests should be addressed to bergerr@ncr.disa.mil.

§ 287.11 ''For Official Use Only'' Records.

The designation ''For Official Use Only'' will be applied to documents and other material only as authorized by 32 CFR part 286 and DoD 5200.1–R.[1]

Dated: November 24, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–31118 Filed 11–30–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–089]

RIN 2115–AE46

Special Local Regulations for Marine Events; New Year's Celebration Fireworks, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the New Year's Celebration Fireworks, to be held over the waters of the Patapsco River, Baltimore, Maryland. These special local regulations are needed to protect spectators and other vessels transiting the event area from the dangers associated with the fireworks displays. The effect will be to restrict general navigation in the regulated areas in order to enhance the safety of life and property during the event.

DATES: This rule is effective from 11:45 p.m. on December 31, 1999 to 12:35 a.m. on January 1, 2000, and from 6:45 p.m. to 7:35 p.m. on January 1, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD 05–99–089] and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

[1] Copies may be obtained via Internet at http://web7.whs.osd.mil/corres.htm

Regulatory Information

On October 8, 1999, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; New Year's Celebration Fireworks, Patapsco River, Baltimore, MD'' in the **Federal Register** (64 FR 54849). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Baltimore Office of Promotions will sponsor the New Year's Celebration Fireworks, to be held over the waters of the Patapsco River, Baltimore, Maryland. The event will consist of pyrotechnic displays fired from 2 barges positioned in the Inner Harbor and Northwest Harbor. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Regulatory Evaluation

This 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 temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a limited amount of time, extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

The Coast Guard expects the impact of this proposed rule to be minimal. The regulated area will only be in effect for a limited amount of time, extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance were received.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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 government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. An ''Environmental Analysis Checklist'' and a ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–T05–089 is added to read as follows:

§ 100.35–T05–089 New Year's Celebration Fireworks, Patapsco River, Baltimore, MD.

(a) *Regulated areas:*

(1) *Inner Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16′54″ North, longitude 076°36′18″ West. All coordinates reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16′36″ North, longitude 076°35′48″ West. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Special local regulations:*

(1) All persons and/or vessels not authorized as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective dates.* This section is effective from 11:45 p.m. on December 31, 1999 to 12:35 a.m. on January 1, 2000, and from 6:45 p.m. to 7:35 p.m. on January 1, 2000.

Dated: 22 November 1999.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 99–31127 Filed 11–30–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–096]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 for the Eastport Yacht Club Lighted Boat Parade, a marine event to be held December 11, 1999, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: This rule is effective from 4:45 p.m. to 9:15 p.m. on December 11, 1999.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (401) 576–2674.

SUPPLEMENTARY INFORMATION: The Eastport Yacht Club will sponsor a lighted boat parade on the waters of the Severn River and Spa Creek at Annapolis, Maryland. The event will consist of approximately 50 vessels, ranging in length from 20 to 55 feet, traveling at slow speed along two separate parade routes in Annapolis Harbor. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: November 22, 1999.

J. E. Shkor,

Vice Admiral, U.S. Coast Guard Commander Fifth Coast Guard District.

[FR Doc. 99–31130 Filed 11–30–99 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–187]

Drawbridge Operation Regulations: Acushnet River, Annisquam River, Fore River, and Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations and request for comments.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations governing the Route 6 Bridge, mile 0.0, across the Acushnet River between New Bedford and Fairhaven; the Route 127 Bridge, mile 0.0, across the Annisquam River in Gloucester; the SR3A Bridge, mile 3.5, across the Fore River between Quincy and Weymouth, and the Route 6 Bridge, mile 1.8, across the Taunton River between Fall River and Somerset, all located in Massachusetts. This deviation from the operating regulations is necessary to test an alternate drawbridge operation schedule for the Christmas and New Year holidays. It is expected

that this alternate schedule will relieve the bridge owner of the requirement to crew the bridge on the holidays and still meet the reasonable needs of navigation.

DATES: This deviation is effective from December 24, 1999 to January 1, 2000. Comments must reach the Coast Guard on or before January 31, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit comments, written data, views, or arguments, concerning this deviation from the drawbridge operation regulations. Persons submitting comments should include their names and addresses, identify this notice (CGD01–99–187) and give reasons for each comment. The Coast Guard requests that all comments and attachments be no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Persons may submit comments by writing to, Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110–3350.

Background

The Route 6 Bridge (Acushnet River) has a vertical clearance of 8 feet at mean high water (MHW) and 12 feet at mean low water (MLW). The Route 127 Bridge has a vertical clearance of 7 feet at MHW and 16 feet at MLW. The Quincy-Weymouth SR3A Bridge has a vertical clearance of 33 feet at MHW and 43 feet at MLW. The Route 6 Bridge (Taunton River) has a vertical clearance of 27 feet at MHW and 31 feet at MLW.

The existing regulations for the Route 6 Bridge (Acushnet River) listed at 33 CFR 117.585 require the bridge to open on signal on the hour between 6 a.m. and 10 a.m., open at a quarter past the hour from 11:15 a.m. to 6:15 p.m., and at all other times on signal. The Route 127 Bridge is governed by 33 CFR 117.5 and is required to open on signal at all times. The existing regulations for the Quincy Weymouth SR3A Bridge listed at 33 CFR 117.621 require it to open on signal; except that, from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday, except holidays, the draw will not open for vessel traffic. The draw opens at all times for self-propelled vessels greater than 10,000 gross tons. The existing regulations for the Route 6 Bridge (Taunton River) listed at 117.5 require it to open on signal at all times.

The bridge owner, Massachusetts Highway Department (MHD), asked the Coast Guard to change the operating regulations for the above bridges to require a two-hour advance notice from 6 p.m. on December 24, 1999, to midnight on December 25, 1999, and from 6 p.m. on December 31, 1999, to midnight on January 1, 2000. There have been no requests to open these bridges on the above dates in past years.

The purpose of this temporary deviation is to test an alternate operating schedule for holiday hours at the above bridges. Under this temporary deviation from the regulations the Route 6 Bridge, mile 0.0, across the Acushnet River, between New Bedford and Fairhaven, the Route 127 Bridge, mile 0.0, across the Annisquam River in Gloucester, the SR3A Bridge, mile 3.5, across the Fore River between Quincy and Weymouth, and the Route 6 Bridge, mile 1.8, across the Taunton River between Fall River and Somerset, all located in Massachusetts, shall operate as follows: The draws shall open on signal if at least a two-hour advance notice for bridge openings is given from 6 p.m. on December 24, 1999, to midnight December 25, 1999, and from 6 p.m. on December 31, 1999, to midnight on January 1, 2000. Requests for openings may be made by calling the Massachusetts Highway Department at 1–(800) 227–0608.

Vessels that can pass under the bridges without openings may do so at all times. This deviation is authorized under 33 CFR 117.43.

Dated: November 22, 1999.

R.M. Larrabee,

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

[FR Doc. 99–31128 Filed 11–30–99 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 127, 154, 155, 159, 164, and 183; and

46 CFR Parts 28, 30, 32, 34, 35, 38, 39, 54, 56, 58, 61, 63, 76, 77, 78, 92, 95, 96, 97, 105, 108, 109, 110, 111, 114, 119, 125, 151, 153, 154, 160, 161, 162, 163, 164, 170, 174, 175, 182, 190, 193, 195, and 199

[USCG–1999–5151]

RIN 2115–AF80

Update of Standards From the American Society for Testing and Materials (ASTM)

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard amends Titles 33 and 46, Code of Federal Regulations, to render current the standards incorporated by reference from the American Society for Testing and Materials (ASTM). Some of the standards incorporated were over 30 years out of date. This rule incorporates the most recent editions of the standards to ensure the use by regulated industry of the latest technology.

DATES: This direct final rule is effective on February 29, 2000, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before January 31, 2000. If you submit an adverse comment, or notice of intent to submit an adverse comment, the Coast Guard will withdraw this rule and publish a timely notice of withdrawal in the **Federal Register**. The incorporation by reference of publications in this rule was approved by the Director of the Federal Register on February 29, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5151), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may inspect the material incorporated by reference at room 1312, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0257. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Ms. Janet Walton, Office of Standards, Evaluation and Development (G–MSR), U.S. Coast Guard, telephone 202–267–0257. For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5151), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which appear in 33 CFR 1.05–55, because it anticipates no adverse comment. Unless, during the specified comment period, it receives either a written adverse comment or written notice of intent to submit one, this rule will become effective on February 29, 2000. In that case, shortly before or after that date, the Coast Guard will publish a document in the **Federal Register** stating that it received neither any written adverse comment nor any written notice of intent to submit one and confirming that this rule will or did become effective on February 29, 2000.

Nevertheless, if the Coast Guard receives either a written adverse comment or written notice of intent to submit one, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this rule. If an adverse comment or a notice of intent to submit one applies to only part of this rule, and removal of that part is possible without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which it received no such comment or notice. In either case it will withdraw any part of this rule that was the subject of any such comment or notice. If it decides to proceed with a rulemaking following receipt of any such comment or notice, it will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment counts as ''adverse'' if it explains why this rule would be inappropriate or would be ineffective or unacceptable without a change, or challenges the premise or approach of the rule.

Background and Purpose

The Coast Guard uses standards established by other organizations, such as ASTM, as a means of establishing technical requirements. Incorporation by reference allows the Coast Guard to include these technical standards in its rules without increasing the volume of the Code of Federal Regulations (CFR). The **Federal Register** is the only medium through which the Coast Guard and other agencies can incorporate by reference. 1 CFR part 51 prescribes the methods and procedures for incorporation by reference.

This rule changes most of the 170 standards from ASTM now incorporated by reference in titles 33 and 46 of the CFR. Standards B 858, D 4268, F 1387, F 1548, and Adjunct F 1626 continue to call for the most recent technology and have not yet been withdrawn or updated by ASTM. ASTM typically updates each standard every 5 years.

ASTM has discontinued standards A 7, A 300, A 430, A 442, A 525, B 97, B 141, and D 1692 and replaced each with a different standard from ASTM. The Coast Guard has eliminated standards F 808 and F 989 from its rules without replacement since ASTM discontinued them, and the Coast Guard has determined that no replacement is necessary. The Coast Guard will incorporate the rest, which ASTM has updated. It will incorporate these because, in addition to its desire for industry to use the most recent technology, the older editions may be difficult for some parties to find.

Discussion of Rule

This rule contains two kinds of updates of standards from ASTM: (1) updates of those standards that bear the same numbers and same general technical contents but that ASTM has brought into more recent year-versions, and (2) updates of those that ASTM has discontinued and replaced or combined with others. A brief description of the two kinds follows:

(1) More Recent Year-Versions of Standards

ASTM has brought the standards listed below into more recent versions. The later versions bear the same general technical contents as the standards currently incorporated, but have been reviewed by ASTM committees on a five-year schedule and brought into new ''year-versions.'' For example, ASTM standard A 27–80 (1980 version of standard A 27) is currently incorporated into the rules of the Coast Guard. The newer version of this standard is A 27–95 (1995 version of standard A 27).

In some cases, ASTM reviews the standards in its 5-year cycle and re-certifies them unchanged. Such standards appear here with the years of their re-certification in parentheses. For example, standard A 192–91 (1996) is the 1991 version of standard A 192 re-certified in 1996 unchanged.

During the review of standards, changes occur—or not—by consensus of the members of committees of ASTM. Since this process provides the opportunity for members of industry, government, and academia to participate, the Coast Guard considers the updated standards to have been adequately reviewed and to be technically sound.

ASTM has brought the following standards into more recent year-versions:

A 20, A 27, A 36, A 47, A 53, A 106, A 126, A 134, A 135, A 139, A 178, A 179, A 182, A 192, A 193, A 194, A 197, A 199, A 203, A 210, A 213, A 214, A 216, A 226, A 234, A 249, A 268, A 276, A 302, A 307, A 312, A 320, A 325, A 333, A 334, A 335, A 336, A 350, A 351, A 352, A 358, A 369, A 370, A 376, A 387, A 395, A 403, A 420, A 449, A 508, A 516, A 520, A 522, A 524, A 533, A 536, A 537, A 575, A 576, A 612, A 662, A 653, A 724, B 16, B 21, B 26, B 42, B 43, B 68, B 75, B 85, B 88, B 96, B 111, B 117, B 122, B 124, B 127, B 152, B 154, B 161, B 165, B 167, B 171, B 209, B 210, B 234, B 241, B 280, B 283, B 315, B 361, C 177, C 518, D 92, D 93, D 323, D 413, D 471, D 570, D 635, D 665, D 751, D 882, D 975, D 1004, D 1434, D 1435, D 1518, D 1621, D 1622, D 1785, D 2241, D 2464, D 2466, D 2467, D 2665, D 2777, D 2842, D 2863, D 4066, D 4986, E 11, E 23, E 84, E 119, E 208, E 648, E 662, F 631, F 682, F 715, F 722, F 1003, F 1006, F 1007, F 1014, F 1020, F 1120, F 1121, F 1122, F 1123, F 1139, F 1155, F 1172, F 1173, F 1196, F 1197, F 1199, F 1200, F 1201, F 1271, F 1273, F 1321, F 1323, F 1476, F 1546, and F 1548.

(2) Discontinued, Replaced, and Combined Standards

ASTM has completely discontinued some standards incorporated into the rules of the Coast Guard for either a lack of need by industry or the development of other, more modern standards. In some cases, ASTM has replaced the discontinued standards with current ones. In others, ASTM has discontinued standards with no replacements, and the Coast Guard has either removed them from its rules or replaced them with similar standards. In yet others, ASTM has combined two or more standards to form one common one.

Each of the following eleven standards falls into one of these three categories:

(1) ASTM A 7–65, ''Standard Specifications for Steel for Bridges and Buildings.'' ASTM discontinued this standard in 1967 and replaced it with A 36–97a, ''Standard Specification for Carbon Structural Steel.'' The Coast Guard has determined that this replacement is appropriate in its rules. The Coast Guard originally incorporated by reference ASTM A 7 into 46 CFR 160.032–1, which governs materials used for davits. It requires that structural steel made by the open-hearth or electric-furnace process meet this standard.

(2) ASTM A 199–84, ''Specification for Seamless Cold-Drawn Intermediate Alloy-Steel Heat-Exchanger and Condenser Tubes.'' ASTM discontinued this standard in 1995 and replaced it with A 200, ''Specification for Seamless Intermediate Alloy-Steel Still Tubes for Refinery Service, and A 213, Standard Specification for Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes.'' The Coast Guard originally incorporated by reference ASTM A 199 into 46 CFR Table 56.60–1(a) as an acceptable piping standard for alloy-steel condenser tubes. Since ASTM no longer promulgates ASTM A 199, the Coast Guard has removed it from its rules. But the Coast Guard cannot substitute ASTM A 200 for it yet, because too little time remained before this rule's going to press for the Coast Guard to analyze the new standard. Nevertheless, the same rules allow piping systems selected from the material specifications of the Code of the American Society of Mechanical Engineers (ASME), Section I, III, or VIII. And ASME may be adding A 200 to its own list of accepted standards in the near future; this, even without reference to ASTM, would allow its use. ASTM A 213, which is also a replacement for A 199, already appears in 46 CFR Table 56.60–1(a) and therefore does not need to be added to the rules.

(3) ASTM A 300, ''Standard Specification for Notch Toughness Requirements for Normalized Steel Parts for Pressure Vessels.'' ASTM discontinued this standard in 1995 with no replacement, but expanded and incorporated it into A 20, ''Standard Specification for General Requirements for Steel Plates for Pressure Vessels.'' This applies to the testing of plate materials. The Coast Guard has determined that ASTM A 20 will serve its purposes and by this rule incorporates it into 46 CFR 54.05–10. The Coast Guard edited its rules to direct the reader to the sections of ASTM A 20 that will apply.

(4) ASTM A 430–84a, ''Standard Specification for Austenitic Steel, Forged and Bored Pipe for High-Temperature Service.'' ASTM discontinued this standard in 1995, and replaced it with A 312–95, ''Standard Specification for Seamless and Welded Austenitic Stainless Steel Pipes.'' The Coast Guard has determined that it should eliminate ASTM A 430 from 46 CFR subpart 56.01 and also from Table 56.60–1(A), which lists standards acceptable for specific piping. ASTM A 312 already appears in this subpart, and remains available for use regardless of ASTM A 430.

(5) ASTM A 442, ''Standard Specification for Pressure Vessel Plates, Carbon Steel, Improved Transition Properties.'' ASTM discontinued this standard in 1991 with no formal (committee-balloted) replacement. However, ASTM A 516, ''Standard Specification for Pressure Vessel Plates, Carbon Steel, for Moderate and Lower Temperature Service'' is the ASTM-recommended replacement. Both standards appear in 46 CFR 54.25–10, which concerns low-temperature operation of ferritic steels. In that section, certain materials, if below specified thicknesses, are exempt from the requirement for ''Charpy impact tests.'' Material of Grade 55, called out by ASTM A 442, is one of these. Since ASTM has discontinued ASTM A 442, the Coast Guard has determined that it should delete it from this section. ASTM A 516 already appears there and therefore does not need to be added to the rules.

(6) ASTM A 525, ''Standard Specification for General Requirements for Steel Sheet, Zinc-Coated (Galvanized) by the Hot-Dip Process.'' ASTM discontinued this standard in 1994 with no replacement. ASTM recommends using A 653, ''Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process'' in its place. The Coast Guard has determined that it should eliminate ASTM A 525 in 46 CFR 160.035–3(b), which specifies plating requirements for steel oar-propelled lifeboats. The Coast Guard has replaced ASTM A 525 with ASTM A 653.

(7) ASTM B 97, ''Standard Specification for Copper Silicon-Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes.'' ASTM discontinued this standard in 1982, and replaced it with B 96, ''Standard Specification for Copper Silicon Alloy Plate, Sheet, Strip and Rolled Bar for General Purposes and Pressure Vessels.'' The Coast Guard has determined that ASTM B 96 serves its purposes and can replace ASTM B 97 where the latter appears: in rules for construction of fuel tanks (46 CFR 58.50–5, 119.440, and 182.440). The Coast Guard has modified regulatory text in each of these rules, so that alloys ''A and B'' in ASTM B 97 give way to alloys C65100 and C65500 in B 96. (Alloy ''C,'' referred to in the rules, is no longer manufactured and does not require an equivalent in B 96.)

(8) ASTM B 141–45, ''Standard Specifications for Electrodeposited Coatings of Nickel and Chromium on Copper and Copper-base Alloys.'' ASTM discontinued this standard in 1967, and replaced it with B 456, ''Standard Specification for Electro-deposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium.'' The Coast Guard has determined that

ASTM B 456 serves its purposes. ASTM B 141 originally governed construction of searchlight reflectors, in 46 CFR 161.006–4. When the Coast Guard incorporated the new standard, it also revised regulatory text to accommodate the new standard, so that ''type K C'' in ASTM B 141 gives way to ''service condition SC 1'' in ASTM B 456.

(9) ASTM D 1692 and D 1692T, ''Rate of Burning [or] Extent and Time of Burning of Cellular Plastics Using a Specimen Supported by a Horizontal Screen.'' ASTM discontinued these standards in 1978 with no formal (committee-balloted) replacement. ASTM D 4986–98, ''Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials'' will serve in their places. ASTM D 1692 is incorporated by reference into 46 CFR subparts 32.57 and 151.15, and helps test the fire-resistance of insulating-materials. This rule will incorporate ASTM D 4986–98 into § 38.01–3.

(10) ASTM F 989, ''Standard Test Methods for Spill Control Barrier Tension Members.'' ASTM discontinued this standard in 1995 with no replacement. This standard was originally incorporated in 33 CFR parts 154 (Appendix C) and 155 (Appendix B), which include requirements for the testing of oil-response boom. The Coast Guard has determined that it is appropriate to eliminate the standard from the text without adding a replacement: The current regulatory text gives the reader the option of using old ASTM F 989, ASTM F 715 (Standard Methods of Testing Spill Control Barrier Membrane Materials), or any of several tests approved by the Coast Guard; and the latter two options remain available.

(11) ASTM F 808, ''Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments.'' ASTM discontinued this standard in 1997, and recommended that the Coast Guard use F 631, ''Standard Method for Testing Full-Scale Advancing Spill Removal Devices'' in its place. ASTM F 808 is incorporated in 33 CFR parts 154 (Appendix C) and 155 (Appendix B), which include requirements for collecting data on performance of oil skimmers. The Coast Guard has determined that it is appropriate to eliminate ASTM F 808 from the text without adding a replacement, since the current regulatory text states that ASTM F 631 or an equivalent test approved by the Coast Guard will serve as well.

Regulatory Evaluation

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs to Industry

This direct final rule involves administrative changes (updates) to rules that incorporate ASTM standards. Industry will need to purchase the updated standards. Each business will incur costs based on the number of standards it must purchase, which will vary greatly. Costs for purchasing these standards will be minimal. The average cost of an ASTM standard is $18 to $20. Because of copyright restrictions, businesses must purchase standards from ASTM.

Benefits to Industry

While it is not possible to accurately quantify the benefits of requiring industry to use recent versions of ASTM's standards, the net result will be improved product quality, which translates into improved maritime safety. Industry already uses these standards in many applications including the manufacture of searchlights, lifejackets, immersion suits, and fire-protective equipment, which have direct implications for safety. Further, since some of the standards have been discontinued, it will be easier for industry to obtain copies of the incorporated updated ones from ASTM.

An added benefit is reduced administrative burden. Industry may already be aware of a new standard and want to use it, but be bound by rule to using the older standard unless the Coast Guard authorizes, case by case, the use of a newer version. If the newer version is already listed, it obviates this need.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this direct final rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Given the wide range of ASTM standard applications, involving the manufacture of products such as sheet metal, metal coatings, metal castings, piping, pressure vessels, plastics, rubber, and many others, it is not practicable to accurately determine the types and numbers of small entities affected by this rule.

Because of copyright, as we note, industry must purchase the standards from ASTM. But the costs associated with purchasing the new standards are minimal, and the Coast Guard believes that purchasing the standards will not create a financial burden for any small business.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule will economically affect it.

Collection of Information

This direct final rule will not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Indeed, it should reduce administrative difficulty for everyone affected by it.

Federalism

We have analyzed this direct final rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

This direct final rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This direct final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Reform of Civil Justice, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this direct final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this direct final rule and concluded that under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. Under paragraph (34)(a), this exclusion is appropriate for rules that are ''editorial or procedural, such as those updating addresses or establishing application procedures.'' A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 127

Fire prevention, Harbors, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 154

Fire prevention, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 159

Incorporation by reference, Sewage disposal, Vessels.

33 CFR Part 164

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

33 CFR Part 183

Incorporation by reference, Marine safety.

46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 35

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 54

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 77

Incorporation by reference, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Incorporation by reference, Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 96

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water).

46 CFR Part 97

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Petroleum, Seamen.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Incorporation by reference, Vessels.

46 CFR Part 114

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 119

Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 125

Administrative practice and procedure, Authority delegation, Hazardous materials transportation, Incorporation by reference, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 163

Incorporation by reference, Marine safety.

46 CFR Part 164

Applicable Specification and Referenced Material, Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 170

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 174

Incorporation by reference, Marine safety, Vessels.

46 CFR Part 175

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 182

Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 190

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Incorporation by reference, Marine safety, Oceanographic research vessels.

46 CFR Part 195

Incorporation by reference, Marine Safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine Safety, Oil and Gas exploration, Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 127, 154, 155, 159, 164, and 183 and 46 CFR parts 28, 30, 32, 34, 35, 38, 39, 54, 56, 58, 61, 63, 76, 77, 78, 92, 95, 96, 97, 105, 108, 109, 110, 111, 114, 119, 125, 151, 153, 154, 160, 161, 162, 163, 164, 170, 174, 175, 182, 190, 193, 195, and 199 as follows:

TITLE 33—[AMENDED]

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

1. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 127.003(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 127.003 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications—127.611; 127.1511.

* * * * *

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

3. Revise the authority citation for part 154 to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

4. In § 154.106(b), revise the entry for ''American Society for Testing Materials'' to read as follows:

§ 154.106 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments—Appendix C

ASTM F 715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage—Appendix C

ASTM F 722–82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems—Appendix A; Appendix B

ASTM F 1122–87 (1992), Standard Specification for Quick Disconnect Couplings—154.500

ASTM F 1155–98, Standard Practice for Selection and Application of Piping System Materials—Appendix A; Appendix B

* * * * *

Appendix C to Part 154 [Amended]

5–7. In Appendix C to part 154, in paragraph 2.3.1, remove the words '', ASTM F 989,''; in paragraph 6.3, remove the words '', ASTM F 808,''; and, in paragraph 6.3.1, remove the number ''13.1.15'' and add, in its place, the number ''13.2.16''.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

8. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

9. In § 155.140(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 631–93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments—Appendix B

ASTM F 715–95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage—Appendix B

ASTM F 722–82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems—Appendix A; Appendix B

* * * * *

Appendix B to Part 155 [Amended]

10. In Appendix B to part 155—

a. In paragraph 2.4, remove the words ''ASTM F 715–81 (Reapproved 1986),'' and add, in their place, the words ''ASTM F 715 (incorporated by reference, see § 155.140)''; and remove the words ''and ASTM F 989–86, Standard Test Methods for Spill Control Barrier Tension Members'';

b. In paragraph 6.3, remove the words ''ASTM F 631–80, Reapproved 1985)'' and add, in their place, the words ''ASTM F 631 (incorporated by reference, see § 155.140)''; and remove the words '', and ASTM F 808–83 (1988), Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments''; and

c. In paragraph 6.3.1, remove the words ''Item 26 in ASTM F 808;'' and remove the number ''13.1.15'' and add, in its place, the number ''13.2.16''.

PART 159—MARINE SANITATION DEVICES

11. The authority citation for part 159 continues to read as follows:

Authority: Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46 (l) and (m).

12. Add § 159.4 to read as follows:

§ 159.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard Office of Design and Engineering Standards (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM E 11–95, Standard Specification for Wire Cloth and Sieves for Testing Purposes—159.125

§ 159.125 [Amended]

13. In § 159.125, remove the words ''ASTM E–11–70'' and add, in their place, the words ''ASTM E 11 (incorporated by reference, see § 159.4)''.

PART 164—NAVIGATION SAFETY REGULATIONS

14. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.03 [Amended]

15. In § 164.03(b), under the entry for ''American Society for Testing and Materials'', remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

§ 164.74 [Amended]

16. In § 164.74(a)(3) (i) and (ii), remove the words ''ASTM D4268–93'', wherever they appear, and add, in their place, the words ''ASTM D 4268 (incorporated by reference, see § 164.03)''.

PART 183—BOATS AND ASSOCIATED EQUIPMENT

17. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

18. In § 183.5(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 183.5 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 471–96, Standard Test Method for Rubber Property—Effect of Liquids—183.114; 183.516; 183.607; 183.620

ASTM D 1621–94, Standard Test Method for Compressive Properties of Rigid Cellular Plastics—183.516

ASTM D 1622–93, Standard Test Method for Apparent Density of Rigid Cellular Plastics—183.516

ASTM D 2842–97, Standard Test Method for Water Absorption of Rigid Cellular Plastics—183.114

* * * * *

§ 183.110 [Amended]

19. In § 183.110, remove the definition of ''ASTM''.

§ 183.620 [Amended]

20. In § 183.620, in the note following paragraph (a)(5)(ii), remove the number ''D–471–1979'' and add, in its place, the words ''D 471 (incorporated by reference, see § 183.5)''.

TITLE 46—[AMENDED]

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

21. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

22. In § 28.40(b), add an entry for ''American Society for Testing and Materials'' in alphabetical order to read as follows:

§ 28.40 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1321–92, Standard Guide for Conducting a Stability Test (Lightweight Survey and Inclining Experiment) to Determine the Light Ship Displacement and Centers of Gravity of a Vessel—28.535

* * * * *

§ 28.535 [Amended]

23. In § 28.535(d), remove the words ''ASTM Standard F 1321–90'' and add, in their place, the words ''ASTM F 1321 (incorporated by reference, see § 28.40)''.

PART 30—GENERAL PROVISIONS

24. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

25. Add § 30.01–3 to read as follows:

§ 30.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard Office of Design and Engineering Standards (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are as follows:

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 323–94, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)—30.10–22; 30.10–59

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

26. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Section 32.22T–5 and subpart 32.59 also issued under 46 U.S.C. 3703 note.

27. In § 32.01–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 32.01–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 4986–98, Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials—32.57–10

ASTM F 1273–91 (1997), Standard Specification for Tank Vent Flame Arresters—32.20–10

§ 32.57–10 [Amended]

28. In § 32.57–10(d)(7–a), remove the words ''American Society for Testing and Materials (ASTM) Specification D–1692, 'Rate of Burning or Extent of Burning of Cellular Plastics Using a Supported Specimen by a Horizontal Screen' '' and add, in their place, the words ''ASTM D 4986, 'Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials' (incorporated by reference, see § 32.01–1)''.

PART 34—FIREFIGHTING EQUIPMENT

29. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 34.01–15 [Amended]

30. In § 34.01–15(b), remove the words ''ASTM F–1121'' and add, in their place, ''ASTM F 1121–87 (Reapproved 1993)''.

PART 35—OPERATIONS

31. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

32. In § 35.01–3(b), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014–92''; and add an entry for ''ASTM D 93'' to read as follows:

§ 35.01–3 Incorporation by reference.

* * * * *

(b) * * *

ASTM D 93–97, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester—35.25–10

* * * * *

§ 35.30–20 [Amended]

33. In § 35.30–20(c)(3), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 35.01–3)''.

PART 38—LIQUEFIED FLAMMABLE GASES

34. The authority citation for part 38 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

35. In § 38.01–3(b), add an entry for ''American Society for Testing and Materials'' to read as follows:

§ 38.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 4986–98, Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials—38.05–20

* * * * *

§ 38.05–20 [Amended]

36. In § 38.05–20(a)(1)(ii), remove the words ''American Society for Testing and Materials Specification D–1692, 'Flammability of Plastics, Foam and Sheeting,' '' and add, in their place, ''ASTM D 4986, 'Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials,' (incorporated by reference, see § 38.01–3)''.

PART 39—VAPOR CONTROL SYSTEMS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 39.10–5 [Amended]

38. In § 39.10–5(b), remove the words ''ASTM F 1271'' and add, in their place, the words ''ASTM F 1271–90 (1995)''; and remove the words '', December 29, 1989''.

PART 54—PRESSURE VESSELS

39. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

40. In § 54.01–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 54.01–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM A 20/A 20M–97a, Standard Specification for General Requirements for Steel Plates for Pressure Vessels—54.05–10; 54.25–10
ASTM A 203/A 203M–97, Standard Specification for Pressure Vessel Plates, Alloy Steel, Nickel—54.05–20
ASTM A 370–97a, Standard Test Methods and Definitions for Mechanical Testing of Steel Products—54.25–20
ASTM E 23–96, Standard Test Methods for Notched Bar Impact Testing of Metallic Materials—54.05–5
ASTM E 208–95a, Standard Test Method for Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels—54.05–5

* * * * *

§ 54.05–10 [Amended]

41. In § 54.05–10(a), remove the words ''as outlined in section 4(b) of ASTM A–300'' and add, in their place, the words ''as outlined in section 12 of ASTM A 20 (incorporated by reference, see § 54.01–1)''.

§ 54.25–10 [Amended]

42. In § 54.25–10, remove paragraphs (d)(1)(v) and (d)(2)(ii); redesignate paragraphs (d)(1)(vi) through (d)(1)(viii) as (d)(1)(v) through (d)(1)(vii); and redesignate paragraphs (d)(2)(iii) through (d)(2)(ix) as (d)(2)(ii) through (d)(2)(viii).

PART 56—PIPING SYSTEMS AND APPURTENANCES

43. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O.12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

44. In § 56.01–2(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM A 36/A 36M–97a, Standard Specification for Carbon Structural Steel—56.30–10
ASTM A 47–90 (1995), Standard Specification for Ferritic Malleable Iron Castings—56.60–1
ASTM A 53–98, Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless—56.10–5; 56.60–1
ASTM A 106–95, Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service—56.60–1
ASTM A 126–95, Standard Specification for Gray Iron Castings for Valves, Flanges, and Pipe Fittings—56.60–1
ASTM A 134–96, Standard Specification for Pipe, Steel, Electric-Fusion (Arc)-Welded (Sizes NPS 16 and Over)—56.60–1
ASTM A 135–97c, Standard Specification for Electric-Resistance-Welded Steel Pipe—56.60–1
ASTM A 139–96, Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and Over)—56.60–1
ASTM A 178/A 178M–95, Standard Specification for Electric-Resistance-Welded Carbon Steel and Carbon-Manganese Steel Boiler and Superheater Tubes—56.60–1
ASTM A 179/A 179M–90a (1996), Standard Specification for Seamless Cold-Drawn Low-Carbon Steel Heat-Exchanger and Condenser Tubes—56.60–1
ASTM A 182/A 182M–97c, Standard Specification for Forged or Rolled Alloy-Steel Pipe Flanges, Forged Fittings, and Valves and Parts for High-Temperature Service—56.50–105
ASTM A 192/A 192M–91 (1996), Standard Specification for Seamless Carbon Steel Boiler Tubes for High-Pressure Service—56.60–1
ASTM A 194/A 194M–98b, Standard Specification for Carbon and Alloy Steel Nuts for Bolts for High Pressure or High Temperature Service, or Both—56.50–105
ASTM A 197–87 (1992), Standard Specification for Cupola Malleable Iron—56.60–1
ASTM A 210/A 210M–96, Standard Specification for Seamless Medium-Carbon Steel Boiler and Superheater Tubes—56.60–1
ASTM A 213/A 213M–95a, Standard Specification for Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes—56.60–1
ASTM A 214/A 214M–96, Standard Specification for Electric-Resistance-Welded Carbon Steel Heat-Exchanger and Condenser Tubes—56.60–1
ASTM A 226/A 226M–95, Standard Specification for Electric-Resistance-Welded Carbon Steel Boiler and Superheater Tubes for High-Pressure Service—56.60–1
ASTM A 234/A 234M–97, Standard Specification for Piping Fittings of Wrought Carbon Steel and Alloy Steel for Moderate and High Temperature Service—56.60–1
ASTM A 249/A 249M–96a, Standard Specification for Welded Austenitic Steel Boiler, Superheater, Heat-Exchanger, and Condenser Tubes—56.60–1
ASTM A 268/A 268M–96, Standard Specification for Seamless and Welded Ferritic and Martensitic Stainless Steel Tubing for General Service—56.60–1
ASTM A 276–98, Standard Specification for Stainless Steel Bars and Shapes—56.60–2
ASTM A 307–97, Standard Specification for Carbon Steel Bolts and Studs, 60,000 PSI Tensile Strength—56.25–20
ASTM A 312/A 312M–95a, Standard Specification for Seamless and Welded Austenitic Stainless Steel Pipes—56.50–105; 56.60–1
ASTM A 320/A 320M–97, Standard Specification for Alloy/Steel Bolting Materials for Low-Temperature Service—56.50–105
ASTM A 333/A 333M–94, Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service—56.50–105; 56.60–1
ASTM A 334/A 334M–96, Standard Specification for Seamless and Welded Carbon and Alloy-Steel Tubes for Low-Temperature Service—56.50–105; 56.60–1
ASTM A 335/A 335M–95a, Standard Specification for Seamless Ferritic Alloy-Steel Pipe for High-Temperature Service—56.60–1
ASTM A 350/A 350M–97, Standard Specification for Carbon and Low-Alloy Steel Forgings, Requiring Notch Toughness Testing for Piping Components—56.50–105
ASTM A 351/A 351M–94a, Standard Specification for Castings, Austenitic, Austenitic-Ferritic (Duplex), for Pressure-Containing Parts—56.50–105
ASTM A 352/A 352M–93 (1998), Standard Specification for Steel Castings, Ferritic and Martensitic, for Pressure-Containing Parts, Suitable for Low-Temperature Service—56.50–105
ASTM A 358/A 358M–95a, Standard Specification for Electric-Fusion-Welded Austenitic Chromium-Nickel Alloy Steel Pipe for High-Temperature Service—56.60–1
ASTM A 369/A 369M–92, Standard Specification for Carbon and Ferritic Alloy Steel Forged and Bored Pipe for High-Temperature Service—56.60–1
ASTM A 376/A 376M–96, Standard Specification for Seamless Austenitic Steel Pipe for High-Temperature

Central-Station Service—56.07–10; 56.60–1; 56.60–2
ASTM A 395/A 395M–98, Standard Specification for Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures—56.50–60; 56.60–1; 56.60–15
ASTM A 403/A 403M–98, Standard Specification for Wrought Austenitic Stainless Steel Piping Fittings—56.60–1
ASTM A 420/A 420M–96a, Standard Specification for Piping Fittings of Wrought Carbon Steel and Alloy Steel for Low-Temperature Service—56.50–105; 56.60–1
ASTM A 520–97, Standard Specification for Supplementary Requirements for Seamless and Electric-Resistance-Welded Carbon Steel Tubular Products for High-Temperature Service Conforming to ISO Recommendations for Boiler Construction—56.60–1
ASTM A 522/A 522M–95b, Standard Specification for Forged or Rolled 8 and 9% Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service—56.50–105
ASTM A 536–84 (1993), Standard Specification for Ductile Iron Castings—56.60–1
ASTM A 575–96, Standard Specification for Steel Bars, Carbon, Merchant Quality, M-Grades—56.60–2
ASTM A 576–90b (1995), Standard Specification for Steel Bars, Carbon, Hot-Wrought, Special Quality—56.60–2
ASTM B 16–92, Standard Specification for Free-Cutting Brass Rod, Bar, and Shapes for Use in Screw Machines—56.60–2
ASTM B 21–96, Standard Specification for Naval Brass Rod, Bar, and Shapes—56.60–2
ASTM B 26/B 26M–97, Standard Specification for Aluminum-Alloy Sand Castings—56.60–2
ASTM B 42–96, Standard Specification for Seamless Copper Pipe, Standard Sizes—56.60–1
ASTM B 43–96, Standard Specification for Seamless Red Brass Pipe, Standard Sizes—56.60–1
ASTM B 68–95, Standard Specification for Seamless Copper Tube, Bright Annealed—56.60–1
ASTM B 75–97, Standard Specification for Seamless Copper Tube—56.60–1
ASTM B 85–96, Standard Specification for Aluminum-Alloy Die Castings—56.60–2
ASTM B 88–96, Standard Specification for Seamless Copper Water Tube—56.60–1
ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels—56.60–2
ASTM B 111–95, Standard Specification for Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock—56.60–1
ASTM B 124–96, Standard Specification for Copper and Copper Alloy Forging Rod, Bar, and Shapes—56.60–2
ASTM B 161–93, Standard Specification for Nickel Seamless Pipe and Tube—56.60–1
ASTM B 165–93, Standard Specification of Nickel-Copper Alloy (UNS NO4400) Seamless Pipe and Tube—56.60–1
ASTM B 167–97a, Standard Specification for Nickel-Chromium-Iron Alloys (UNS NO6600, NO6601, NO6603, NO6690, NO6025, and NO6045) Seamless Pipe and Tube—56.60–1
ASTM B 171–95, Standard Specification for Copper-Alloy Plate and Sheet for Pressure Vessels, Condensers, and Heat Exchangers—56.60–2
ASTM B 210–95, Standard Specification for Aluminum and Aluminum-Alloy Drawn Seamless Tubes—56.60–1
ASTM B 234–95, Standard Specification for Aluminum and Aluminum-Alloy Drawn Seamless Tubes for Condensers and Heat Exchangers—56.60–1
ASTM B 241/B 241M–96, Standard Specification for Aluminum and Aluminum-Alloy Seamless Pipe and Seamless Extruded Tube—56.60–1
ASTM B 280–97, Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service—56.60–1
ASTM B 283–96, Standard Specification for Copper and Copper-Alloy Die Forgings (Hot-Pressed)—56.60–2
ASTM B 315–93, Standard Specification for Seamless Copper Alloy Pipe and Tube—56.60–1
ASTM B 361–95, Standard Specification for Factory-Made Wrought Aluminum and Aluminum-Alloy Welding Fittings—56.60–1
ASTM B 858M–95, Standard Test Method for Determination of Susceptibility to Stress Corrosion Cracking in Copper Alloys Using an Ammonia Vapor Test—56.60–2
ASTM D 635–97, Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Plastics in a Horizontal Position—56.60–25
ASTM D 1785–96b, Standard Specification for Poly (Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120—56.60–25
ASTM D 2241–96b, Standard Specification for Poly (Vinyl Chloride)(PVC) Pressure-Rated Pipe (SDR Series)—56.60–25
ASTM D 2464–96a, Standard Specification for Threaded Poly (Vinyl Chloride)(PVC) Plastic Pipe Fittings Schedule 80—56.60–25
ASTM D 2466–97, Standard Specification for Poly (Vinyl Chloride)(PVC) Plastic Pipe Fittings, Schedule 40—56.60–25
ASTM D 2467–96a, Standard Specification for Poly (Vinyl Chloride)(PVC) Plastic Pipe Fittings, Schedule 80—56.60–25
ASTM D 2665–97b, Standard Specification for Poly (Vinyl Chloride)(PVC)Plastic Drain, Waste, and Vent Pipe and Fittings—56.60–25
ASTM D 2863–95, Standard Test Method for Measuring the Minimum Oxygen Concentration to Support Candle-like Combustion of Plastics (Oxygen Index)—56.60–25
ASTM E 23–96, Standard Test Methods for Notched Bar Impact Testing of Metallic Materials—56.50–105
ASTM F 682–82a (1993), Standard Specification for Wrought Carbon Steel Sleeve-Type Pipe Couplings—56.60–1
ASTM F 1006–86 (1992), Standard Specification for Entrainment Separators for Use in Marine Piping Applications—56.60–1
ASTM F 1007–86 (1996), Standard Specification for Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application—56.60–1
ASTM F 1020–86 (1996), Standard Specification for Line-Blind Valves for Marine Applications—56.60–1
ASTM F 1120–87 (1993), Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications—56.60–1
ASTM F 1123–87 (1993), Standard Specification for Non-Metallic Expansion Joints—56.60–1
ASTM F 1139–88 (1993), Standard Specification for Steam Traps and Drains—56.60–2
ASTM F 1172–88 (1993), Standard Specification for Fuel Oil Meters of the Volumetric Positive Displacement Type—56.60–1
ASTM F 1173–95, Standard Specification for Thermosetting Resin Fiberglass Pipe and Fittings to be Used for Marine Applications—56.60–1
ASTM F 1199–88 (1993), Standard Specification for Cast (All Temperature and Pressures) and Welded Pipe Line Strainers (150 psig and 150 Degrees F Maximum)—56.60–1
ASTM F 1200–88 (1993), Standard Specification for Fabricated (Welded) Pipe Line Strainers (Above 150 psig and 150 Degrees F)—56.60–1
ASTM F 1201–88 (1993), Standard Specification for Fluid Conditioner

Fittings in Piping Applications above 0 Degrees F—56.60–1

ASTM F 1387–93, Standard Specification for Performance of Mechanically Attached Fittings—56.30–25

ASTM F 1476–95a, Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications—56.30–35

ASTM F 1548–94, Standard Specification for the Performance of Fittings for Use with Gasketed Mechanical Couplings, Used in Piping Applications 56.30–35

* * * * *

§ 56.30–25 [Amended]

45. In § 56.30–25(a), remove the words ''ASTM F 1387–93'' and add, in their place, the words ''ASTM F 1387 (incorporated by reference, see § 56.01–2)''.

§ 56.30–35 [Amended]

46. In § 56.30–35(a), remove the words ''ASTM F 1476–93'' and add, in their place, the words ''ASTM F 1476 incorporated by reference, see § 56.01–2)''; and remove the words ''ASTM F 1548–94'' and add, in their place, the words ''ASTM F 1548 (incorporated by reference, see § 56.01–2)''.

§ 56.60–1 [Amended]

47. In § 56.60–1(a), revise the heading of Table 56.60–1(A) and the note between the heading and the table itself to read, respectively, as follows: ''Table 56.60–1(A)-Adopted Specifications and Standards'' and ''Note: Table 56.60–1(A) replaces Table 126.1 in ANSI B31.1 and sets forth specifications of pipes, tubing, and fittings intended for use in piping-systems. The first column lists acceptable standards from ASTM; the second lists those from ANSI. The Coast Guard will consider use of alternative pipes, tubing, and fittings when it receives certification of their mechanical properties. Without this certification it will restrict use of such alternatives to piping-systems inside heat exchangers that ensure containment of the material inside pressure shells.''; and, in the table, remove the entries for ''A430 Austenitic alloy'' and ''A199 Alloy steel condenser tubes''.

§ 56.60–2 [Amended]

48. In § 56.60–2, in Table 56.60–2(A), in footnote 7, remove the words ''ASTM B 858M–95'' and add, in its place, ''ASTM B 858M (incorporated by reference, see § 56.01–2)''; and, in footnote 9, remove the words ''ASTM B 858–95'' and add, in its place, ''ASTM B 858 (incorporated by reference, see § 56.01–2)''.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

49. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 58.01–10 [Amended]

50. In § 58.01–10(b), remove the words ''ASTM-D93–80'' and add, in their place, the words ''ASTM D 93 (incorporated by reference, see § 58.03–1)''.

51. In § 58.03–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 58.03–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM A 193/A 193M–98a, Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service—58.30–15

ASTM B 96–93, Standard Specification for Copper–Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels—58.50–5

ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip, and Rolled Bar—58.50–5

ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar—58.50–5

ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate—58.50–5; 58.50–10

ASTM D 92–97, Standard Test Method for Flash and Fire Points by Cleveland Open Cup 58.30–10

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—58.01–10

ASTM D 323–94, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method) 58.16–5

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§ 58.30–10 [Amended]

51a. In § 58.30–10(b), remove the words ''ASTM D92–57'' and add, in their place, the words ''ASTM D 92 (incorporated by reference, see § 58.03–1)''.

§ 58.50–5 [Amended]

52. In § 58.50–5(a), in Table 58.50–5(A), in the heading of column two, immediately following the words ''(latest edition)'' add the words ''[see also § 58.03–1]''; and in column two remove the words ''B97, Alloys A, B, and C'' and add, in their place, the words ''B 96, alloys C65100 and C65500''.

§ 58.50–10 [Amended]

52a. In § 58.50–10(a), in Table 58.50–10(A), in the heading of column two, immediately following the words ''(latest edition)'' add the words ''[see also § 58.03–1]''.

PART 61—PERIODIC TESTS AND INSPECTIONS

53. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

54. In § 61.03–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 61.03–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 665–98, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water—61.20–17

* * * * *

§ 61.20–17 [Amended]

55. In § 61.20–17(a), remove the words ''ASTM D 665–92'' and add, in their place, the words ''ASTM D 665 (incorporated by reference, see § 61.03–1)''.

PART 63—AUTOMATIC AUXILIARY BOILERS

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

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

57. In § 63.05–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 63.05–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1323–98, Standard Specification for Shipboard Incinerators—63.25–9

* * * * *

§ 63.25–9 [Amended]

58. In § 63.25–9, remove the words ''ASTM F–1323–90'' and add, in their place, the words ''ASTM F 1323 (incorporated by reference, see § 63.05–1)''.

PART 76—FIRE PROTECTION EQUIPMENT

59. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

60. In § 76.01–2(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 76.01–2 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications—76.10–10

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PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

61. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

62. In § 77.01–3(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 77.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—77.35–5

§ 77.35–5 [Amended]

63. In § 77.35–5(c), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 77.01–3)''.

PART 78—OPERATIONS

64. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

65. In § 78.01–2(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 78.01–2 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—78.17–75

* * * * *

PART 92—CONSTRUCTION AND ARRANGEMENT

66. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 92.01–2 [Removed]

67. Remove § 92.01–2.

PART 95—FIRE PROTECTION EQUIPMENT

68. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

69. In § 95.01–2(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 95.01–2 Incorporation by reference.

* * * * *

(b) * * *

82. In § 109.105(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications—95.10–10

* * * * *

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

70. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

71. In § 96.01–3(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 96.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—96.35–5

* * * * *

§ 96.35–5 [Amended]

72. In § 96.35–5(c), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 96.01–3)''.

PART 97—OPERATIONS

73. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

74. In § 97.01–2(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 97.01–2 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—97.15–55

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation II–2/20 of the 1974 SOLAS Convention as amended PCN: 12–616260–01 (1996)—97.36–1

* * * * *

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

75. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

76. Add § 105.01–3 to read as follows:

§ 105.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard Office of Design and Engineering Standards (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are as follows:

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 323–94, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)—105.10–15

PART 108—DESIGN AND EQUIPMENT

77. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

78. In § 108.101(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 108.101 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—108.500

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—108.497

ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications—108.427

* * * * *

§ 108.497 [Amended]

79. In § 108.497(b), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 108.101)''.

§ 108.500 [Amended]

80. In § 108.500(b), remove the words ''ASTM D–93–94'' and add, in their place, the words ''ASTM D 93 (incorporated by reference, see § 108.101)''.

PART 109—OPERATIONS

81. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

82. In § 109.105(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 109.105 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation II–2/20 of the 1974 SOLAS Convention as amended PCN: 12–616260–01 (1996)—109.563

* * * * *

PART 110—GENERAL PROVISIONS

83. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

84. In § 110.10–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 110.10–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—110.15–1

ASTM D 4066–96a, Standard Classification System for Nylon Injection and Extrusion Materials (PA)—111.60–1

* * * * *

PART 111—ELECTRICAL SYSTEMS—GENERAL ENGINEERING

85. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 111.60–1 [Amended]

86. In § 111.60–1(c)(4), remove the words ''ASTM D 4066–94b Type VIII'' and add, in their place, the words ''ASTM D 4066 (incorporated by reference, see § 110.10–1 of this chapter)''.

PART 114—GENERAL PROVISIONS

87. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

88. In § 114.600(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 114.600 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels—119.440

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—114.400

ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy , Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip, and Rolled Bar—119.440

ASTM B 127–98, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip—119.440

ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar—119.440

ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate—119.440

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—114.400

ASTM D 635–97, Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Plastics in a Horizontal Position—119.440

ASTM D 2863–95, Standard Test Method for Measuring the Minimum Oxygen Concentration to Support Candle-like Combustion of Plastics (Oxygen Index)—119.440
ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials—116.405; 116.422; 116.423
ASTM E 648–97, Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source—114.400; 116.423
ASTM E 662–97, Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials—114.400; 116.423
* * * * *

PART 119—ADDITIONAL EQUIPMENT

89. The authority citation for part 119 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 119.440 [Amended]

90. In § 119.440(a)(1), in Table 119.440(A)(1), in the heading of column two, immediately following the words ''(latest edition)'' add the words ''[see also § 114.600 of this chapter]''; and in column two, remove the words ''B97, Alloys A, B, and C'' and add, in their place, the words ''B 96, alloys C65100 and C65500''.

PART 125—GENERAL

91. The authority citation for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

92. In § 125.180(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 125.180 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—128.310
* * * * *

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

93. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

94. In § 151.01–2(b), add an entry for ''American Society for Testing and Materials'' to read as follows:

§ 151.01–2 Incorporation by reference.

* * * * *

(b)* * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
ASTM D 4986–98, Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials—151.15–3
ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials—151.15–3
* * * * *

§ 151.15–3 [Amended]

95. In § 151.15–3(g)(2)(iii), remove the words ''D–1692, ''Flammability of Plastics'' '' and add, in their place, the words ''D 4986, ''Horizontal Burning Characteristics of Cellular Polymeric Materials'' (incorporated by reference, see § 151.01–2)''.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

96. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

97. In § 153.4(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 153.4 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
ASTM F 1122–87 (1992), Standard Specification for Quick Disconnect Couplings—153.940
ASTM F 1271–90 (1995), Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protections Applications—153.365
* * * * *

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

98. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 CFR 1.46.

99. In § 154.1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 154.1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.
ASTM A 20/A 20M–97a, Standard Specification for General Requirements for Steel Plates for Pressure Vessels—154.610
ASTM F 1014–92, Standard Specification for Flashlights on Vessels—154.1400
* * * * *

§ 154.610 [Amended]

100. In § 154.610(c), remove the words ''ASTM A–20–75'' and add, in their place, the words ''ASTM A 20 (incorporated by reference, see § 154.1)''.

§ 154.1400 [Amended]

101. In § 154.1400, remove the words ''ASTM F1014–1986'' wherever they appear and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 154.1)''.

PART 160—LIFESAVING EQUIPMENT

102. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

103. In § 160.032–1, revise paragraph (a)(1) to read as follows; and, in paragraph (b), remove the words ''The A.S.T.M. Standards may be purchased from the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pa., 19103'' and add, in their place, the words ''You may purchase the standards of ASTM from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959'':

§ 160.032–1 Applicable Specifications.

(a) * * *

(1) Standards of ASTM:

ASTM A 27/ A 27M–95, Standard Specification for Steel Castings, Carbon, for General Application—160.032–3
ASTM A 36/A 36M–97a, Standard Specification for Carbon Structural Steel—160.032–3
ASTM A 216/A 216M–93 (1998), Standard Specification for Steel

Castings, Carbon, Suitable for Fusion Welding for High-Temperature Service—160.032–3

* * * * *

§ 160.032–3 [Amended]

104. In § 160.032–3(c), remove the words ''A.S.T.M. Standard Specification A7'' and add, in their place, the words ''ASTM A 36/A 36 M (incorporated by reference, see § 160.032–1)''.

105. In § 160.035–1, revise paragraph (a)(1) to read as follows; and, in paragraph (b), remove the words ''The A.S.T.M. standards may be purchased from the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pa., 19103'' and add, in their place, the words ''You may purchase the standards of ASTM from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959'':

§ 160.035–1 Applicable specifications.

(a) * * *

(1) Standards of ASTM:

ASTM A 36/A 36M–97a, Standard Specification for Carbon Structural Steel—160.035–3

ASTM A 653/A 653M–98, Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process—160.035–3

* * * * *

106. Revise § 160.035–3(b)(1) to read as follows:

§ 160.035–3 Construction of steel oar-propelled lifeboats.

* * * * *

(b) *Materials.* (1) Plating for shell, floors, air tanks, etc., must be in accordance with ASTM A 653, Coating Designation G90 (incorporated by reference, see § 160.035–1). The bend test required by these specifications must be made after the galvanizing or other anticorrosive treatment has been applied.

* * * * *

107. Revise § 160.055–1(a)(4) to read as follows:

§ 160.055–1 Applicable specifications.

(a) * * *

(4) Standards of ASTM:

ASTM D 413–82 (1993), Standard Test Methods for Rubber Property—Adhesion to Flexible Substrate—160.055–3

ASTM D 570–95, Standard Test Method for Water Absorption of Plastics—160.055–3

ASTM D 882–97, Standard Test Method for Tensile Properties of Thin Plastic Sheeting—160.055–3

ASTM D 1004–94a, Standard Test Method for Initial Tear Resistance of Plastic Film and Sheeting—160.055–3

* * * * *

108. In § 160.076–11(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.076–11 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 751–95, Standard Test Methods for Coated Fabrics—160.076–25

ASTM D 1434–82 (1988), Standard Test Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting—160.076–25

* * * * *

109. In § 160.077–5(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.077–5 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—160.077–11

ASTM D 751–95, Standard Test Methods for Coated Fabrics—160.077–19

ASTM D 1434–82 (1988), Standard Test Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting—160.077–19

* * * * *

110. In § 160.151–5(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.151–5 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—160.151–21

* * * * *

111. In § 160.171–3(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.171–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—160.171–17

ASTM C 177–85 (1993), Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus—160.171–17

ASTM C 518–91, Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus—160.171–17

ASTM D 975–98, Standard Specification for Diesel Fuel Oils—160.171–17

ASTM D 1004–94a, Standard Test Method for Initial Tear Resistance of Plastic Film and Sheeting—160.171–17

* * * * *

112. In § 160.174–3(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.174–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM C 177–85 (1993), Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus—160.174–17

ASTM C 518–91, Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus—160.174–17

ASTM D 975–98, Standard Specification for Diesel Fuel Oils—160.174–17

ASTM D 1004–94a, Standard Test Method for Initial Tear Resistance of Plastic Film and Sheeting—160.174–17

ASTM D 1518–85 (1990), Standard Test Method for Thermal Transmittance of Textile Materials—160.174–17

* * * * *

113. In § 160.176–4(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 160.176–4 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—160.176–8; 160.176–13

ASTM D 751–95, Standard Test Methods for Coated Fabrics—160.176–13

ASTM D 975–98, Standard Specification for Diesel Fuel Oils—160.176–13

ASTM D 1434–82 (1988), Standard Test Method for Determining Gas Permeability Characteristics of Plastic Film and Sheeting—160.176–13

* * * * *

PART 161—ELECTRICAL EQUIPMENT

114. The authority citation for part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

115. In § 161.002–1(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 161.002–1 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—161.002–4

* * * * *

116. In § 161.006–1, revise paragraph (a)(3) to read as follows:

§ 161.00 6–1 [Amended]

(a) * * *

* * * * *

(3) Standards of ASTM:

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—161.006–5

ASTM B 456–95, Standard Specification for Electrodeposited Coatings of Copper Plus Nickel Plus Chromium and Nickel Plus Chromium—161.006–4

You may obtain these standards from The American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

§ 161.006–4 [Amended]

117. In § 161.006–4(h), remove the words ''A.S.T.M. Specification B141–45, Type K.C., or as otherwise approved'' and add, in their place, the words ''ASTM B 456 (incorporated by reference, see § 161.006–1), Service Condition 1, or as otherwise approved''.

§ 161.006–5 [Amended]

118. In § 161.006–5(b)(3), remove the words ''A.S.T.M. Standard B117–44T'' and add, in their place, the words ''ASTM B 117 (incorporated by reference, see § 161.006–1)''.

PART 162—ENGINEERING EQUIPMENT

119. Revise the authority citation for part 162 to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 162.027–1 [Amended]

120. In 162.027–1(b), remove the words ''ASTM F 1546–94'' and add, in their place, the words ''ASTM F 1546 [or] F 1546 M–96''.

§ 162.027–2 [Amended]

121. In § 162.027–2, remove the words ''ASTM F 1546–94'' wherever they appear and add, in their place, the words ''ASTM F 1546 (incorporated by reference, see § 162.027–1)''.

§ 162.027–3 [Amended]

122. In 162.027–3(a), remove the words ''ASTM F 1546–94'' and add, in their place, the words ''ASTM F 1546 (incorporated by reference, see § 162.027–1)''.

123. In 162.050–4, revise paragraphs (a)(3) and (b)(2) to read as follows:

§ 162.050–4 Documents incorporated by reference.

(a) * * *

(3) ASTM D 2777–98, Standard Practice for Determination of Precision and Bias of Applicable Test Methods of Committee D–19 on Water—162.050–15.

(b) * * *

(2) You may obtain the ASTM Standard from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

§ 162.050–15 [Amended]

124. In 162.050–15(f)(1), remove the words ''the method described in paragraph 10.3.2 of'' and the number ''D–2777–77'', and add, in place of the latter, the number ''D 2777 (incorporated by reference, see § 162.050–4)''.

PART 163—CONSTRUCTION

125. The authority citation for part 163 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

126. Revise § 163.003–3 to read as follows:

§ 163.003–3 ASTM standard.

The following standard of the American Society for Testing and Materials (ASTM) is incorporated by reference into this subpart: ASTM D 1435–94, Standard Practice for Outdoor Weathering of Plastics. You may obtain this standard from the Society at 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

PART 164—MATERIALS

127. The authority citation for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

128. Revise § 164.007–1(b) to read as follows:

§ 164.007–1 Applicable specification and referenced material.

* * * * *

(b) *Guidance.* For guidance you may use the following technical reference: ASTM E 119–98, Standard Test Methods for Fire Tests of Building Construction and Materials. You may obtain it from The American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

129. Revise § 164.008–1(b) to read as follows:

§ 164.008–1 Applicable specification and referenced material.

* * * * *

(b) *Guidance.* For guidance you may use the following technical reference: ASTM E 119–98, Standard Test Methods for Fire Tests of Building Construction and Materials. You may obtain it from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

* * * * *

§ 164.012–1 [Amended]

130. In 164.012–1, in paragraph (a)(1), remove the words ''E 84–50T—Tentative Method of Fire Hazard Classification for Building Materials'' and add, in their place, the words ''E 84–98, Standard Test Method for Surface Burning Characteristics of

Building Materials''; and, in paragraph (b), remove the words ''1916 Race Street, Philadelphia, Pa., 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

131. In 164.015–1, revise paragraph (a)(4) to read as set forth below and, in paragraph (b)(3), remove the words ''1916 Race Street, Philadelphia, Pa. 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

§ 164.015–1 Applicable Specifications and Standards.

(a) * * *

(4) ASTM D 4986–98, Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials.

* * * * *

132. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

133. In § 170.015(b), revise the entry for American Society for Testing and Materials'' to read as follows:

§ 170.015 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1196–94, Standard Specification for Sliding Watertight Door Assemblies—170.270

ASTM F 1197–89 (1994), Standard Specification for Sliding Watertight Door Control Systems—170.270

* * * * *

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

134. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

135. In § 174.007(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 174.007 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1196–94, Standard Specification for Sliding Watertight Door Assemblies—174.100

ASTM F 1197–89 (1994), Standard Specification for Sliding Watertight Door Control Systems—174.100

PART 175—GENERAL PROVISIONS

136. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

137. In § 175.600(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 175.600 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels—182.440

ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus—175.400

ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar—182.440

ASTM B 127–98, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip—182.440

ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar—182.440

ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate—182.440

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—175.400

ASTM D 635–97, Standard test Method for Rate of Burning and or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position—182.440

ASTM D 2863–95, Standard Method for Measuring the Minimum Oxygen Concentration to Support Candle-Like Combustion of Plastics (Oxygen Index)—182.440

ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials—177.410

* * * * *

PART 182—MACHINERY INSTALLATION

138. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 182.440 [Amended]

139. In § 182.440(a)(1), in Table 182.440(A)(1), in the heading of column two, immediately following the words ''(latest edition)'' add the words ''[see also § 175.600 of this chapter]''; and in column two, remove the words ''B97, alloys A, B, and C'' and add, in their place, the words ''B 96, alloys C65100 and C65500''.

PART 190—CONSTRUCTION AND ARRANGEMENT

140. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–3 [Removed]

141. Remove § 190.01–3.

PART 193—FIRE PROTECTION EQUIPMENT

142. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

143. In § 193.01–3(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 193.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1121–87 (1993), Standard Specification for International Shore Connections for Marine Fire Applications—193.10–10

* * * * *

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

144. The authority citation for part 195 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

145. In § 195.01–3(b), revise the entry for ''American Society For Testing and Materials'' to read as follows:

§ 195.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—195.35–5

* * * * *

§ 195.35–5 [Amended]

146. In 195.35–5(c), remove the words ''ASTM F1014–1986'' and add, in their place, the words ''ASTM F 1014 (incorporated by reference, see § 195.01–3)''.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

147. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

148. In § 199.05(b), revise the entry for ''American Society for Testing and Materials'' to read as follows:

§ 199.05 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester—199.261; 199.290

ASTM F 1003–86(1992), Standard Specification for Searchlights on Motor Lifeboats—199.175

ASTM F 1014–92, Standard Specification for Flashlights on Vessels—199.175

* * * * *

§ 199.261 [Amended]

149. In 199.261(g), remove the words ''ASTM D93–94'' and add, in their place, the words ''ASTM D 93 (incorporated by reference, see § 199.05)''.

§ 199.290 [Amended]

150. In 199.290(b), remove the words ''ASTM D93–94'' and add, in their place, the words ''ASTM D 93 (incorporated by reference, see § 199.05)''.

Dated: October 26, 1999.

T.H. Gilmour,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–28611 Filed 11–30–99; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–7 CARP]

37 CFR Part 253

Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress announces a cost of living adjustment of 2.6% in the royalty rates paid by colleges, universities, or other nonprofit educational institutions that are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is based on the change in the Consumer Price Index from October, 1998, to October, 1999.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. 17 U.S.C. 118(c). The last proceeding to adjust the terms and rates for the section 118 license began in 1996. 61 FR 54458 (October 18, 1996).

On January 14, 1998, the Copyright Office announced final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works, including the 1998 rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities. 63 FR 2142 (January 14, 1998).

Pursuant to these regulations, on December 1 of each year ''the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.'' 37 CFR 253.10(a). The regulations also require that the Librarian publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the Consumer Price Index. 37 CFR 253.10(b).

Accordingly, the Copyright Office of the Library of Congress is hereby announcing the change in the Consumer Price Index and performing the annual cost of living adjustment to the rates set out in § 253.5(c). 63 FR 2142 (January 14, 1998).

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published before December 1, 1998, to the most recent Index published before December 1, 1999, was 2.6% (1998's figure was 164.0; 1999's figure is 168.4, based on 1982–1984=100 as a reference base). Rounding off to the nearest dollar, the adjustment in the royalty rate for the use of musical compositions in the repertory of ASCAP and BMI is $231, each, and $63 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 253

Copyright, Radio, Television.

Final Regulation

For the reasons set forth in the preamble, part 253 of title 37 of the Code of Federal Regulations is amended as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. 37 CFR 253.5 is amended by revising paragraphs (c)(1) through (c)(3).

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP, $231 annually.

(2) For all such compositions in the repertory of BMI, $231 annually.

(3) For all such compositions in the repertory of SESAC, $63 annually.

* * * * *

Dated: November 22, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–30929 Filed 11–30–99; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT060–7219a; A–1–FRL–6479–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Removal of Oxygenated Gasoline Requirement for the Connecticut Portion of the New York-N. New Jersey-Long Island Area (the ''Southwest Connecticut Area'')

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In today's action, EPA is approving a State Implementation Plan (SIP) revision under the Clean Air Act submitted by the State of Connecticut on October 7, 1999 to remove Connecticut's oxygenated gasoline program as a carbon monoxide control (CO) measure from the SIP. The SIP revision includes revised regulations adopted by Connecticut which redefine the control period for oxygenated gasoline in southwest Connecticut such that the oxygenated gasoline program is not required to be implemented except in the unlikely event of a violation of the CO standard in the area. EPA supports this regulatory amendment since it is consistent with the CO redesignation and maintenance plan for the southwest Connecticut area that EPA approved on March 10, 1999 (64 FR 12005).

DATES: This direct final rule is effective on January 31, 2000 without further notice, unless EPA receives adverse comment by January 3, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner; (617) 918–1665; butensky.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

What Action Is EPA Taking Today?

On October 7, 1999, the State of Connecticut submitted a formal revision to its SIP removing the oxygenated gasoline program as a CO control measure for the southwest Connecticut area. In the CO redesignation published on March 10, 1999 (64 FR 12005), EPA agreed that Connectocut's CO SIP does not rely on the oxygenated gasoline program to maintain the CO National Ambient Air Quality Standard (NAAQS) in the southwest Connecticut area.

Under Clean Air Act section 211(m), 42 U.S.C. 7545(m), States with certain CO nonattainment areas are required to implement oxygenated gasoline programs. Once such an area subsequently attains the CO NAAQS, oxygenated gasoline requirements may be removed if it is demonstrated that the program is not needed to maintain attainment in that area. See Clean Air Act section 110(l), 42 U.S.C. 7410(l). CO concentrations throughout the New York City area (which includes the southwest Connecticut area) have been below the CO NAAQS for more than four years, and the CO NAAQS has not been exceeded in southwest Connecticut since 1985.

Through the use of EPA's MOBILE computer model and air quality dispersion modeling, it has been determined that the oxygenated gasoline program no longer needs to be implemented to maintain attainment of the CO NAAQS. The CO NAAQS will not be violated in the future if the program is removed as a control strategy. Improved CO levels are attributable primarily to three sources of emission reductions: (1) turnover of vehicle fleets in the area to more sophisticated cleaner technology vehicles; (2) implementation of reformulated gasoline year round; and (3) the recent implementation of the enhanced vehicle inspection and maintenance (I/M) program in Connecticut. This modeling supports the conclusion that the area will remain well below the NAAQS without the wintertime oxygenated gasoline program in place.

What Is the Oxygenated Gasoline Program and How Does It Apply to Connecticut?

The oxygenated gasoline program is designed to reduce CO pollution from gasoline powered vehicles including passenger cars, sport utility vehicles and light trucks, which are significant contributors of CO emissions. Inhaling CO inhibits the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, infants, elderly persons, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks.

On March 3, 1978, (43 FR 8962), EPA published a rulemaking that set forth the attainment status for all States in relation to the NAAQS. The Connecticut portion of the New York—N. New Jersey-Long Island area was designated as nonattainment for CO through this notice.

The Clean Air Act sets forth a number of SIP requirements for States with areas designated as nonattainment for the CO NAAQS. Section 211(m) of the Clean Air Act requires States with CO nonattainment areas, having design values of 9.5 parts per million (ppm) CO or above for any two-year period after 1989, to implement oxygenated gasoline programs. The requirement for an oxygenated gasoline program is to apply during the high CO season, which is generally during the colder winter

months when cars tend to have higher tailpipe CO emissions. Oxygenated gasoline programs require that, during the high CO season, gasoline contain at least 2.7% oxygen by weight. This requirement was intended to assure more complete gasoline combustion, thus achieving a reduction in tailpipe emissions.

The requirement for an oxygenated gasoline program applies to southwest Connecticut because this area is included in the New York City CO nonattainment area which had a design value for CO above 9.5 ppm. In a letter to EPA dated March 14, 1991, the Connecticut Department of Environmental Protection (CTDEP) recommended that the southwest Connecticut area be classified as moderate nonattainment for CO based on monitoring data measured outside the Connecticut portion of the nonattainment area, which includes the aforementioned parts of New York State and New Jersey. Therefore, although the southwest Connecticut area was attaining the standard prior to 1990, the area had to implement the oxygenated gasoline program as part of the New York-N. New Jersey-Long Island Area. The municipalities included in the Connecticut area are Bethel, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport, and Wilton.[1] EPA also determined that oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen, specific labeling requirements, and enforcement procedures (57 FR 47849 (October 20, 1992)).

On September 30, 1994, Connecticut submitted to EPA its oxygenated gasoline program contained in section 22a–174–28 of the Regulations of Connecticut State Agencies, entitled ''Oxygenated gasoline.'' EPA approved this submittal as it applies to southwest Connecticut on July 25, 1996 (61 FR 38574), thereby satisfying the requirements of section 211(m) of the Clean Air Act. This action also defined the control period (i.e, the period that oxygenated gasoline must be sold in the area) to be the four month period from November 1 through the last day of February.

[1] Because Clean Air Act section 211(m) applies to the larger of the Consolidated Metropolitan Statistical Areas (CMSA) or the metropolitan statistical area in which the nonattainment area is located, the oxygenated gasoline requirement for the area applies throughout the larger CMSA.

What Is the Purpose and Content of Connecticut's SIP Revision?

Connecticut submitted an oxygenated gasoline SIP revision to EPA on October 7, 1999. The submittal revised the SIP to remove Connecticut's oxygenated gasoline program as a CO control measure. The SIP revision documents that the Connecticut Department of Environmental Protection held a public hearing on August 5, 1999 to take comment on the State's proposed rulemaking to remove the State requirements for its oxygenated gasoline program in Connecticut. The rulemaking was adopted by the State of Connecticut on September 28, 1999, and submitted to EPA as a formal SIP revision on October 7, 1999.

The 1990 Clean Air Act required areas to achieve the CO standard by December 31, 1995, and the Connecticut area has measured no violations of the CO standard since 1985. This area was allowed to redesignate based on the entire area attaining, and the southwest Connecticut area was redesignated to attainment on March 10, 1999 (64 FR 12005). As a result of the redesignation to attainment, the area became eligible to drop the oxygenated gasoline requirement and convert it to a contingency measure. Removal of the oxygenated gasoline program is supported by the State's demonstration that the area is attaining the CO NAAQS and will continue to attain even without implementation of the oxygenated gasoline program. EPA supports this regulatory amendment since it is consistent with the CO redesignation and maintenance plan for the southwest Connecticut area that EPA approved on March 10, 1999 (64 FR 12005).

On September 9, 1999 (64 FR 48974), EPA approved the removal of the oxygenated gasoline program for the New Jersey portion of the CO control area. The submittal from New Jersey contained an analysis of multi-state air quality and impacts of oxygenated gasoline removal which confirmed that the area will continue to attain the CO NAAQS with the removal of oxygenated gasoline. In addition, the CO redesignation submitted by Connecticut on May 29, 1998 and approved by EPA on March 10, 1999 (64 FR 12005) also demonstrated that removing oxygenated gasoline in Connecticut would have inconsequential impact on the other two states CO attainment.

Based on EPA's determination that the entire CMSA is attaining the CO NAAQS, EPA is approving Connecticut's SIP revision, submitted on October 7, 1999, to remove the State's oxygenated gasoline program and convert it to a contingency measure in the CO SIP.

How Have the Criteria for Removing Oxygenated Gasoline Been Met?

The entire New York-N. New Jersey-Long Island area (which includes the southwest Connecticut area) has attained the CO NAAQS since 1995. In 1994, New Jersey experienced two violations of the CO NAAQS that were recorded at monitoring stations in North Bergen and Elizabeth in Northern New Jersey. Since 1995, no subsequent violations were recorded in Northern New Jersey. Since 1994, no violations of the CO NAAQS were recorded in the New York portion of the area, and southwest Connecticut area has not had an exceedance of the standard since 1985.[2]

Two CO monitors meeting EPA siting criteria are maintained in the southwest Connecticut portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur, and were placed in the cities of Bridgeport and Stamford.

Monitoring data from these locations are collected and quality-assured in accordance with 40 CFR part 58. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

CONNECTICUT CO AIR QUALITY DATA SUMMARY—CO NAAQS EXCEEDANCE LEVEL = 9.5 PPM

Year	Bridgeport	Stamford
1994	5.8	6.2
1995	4.9	5.4
1996	3.0	4.1
1997	4.0	5.1
1998	2.8	3.8

Prior to today's action, EPA approved the redesignation of the southwest Connecticut portion of the New York City CO nonattainment area (64 FR 12005, March 10, 1999). As part of its action to approve Connecticut's redesignation, EPA also approved the maintenance demonstration for southwest Connecticut. Furthermore, EPA has also determined that CO

[2] An exceedance occurs when an average CO concentration greater than or equal to 9.5 ppm is recorded over an eight-hour period. A violation occurs when two non-overlapping exceedances are recorded at the same monitoring site during the same calendar year.

maintenance is demonstrated in southwest Connecticut without reliance on oxygenated gasoline implementation. Connecticut has demonstrated that any increase in CO emissions that might result from removing the oxygenated gasoline requirement will not contribute to CO emissions that exceed the CO emissions budget EPA approved in Connecticut's maintenance plan. In addition, the redesignation included an analysis of the impacts that removing the Connecticut program would have on New York and New Jersey, and these impacts were deemed inconsequential. Additional detail on the CO maintenance demonstration analysis for Connecticut can be found at 63 FR 58637 (November 2, 1998) and 64 FR 12005 (March 10, 1999).

Based on EPA's determination that the entire area is attaining the CO NAAQS and will continue to meet the standard even without the oxygenated gasoline program, EPA is approving Connecticut's SIP revision, submitted on October 7, 1999, which removes the State's oxygenated gasoline requirement program from its CO SIP.

What Is the Contingency Plan for Carbon Monoxide?

In the March 10, 1999 **Federal Register** (64 FR 12005), EPA determined, through Connecticut's use of EPA's MOBILE computer model and air quality dispersion modeling, that the oxygenated gasoline program is no longer necessary for Connecticut because it has been demonstrated that the CO NAAQS will not be violated anywhere in the CMSA if the program is removed. Furthermore, since the area was redesignated to attainment for CO, Connecticut is no longer required to implement the oxygenated gasoline program but must keep it in the SIP as a contingency measure. See Clean Air Act section 175A(d), 42 U.S.C. 7505a(d). However, the State is required to implement the maintenance plan approved into the SIP on March 10, 1999.

Connecticut developed a three-stage contingency plan for the southwest Connecticut area to be implemented in the unlikely event of an exceedance. The State will implement contingency measures when a CO exceedance occurs even though they are only required if a violation occurs, therefore making the continency plan more stringent than is required (again, see March 10, 1999 redesignation at 64 FR 12005). As mentioned earlier, an exceedance occurs when a monitor measures CO levels of 9.5 parts per million as a mean concentration over an eight-hour period. If this were to occur, the first stage of the plan is to investigate the local traffic conditions where the exceedance occurred. The second stage is the implementation of the enhanced inspection and maintenance program, and the third is the low emission vehicle program (both are already being implemented for ground-level ozone purposes.) The State believes that an early trigger (an exceedance rather than violation) will allow Connecticut to take early measures in response to the emission problem to avoid another exceedance and/or persistence of a problem that could lead to a NAAQS violation.

Connecticut's revised ''Oxygenated gasoline'' regulation contained in section 22a–174–28 of the Regulations of Connecticut State Agencies only applies if a violation of the CO standard (the NAAQS is violated if there are two or more exceedances in a given year) is recorded. Therefore, the oxygenated gasoline program essentially becomes a fourth contingency measure for the southwest Connecticut area. See the technical support document and the March 10, 1999 **Federal Register** for more information on CO contingency measures.

Conclusion

EPA has determined that the southwest Connecticut CO nonattainment area has attained the CO National Ambient Air Quality Standard and can maintain attainment without the continued implementation of its oxygenated gasoline program. As a consequence of this determination, EPA is approving Connecticut's October 7, 1999 SIP revision to remove the State's oxygenated gasoline program requirement from the federally approved State Implementation Plan and convert it to a contingency measure.

II. Final Action

EPA is approving removal of oxygenated gasoline requirement for the Connecticut portion of the New York-N. New Jersey-Long Island Area. The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. EPA is also making a minor technical correction to the Code of Federal Regulations to remove a CO attainment date extension that is no longer relevant to the State.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 31, 2000 without further notice unless the Agency receives relevant adverse comments by January 3, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 31, 2000 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Orders on Federalism

Executive Order 13132 on Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism

implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

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

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

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 12, 1999.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(83) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(83) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 7, 1999 to discontinue the oxygenated gasoline program in the Connecticut portion of the New York—N. New Jersey—Long Island Area.

(i) Incorporation by reference.

(A) CTDEP; ''Abatement of Air Pollution: Oxygenated Gasoline,''

State Regulation 22a–174–28.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Environmental Protection dated October 7, 1999 submitting a revision to the Connecticut State Implementation Plan.

§ 52.372 [Amended]

3. Section 52.372 is amended by removing and reserving paragraph (a).

4. Section 52.376 is amended by adding paragraph (g) to read as follows:

§ 52.376 Control Strategy: Carbon Monoxide.

* * * * *

(g) Approval—On October 7, 1999, the Connecticut Department of Environmental Protection submitted a revision to the carbon monoxide State Implementation Plan that removes the oxygenated fuel requirement for the Connecticut portion of the New York—N. New Jersey—Long Island area and converts the program to a contingency measure. If a violation of the carbon monoxide ambient air quality standard were to occur, the State would be required to reimplement the program.

5. In § 52.385, Table 52.385 is amended by adding a entry in numerical order to read as follows:

§ 52.385 EPA—approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA—APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Comments/ description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–28	SIP revision concerning Oxygenated Gasoline.	September 28, 1999.	January 31, 2000	[64 FR 67188] ..	(c)(83)	This SIP revision removes the oxygenated gasoline requirement for the Connecticut portion of the New York—N. New Jersey—Long Island area and changes it to a continency measure for maintaining the carbon monoxide National Ambient Air Quality Standard in the southwest Connecticut area
*	*	*	*	*	*	*

[FR Doc. 99–31045 Filed 11–30–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–82; CS Docket No. 96–85; FCC 99–288]

Cable Television Consumer Protection and Competition Act of 1992; Cable Act Reform Provision of the Telecommunications Act of 1996: Review of the Commission's Cable Attribution Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts amendments to the cable attribution and affiliation rules, which determine whether an entity is subject to the Commission's cable regulations, in order to more accurately identify interests that confer on their holders the ability to influence or control the operations of a held entity or create the type of economic incentives that the Commission's rules relating to the provision of cable television services are designed to address.

DATES: Effective February 9, 2000, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

Written comments by the public on the new and/or modified information collections are due January 31, 2000.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, FCC 99–288, adopted on October 8, 1999 and released October 20, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

This *Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Paperwork Reduction Act

This *Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 31, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.
Title: Cable Attribution Rules.
Form No.: Not applicable.
Type of Review: New collection.
Respondents: Business or other for-profit.
Number of Respondents: 20.
Estimated Time per Response: 4 hours.
Total Annual Burden: 80 hours.
Cost to Respondents: $3200.
Needs and Uses: Filings will be used by the Commission to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

Synopsis of Report and Order

1. The Commission's *Report and Order* amends the Commission's cable attribution and affiliation rules to more accurately identify interests that confer on their holders the ability to influence the operations of the held entity such that the holders should be subject to the cable rules.

2. *Key Decisions:*

- The *Report and Order* maintains the 5% voting equity attribution standard and adopts this standard for the Commission's cable-telco buyout prohibition rule, cable/SMATV cross-ownership rule, and the competing provider prong of the effective competition test. 47 CFR 76.505, 76.501(d), 76.905(h).
- *The Report and Order* raises the passive institutional investor threshold from 10% to 20%.
- The *Report and Order* eliminates the cable attribution rule's single majority shareholder exemption.
- The *Report and Order* attributes nonvoting equity and debt where an investor's interest is greater than 33% of a company's total assets, which is the sum of all equity and debt. This equity debt rule will also act as an exemption to the insulated limited partner exception.
- For the horizontal ownership and channel occupancy rules, 47 CFR 503, 504, the *Report and Order* narrowly tailors the insulated limited partnership criteria to permit a limited partner to insulate its interest so long as the limited partner is not involved in the video-programming activities of the partnership. In addition, for these two rules, the *Report and Order* permits interlocking and appointed directors and officers to petition the Commission for a waiver from attribution where the directors and officers are not involved in the video-programming activities of either company.
- The *Report and Order* adopts a 10% partnership or voting equity attribution threshold for the local exchange carrier prong of the effective competition test. 47 CFR 76.905(b)(4).
- The *Report and Order* permits investors in limited liability companies to insulate their interests under the insulated limited partnership criteria.
- The *Report and Order* clarifies the attribution and affiliation standards for the following rules: 47 CFR 76.1000 (program access); 47 CFR 76.1300 (program carriage); 47 CFR 76.924 (allocation of service cost categories); 47

CFR 76.922 (rates for the basic service tier and cable programming services tiers); 47 CFR 76.970 (commercial leased access); and 47 CFR 76.1500 (open video systems). Under these rules, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

• The *Report and Order* adopts transitional provisions. For the ownership rules covered in the *Report and Order,* the new attribution rules apply only to interests acquired on or after June 26, 1998. For the other rules covered in the *Report and Order,* the new attribution rules apply to all interests, no matter when acquired.

Ordering Clauses

3. Accordingly, pursuant to Sections 4(i), 303 and 612, 613(f)(1)(A)&(B), 616, 623, 628 and 652 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 532, 533(f)(1)(A)&(B), 536(a), 543, 548(b), 572 and 573, the amendments discussed in this *Report and Order Are adopted.* These amendments shall become effective 70 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

4. The Commission's Office of Public Affairs, Reference Operations Division, *Shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C.A. 601 *et seq.*

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.501 is amended by revising Notes 1, 2, 5 and 6 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 1: Actual working control, in whatever manner exercised, shall be deemed a cognizable interest.

Note 2: In applying the provisions of this section, ownership and other interests in an entity or entities covered by this rule will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporation will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporation, or if any of the officers or directors of the corporation are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant entity covered by this rule are subject to said trust.

(e) Subject to paragraph (i) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) Subject to paragraph (i) of this Note, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these

certifications are described in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary media business, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a media entity, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a media entity shall not be attributed with ownership of that entity by virtue of such status.

(h) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this Note, the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity, provided however that:

(1) in applying the provisions of paragraph (i) of this note to §§ 76.501, 76.505 and 76.905(b)(2), the holder of an equity or debt interest or interests in a broadcast station, cable system, SMATV or multiple video distribution provider subject to §§ 76.501, 76.505, or 76.905(b)(2) (''interest holder'') shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity; and

(i) the interest holder also holds an interest in a broadcast station, cable system, SMATV, or multiple video distribution provider that operates in the same market, is subject to §§ 76.501, 76.505, or 76.905(b)(2) and is attributable without reference to this paragraph (i); or

(ii) the interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

(2) For purposes of applying subparagraph (i)(1), the term ''market'' will be defined as it is defined under the rule that is being applied.

* * * * *

Note 5: Certifications pursuant to this section and these notes shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 12th Street, NW Washington, DC 20554.

Note 6: In applying paragraph (a) of § 76.501, no minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporation in which the minority interest is held, provided however, that an investor that has an interest under the terms of Note 2(i) of this section shall have that interest attributed.

3. Section 76.503 is amended by adding a Note 2 to read as follows:

§ 76.503 National subscriber limits.

* * * * *

Note 2: *Attributable Interest* shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99–288, CS Docket No. 98–82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the

management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

4. Section 76.504 is amended by removing paragraph (h) and adding a Note 1 to read as follows:

§ 76.504 Limits on carriage of vertically integrated programming.

* * * * *

Note 1: Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided however, that:

(a) Notes 2(f) and 2(g) to § 76.501 to shall not apply;

(b)(1) Subject to Note 2(i) to § 76.501, a limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the video programming-related activities of the partnership and the relevant entity so certifies.

(2) In the case of a limited partnership, in order for an entity to make the certification set forth in paragraph (b)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the partnership. In the case of an LLC or RLLP, in order for an entity to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the video programming activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of these certifications are described in the Report and Order, FCC No. 99–288, CS Docket No. 98–82 (released October 20, 1999). In order for the Commission to accept the certification, the certification must be accompanied by facts, e.g. in the form of documents, affidavits or declarations, that demonstrate that these insulation criteria are met. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the video-programming activities of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the entity seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(c) Officers and directors of an entity covered by this rule are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in activities other than video-programming activities, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to the entity's video-programming activities. In the case of common or appointed directors and officers, if common or appointed directors or officers have duties and responsibilities that are wholly unrelated to video-programming activities for both entities, the relevant entity may request the Commission to waive attribution of the director or officer. The officers and directors of a parent company of a video-programming business, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the video-programming subsidiary, and a certification properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a cable system shall not be attributed with ownership of that entity by virtue of such status.

5. Section 76.505 is amended by adding paragraphs (f) and (g) to read as follows:

§ 76.505 Prohibition on buy outs.

* * * * *

(f) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(g) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

6. Section 76.905 is amended by adding paragraphs (h) and (i) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(h) For purposes of paragraph (b)(2) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501.

(i) For purposes of paragraph (b)(4) of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities. Attributable interest shall be defined as follows:

(1) A 10% partnership or voting equity interest in a corporation will be cognizable.

(2) Subject to paragraph (i)(3), a limited partnership interest of 10% or

more shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the relevant entity so certifies. Certifications must be made pursuant to the guidelines set forth in Note 2(f) to § 76.501.

(3) Notwithstanding paragraph (i)(2), the holder of an equity or debt interest or interests in an entity covered by this rule shall have that interest attributed if the equity (including all stockholdings, whether voting or nonvoting, common or preferred, and partnership interests) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that entity.

(4) Discrete ownership interests held by the same individual or entity will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if the sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 10%.

7. Section 76.922 is amended by adding paragraphs (f)(6) (i) and (ii) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(f) * * *

(6)(i) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(ii) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(A) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

8. Section 76.924 is amended by adding paragraphs (i)(6) and (i)(7) to read as follows:

§ 76.924 Allocation to service cost categories.

* * * * *

(i) * * *

(6) For purposes of this section, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(7) Attributable interest shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(i) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(ii) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

9. Section 76.970 is amended by redesignating paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (e), (f), (g), (h) and (i); revising paragraph (b); and adding a new paragraph (c) to read as follows:

§ 76.970 Commercial leased access rates.

* * * * *

(b) In determining whether an entity is an ''affiliate'' for purposes of commercial leased access, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(c) Attributable interest shall be defined by reference to the criteria set forth in Notes 1–5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

10. Section 76.1000 is amended by revising paragraph (b) to read as follows:

§ 76.1000 Definitions.

* * * * *

(b) *Cognizable interests.* In applying the provisions of this subpart, ownership and other interests in cable operators, satellite cable programming vendors or satellite broadcast programming vendors will be attributed to their holders and subject the interest holders to the rules of this subpart. Cognizable and attributable interests shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

11. Section 76.1300 is amended by redesignating paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e); revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 76.1300 Definitions.

* * * * *

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

§ 76.1401 [Removed]

12. Section 76.1401 is removed.

13. Section 76.1500 is amended by redesignating paragraph (h) as paragraph (i), revising paragraph (g) and adding a new paragraph (h) to read as follows:

§ 76.1500 Definitions.

* * * * *

(g) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(h) *Attributable Interest.* The term ''attributable interest'' shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

* * * * *

[FR Doc. 99–31023 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264; FCC 99–289]

Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the method by which the cable horizontal ownership limit is calculated in order to further implements Congress' directive that a cable horizontal cap be established and to reflect dynamic changes in the marketplace.

DATES: Effective February 9, 2000, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. Written comments by the public on the new and/or modified information collections are due January 31, 2000.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Darryl Cooper at (202) 418–7200 or via Internet at *dacooper@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Third Report and Order,* FCC 99–289, adopted on October 8, 1999 and released October 20, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csb.html. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

This Third Report & Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Paperwork Reduction Act

This *Third Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 31, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0581.

Title: Section 76.503 National Subscriber Limits.

Form No.: Not applicable.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Response: 1 hour.

Total Annual Burden: 20 hours.

Cost to Respondents: $400.00.

Needs and Uses: The certification filings will be used by the Commission to: (1) Ensure that cable operators do not violate the 30 percent share rule in their acquisitions of additional multi-channel programming providers; (2) verify that limited partners who so certify are not involved in management or operations of the media-related activities of the partnership. The waiver allowance filings will be used to verify that certain directors and officers are not involved in the video programming activities of partnership.

Synopsis of Report and Order

1. The Commission's *Third Report and Order* amends the method by which the cable 30% horizontal ownership cap is calculated. The amendments recognize dynamic changes in the video distribution marketplace and will encourage further competition that will benefit consumers.

2. *Key Decisions*:

- The old horizontal ownership rule directed that no person or entity should be permitted to reach more than 30% of all homes passed nationwide through cable systems. The old rule measured the 30% limit in terms of the number of homes a cable operator is capable of serving in its franchise areas against the total number of homes in the nation that all cable systems are capable of serving. This standard is known as cable homes passed. The *Third Report and Order* changed the standard to the actual number of subscribers that a cable operator serves. This decision recognized that subscriber numbers more accurately represent a cable operator's programming market power.
- The *Third Report and Order* recognized the impact that competition from satellite and other video providers has had on a cable operator's market power. In 1994, cable operators served approximately 93% of the multichannel marketplace. In 1999, the market share of cable operators fell to 82% due to increased competition from non-cable video providers. To recognize competition from satellite providers and others, the *Third Report and Order* decided to calculate a cable operator's 30% horizontal limit as a percentage of the total multichannel video programming market, including all cable and non-cable multichannel video programming subscribers. This new method of calculation creates a sliding horizontal scale that will grow as competition to cable grows and diminish as competition diminishes. Under market conditions at the time the *Third Report and Order* was adopted, a 30% limit on all multichannel video programming subscribers was effectively equal to a 36.7% limit on cable subscribers alone, thereby effectively raising the horizontal limit to 36.7%.
- The *Third Report and Order* decided to encourage competition between cable operators by not including in their limit subscribers that the cable operators serve through overbuilding other cable systems.
- Because the changes in the method of calculating the limit reflected the changes in the cable marketplace since the limit was initially established, the *Third Report and Order* found that it was unnecessary to raise or lower the 30% limit. The *Third Report and Order* found that the 30% limit strikes a balance between the dangers that a cable operator's size pose to programmers and the benefits to cable operators of economies of scale.

• The *Third Report and Order* eliminated the minority control allowance. This allowance was designed to permit a cable operator to have ownership interests in up to 35% of the market if 5% of its systems were controlled by minorities. However, given that no parties have used this allowance or have argued that they will use the allowance, the allowance was eliminated.

• The *Third Report and Order* denied a motion to lift the Commission's stay of the horizontal ownership rule pending consideration by the United States Court of Appeals for the District of Columbia Circuit on challenges to Section 613(f)(1)(A) of the Communications Act, as amended, and the horizontal ownership rule. The Commission had decided that affected parties must comply with the horizontal rule within 60 days of the court's issuance of a mandate upholding Section 613(f)(1)(A) and the rules. In the *Third Report and Order*, the Commission found that 60 days was an unduly burdensome time frame for affected parties to dispose of property to comply with the newly effective rules. The Commission decided that the horizontal ownership rules would become effective immediately upon the court's issuance of a mandate upholding the statute and the rules and that parties in violation of the rules on that date would have 180 days to comply with the rules.

Ordering Clauses

3. Accordingly, pursuant to Sections 4(i), 303 and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 533, the amendments to 47 CFR 76.503 discussed in this Third Report and Order *Are adopted.* These amendments shall become effective 70 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

4. The August 17, 1999 Consumers Union, Consumer Federation of America, and Media Access Project's Motion to Vacate Stay of Enforcement of Horizontal Ownership Limits and other requested relief *Is denied* in its entirety.

5. 47 CFR 503(a) through (f) *is Stayed* until the United States Court of Appeals for the District of Columbia Circuit issues a decision upholding Section 613(f)(1)(A) of the Communications Act, as amended, 47 U.S.C. 533(f)(1)(A), and 47 CFR 76.503, and affected parties in violation of 47 CFR 503(a) through (f) will come into compliance within one hundred and eighty (180) days after the court issues its mandate.

6. Parties shall continue to comply with the reporting requirements of Section 503 of our rules, as modified by 47 CFR 76.503(g) and as discussed in note 10 of the *Third Report and Order*.

7. The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C.A. 601 *et seq.*

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.503 is revised to read as follows:

§ 76.503 National subscriber limits.

(a) Subject to paragraph (b) of this section, no cable operator shall serve more than 30% of all multichannel-video programming subscribers nationwide through multichannel video programming distributors owned by such operator or in which such cable operator holds an attributable interest.

(b) Cable subscribers that a cable operator does not serve through incumbent cable franchises shall be excluded from the cable operator's limit.

(c) For purposes of this section, ''incumbent cable franchise'' means a cable franchise in existence as of October 20, 1999 and all successors in interest to these franchises.

(d) Subscribers that a cable operator serves through incumbent cable franchises shall include all subscribers served by those incumbent cable franchises, regardless of when the subscribers were added to the incumbent cable franchise system.

(e) ''Multichannel video-programming subscribers'' means subscribers who receive multichannel video-programming from cable systems, direct broadcast satellite services, direct-to-home satellite services, multichannel multipoint distribution services, local multipoint distribution services, satellite master antenna television services (as defined in § 76.5(a)(2)), and open video systems.

(f) ''Cable operator'' means any person or entity that owns or has an attributable interest in an incumbent cable franchise.

(g) Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

Note 1 to Section 76.503: Certifications made under this section shall be sent to the attention of the Cable Services Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554.

[FR Doc. 99–31024 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[FCC 99–138—PR Docket No. 92–235]

Private Land Mobile Radio Services; Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Radio Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Preamble correction and correcting amendment.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** on September 16, 1999 (64 FR 50257). The rules relate to trunking of radio channels in the shared Private Land Mobile Radio bands below 512 MHz.

DATES: Effective December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, 202–418–0870 (not a toll-free call) or mwilhelm@fcc.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction amended 47 CFR 90.187 and affect the procedures to be followed by Private Land Mobile Radio applicants who propose the use of trunked radio facilities.

Need for Correction

As published, the final rule, omitted a reference to paragraph (b)(2)(iii). In addition, the **DATES** section of the preamble contained a typographical error.

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

On page 50257, in the third column, in the **DATES** section, the reference to ''§ 90.187(b)(2)(b)'' is corrected to read ''§ 90.187(b)(2)(v)''.

Accordingly, 47 CFR Part 90 is corrected by making the following correcting amendment:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309 and 332, 48 Stat. 1066, 1062, as amended: 47 USC 154, 251–2, 303, 309 and 332 unless otherwise noted.

2. Revise § 90.187(b)(2) introductory text to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 Mhz.

* * * * *

(b) * * *

(2) Trunking will be permitted on frequencies where an applicant or licensee does not have an exclusive service area provided that all frequency coordination requirements are complied with and written consent is obtained from affected licensees using either the procedure set forth in (b)(2)(i) and (b)(2)(ii) of this section (mileage separation) or the procedure set forth in (b)(2)(iii) (protected contours).

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31060 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 230
Wednesday, December 1, 1999

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA–00–02]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This document invites written comments on a proposal to suspend a portion of the pool supply plant definition of the Southern Illinois-Eastern Missouri Federal milk marketing order (Order 32) for the period of December 1999 through January 2000. Prairie Farms Dairy, Inc. (Prairie Farms), requested the proposed action. The cooperative contends the suspension is necessary to prevent inefficient movements of milk and to ensure that producers historically associated with Order 32 will continue to have their milk priced and pooled under the order.

DATES: Comments must be submitted on or before December 8, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB FMMO Comments@usda.gov. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690–1932, e-mail address nicholas.memoli@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 1999, 1,312 dairy farmers were producers under Order 32. Of these producers, 1,277 producers (i.e., 97%) were considered small businesses. For the same month, 10 handlers were pooled under Order 32, of which three were considered small businesses.

The supply plant shipping standard is designed to ensure that the market's fluid needs will be met. Prairie Farms, the proponent of the suspension, anticipates that there will be an increase in milk production based on current market trends and experiences in prior years.

The proposal would allow a supply plant operated by a cooperative association that delivered milk to Order 32 pool distributing plants during each of the months of September 1998 through August 1999 to meet the Order's pool supply plant standard by shipping at least 25 percent of its milk to pool distributing plants during the months of December 1999 and January 2000. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for the period of December 1, 1999, through January 31, 2000:

In § 1032.7(b), the words ''and 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered'' and the words ''and physically received at''.

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection at the address above during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend a portion of the pool supply plant definition of the Southern Illinois-Eastern Missouri Federal milk marketing order for the period of December 1999 through January 2000. The proposed action would allow a plant operated by a cooperative association to qualify as a pool supply plant by shipping at least 25 percent of its milk to pool distributing plants during December 1999 and January 2000 if such plant delivered milk to Order 32 pool distributing plants during each of the immediately preceding months of September 1998 through August 1999. Without the suspension, such plants would have to meet the minimum 25 percent pool supply plant standard and at least 75 percent of the total producer milk marketed in that 12-month period would have to have been delivered or physically received at pool distributing plants to qualify as a pool supply plant.

In Prairie Farms' letter requesting the suspension, the cooperative indicated that they currently operate processing plants in Carlinville, Olney, and Quincy, Illinois, and a multi-product plant in Granite City, Illinois, which are all regulated under the Southern Illinois-Eastern Missouri order. Prairie Farms notes that, from fiscal year 1998 to fiscal year 1999, milk processed at their Order 32 plants was approximately 6 percent higher and milk production of their member producers also increased about 8 percent. Based on current market trends and experiences in prior years, the cooperative expects an increase in milk production from its member producers during December 1999 and January 2000. Accordingly, it anticipates having a problem pooling all of its member producers' milk and the milk of its suppliers during the proposed suspension period.

Prairie Farms states that the proposed suspension would provide some relief for December 1999 and January 2000 and prevent large amounts of milk from being disassociated with the order. The cooperative contends that the proposed action is necessary to prevent inefficient movements of milk and to ensure that producers historically associated with Order 32 will continue to have their milk priced and pooled under the order. The cooperative points out that a portion of the supply plant provision was suspended in December 1994 and January 1995 for virtually the same reasons.

Accordingly, it may be appropriate to suspend the aforesaid provisions from December 1, 1999, through January 31, 2000.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: November 23, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–31137 Filed 11–30–99; 8:45 am]

BILLING CODE 3410–02–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket No. PRM–26–2]

Barry Quigley

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated September 28, 1999, that was filed with the Commission by Mr. Barry Quigley. The petition was docketed by the NRC on October 7, 1999, and has been assigned Docket No. PRM–26–2. The petitioner requests that the NRC: (1) Add enforceable working hour limits to 10 CFR Part 26; (2) add a criterion to 10 CFR Part 55.33 (a)(1) to require evaluation of known sleeping disorders; (3) revise the Enforcement Policy to include examples of working hour violations warranting various NRC sanctions; and (4) revise NRC Form-396 to include self-disclosure of sleeping disorders by licensed operators. The petitioner also requests changes to NRC Inspection Procedure 81502, Fitness for Duty Program. The petitioner believes that clear and enforceable working hour limits are required to ensure that the impact of personnel fatigue is minimized.

DATES: Submit comments by February 14, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition and the two reports submitted with the petition (referenced below), write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov*).

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368-5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is licensed by the NRC as a Senior Reactor Operator who is required to comply with all applicable Commission regulations.

Background

The petitioner states that in an increasingly competitive electricity market, the battle cry is ''do more with less.'' According to the petitioner, this translates into fewer people who are working more and sometimes many more hours at nuclear power plants. The petitioner believes that personnel

mistakes at nuclear power plants can be attributed to fatigue and believes that work-hour limits should be required to minimize personnel fatigue.

The petitioner states that in a letter dated May 18, 1999, to Congressman Edward J. Markey, then-NRC Chairman Shirley Jackson stated that few significant industry events can be attributed to fatigue. While the petitioner agrees that this statement is correct, he asserts that a review of the NRC's Human Factors Information System (HFIS) database suggests that events related to fatigue occur but are not reported, or not properly attributed to fatigue. According to the petitioner, NRC inspection reports listed 87 occurrences of staffing as less than adequate while the industry, using data from the Licensee Events Report, only listed 11. For occurrences attributable to excessive overtime/acute fatigue, the petitioner states that NRC reported 59 occurrences, as compared to 3 occurrences reported by the nuclear industry, and for frequent use of overtime/cumulative fatigue, NRC reported 28 cases and the industry reported none.

The petitioner believes that, based on NRC's much higher reporting of fatigue-type events, industry's accounting and reporting process is non-conservative. The petitioner believes that the tendency of the industry to under-report events related to fatigue is all the more significant in light of the NRC's trend, as asserted by the petitioner, of reducing its inspection efforts at nuclear power plants.

The petitioner states that while NRC's HFIS database contains more events related to fatigue than industry's reporting, the NRC also under-reports fatigue issues. The petitioner states that among other things, fatigue causes inattention to detail, increased risk-taking, and poor work practices. The petitioner cites the following categories in the HFIS database to support his position:

Work practices or skill of the craft less than adequate—If the skill of the craft activities are not performed consistent with management expectations, safety significance of activity or industry standard. 4913 occurrences (NRC and industry combined).

Non-conservative decision making or questioning attitude less than adequate—If personnel fail to stop work or establish appropriate controls when presented with unfavorable or uncertain work conditions. 1805 combined occurrences.

Self-checking less than adequate—If a worker fails to self-check adequately before performing task (Stop, Think, Act, Review). 618 combined occurrences.

Awareness or attention less than adequate—Includes problems that are due to failing to maintain situational awareness, infrequent or ineffective control board monitoring and problems arising from being distracted or interrupted. 2389 combined occurrences.

The petitioner states that the 9725 occurrences included in these four categories account for almost 30% of the total HFIS entries for 1996 through 1998. The petitioner believes that while there are certainly other causes for these occurrences, such as distractions and interruptions, fatigue most probably played a role in a respectable percentage of them. The petitioner cites a National Transportation Safety Board (NTSB) report, which was attached to the petition, that found that, depending on the transportation mode, 21% to 33% of consequential events were fatigue-related, whereas the NRC only attributed 90 occurrences (out of the 9725 included in the HFIS database) directly to fatigue. The petitioner states that it is highly unlikely that less than 1% were caused by fatigue. The petitioner compares the fact that the Department of Transportation (DOT) spent over $30 million on fatigue research in fiscal years 1990 to 1998, while no figures could be found in the NRC budget related to fatigue research. The petitioner compares NTSB and DOT research reports to recent NRC research reports and asserts that the NRC may not be qualified to detect fatigue-related events until they grow to the size of the Peach Bottom occurrence (the NRC ordered two reactors at Peach Bottom nuclear plant to be shut down in March 1987 after NRC inspectors discovered licensed operators asleep in the control room).

The petitioner specifies three other factors that reduce faith in NRC and the industry's reporting on fatigue:

1. Some fatigue errors have latent effects that may not be discovered for quite sometime. The examples the petitioner provided were valve mispositionings and procedures with technical errors caused by an over-worked and fatigued staff. The petitioner asserts that the cause for such errors would be difficult to trace.

2. The HFIS database shows 392 occurrences for which a root cause analysis was determined to be less than adequate. The petitioner questions the quality of the LER's presented by industry to identify all causes of an event.

3. The NRC is not aggressive in looking for fatigue issues. The petitioner notes that NRC indicated that it is very difficult to get overtime issues into Inspection Reports because it is concerned that the licensee may object.

The petitioner states that it appears that the policy of NRC is to wait for something bad to happen and then raise the issue with licensee management.

Petitioner's Conclusion

The petitioner states that the NRC issued a Generic Letter 82–12 on June 15, 1982, to all plant owners that provided guidelines that established controls to prevent situations where fatigue could reduce the ability of personnel to maintain the reactor in a safe condition. According to the petitioner, the issuance of the Generic Letter 17 years ago indicates that NRC is well aware of the threat and undue risk posed by fatigue on workers to safely operate a nuclear power plant, and therefore required plant owners to control working hours. The petitioner notes that with electricity deregulation forcing plant owners to slash staffing levels and work the survivors longer and longer hours, that the NRC has redefined the fatigue risk because few significant events can be precisely attributed to fatigue. However, according to the petitioner, the NRC shut down the Peach Bottom plant without first proving that a single significant event at the facility could be attributed to operator inattentiveness (*i.e.,* napping). The petitioner also states that in the 1980's, although few significant events were attributed to drug or alcohol abuse, the NRC took action to reduce the risk of an accident caused by degraded human performance. Specifically, the NRC implemented a Fitness-for-Duty rule that includes individual and corporate sanctions. The petitioner requests that the NRC take comparable steps to prevent degraded human performances resulting from fatigue.

The Petitioner's Proposed Amendments

The petitioner recommends the following amendments to 10 CFR Part 26.

(1) The following limits apply for personnel performing safety-related work:

(a) During non-outage periods:

(i) 60 hours per week, and

(ii) 108 hours in two weeks.

(b) During outage periods [1]:

(i) 72 hours per week, and

[1] Outage periods are defined as the 48 hours prior to reactor shutdown, the duration of the shutdown and the 48 hours after synchronizing to the grid.

(ii) 132 hours in two weeks.

(c) The maximum annual limits [2] as a percentage over 2080 hours are:

Year ending	Shift workers		Non-shiftworkers	Roving crews
	Licensed	Non-licensed		
Dec 31, 2003 [3]	20	20	30	30
Dec 31, 2002	25	20	35	35
Dec 31, 2001	30	25	40	40

(d) No part of a 16-hour shift shall occur between the hours of 11 pm and 7 am, except for turnover.

(e) No more than two 16-hour shifts shall occur in a rolling 7-day period. The first 16-hour shift shall be followed by a 16-hour rest period. The second 16-hour shift shall be preceded by a 24-hour rest period. The rest periods may be combined.

(f) No more than 24 hours in a 48 hour period.

(g) The limits apply to an individual regardless of work location or employer.

(h) Turnovers:

(i) A turnover time of 1 hour (1½ hours outage) may be allocated in any manner between an individual's oncoming and offgoing turnovers. Any balance of time remaining from turnover shall not be used for other purposes.

(ii) Exceeding the turnover time limit shall not constitute violation of the working hour limits provided:

(I) The condition is entered into the Licensee's Corrective Action program, and

(II) There is no more than one occurrence per individual per week.

(iii) The turnover time allowance shall only apply to written turnovers conducted face-to face.

(2) The following exceptions apply to the work hour limits of paragraph (1) provided the licensee takes action to minimize the effects of fatigue on human performance. Such actions may be demonstrated by compliance with paragraph (3) in addition to increased supervisory oversight.

(a) Activation of the Emergency Plan under 10 CFR 50.47,

(b) For those plants which shutdown for severe weather, the limits are suspended from the beginning of the power reduction until the severe weather has passed,

(c) The transition to Daylight Savings time in the Fall. No showing of minimization of fatigue is required for this exemption.

(d) Plant transients, typically large unplanned power changes or initiation of major Engineered Safety Features. Avoidance of Technical Specifications required shutdowns is not a transient covered by this exemption.

(e) For extended shutdown, the biweekly limit increases to 144 hours per week (weekly remains at 72 hours) provided:

(i) Prior to restart or fuel load, a plan is in place to ensure adequate rest for personnel performing critical tasks. Critical tasks are on a higher tier than safety-related work and are physical and administrative tasks directly related to fuel load and startup of the primary and secondary plant. Critical tasks would typically be those related to fuel load, primary and secondary system fill and vents, safety-related system testing, plant heatup and reactor startup (through the reaching of full power).

(ii) The role of fatigue is specifically and promptly evaluated for all— [4]

(I) Events classified as Conditions Adverse to Quality under 10 CFR part 50, Appendix B, Criterion XVI,

(II) Events classified as Conditions Adverse to Quality under 10 CFR part 50, Appendix B, Criterion XVI and attributed to personnel error,

(III) Reportable events of 10 CFR parts 20 and 50,

(IV) OSHA recordable injuries,

(V) Traffic accidents involving employees on their way home from work [5]

(3) Training and monitoring of fatigue.

(a) Licensees shall provide initial and continuing fatigue mitigation training to personnel performing safety-related work, their supervisors and managers. This training shall be developed in accordance with the systems approach to training of 10 CFR 55.4. At a minimum this training will cover:

(i) Effects of diet, gender, and age on fatigue,

(ii) Importance and ways to maximize rest in off-hours,

(iii) Symptoms of major sleep disorders, and

(iv) Other items as determined during the rule comment period.

(b) Licensees shall provide training to supervisors of personnel performing safety-related work in the monitoring and detection of fatigue.

(4) Section 26.20, ''Written Policy and Procedures,'' should be revised to remove the word ''fatigue'' from:

''Licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness.'' (The purpose of this change is to eliminate conflicts with the prescriptive working hour limits and inclusion of the word ''fatigue'' in a statement that is essentially only a recommendation as indicated by the word ''should''.)

(5) A new definition should be added to 10 CFR Part 26 for the term ''Working Hours:''

Working Hours—All hours performing safety-related services for the licensee while on property owned or controlled by the licensee. This includes training and meetings. Breaks, paid, or unpaid, are also included in the calculation of working hours for fatigue. This is appropriate since fatigue is related to several factors, including time since awakening.

Proposed Revisions to NRC Form 396 and 10 CFR Part 55

NRC Form 396 and 10 CFR Part 55 should be revised to require self-disclosure and evaluation of known sleep disorders.

(6) Other Changes: A full set of examples ranging from non-cited to Level I violations should be provided in the Enforcement Manual.

Bases for Proposed Changes

Weekly/Biweekly

The petitioner states that the weekly and biweekly limits are to prevent cumulative fatigue over the short-term. A 60-hour limit allows 5 twelve-hour shifts or 7 eight-hour shifts. The biweekly limit would limit one of the weeks to 48 hours. The 108-hour total is based on limiting the total hours worked for twelve hour shifts to a

[3] And all subsequent years.

[4] This includes events on other units of multi-unit sites if the personnel are under the extended outage provision.

[5] Letter from D. Lochbaum, Union of Concerned Scientists to Chairman Jackson, NRC, March 18, 1999.

reasonable number and ensuring those working eight-hour shifts have at least one day off every two weeks.

Annual

The petitioner states that the annual limits address longer-term cumulative fatigue and are based on NUREG/CR–4248, ''Recommendation for NRC Policy on Shift Scheduling and Overtime at Nuclear Power Plants,'' [6] which recommended limiting overtime to 2,260 hours per year. The petitioner specifies that the maximum allowed by this petition exceeded this amount but it is not likely that the limit of 2260 hours could be reached. According to the petitioner, the table includes a workdown curve for each of the categories to ensure that some amount of immediate relief is provided while allowing a gradual transition period. The shiftworker limits are lower to allow for the impact of rotating shiftwork, constant disruption of circadian rhythms and working during the pre-dawn trough in performance. The licensed operator curve is more gradual to allow more time to increase the number of operators, if the licensee chooses to do so. The roving crew limits are needed to prevent multi-site utilities from almost constantly having people move from site to site using the outage limits on working hours.

16-Hour Shifts

The petitioner states that the 16-hour shift limits address acute fatigue. The petitioner offers that a substantial amount of first- and second-hand experience is available to him that shows that any 16-hour shift involving a midshift is foolhardy. The petitioner offers the following scenario for a 16-hour shift from 3 pm to 7 am.

Assume the worker arises at 8 am, after a restful sleep, on the day he is to work. A nap prior to 3 pm will be difficult, absent the use of sleeping aids, since sleeping during the day is not natural and the worker should still be rested from the previous night. Near the end of the shift, the worker will have been awake for almost 24 hours.

The petitioner states that Australian researchers [7] show that after 24 hours awake, the performance degradation is equivalent to a Blood Alcohol Content of 0.10%. Additionally, the petitioner states that with the increase in online maintenance, midshifts are no longer the quiet times they were a few years ago and that although the increased workload provides increased stimulation, stimulation is no substitute for rest. The petitioner believes the increased activities provide more opportunities for mishaps.

The petitioner offers a similar scenario for a worker who rises at 8 am and works on a shift from 11 pm to 3 pm. The petitioner states that at the end of the shift, the worker will have been up for 31 hours with a 3-hour nap. The petitioner states that although short naps (30 minutes) may have some restorative ability, they must be taken when tired. The petitioner notes that this would qualify as a ''split rest period'' under NTSB rules and that NTSB is requesting the DOT to abolish split rest periods due to lack of effectiveness.

Individual Basis

The petitioner believes that limiting hours worked, regardless of employer or location, is necessary to ensure that contractors or others are not excessively fatigued.

Turnover Limits

The petitioner states that turnovers require special consideration. The petitioner believes that orderly transfer of information from one shift to the next is essential for plant safety and that it is as equally important that the work hours are minimized and the turnover allowance is not abused. The petition states there is substantial potential for abuse of the turnover allowance since some may see it as a ''free'' extra hour. For example, a maintenance worker or engineer (personnel who typically do not have written turnover) could simply tack on an hour to their workday, absent a specific prohibition. The petitioner also notes that abuses are possible for personnel using written turnovers, i.e., if a turnover is normally completed in 15 minutes, the extra 45 minutes shall not be used for other administrative duties. The petitioner states that this is consistent with the requirement to control working hours to limit the effect of fatigue.

The petitioner further states that there are times when plant events require extended turnovers. The once a week exception is judged adequate based on the petitioner's experience as an on-shift SRO. The petitioner indicated that the requirement to enter the condition into the Licensee's Corrective Action program is required to provide both visibility and tracking, the assumption being that a high number indicates either an excessive administrative burden or an individual performance issue.

Exemption

The list of exemptions is considered reasonable based on the petitioner's experience. It is anticipated to grow slightly during the rulemaking phase as more experience is added. The overriding goal of the exemptions is that they be limited both in circumstance and number. The purpose is to avoid the ambiguity of Generic Letter 82–12.

NRC Form 396 and 10 CFR Part 55

The petitioner believes this revision would allow the NRC to issue conditional licenses with the appropriate compensatory actions. The petitioner states that this approach was adopted by the Coast Guard.

Other Changes

The petitioner believes that a full set of examples in the Enforcement Manual would provide clear guidance to NRC staff on the appropriate level of sanctions required.

Reference Documents

The petitioner states that documents used in support of this petition were readily available on websites of the NRC and the NTSB and in the NRC Public Document Room. The petitioner also attached two documents that in his view summarize the hazards of fatigue. They are *Overtime and Staffing Problems in the Commercial Nuclear Power Industry*, Union of Concerned Scientists (March 1999), and *Evaluation of U.S. Department of Transportation Efforts in the 1990s to Address Operator Fatigue*, NTSB Safety Report NTSB/SR–99/01 (May 1999).

Dated at Rockville, Maryland, this 24th date of November 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–31192 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

[6] Battelle Pacific Northwest Laboratories, Richland, WA July 1985.

[7] Nature, Vol. 388, July 17, 1997 pg 235.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice of extension of comment period.

SUMMARY: On November 8, 1999, SBA published a proposed rule to amend the regulations governing Certified Development Companies (''CDCs''). The original comment period closes on December 8, 1999. This Notice extends the comment period for 60 days.

DATES: Continue to submit comments on or before January 31, 2000.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jane Palsgrove Butler, Associate Administrator for Financial Assistance, (202) 205–6490.

SUPPLEMENTARY INFORMATION: On November 8, 1999, SBA published a proposed rule to amend the regulations governing Certified Development Companies (''CDCs'') (64 FR 60735). The original comment period closes on December 8, 1999. SBA is extending the comment period for 60 days.

SBA will also plan a public hearing on this proposed rule and will publish in the **Federal Register** a Notice providing further information on the public hearing.

Dated: November 24, 1999.

Jane Palsgrove Butler,

Associate Administrator for Financial Assistance.

[FR Doc. 99–31214 Filed 11–30–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 1A Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Turbomeca Arrius 1A and series turboshaft engines. This proposal would require installation of module TU63, which provides a separate supply of fuel for one of the 10 main injectors of the fuel injection system. This proposal is prompted by reports of unexpected power loss during test flights. The actions specified by the proposed AD are intended to prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–42–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Turbomeca Arrius 1A series turboshaft engines. The DGAC advises that they have received reports of unexpected power loss during test flights. This power loss is due to lack of fuel supply to the main fuel injectors during low fuel flow conditions. The power loss occurred during a very quick decrease of power consumption caused by displacing collective pitch of the helicopter to minimum stop, for example, during a ''quick stop.'' This condition, if not corrected, could result in unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

Service Information

Turbomeca has issued Service Bulletin (SB) No. 319 72 0016, Revision 1, dated December 22, 1997, that specifies procedures for installing module TU63, which provides a separate supply of fuel for one of the 10 main injectors of the fuel injection system. The DGAC classified this SB as mandatory and issued Airworthiness Directive (AD) 98–200(A), dated May 20, 1998, in order to assure the airworthiness of these engines in France.

Bilateral Airworthiness Agreement

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

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require installation of module TU63, at the earliest of the following: the next shop visit after the effective date of this AD, 120 cycles-in-service after the effective date of this AD, or within 30 days after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB described previously.

Economic Analysis

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that 9 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,500.00 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $ $50,040. The manufacturer has advised the DGAC that they may provide module TU63 at no cost to the operator, thereby substantially reducing the cost impact of this proposed rule.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca: Docket No. 99–NE–42–AD.

Applicability: Turbomeca Arrius 1A series turboshaft engines, installed on but not limited to Ecureuil AD355 series helicopters.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing, accomplish the following:

Installation of Module TU63

(a) Install module TU63 in accordance with the Instructions for Incorporation of Turbomeca Service Bulletin (SB) No. 319 72 0016, Revision 1, dated December 22, 1997, at the earliest of the following after the effective date of this AD:

- The next shop visit, or
- Within 120 cycles-in-service, or
- Within 30 days.

Definition

(b) For the purpose of this AD, a shop visit is defined as whenever the engine is removed from the helicopter for maintenance.

Alternative Methods of Compliance

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

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

Ferry Flights

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

Issued in Burlington, Massachusetts, on October 24, 1999.

David A. Downey,

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

[FR Doc. 99–31171 Filed 11–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 99N–1852]

RIN 0910–AB83

Postmarketing Studies for Human Drugs and Licensed Biological Products; Status Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the status reports section of the postmarketing annual reporting requirements for drug and biological products, and to require applicants to submit annual status reports for certain postmarketing studies of licensed biological products. This proposed rule would describe the types of postmarketing studies covered by these status reports, the information to be included in the reports, and the type of information that FDA would consider appropriate for public disclosure. The agency is taking this action to implement section 130 of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments on the proposed rule by February 14, 2000. Submit written comments on the information collection provisions by January 3, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch

(HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6344; or

Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5625.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 21, 1997, the President signed the FDAMA into law (Public Law 105–115). Section 130(a) of the FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision on reports of postmarketing studies) (section 506B of the act (21 U.S.C. 356b)). Section 506B of the act provides FDA with additional authority for monitoring the progress of postmarketing studies that companies have made a commitment to conduct and also requires the agency to make information that pertains to the status of these studies publicly available.

Under section 506B(a) of the act, applicants that have committed to conduct a postmarketing study for a drug or biological product that is approved for marketing must submit to FDA a report on the progress of the study or the reasons for the failure of the applicant to conduct the study. This provision directs FDA to issue regulations that prescribe the content of these reports.

Section 506B(a) of the act also states that these reports must be submitted to FDA within 1 year after the approval of the product and annually thereafter until the study is completed or terminated. This provision applies to commitments for postmarketing studies that were made on or after enactment of FDAMA, as well as those made prior to enactment of FDAMA. For commitments made prior to enactment of FDAMA, the act requires that an initial report be submitted to FDA within 6 months after the date of issuance of the final rule implementing section 506B of the act. Section 506B(b) of the act specifies which information in a status report may be considered public information. Under section 506B(b) of the act, FDA may publicly disclose any information pertaining to a status report under section 506B(a) to the extent that the information is necessary to identify the applicant, or to establish the status of a study and the reasons, if any, for failure to conduct, complete, and report the study.

Section 506B(c) of the act directs FDA to develop and publish annually in the **Federal Register** a report concerning this activity. This report must provide information on the status of postmarketing studies that applicants have committed to conduct under this provision and for which reports have been submitted.

FDAMA also directs FDA, under section 130(b), to submit a specific report to Congress by October 1, 2001. This report must contain a summary of the status reports submitted under section 506B of the act, an evaluation of the performance of applicants in fulfilling their commitments to conduct postmarketing studies under this provision and of FDA's timeliness in reviewing these postmarketing studies, and any legislative recommendations regarding postmarketing studies.

Under the agency's existing postmarketing reporting regulations for human drug products, at § 314.81(b)(2) (21 CFR 314.81(b)(2)), each applicant holding an approved new drug application (NDA) or abbreviated new drug application (ANDA) must submit an annual report to FDA for the drug product. This annual report is required to contain, among other information, a section on status reports that includes a statement on the current status of any postmarketing studies of the drug product performed by, or on behalf of, the applicant (§ 314.81(b)(2)(vii)). This section also permits applicants to include a list of any open regulatory business with FDA concerning the drug product. In the **Federal Register** of December 2, 1998 (63 FR 66632), FDA issued a final rule amending these postmarketing reporting regulations to require that annual reports contain, among other information, specific information about the status of postmarketing clinical studies in pediatric populations. In this proposed rule, FDA is proposing to amend these regulations, including the new provisions issued in the final rule of December 2, 1998, to implement the requirements of section 506B of the act for human drug products. In a separate rulemaking, FDA plans to propose additional amendments to the annual report requirements pertaining to the nonclinical laboratory studies and clinical data sections of the annual report. However, these amendments are beyond the scope of this proposed rule.

Each applicant holding a biologics license application (BLA) must submit an annual report to FDA describing any minor changes that may relate to the safety or effectiveness of the product (§ 601.12(d) (21 CFR 601.12(d)) and must also submit a separate annual report, in accordance with the final rule of December 2, 1998 (63 FR 66632), regarding postmarketing pediatric studies (§ 601.37 (21 CFR 601.37)). In this proposed rule, FDA is proposing to amend the biologics regulations at part 601 (21 CFR part 601) by revising the postmarketing annual reporting requirement at § 601.37 and by adding a new postmarketing annual reporting requirement, § 601.70, to implement the requirements of section 506B of the act for licensed biological products. Proposed § 601.70 would only apply to licensed biological products that meet the definition of ''drug'' under the act; it would not apply to biological products that also meet the definition of ''medical device'' under the act, since section 506B does not cover medical devices.

This proposed rule would only apply to human drug and biological products; it would not apply to animal drug products. FDA intends to amend its regulations to implement section 506B of the act for animal drug products in a separate rulemaking.

In May 1996, the Office of Inspector General of the Department of Health and Human Services issued a report regarding FDA's oversight of postmarketing study commitments for prescription drugs (Ref. 1). This study found that the number of postmarketing study commitments was increasing and that the agency did not have formal standards or procedures for monitoring postmarketing studies or for establishing whether a postmarketing study commitment had been met. At the same time, FDA was developing formal procedures for tracking the progress of postmarketing study commitments, an effort that began in February 1995 when the agency recognized the need for such procedures. These procedures were implemented in October 1996. The proposed revisions to the human drug and biologics regulations in this rule will facilitate FDA's current system for tracking postmarketing study commitments.

In addition to the regulatory changes proposed in this rule, FDA will issue guidance regarding section 506B of the act. This guidance will describe in greater detail the type of information

that applicants should submit to the agency in a status report for a postmarketing study of an approved drug or licensed biological product, the implementation schedule for submission of these status reports to the agency, how FDA will track information obtained for postmarketing studies, and the schedule for FDA review of status reports and final study reports for postmarketing studies. In accordance with the agency's Good Guidance Practices (62 FR 8961, February 27, 1997), FDA will make the guidance available in draft form for public comment before issuing a final guidance. FDA is also in the process of reviewing and revising, as necessary, its internal operating procedures related to tracking commitments made for the conduct of postmarketing studies under this provision for approved drug and licensed biological products.

II. Description of the Proposed Rule

A. Introduction

The proposed rule would amend the postmarketing annual reporting requirements for human drug products under § 314.81(b)(2) by reorganizing the status reports section, at § 314.81(b)(2)(vii), to require that the information contained in this section be provided to FDA in a different format. FDA is proposing that this information be included in the annual report in three different sections. One section would contain, as described below (see section II.B of this document), status reports for those postmarketing studies of the drug product (i.e., clinical safety, clinical efficacy, clinical pharmacology and nonclinical toxicology) that are required by FDA (e.g., pediatric studies) or that an applicant has committed, in writing, to conduct either at the time of approval of an application or a supplement to an application, or after approval of an application or a supplement consistent with section 506B of the act (proposed § 314.81(b)(2)(vii)). This section would also include, for pediatric studies, a statement that indicates whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23 (21 CFR 201.23). Another section would contain status reports for any other postmarketing studies of the drug product (proposed § 314.81(b)(2)(viii)) (e.g., chemistry, manufacturing, and controls, stability of the product), and the third section would contain, at the applicant's discretion, a list of any open regulatory business with FDA concerning the drug product (proposed § 314.81(b)(2)(ix)). FDA would use the information provided under proposed § 314.81(b)(2)(vii) to meet its reporting obligations under section 506B of the act (annual report in the **Federal Register**) and section 130(b) of FDAMA (report to congressional committees by October 1, 2001). FDA does not intend to use information provided under proposed § 314.81(b)(2)(viii) for this purpose. This proposed change in the structure of the annual report would facilitate FDA's preparation of its annual reports and its report to Congress without imposing a new reporting burden on applicants with approved NDA's and ANDA's because these applicants are currently required to report such information to FDA.

The proposed rule would also create a new subpart G under part 601 entitled ''Postmarketing Studies'' and a new § 601.70 under subpart G. Proposed § 601.70 would require, as described in section II.B of this document, annual reports of the status of postmarketing studies for licensed biological products (i.e., clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology) that are required by FDA (e.g., pediatric studies) or that an applicant has committed, in writing, to conduct either at the time of approval of an application or a supplement to an application, or after approval of an application or a supplement. Proposed § 601.37(c) would require that the status of postmarketing pediatric studies that are covered under proposed § 601.70 be reported to FDA under proposed § 601.70 rather than under § 601.37. FDA notes that biological products previously approved under the product license application and establishment license application process are included wherever BLA, the new form of application for biological products, is used in this preamble.

B. Scope of Proposed Rule

Postmarketing studies for marketed human drug and licensed biological products are conducted for a variety of purposes (e.g., new indication, safety, medication errors, pharmacokinetics, pharmacology, chemistry, marketing, stability, use in special populations such as children). Some of these postmarketing studies are conducted by an applicant on its own initiative. Other postmarketing studies are required by FDA to be conducted by applicants such as assessing the safety and effectiveness of new drugs and biologics in pediatric patients (§ 314.55 (21 CFR 314.55) and § 601.27. Others result from an applicant's commitment, in writing, to the agency to conduct the study at the time of approval of an application (e.g, an NDA, ANDA, BLA, or supplement), after approval of an application (e.g., as a result of suspected adverse drug reaction reports), as a condition of accelerated approval of new drugs and biological products for serious or life–threatening illnesses (subpart H of part 314 (21 CFR part 314), and subpart E of part 601 respectively), or as a deferred submission of pediatric studies (§§ 314.55(b) and 601.27(b)). Studies that applicants commit to conduct at the time of approval of an application are usually intended to address concerns about the risks, benefits, or optimal use of a drug or biological product that do not warrant delaying approval of the application.

This proposed rule would define postmarketing studies for which status reports must be submitted under section 506B of the act as those that concern clinical safety, clinical efficacy, clinical pharmacology or nonclinical toxicology studies and that are required by FDA (e.g., pediatric studies) or that are committed to, in writing, either at the time of approval of an application or a supplement or after approval of an application or supplement. FDA is proposing to include clinical studies such as safety, efficacy, and pharmacology studies within the scope of this rule because these types of studies provide the most relevant and useful additional information about the risks, benefits, and optimal use to patients and consumers of an approved drug or licensed biological product. In addition, FDA is proposing to include nonclinical toxicology studies within the scope of this rule, although such studies typically cannot be performed on human subjects, because they are very useful to further evaluate the safety of a marketed drug or biological product.

For the purpose of this rule, clinical safety and clinical efficacy studies would include human epidemiological studies. Examples of clinical pharmacology studies are pharmacokinetic and pharmacodynamic studies. For all of the postmarketing studies described previously, §§ 314.81(b)(2)(vii) and 601.70 would require applicants to provide status reports to FDA regarding the progress of such studies.

Postmarketing studies designed to evaluate other types of issues such as manufacturing and control issues (e.g., stability of the product, development of new tests or specifications) and medication errors (e.g., attributable to the labels, labeling and/or packaging of the product) would be reported for drug products, as described below, under proposed § 314.81(b)(2)(viii) rather than under proposed § 314.81(b)(2)(vii), and

would not be required to be reported under § 601.70 for licensed biological products.

This proposed rule would require, as stated previously, status reports, under proposed §§ 314.81(b)(2)(vii) and 601.70, for postmarketing studies that either are required by FDA (e.g., pediatric studies) or that applicants commit, in writing, to conduct either at the time of approval of an application or a supplement to an application, or after approval of an application or a supplement.

Under proposed § 314.81(b)(2)(viii), applicants with approved NDA's and ANDA's would be required to provide status reports for any postmarketing study not reported under proposed § 314.81(b)(2)(vii) (e.g., chemistry, manufacturing, and controls, stability of the product, medication errors). These would include postmarketing studies performed by, or on behalf of, the applicant, whether or not the studies are required or subject to commitments. Proposed § 314.81(b)(2)(viii) does not represent a new reporting burden for applicants with approved NDA's or ANDA's because these applicants are currently required to provide status reports for these studies in their postmarketing annual reports. FDA is not proposing a similar reporting requirement for postmarketing studies of licensed biological products in this proposed rule. Applicants with licensed biological products may voluntarily submit status reports to FDA for postmarketing studies that are not required to be reported under proposed § 601.70.

The agency is committed to harmonizing its reporting requirements for drugs and biologics as much as possible. Section 123(f) of FDAMA requires FDA to take measures to minimize differences in the review and approval of products required to have approved BLA's under section 351 of the Public Health Service Act (42 U.S.C. 262) and products required to have approved NDA's under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)). At the present time, FDA is considering whether to amend its biologics regulations in a separate rulemaking to require the submission of information in postmarketing annual reports currently submitted to the agency by applicants with approved NDA's and ANDA's under § 314.81(b)(2)(i) through (b)(2)(vi). FDA requests comment on whether the postmarketing annual report for licensed biological products under § 601.12(d), (changes to an approved application), § 601.37 (annual reports of postmarketing pediatric studies), and proposed § 601.70 should be combined into a single annual report and whether such a report should include additional information as required in § 314.81(b)(2)(i) through (b)(2)(vi). However, FDA has determined that requiring such additional information is beyond the scope of this proposed rulemaking and that it is appropriate, at this time, to harmonize only the drugs and biologics postmarketing annual reporting requirements as they relate to section 506B of the act.

C. Content of Status Reports

Current regulations (§ 314.81(b)(2)(vii)) do not prescribe the content of status reports of postmarketing studies. In this proposed rule, FDA is proposing to set forth the format and content of these reports, as described in section 506B of the act, which requires sufficient information to identify the applicant of the postmarketing study, the specific study being conducted, the status of the study, and the reasons, if any, for the applicant's failure to complete the study. Under proposed § 314.81(b)(2)(vii) and (b)(2)(viii) and § 601.70(b), a status report for a postmarketing study would be required to contain the following information:

1. Applicant's name.

2. Product name. This would include the approved product's established/proper name and proprietary name, if applicable.

3. NDA number, ANDA number, BLA/reference number, or supplement number of the approved product.

4. Date of product's U.S. approval.

5. Date of postmarketing study commitment. This date would be the same as the date of the product's U.S. approval for commitments made, in writing, at the time of U.S. approval of an application; would be the date of U.S. approval of the supplement for commitments made, in writing, at the time of U.S. approval of a supplement; and would be the date of written commitment for commitments made after U.S. approval of an application or supplement.

6. Description of postmarketing study commitment. For clinical studies, this section would include the purpose of the postmarketing study, the patient population addressed by the study, the number of patients and/or subjects to be included in the study, and the indication and dosage(s) that are to be studied. For nonclinical studies, this section would include the type and purpose of the study (e.g., carcinogenicity study to determine effects of chronic dosing).

7. Schedule for conduct, completion, and reporting of the postmarketing study commitment. This section would include projected dates for initiation of the different phases of the study, for completion of the study, and for submission of the final study report to FDA. This schedule should reflect a reasonable, but aggressive timetable for completing the postmarketing study commitment. Although some delays in a study may be unanticipated, it is expected that studies would progress as originally scheduled. If the original schedule is revised under section 9 of this status report, the revised schedule would also be reported in this section (i.e., section 7) in the next report with a note indicating that the schedule has been revised as reported in the previous status report.

8. Current status of the postmarketing study commitment. Applicants would categorize the status of each postmarketing study using one of the following terms that describe the study's status on the U.S. anniversary date of approval of the application or other agreed upon date:

a. *Pending*. The study has not been initiated (i.e., first patient has not been enrolled).

b. *Ongoing*. The study is proceeding according to or ahead of the original schedule described in section 7 of the status report. If a study has been completed but the final study report has not been submitted to FDA, the date the study was completed would be provided.

c. *Delayed*. The study is proceeding but is behind the original schedule described in section 7 of the status report. The original schedule would serve as the basis for defining a study as ''delayed,'' even if a revised schedule is provided.

d. *Terminated*. The study was ended before completion.

e. *Submitted*. The study has been completed (i.e., last patient finished the protocol) or terminated and a final study report has been submitted to FDA. This category would include the date the final study report was submitted to FDA.

9. Explanation of the study's status. This section would include a brief description of the status of the study, including the number of patients and/or subjects enrolled to date and an explanation of the study's status identified under section 8 of the status report (e.g., delayed due to difficulty in patient accrual, terminated because study would no longer provide useful information, terminated because study is no longer feasible, terminated because of adverse events or other safety issues associated with the use of the product). This section would also include a

revised schedule, as well as the reason(s) for the revision, if the schedule under section 7 of the status report has changed since the last annual report. This revised schedule would be included, as noted previously, under section 7 of the next report.

FDA believes that the information proposed to be required in status reports would provide the agency with sufficient data for review of the progress of ongoing postmarketing studies under this section. These reports would also provide FDA with sufficient information to meet the agency's reporting obligations under section 130 of FDAMA (i.e., annual report in the **Federal Register** on the status of postmarketing studies, report to congressional committees by October 1, 2001).

D. Log of Outstanding Regulatory Business

Current regulations (§ 314.81(b)(2)(vii)), as noted previously (see section I of this document), permit applicants with approved NDA's and ANDA's to include in the status reports section of annual reports a list of any open regulatory business with FDA concerning the drug product that is the subject of the annual report. FDA would continue to permit applicants to submit such information in annual reports under proposed § 314.81(b)(2)(ix). For clarification, FDA is proposing to provide examples of the types of open regulatory business that would be reported under proposed § 314.81(b)(2)(ix). These would include a list of the applicant's unanswered correspondence with the agency and a list of the agency's unanswered correspondence with the applicant.

Proposed § 601.70 does not contain a similar provision for outstanding regulatory business. However, as noted previously (see section II.B of this document), FDA is considering a separate rulemaking that would require the same postmarketing annual reporting requirements for drugs and biologics.

E. Report Submission Requirements

Current regulations at § 314.81(b), require applicants with approved drug products to submit two copies of an annual report to FDA. Under § 314.81(b)(2), these annual reports are required to be submitted within 60 days of the anniversary date of U.S. approval of the application to the FDA division responsible for reviewing the application and these reports. Each annual report is required to be accompanied by a completed transmittal Form FDA–2252 (Transmittal of Periodic Reports for Drugs for Human Use) that includes all the information required under § 314.81(b)(2) that the applicant received or otherwise obtained during the annual reporting interval, which ends on the U.S. anniversary date. FDA is proposing to amend these regulations by replacing the phrase ''Periodic Reports'' with the phrase ''Annual Reports'' to correct an error and by making other minor changes to provide clarity.

Currently, applicants with licensed biological products must submit reports, under § 601.12(d), describing certain minor changes to an approved BLA, and under § 601.37, providing information on postmarketing pediatric studies, each year within 60 days of the anniversary date of approval of the application. Proposed § 601.70(c) and (d) would require applicants with licensed biological products to submit a separate annual report to FDA describing the status of certain postmarketing studies using submission requirements similar to those required for drugs under § 314.81(b)(2) and for licensed biologics under §§ 601.12(d) and 601.37. Applicants with licensed biological products would submit two copies of an annual progress report to FDA within 60 days of the anniversary date of the U.S. approval of the application for the product. Each annual progress report would be accompanied by a completed transmittal Form FDA–2252 that includes all the information required under proposed § 601.70 that the applicant received or otherwise obtained during the annual reporting interval, which ends on the U.S. anniversary date. These annual progress reports would be submitted for all postmarketing studies of a licensed biological product covered under the scope of this proposed rule including those that are required by FDA (e.g., pediatric studies) and those that an applicant committed, in writing, to conduct on or after the effective date of any final rule that may issue based on this proposed rule and prior to the effective date.

For drugs and biologics with approved NDA's, ANDA's, and BLA's, FDA intends, as noted previously (see section II.A of this document), to fulfill its annual reporting requirement mandated by section 506B(c) of the act by publishing in the **Federal Register**, the status of postmarketing study commitments reported under proposed §§ 314.81(b)(2)(vii) and 601.70. Furthermore, FDA will post additional information on the agency's web page (see section G.2 of this document). This additional information will include an applicant's failure to submit a status report under proposed §§ 314.81(b)(2)(vii) and 601.70 for any postmarketing study commitment that the agency has formally tracked (i.e., commitments included in agency databases which were made, in writing, at the time of approval or after approval of an application or a supplement to an application, and commitments made as a condition of accelerated approval, or required studies for assessing the safety and effectiveness of drugs and biologics in pediatric patients).

A status report under proposed §§ 314.81(b)(2)(vii) and 601.70 would be submitted to FDA until the agency notifies the applicant, in writing, that the study commitment has been fulfilled or acknowledges that the study is either no longer feasible or would no longer provide useful information. Applicants may indicate in their status report that a study has been terminated because it is either no longer feasible or would no longer provide useful information. However, these applicants would be required to submit a final study report to FDA and continue to submit status reports for the study until the agency evaluates the final study report and concurs, in writing, with the applicant's determination. To expedite the process, FDA encourages applicants to submit a final study report to the agency as soon as they have determined that a postmarketing study commitment is to be terminated.

F. Public Disclosure of Information

Section 506B(b) of the act requires FDA to publicly disclose any information pertaining to a status report described in section 506B(a) of the act to the extent that such information is necessary to: (1) Identify the sponsor or (2) establish the status of the postmarketing study and the reasons, if any, for any failure to carry out the study. Therefore, FDA is proposing to state in the rule its authority to disclose any information contained within or relating to postmarketing studies under proposed § 314.81(b)(2)(vii) or proposed § 601.70, if the information is necessary to establish the identity of the applicant or the status of the study, including the reasons, if any, for the applicant's failure to conduct, complete, and report the study. However, FDA would not disclose trade secrets as defined in 21 CFR 20.61(a) or information described in 21 CFR 20.63, the disclosure of which would constitute an unwarranted invasion of personal privacy. Information necessary to establish the status of a postmarketing study would include the study protocol, patient accrual rates, reports of unexpected (i.e., unlabeled) suspected adverse drug

reactions, and study results. Some of these types of information such as study protocols for certain postmarketing studies and adverse event reports for certain postmarketing studies are currently publicly available. Section 130(b) of FDAMA provides FDA with statutory authority to disclose data and information, including certain information that may be considered to constitute confidential commercial information. Section 130(b) of FDAMA constitutes authorization by law for the purposes of 18 U.S.C. 1905 to disclose certain information that could otherwise be considered nondisclosable confidential commercial information.

G. Proposed Implementation Scheme

1. Effective Dates

FDA proposes that any final rule that may issue based on this proposed rule become effective 90 days after its date of publication in the **Federal Register**. Applicants with approved applications for human drug and licensed biological products (that are not medical devices) would be subject to the annual reporting requirements in this proposed rule. In addition, applicants that have entered into a commitment prior to November 21, 1997, to conduct a postmarketing study described under proposed § 314.81(b)(2)(vii) or proposed § 601.70 would be required, as mandated by FDAMA, to submit an initial report to FDA within 6 months after the effective date of any final rule that may issue based on this proposed rule. Thus, in some cases, an applicant would be required to submit two reports to FDA in the first year after the effective date of the final rule (i.e., an initial report containing only information required under proposed § 314.80(b)(2)(vii) or proposed § 601.70 due within 6 months after the effective date and a complete annual report based on the product's anniversary date of U.S. approval due in the 7th to 12th month after the effective date). After the first year, applicants would only be required to submit one annual report to FDA each year.

This proposed rule does not affect the existing reporting requirements issued in the final rule of December 2, 1998 (63 FR 66632). Any changes to the provisions in the final rule of December 2, 1998, that are proposed in this rule would be in effect on the effective date of any final rule that may issue based on this proposed rule.

2. Annual **Federal Register** Report

Consistent with section 506B(c) of the act, FDA will publish annually a report in the **Federal Register**. This report will provide a brief summary of the status of postmarketing study commitments for approved drugs and licensed biological products that applicants have submitted to FDA under proposed §§ 314.81(b)(2)(vii) and 601.70. The report will include the number of pending, ongoing, delayed, and terminated postmarketing study commitments, as well as the number of final study reports that have been submitted to FDA, the number of study commitments that FDA has deemed fulfilled, and the number of applicants that failed to submit a status report to the agency for unfulfilled postmarketing study commitments. Detailed information regarding the status of these postmarketing studies will be posted on FDA's web page at ''http://www.fda.gov''. The web site will contain, at a minimum, the following information for each postmarketing study commitment: Name of the applicant, application number, product name, dosage form, product use category, type of study, commitment description, commitment date, projected study completion date, current status of commitment, applicant summary of status, annual report due date, and date annual report received.

III. Request for Comments

Interested persons may, on or before February 14, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule would have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any 1 year.

The agency believes that this rule is consistent with the principles set out in the Executive Order and in these two statutes. OMB has determined that the proposed rule is a significant regulatory action as defined by the Executive Order and so is subject to review. The rule would require applicants that have committed, in writing, to conduct a postmarketing study for an approved drug or biologic product to submit annual reports on the progress of the study or on the reasons for the failure of the applicant to conduct, complete, and report the study. The rule would permit FDA to publicly disclose information concerning these postmarketing studies, thereby providing patients, consumers, and the medical community with access to important and useful information.

A. Nature of Impact

Currently, applicants holding approved NDA's or ANDA's are required to submit annual reports to the agency that include information on the current status of any postmarketing studies of the drug product performed by, or on the behalf of the applicant. Although the proposed rule prescribes the format for the required information, this requirement would add no new economic burden for the majority of NDA and ANDA applicants. About half of the applicants holding approved NDA's or ANDA's with outstanding postmarketing study commitments made prior to the enactment of FDAMA may incur a small cost the first year, if their annual report is due within the last 6 months after the effective date of issuance of the final rule and they must submit one initial report within the first 6 months after the effective date. FDA estimates that there will be approximately 116 such reports submitted, which will require about 16 hours per report to complete. Assuming an average wage rate of $35 per hour,

the estimated, one-time cost of this provision is $64,960.

Applicants with licensed biological products are currently required to submit information on postmarketing studies in pediatric populations in annual reports to the agency. These applicants will incur additional costs to comply with the proposed requirements in this proposed rule. The agency estimates that about 33 applicants will submit approximately 43 postmarketing status reports annually for approved licensed biological products. As the reporting requirements are not extensive and the information is readily accessible to the applicant, FDA estimates that establishments will require about 16 hours to complete the required information. Assuming an average wage rate of $35 per hour, the estimated incremental cost of the annual reporting requirement will be $560 per report, for an industry total of $24,080 per year. As with applicants holding NDA's or ANDA's, a few applicants with licensed biological products with outstanding postmarketing study commitments may also incur an additional, one-time cost because they must submit their initial report within the first 6 months after the effective date of the final rule and an annual report within the last 6 months of the year. FDA estimates there will be approximately seven such reports, for a total one-time cost of about $4,000.

B. Small Business Impacts

The requirements in this proposed rule will not have a significant economic impact on a substantial number of small entities. Although it is possible that some firms may feel added pressure to honor the agreed upon commitments, the agency does not expect the proposed rule to result in an increased number of completed postmarketing studies. Nor does it believe that applicants will incur significantly increased costs from completing studies earlier than intended, as a result of the reporting, tracking, and disclosure activities implemented by the agency. Because affected applicants holding NDA's and ANDA's must currently submit annual reports to the agency, they already have procedures in place to monitor their postmarketing studies. The additional reporting requirement for applicants holding approved BLA's and the reformatting of the annual reports for applicants holding NDA's and ANDA's would be minimal. To simplify the reporting requirement further, however, the agency will publish a guidance for industry to aid applicants in preparing reports in the proper format.

C. Conclusion

The previous cost estimates demonstrate that this rule is not economically significant under Executive Order 12866. The Unfunded Mandates Reform Act does not require a cost-benefit analysis of this rule, because the rule will not result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million in any 1 year. Finally, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

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

Title: Reporting the Status of Postmarketing Studies for Human Drugs and Licensed Biological Products.

Description: Section 506B of the act provides FDA with additional authority for monitoring the progress of postmarketing studies that companies have made a commitment to conduct and also requires the agency to make the status of these studies publicly available.

Under section 506B(a) of the act, applicants that have committed to conduct a postmarketing study for an approved human drug or biological product must submit to FDA a report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the product and annually thereafter until the study is completed or terminated. Under §§ 314.81(b)(2)(vii) and (b)(2)(viii), and 601.70(b), information submitted in a status report would be limited to that which is needed to sufficiently identify each applicant that has committed to conduct a postmarketing study, the status of the study that is being reported, and the reasons, if any, for the applicant's failure to conduct, complete, and report the study.

Currently under § 314.81(b)(2), applicants holding an NDA or an ANDA must submit status reports on postmarketing studies for the approved human drug product as part of an annual report to FDA. The agency is proposing to amend § 314.81(b)(2)(vii) to specify information that must be included in status reports submitted under section 506B of the act (studies of clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology that are required by FDA or that an applicant commits, in writing, to conduct either at the time of approval of an application or a supplement to an application or after approval of an application or supplement). Proposed § 314.81(b)(2) also adds paragraph (b)(2)(viii) which would require status information on any postmarketing study commitments not reported under paragraph (b)(2)(vii) that are being performed by, or on behalf of, the applicant; and paragraph (b)(2)(ix) which would allow the applicant to list any open regulatory business with FDA concerning the drug product subject to the application. For licensed biological products, FDA proposes to create § 601.70 to require postmarketing status reports for studies of clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology that are required by FDA or that an applicant of a BLA commits to conduct, in writing, at the time of approval of an application or a supplement to an application or after approval of an application or a supplement. FDA is also proposing to revise § 601.37(c) to require that the status of postmarketing pediatric studies described in proposed § 601.70 be reported under proposed § 601.70 rather than § 601.37.

This proposed rule is intended to provide FDA with specific procedures for monitoring the progress of postmarketing studies that companies have made a commitment, in writing, to conduct and also to permit the agency to make the status of these studies publicly available.

Description of Respondents: Applicants holding approved

applications for human drugs and biological products that have committed to conduct postmarketing studies.

Under current § 314.81(b)(2), applicants with approved NDA's and ANDA's for human drugs are required to submit to the agency two copies of the annual reports that must include information on the current status of any postmarketing study (OMB No. 0910–0001).

Proposed § 314.81(b)(2)(vii), (b)(2)(viii), and (b)(2)(ix) would expressly require status information to be provided in a specific format as part of the status reports of postmarketing study commitments (clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology), a subpart of the annual report. Based on past experience, the agency estimates that each applicant holding an approved NDA or ANDA would expend an additional 8 hours, to reformat the annual report. This is a one-time burden required under proposed § 314.81(b)(2)(vii). Based on the number of drug applicants in past years who have committed to conduct postmarketing studies, the agency estimates that this provision would apply to approximately 183 applicants and approximately 462 postmarketing studies.

Based upon information obtained from the Center for Biologics Evaluation and Research's computerized application and license tracking database, the agency estimates that approximately 33 applicants with 43 approved BLA's have committed to conduct approximately 86 postmarketing studies (clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology) and would be required to submit an annual progress report on those postmarketing studies under proposed § 601.70. Proposed § 601.70 requires postmarketing studies status reports for the first time for biological products. Based on past experience with reporting under § 314.81(b)(2), the agency estimates that approximately 8 hours annually is required for an applicant to gather, complete, and submit the appropriate information for each report (approximately two studies per report). Included in these 8 hours is the time necessary to initially format the status report.

Applicants holding NDA's, ANDA's, and BLA's whose anniversary date of U.S. approval of the application falls within the latter half of the year after the effective date of any final rule that may issue based on this proposed rule are required under section 506B of the act to submit an initial report to FDA for postmarketing studies committed to be conducted prior to November 21, 1997, within 6 months after the effective date of any final rule in addition to the reports required by the final rule. This information collection is a statutory requirement for which the proposed regulations add no additional burden other than prescribing the format. The burden of setting up the format is calculated under §§ 314.81(b)(2)(vii) and 601.70(b).

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.81(b)(2)(vii), (b)(2)(viii), (b)(2)(ix)[2]	183	2.5	462	8	3,696
601.70(b) and (d)	33	2.6	86	8	688
Total					4,384

[1] There are no capital costs or operating and maintenance costs with this collection of information.
[2] One-time burden for reformatting annual report.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (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 this information collection by January 3, 2000, 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.

VII. Reference

The following reference has 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. ''Postmarketing Studies of Prescription Drugs,'' Department of Health and Human Services, Office of the Inspector General Final Report, May 1996.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 314 and 601 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356b, 371, 374, 379e.

2. Section 314.81 is amended by revising the introductory text of paragraph (b)(2), by revising paragraph (b)(2)(vii), and by adding paragraphs (b)(2)(viii) and (b)(2)(ix) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(2) *Annual report.* The applicant shall submit the following information each year within 60 days of the anniversary date of U.S. approval of the application. The applicant shall submit two copies of the report to the FDA division responsible for reviewing the application. Each annual report is required to be accompanied by a completed transmittal Form FDA–2252 (Transmittal of Annual Reports for Drugs for Human Use), which may be obtained from the PHS Forms and Publications Distribution Center, 12100 Parklawn Dr., Rockville, MD 20857, and is required to include all the information required under this section that the applicant received or otherwise obtained during the annual reporting interval, which ends on the U.S. anniversary date. The report is required to contain in the order listed:

* * * * *

(vii) *Status reports of postmarketing study commitments.* A status report of each postmarketing study of the drug product concerning clinical safety, clinical efficacy, clinical pharmacology,

and nonclinical toxicology that is required by FDA (e.g., pediatric studies) or that the applicant has committed, in writing, to conduct either at the time of approval of an application for the drug product or a supplement to an application, or after approval of an application or a supplement. For pediatric studies, the status report shall include a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23 of this chapter. The status of these postmarketing studies shall be reported annually until FDA notifies the applicant, in writing, that the agency concurs with the applicant's determination that the study commitment has been fulfilled or that the study is either no longer feasible or would no longer provide useful information.

(*a*) *Content of status report.* The following information shall be provided for each postmarketing study reported under this paragraph:

(*1*) *Applicant's name.*

(*2*) *Product name.* Include the approved drug product's established name and proprietary name, if applicable.

(*3*) *NDA, ANDA (abbreviated new drug application), or supplement number.*

(*4*) *Date of product's U.S. approval.*

(*5*) *Date of postmarketing study commitment.*

(*6*) *Description of postmarketing study commitment.* For clinical studies, include the purpose of the postmarketing study, the patient population addressed by the study, the number of patients and/or subjects to be included in the study, and the indication and dosage(s) that are to be studied. For nonclinical studies, include the type and purpose of the study.

(*7*) *Schedule for conduct, completion, and reporting of the postmarketing study commitment.* Include projected dates for initiation of the different phases of the study, for completion of the study, and for submission of the final study report to FDA. Provide a revised schedule, in addition to the original schedule, if the original schedule was revised in the previous report.

(*8*) *Current status of the postmarketing study commitment.* Categorize the status of each postmarketing study using one of the following terms that describes the study's status on the anniversary date of U.S. approval of the application or other agreed upon date:

(*i*) *Pending.* The study has not been initiated.

(*ii*) *Ongoing.* The study is proceeding according to or ahead of the original schedule described under paragraph (b)(2)(vii)(*a*)(*7*) of this section. Include the date the study was completed, if a study has been completed but the final study report has not been submitted to FDA.

(*iii*) *Delayed.* The study is proceeding but is behind the original schedule described under paragraph (b)(2)(vii)(*a*)(7) of this section.

(*iv*) *Terminated.* The study was ended before completion.

(*v*) *Submitted.* The study has been completed or terminated and a final study report has been submitted to FDA. Include the date the final study report was submitted to FDA.

(*9*) *Explanation of the study's status.* Provide a brief description of the status of the study, including the number of patients and/or subjects enrolled to date and an explanation of the study's status identified under paragraph (b)(2)(vii)(*a*)(*8*) of this section. Provide a revised schedule, as well as the reason(s) for the revision, if the schedule under paragraph (b)(2)(vii)(*a*)(*7*) of this section has changed since the last report.

(*b*) *Public disclosure of information.* Except for the information described in this paragraph, FDA may publicly disclose any information concerning a postmarketing study, within the meaning of paragraph (b)(2)(vii) of this section, if the agency determines that the information is necessary to identify the applicant or to establish the status of the study including the reasons, if any, for failure to conduct, complete, and report the study. Information necessary to establish the status of a postmarketing study includes the study protocol, patient accrual rates, reports of unexpected suspected adverse drug reactions, and study results. Under this section, FDA will not publicly disclose trade secrets, as defined in § 20.61 of this chapter, or information, described in § 20.63 of this chapter, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(viii) *Status of other postmarketing studies.* A status report of any postmarketing study not included under paragraph (b)(2)(vii) of this section that is being performed by, or on behalf of, the applicant. The applicant shall provide information as prescribed under paragraphs (b)(2)(vii)(*a*)(*1*) through (b)(2)(vii)(*a*)(*9*) of this section for each of the postmarketing studies required to be reported under this paragraph.

(ix) *Log of outstanding regulatory business.* To facilitate communications between FDA and the applicant, the report may, at the applicant's discretion, also contain a list of any open regulatory business with FDA concerning the drug product subject to the application (e.g., a list of the applicant's unanswered correspondence with the agency, a list of the agency's unanswered correspondence with the applicant).

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 is revised to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

4. Section 601.37 is amended by revising the second sentence in paragraph (c) to read as follows:

§ 601.37 Annual reports of postmarketing pediatric studies.

* * * * *

(c) * * * The statement shall include whether postmarketing clinical studies in pediatric populations were required or agreed to, and, if so, the status of these studies shall be reported to FDA in annual progress reports of postmarketing studies under § 601.70 rather than under this section.

5. Subpart G, consisting of § 601.70, is added to part 601 to read as follows:

Subpart G—Postmarketing Studies

§ 601.70 Annual progress reports of postmarketing studies

(a) *General requirements.* This section applies to all required postmarketing studies (e.g., pediatric studies) and postmarketing studies that an applicant has committed, in writing, to conduct either at the time of approval of an application or a supplement to an application, or after approval of an application or a supplement. Postmarketing studies within the meaning of this section are those that concern:

(1) Clinical safety;

(2) Clinical efficacy;

(3) Clinical pharmacology; and

(4) Nonclinical toxicology.

(b) *What to report.* Each applicant of a licensed biological product shall submit a report to FDA on the status of postmarketing studies for each approved product application. The report shall include the status of each study which is required by FDA (e.g., pediatric studies) or which the applicant has committed, in writing, to conduct, including any reasons for the applicant's failure to conduct or to progress with the study. The status of these postmarketing studies shall be

reported annually until FDA notifies the applicant, in writing, that the agency concurs with the applicant's determination that the study commitment has been fulfilled, or that the study is either no longer feasible or would no longer provide useful information. Each annual progress report shall be accompanied by a completed transmittal Form FDA–2252, which may be obtained from the PHS Forms and Publications Distribution Center, 12100 Parklawn Dr., Rockville, MD 20857, and shall include all the information required under this section that the applicant received or otherwise obtained during the annual reporting interval, which ends on the U.S. anniversary date. The report shall provide the following information for each postmarketing study:

(1) *Applicant's name.*

(2) *Product name.* Include the approved product's proper name and the proprietary name, if applicable.

(3) *Biologics license application (BLA)/reference or supplement number.* The biologics license application number, reference number, or supplement number of the approved product.

(4) *Date of product's U.S. approval.*

(5) *Date of postmarketing study commitment.*

(6) *Description of postmarketing study commitment.* For clinical studies, include the purpose of the postmarketing study, the patient population addressed by the postmarketing study, the number of patients and/or subjects to be included in the study, and the indication and dosage(s) that are to be studied. For nonclinical studies, include the type and purpose of the study.

(7) *Schedule for conduct, completion, and reporting of the postmarketing study commitment.* Include projected dates for initiation of the different phases of the study, for completion of the study, and for submission of the final study report to FDA. Provide a revised schedule, in addition to the original schedule, if the original schedule was revised in the previous report.

(8) *Current status of the postmarketing study commitment.* Categorize the status of each postmarketing study using one of the following terms that describes the study's status on the anniversary date of the U.S. approval of the application or other agreed date:

(i) *Pending.* The study has not been initiated.

(ii) *Ongoing.* The study is proceeding according to or ahead of the original schedule described under paragraph (b)(7) of this section. Include the date the study was completed, if a study has been completed but the final study report has not been submitted to FDA.

(iii) *Delayed.* The study is proceeding but is behind the original schedule described under paragraph (b)(7) of this section.

(iv) *Terminated.* The study was ended before completion.

(v) *Submitted.* The study has been completed or terminated, and a final study report has been submitted to FDA. Include the date the final study report was submitted to FDA.

(9) *Explanation of the study's status.* Provide a brief description of the status of the study, including the number of patients and/or subjects enrolled to date and an explanation of the study's status identified under paragraph (b)(8) of this section. Provide a revised schedule, as well as the reason(s) for the revision, if the schedule under paragraph (b)(7) of this section has changed since the previous report.

(c) *When to report.* Annual progress reports for postmarketing study commitments entered into by applicants shall be reported to FDA within 60 days of the anniversary date of the U.S. approval of the application for the product.

(d) *Where to report.* Submit two copies of the annual progress report of postmarketing studies to the Food and Drug Administration, Center for Biologics Evaluations and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

(e) *Public disclosure of information.* Except for the information described in this paragraph, FDA may publicly disclose any information concerning a postmarketing study, within the meaning of this section, if the agency determines that the information is necessary to identify an applicant or to establish the status of the study including the reasons, if any, for failure to conduct, complete, and report the study. Information necessary to establish the status of a postmarketing study includes the study protocol, patient accrual rates, reports of unexpected suspected adverse drug experiences, and study results. Under this section, FDA will not publicly disclose trade secrets, as defined in § 20.61 of this chapter, or information described in § 20.63 of this chapter, the disclosure of which would constitute an unwarranted invasion of personal privacy.

Dated: August 9, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–31123 Filed 11–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[DEA NUMBER 185–P]

RIN 1117–AA50

Chemical Registration and Reregistration Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to amend its application fees for registration and reregistration of manufacturers, distributors, importers, and exporters of List I chemicals, as authorized by section 3(a) of the Domestic Chemical Diversion Control Act of 1993 (DCDCA), reducing the fees from $595 to $326 for initial registration, and the reregistration fees from $477 to $171. Fees for retail registrants will increase from $255 to $326 for registration, and from $116 to $171 for reregistration. Office of Management and Budget (OMB) Circular A–25 requires a periodic review of user charges for agency programs. This review will bring fees into alignment with current changes in costs or market values.

DATES: Written comments or objections must be submitted on or before January 31, 2000.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Impact of the Proposed Rule

What Is the Effect of This Proposed Rule, and to Whom Does It Apply?

The Drug Enforcement Administration (DEA) proposes to reduce the registration and

reregistration fees for persons manufacturing, distributing (non-retail), importing and exporting List I chemicals. There are currently 3,685 such registrants. Fees are reduced from $595 to $326 for registration, and from $477 to $171 for reregistration. Registration and reregistration fees for the 47 current retail registrants increase slightly, from $255 to $326 for registration, and from $116 to $171 for reregistration. At this time, DEA is receiving, on average, fewer than the new retail applications per year.

Legislative History

What is the Legal Basis for Registering Persons Manufacturing, Distributing, Importing and Exporting List I Chemicals

The Chemical Diversion and Trafficking Act (CDTA) of 1988 was passed by Congress to control the diversion of certain chemicals that are necessary for the illicit manufacture of controlled substances. The CDTA and its regulations, set forth in Title 21 Code of Federal Regulations (CFR) parts 1310 and 1313, established a system of record keeping and reporting requirements through which DEA and the chemical industry could identify persons seeking to divert listed chemicals for the manufacture of illicit controlled substances.

The Domestic Chemical Diversion Control Act of 1993 (DCDCA), which became effective on April 16, 1994, established a number of new requirements intended to close avenues used by illicit controlled substance manufacturers to circumvent the CDTA. One of the main provisions of the DCDCA was the requirement that manufacturers, distributors, importers and exporters of List I chemicals obtain a registration from DEA.

Concurrent with the establishment of the registration requirement, DEA established, by regulations, the fees to be charged for registration and reregistration of List I chemical handlers, as required under the Independent Offices Appropriations act (IOAA) and the guidelines set forth in the Office of Management and Budget (OMB) Circular A–25.

OMB Circular A–25, Section 6 provides that ''[A] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' The section further requires that the user charge be sufficient to ''* * * recover the full cost to the Federal Government for providing the special benefit.'' A special benefit is described as a Government service which ''Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (*e.g.,* receiving a patient, insurance, or guarantee provision, *or a license to carry on a specific activity or business* [emphasis added] or various kinds of public land use).''

Sections 822 and 957 of Title 21, United States Code, as amended by the DCDCA, require that any person who manufactures, distributes, imports or exports a List I chemical must obtain annually a registration in accordance with DEA rules and regulations. A registration to manufacture, distribute, import or export List I chemicals is a special benefit under Circular A–25, in that it allows the registrant to engage in certain activities while a member of the general public may not. Therefore, the costs associated with DEA's issuance of a registration to manufacture, distribute, import or export a List I chemical; certain costs associated with advising registrants of their responsibilities; and maintenance of the integrity of the registration system must be recovered through assessment of a user fee.

Section 6(d) of Circular A–25 describes the requirements for determining the full cost of a service or benefit. ''Full cost'' is defined as all direct and indirect costs, including, but not limited to: direct and indirect personnel costs, including salaries, fringe benefits (such as life and health insurance and retirement) and travel; physical overhead, including material and supply costs, rent and utilities; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulations. Section 6(d)(1)(e) provides that the cost figures shall be established utilizing ''the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.'' The costs of the services provided by DEA were determined by use of proven and accepted budget estimating techniques as outlined in the DOJ budget guidelines and OMB Circular A–11.

Initial Fee Implementation

How did DEA Implement the Initial Fees

DEA established two distinct categories of chemical registrants: retail distributors, such as convenience stores, gas stations, truck stops, liquor stores, etc., whose regulated activities consist of the direct sales to walk-in customers of drug products that are regulated as List I chemicals; and non-retail registrants, such as manufacturers which distribute, distributors, importers, and exporters of List I chemicals. Each category of registrant was addressed independently during the original establishment of the fees.

Establishment of the initial application fee was a simple matter since the costs associated with the processing of each application for registration were direct costs applicable to each individual application; there were minimal general program costs that were required to be averaged across the applicant population. For renewal applications the calculation of the fee required identification of general program maintenance costs which were to be averaged across the registrant population. However, because List I chemical registration was a new requirement, there was no existing registrant population and the fees had to be calculated based on estimates of the potential population. For purposes of calculating the fee DEA estimated 10,000 retail registrants and 1,500 non-retail registrants.

Full details regarding the calculation of the original fees are contained in DEA's proposed rule regarding Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) which was published in the **Federal Register** on October 13, 1994 (59 FR 51887).

New Applications

What Factors Were Involved in Establishing New Application Fees

Due to industry comments regarding the financial impact of the registration fee received at the time the requirements of the MCA were implemented, DEA reviewed the preregistration process and waived a significant portion of the initial registration fee for manufacturers, distributors, importers, and exporters of regulated drug products, requiring that only $116 of the $595 fee be paid. Notice regarding the fee waiver was published in the **Federal Register** on October 17, 1997 (62 FR 53958). Since that time, DEA has continued to assess the situation and has become aware of a number of incidents involving the theft of significant quantities of drug products and raw materials from persons distributing controlled substances and listed chemicals. At least five million dosage units of drug products and 75 kilograms of pseudoephedrine powder have been reported stolen. DEA is concerned that with the emphasis placed on ''knowing the customer'' and ensuring that all sales are legitimate, there may be

insufficient emphasis placed on maintaining security of the listed chemicals that registrants have in their possession. It is clear that a strong DEA presence at the time of initial registration remains necessary to ensure that applicants are fully aware of all requirements, not only in terms of ''knowing the customer'' and ensuring that sales are legitimate, but also ensuring that appropriate safeguards are in place to prevent theft or diversion of listed chemicals from the regulated location. However, while DEA will continue to conduct on-site activities as part of the preregistration investigation, at this time, due to the demand on resources for the pursuit of criminal investigations, DEA will only be able to allocate six hours of investigative time for each preregistrant investigation. However, DEA anticipates that, over time, these demands will lessen and resources currently dedicated to criminal investigations will be reallocated to other chemical regulatory activities, including preregistration investigations. DEA will reexamine chemical registration and reregistration fees when this reallocation of resources occurs.

Reregistration Applications

What Factors Were Involved in Establishing Reregistration Application Fees

Two factors have affected the calculation of the reregistration fees. First, due to the continued demand for resources for the pursuit of investigations, DEA anticipates dedicating a total of six investigator work years to regulatory audits of both retail and non-retail registrants. Second, the actual non-retail registrant population is greater than the originally estimated population of 1,500 registrants, due in part to the expanded registration requirements of the MCA. At the time of drafting of this notice, there are 47 retail registrants and 3,685 non-retail registrants, for a total of 3,732 chemical registrants.

Fees

What Specific Costs Were Included in the Calculation of the Fees?

DEA utilized the standard modular costing method used throughout the federal government to calculate fees. This methodology relates costs to the number of personnel within the program and accounts for inflationary increase. Funding for salaries, benefits, equipment, training, and other position-related expenses is predicted on the modular formula which is reviewed and revised each budget year by the Department of Justice (DOJ) and OMB, the latter having ultimate authority in finalizing the formula for each fiscal year.

As previously stated, the personnel costs listed below include all direct and indirect costs, including salaries, fringe benefits (such as life and health insurance and retirement) and travel; physical overhead, including material and supply costs such as forms, postage, equipment, rent and utilities. Direct costs are those costs which are apportionable to a specific registration or reregistration application, *i.e.,* direct personnel and materials costs, whereas indirect costs are costs not directly apportionable to a specific registration or reregistration application, *i.e.,* managerial, regulatory, and supervisory costs.

In light of the minimal number of retail registrants (47), the fact that direct costs are the same for retail and non-retail registrants, and the indirect costs are averaged across the entire retail/non-retail registrant population, DEA has determined that the initial fee for retail and non-retail registrants can be calculated together rather than separately, and that the renewal fee for retail and non-retail registrants can be calculated together rather than separately.

Based on the costs as laid out in the following tables, the initial registration fee will be $326.00, and the reregistration fee will be $171.00.

Costs for Processing an Application and Issuing an Initial Registration

Direct Costs:		
Clerical Time [1]	.5 hour	$10.34
Material Costs: [2]		
Application Form		.043
Postage		.064
Chemical Handlers Manual		0.30
Registration Certificate		0.10
Investigator Time [3]	6 hours	237.44
Total Direct Costs		249.25
Indirect Costs:		
Management/Supervisory time [4]		23.87
Regulatory/Policy Development [5]		7.82
Applicant/Registrant Support [6]		44.26
Total Indirect Costs		75.95
Total Direct and Indirect Costs		325.20

Notes Regarding the Costs Associated With Issuance of an Initial Registration

1. Clerical time includes the time required for preparing and mailing application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and transmitting a copy of the application to the appropriate DEA field office for the registration review process. Following the registration review, time is required to approve the registration, initiate issuance of the registration certificate, and file copies of the report and application.

2. The printing cost for application forms for chemical registration is $4,500 for 20,000 forms or 22.5 cents per form. The cost for the last printing of the Chemical Handlers Manual was $2,250 for 7,500 copies, or 30 cents per copy.

3. DEA is including an average of six hours of investigator time toward the following: travel, on-site visits, telephonic communications, and paperwork processing.

4. Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program, including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control.	.05 work year each	$22,304
Chief, Chemical Control Section	.1 work year	13,067
Chief, Data Processing and Analysis Unit	.25 work year	29,030
Chief, Liaison and Policy Section	.1 work year	13,067
Chief, Policy Unit	.1 work year	11,612
Total Costs		89,080

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire applicant population. For 3,732 applicants, the average cost would be $23.87.

5. Regulatory and policy development time consists of .5 work year of a program analyst time for drafting new/amended regulations and **Federal Register** notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the applicant population. The cost of that time, $29,192, divided by 3,732 applicants equals $7.82.

6. Applicant/Registrant Support time will consist of 2 work years of Diversion Investigator time, which will be dedicated to providing technical assistance, advice and informational materials to the industry to assist in complying with the registration, record keeping and reporting requirements. The total cost for 2 work years of Diversion Investigator time is $165,178, divided by 3,732 applicants equals $44.26.

Cost for Processing a Reregistration Application

Direct Costs:		
Clerical Time [1]	.25 hours	$5.17
Material Costs [2]		.43
Forms		.64
Postage		.64
Total Direct Costs		6.24
Indirect Costs:		
Management/Supervisory Time [3]		23.87
Regulatory/Policy Development [4]		7.82
Regulatory Audit Time [5]		132.78
Total Indirect Costs		164.47
Total Direct and Indirect Costs		170.71

Notes Regarding the Costs Associated With Reregistration

1. Clerical time includes the time required for preparing and mailing application packages, time for processing applications received, including computer data entry, encoding the application form, filing, and preparing the fee for deposit.

2. The forms cost covers both the reregistration application form and the registration certificate. Postage is for mailing the reregistration application and the registration certificate.

3. Management/Supervisory time is that time spent by management and supervisory personnel in the overall development and maintenance of the registration program, including establishment of program priorities and policy, resource allocation, and administrative direction. The following positions are involved:

Deputy Assistant Administrator and Deputy Director of the Office of Diversion Control.	.05 work year each	$22,304
Chief, Chemical Control Section	.1 work year	13,067
Chief, Data Processing and Analysis Unit	.25 work year	29,030
Chief, Liaison and Policy Section	.1 work year	13,067
Chief, Policy Unit	.1 work year	11,612
Total Costs		89,080

Because the Management/Supervisory costs are related to the general operation of the registration program, they must be averaged across the entire reregistration applicant population. DEA has received 3,732 retail and non-retail reregistration applications. The average cost per applicant would be $23.87.

4. Regulatory and policy development time consists of .5 work year of a program analyst time for drafting new/amended regulations and **Federal Register** notices, issuance of policy statements and directives related to the registration program and responding to registrant queries regarding registration matters. This time is for general chemical registration program purposes and must be spread equally across the reregistration applicant population. The cost of that time, $29,192, divided by 3,732 reregistration applicants, equals $7.82.

5. DEA will conduct regulatory audits to ensure that registrants are complying with the chemical control requirements and that chemicals are not being distributed to persons seeking to divert them. The investigations will consist of a comprehensive review of each registrant's records, reporting systems, and security provisions. Each investigation will require comprehensive on-site review of the registrant's records; verification of transactions and purchasers, including record checks of and visits to purchasers; travel; and report preparation. DEA anticipates that all such investigations combined will require 6 work years of Diversion Investigator time. The total cost for 6 work years of Diversion Investigator time is $495,534, divided by 3,732 reregistration applicants equals $132.78.

Refund of Fees for Certain Registrants

Section 8(e) of OMB Circular A–25 requires periodic review of user fees. DEA's initial review of these fees in 1997 was delayed due to passage of the Comprehensive Methamphetamine Control Act of 1996 (MCA) which significantly expanded the scope of the registration requirement. DEA postponed the review of the fees until all persons affected by the MCA had submitted their applications. Due to this delay, there are registrants who have been required to pay the full reregistration fee of $477.00. DEA will

be making arrangements to refund the difference between the current and proposed reregistration fees. Refunds will be provided to those registrants who have renewed their registration in the year preceding the effective date of the final rule published in conjunction with this notice. Refunds will only be provided to those registrants who renewed their registration on time, not those applicants who, by virtue of renewing late, fell into this payment period.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this proposed rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not have a significant economic impact on a substantial number of small business entities. This notice reduces the registration and reregistration fee substantially for the larger portion of the industry, *i.e.,* those persons required to submit applications for renewal of registration, reducing the registration fee from $595 to $326, and the reregistration fee from $447 to $171, providing economic relief to the small businesses affected. With respect to the one category of fee that increased, for retail distributors, there are currently less than 50 retail distributor registrants and DEA is receiving, on average, less than 10 new applications from retail distributors per year.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action. As noted above, this proposed rule reduces the existing fee structure for most registrants, thus providing economic relief to the registrant population . DEA has determined that this rulemaking is not significant. Therefore, it has not been submitted to the Office of Management and Budget for review.

Executive Order 13132

This action has been analyzed with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of these regulations, call or write Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7297.

List of Subjects in 21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and List II chemicals, Security measures For the reasons set out above, 21 CFR Part 1309 is proposed to be amended as follows:

PART 1309—[AMENDED]

1. The authority citation for 21 CFR Part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.11 is revised to read as follows:

§ 1309.11 Fee amounts.

(a) For each initial registration to manufacture for distribution, distribute (either retail distribution or non-retail distribution), import, or export a List I chemical, the applicant shall pay a fee of $326 for an annual registration.

(b) For each reregistration to manufacture for distribution, distribute (either retail distribution or non-retail distribution), import, or export a List I chemical, the registrant shall pay a fee of $171 for an annual registration.

3. Section 1309.12 is revised to read as follows:

§ 1309.12 Time and method of payment; refund.

(a) For each application for registration or reregistration to manufacture for distribution, distribute (either retail distribution or non-retail distribution), import, or export a List I chemical, the applicant shall pay the fee when the application for registration or reregistration is submitted for filing.

(b) Payment should be made in the form of a personal, certified, or cashier's check or money order made payable to ''Drug Enforcement Administration.'' Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These application fees are not refundable.

Dated: October 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 99–30960 Filed 11–30–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA54

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Expansion of Dependent Eligibility for TRICARE Retiree Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a change to the TRICARE Retiree Dental Program (TRDP) required by the National Defense Authorization Act for Fiscal Year 1999. This change expands eligibility for enrollment in the program to allow dependents of certain retired members of the Uniformed Services to enroll in the program even if the retired member does not enroll. In addition, this rule clarifies the existing regulatory provisions for election of TRDP coverage and disenrollment.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Linda Winter, TRICARE Management Activity, (303) 676–3682.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the TRICARE Retiree Dental Program (TRDP), a

program completely funded by enrollee premiums, was directed by Congress in section 703 of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, which amended title 10, United States Code, by adding section 1076c. Section 1076c was subsequently amended by the National Defense Authorization Act for Fiscal Year 1998 to expand eligibility to retirees of the Public Health Service and the National Oceanic and Atmospheric Administration and to surviving spouses and dependents of deceased active duty members. As amended, the law directs the implementation of a dental program for: (1) Members of the uniformed services who are entitled to retired pay, (2) Members of the Retired Reserve who would be entitled to retired pay but are under the age of 60, (3) Eligible dependents of a member in (1) or (2) who are covered by the enrollment of the member, and (4) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in (1) or (2); the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the Active Duty Dependents Dental Plan.

Eligibility of dependents (other than surviving spouses and dependents) for the TRDP was contingent on the enrollment of the retired member. This applied even in cases where the member could not benefit from TRDP coverage. In such cases, members had a choice of enrolling solely to obtain coverage for their dependents, or doing without the program altogether.

With regard to amending section 1076c of title 10 to rectify this situation, the House National Security Committee reported, ''Presently, dependents may enroll in the retiree dental program only if the retired member also enrolls. However, some retired members are entitled to receive dental care from the Secretary of Veterans Affairs or have medical or dental conditions which preclude their use of the dental program. The committee believes it is not reasonable to ask these retirees to enroll in, and pay premiums for, a program which offers them no benefits only so their dependents may also enroll in the program. Therefore, this provision would allow the dependents of these specific retirees to enroll in the retiree dental program independently.''

Section 702 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261, addressed this situation by extending eligibility for the TRDP to eligible dependents of certain retired members who are not enrolled and whose benefit from enrollment would be severely limited at best. These are members who are enrolled with Veterans Affairs to receive dental care, members who are enrolled through employment in a dental plan that is not available to the member's dependents, and members who are prevented by a medical or dental condition from being able to use TRDP benefits.

II. Provisions of the Proposed Rule To Expand Eligibility of Dependents

This proposed rule extends eligibility for the TRDP to eligible dependents when the retired member is not enrolled because the member would not benefit from the program due to any of the three conditions stipulated in the law, which are, briefly, dental care from Veterans Affairs, employee-only dental coverage, or medical or dental condition which precludes dental care. To facilitate understanding and convey the intent of the law, the proposed rule mandates that each of these conditions must meet the test of being on-going, long-term, or enduring as opposed to episodic, conditional, temporary, or short-term. The retired member's circumstance must be such that the benefits of the TRDP would not be useful currently and in the foreseeable future. This distinction is also necessary to help limit the potential for adverse selection and higher costs.

Given the absence of any systems of information that a member meets any of the three qualifying conditions, the proposed rule requires that retired members desiring to enroll their dependents under the dependent-only provision provide documentation attesting to the existence of these conditions. The documentation requirements are specified as being (1) confirmation by the Department of Veterans Affairs of its authorization for the member's ongoing, comprehensive dental care, (2) confirmation by a member's employer or the employer's dental plan administrator that the member is enrolled in a dental plan through employment that is separate from the member's uniformed service, and the dental plan is not available to the member's dependents, or (3) confirmation by the member's physician or dentist of the member's inability to utilize TRDP benefits due to a current and enduring medical or dental condition. These criteria and documentation requirements were developed with the recognition that the three situations specified by Congress for allowing dependent-only enrollment represent exceptional circumstances.

The availability of dental care from the Department of Veterans Affairs is extremely limited. Sections 1710(c) and 1712 of title 38, United States Code, and sections 17.93, and 17.160 through 17.166 of title 38, Code of Federal Regulations specify the criteria which a veteran must meet to be considered for dental care. The policies and procedures for the Veterans Health Administration (VHA) Dental Program are covered in the VHA Directive 1130 (December 7, 1998) and the VHA Handbook 1130.1 (December 7, 1998).

The determinations of eligibility or authorization for dental care are not based simply on enrollment for Veterans Affairs healthcare nor are such decisions recorded in a centralized system. These are accomplished by the Veterans Affairs at local and regional levels. In general, entitlement to continuous, comprehensive dental benefits from Veterans Affairs is limited to those veterans who are in receipt of a compensable service connected dental rating, a 100% service connected rating, or a permanent and totally disabled (unemployable) rating, or who have been classified as former Prisoners of War (for at least 90 days). In most other cases, the dental care provided to eligible veterans is episodic and short-term.

Just as the dental care available from Veterans Affairs is limited, employee-only dental coverage is not prevalent in the health insurance industry according to sources at the Health Insurance Association of America and Delta Dental Plan of California. Similarly, expectations are that the prevalence of medical or dental conditions that would preclude any use for the coverage offered by the TRDP is relatively small.

The proposed rule prohibits retroactive dependent-only enrollments and requires that enrolled retirees satisfy any remaining enrollment commitment prior to enrolling dependents under the dependent-only provision. Once the initial enrollment commitment is fulfilled, retirees who meet one of the dependents-only eligibility conditions may disenroll with dependents remaining enrolled on a month-to-month basis.

III. Other Provisions of the Proposed Rule

In addition to implementing dependent-only eligibility, this proposed rule clarifies the process for electing to enroll in the TRDP by removing the apparently restrictive

reference to written election, thereby recognizing the existence of the variety of methods in which an election of enrollment can be conveyed, *e.g.*, by written, telephonic, or e-mailed application. The proposed rule also clarifies the 12-month enrollment lock-out provision by specifying that the provision applies to disenrollment occurring at any time and for any reason. This includes disenrollment after the enrollee has fulfilled the 24-month initial enrollment commitment and disenrollment of the retired member to convert to dependent-only coverage.

IV. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel, and Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.22 is proposed to be amended by revising paragraphs (d)(1)(iii), (d)(3), and (d)(4); redesignating paragraph (d)(1)(iv) as paragraph (d)(1)(v); and adding a new paragraph (d)(1)(iv) to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(d) * * *

(1) * * *

(iii) Eligible dependents of a member described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section who are covered by the enrollment of the member;

(iv) Eligible dependents of a member described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section when the member is not enrolled in the program and the member meets at least one of the conditions in paragraphs (d)(1)(iv)(A) through (C) of this section. Already enrolled members must satisfy any remaining enrollment commitment prior to enrollment of dependents becoming effective under this paragraph, at which time the dependent-only enrollment will continue on a voluntary, month-to-month basis as specified in paragraph (d)(4) of this section. Members must provide documentation to the TRDP contractor giving evidence of compliance with paragraphs (d)(1)(iv)(A), (B), or (C) of this section at the time of application for enrollment of their dependents under this paragraph.

(A) The member is enrolled under section 1705 of title 38, United States Code, to receive ongoing, comprehensive dental care from the Secretary of Veterans Affairs pursuant to section 1712 of title 38, United States Code, and §§ 17.93, 17.161, or 17.166 of title 38, Code of Federal Regulations. Authorization of such dental care must be confirmed in writing by the Department of Veterans Affairs.

(B) The member is enrolled in a dental plan that is available to the member as a result of employment of the member that is separate from the uniformed service of the member, and the dental plan is not available to dependents of the member as a result of such separate employment by the member. Enrollment in this dental plan and the exclusion of dependents from enrollment in the plan must be confirmed by documentation from the member's employer or the dental plan's administrator.

(C) The member is prevented by a current and enduring medical or dental condition from being able to obtain benefits under the TRDP. The specific medical or dental condition and reason for the inability to use the program's benefits over time, if not apparent based on the condition, must be documented by the member's physician or dentist.

* * * * *

(3) *Election of coverage.* In order to initiate dental coverage, election to enroll must be made by the retired member or eligible dependent. Enrollment in the TRICARE Retiree Dental Program is voluntary and will be accomplished by submission of an application to the TRDP contractor.

(4) *Enrollment periods.* Initial enrollment shall be for a period of 24 months followed by month-to-month enrollment as long as the enrollee chooses to continue enrollment. An enrollee's disenrollment from the TRDP at any time for any reason is subject to a lock-out period of 12 months. After any lock-out period, eligible individuals may elect to reenroll and are subject to a new initial 24-month enrollment period.

* * * * *

Dated: November 24, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–31117 Filed 11–30–99; 8:45 am]

BILLING CODE 5001–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT060–7219B; A–1–FRL–6479–5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Removal of Oxygenated Gasoline Requirement for the Connecticut Portion of the New York—N. New Jersey—Long Island Area (the ''Southwest Connecticut Area'')

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to approve a State Implementation Plan (SIP) revision under the Clean Air Act submitted by the State of Connecticut on October 7, 1999, to remove Connecticut's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP and convert it to a contingency measure for maintaining the National Ambient Air Quality Standard for carbon monoxide. In the Final Rules Section of this **Federal Register**, EPA is approving this submittal as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule

based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 3, 2000.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Jeff Butensky, Environmental Planner; (617) 918–1665; butensky.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: November 10, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–31046 Filed 11–30–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 438

[HCFA–2015–P]

RIN 0938–AJ06

Medicaid Program; External Quality Review of Medicaid Managed Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish requirements and procedures for external quality review (EQR) of Medicaid managed care organizations (MCOs). The rule would implement section 1932(c)(2) of the Social Security Act (the Act), which was enacted in section 4705(a) of the Balanced Budget Act of 1997 (BBA), and section 1903(a)(3)(C)(ii) of the Act, which was enacted in section 4705(b) of the BBA. Under section 1932(c)(2) each contract between a State Medicaid agency (State agency) and an MCO must provide for an annual EQR of the quality outcomes, the timeliness of, and access to, the services for which the MCO is responsible under the contract. Section 1903(a)(3)(C) provides enhanced matching for these activities.

This annual external review is to be conducted by an independent entity that meets the qualifications set forth in this rule, using protocols also set forth in this rule.

In addition, these BBA provisions allow State agencies to exempt certain Medicare MCOs from all EQR requirements or from particular review activities that would duplicate review activities conducted as part of a Medicare MCO's external review or accreditation processes.

These BBA provisions require that the results of the EQR be made available to participating health care providers, enrollees and potential enrollees of the MCO, and also authorize the payment of enhanced Federal financial participation at the 75 percent rate for the administrative costs of EQRs that are conducted by approved entities.

DATES: *Comment date.* Comments will be considered if we receive them at the appropriate address, as provided below no later than 5 p.m. on January 31, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2015–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2015–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Sharon Gilles, (410) 786–1177.

SUPPLEMENTARY INFORMATION:

I. Background

In 1965, the Congress passed Title XIX of the Social Security Act (the Act) which established the Medicaid program. Under this title, we pay Federal financial participation (FFP) to State Medicaid agencies (State agencies) to assist in the costs of health care for low-income pregnant women, families, and aged, blind and disabled individuals. The Medicaid program is administered by State agencies subject to Federal statutory and regulatory requirements, which are implemented in accordance with a ''State plan'' that must be approved by the Health Care Financing Administration (HCFA).

In the early years of the Medicaid program, State agencies provided most Medicaid coverage by paying health care providers on a fee-for-service (FFS) basis. Beginning in the 1980s and continuing throughout the 1990s, State agencies have increasingly provided Medicaid coverage through managed care contracts, under which they pay a health maintenance organization (HMO) or other similar entity a fixed monthly capitation payment for each Medicaid beneficiary [1] enrolled with the entity.

As these managed care programs have grown in number and complexity, so has Federal oversight, particularly oversight of quality of care. Many studies conducted by health services researchers indicate that, with few exceptions, the quality of care furnished by managed care organizations [2] (MCO) is similar to that furnished by FFS providers. Despite these findings, the quality of managed care has received increased attention from the Congress, HCFA and the States. This has been—

- Prompted originally by the fact that, in the early years of Medicaid managed care, there were highly publicized accounts of Medicaid enrollees encountering barriers to accessing care, and other quality-related problems;
- Encouraged by developments in the private sector, such as the use of ''continuous quality improvement'' and ''value-based purchasing'', which can be applied in the public sector to obtain

[1] The term ''beneficiary'', used throughout the preamble is synonymous with the term ''recipient'', used in the text of the regulation. Both refer to an individual who is eligible for and receiving Medicaid benefits.

[2] Section 4701(b) of the Balanced Budget Act of 1997 (BBA) established this term to encompass not only HMOs but also M+C organizations, other types of organizations that may participate in the Medicare program, and other public or private organizations that meet specified statutory requirements.

high quality health care for Medicaid beneficiaries; and

• Made feasible by the fact that an MCO that contracts to furnish defined services to a defined population can be held accountable in a way that is not possible under FFS Medicaid. For example, under FFS Medicaid, if a child does not receive an immunization, it is difficult to place responsibility on any of the providers that may have treated that child for different illnesses.

As a result of the above, the number of legislative, regulatory, and HCFA initiatives to improve health care quality have increased both in number and in sophistication.

Federal statutes governing Medicaid managed care contracts did not contain provisions explicitly addressing quality of care until 1986. However, before that date, our regulations required HMOs to have an internal quality assurance system and required State agencies to conduct periodic medical audits to ensure the furnishing of quality health care and access to that care. In the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), the Congress called for a new approach that complemented an HMO's internal quality assurance program and the periodic medical audits conducted by State agencies. OBRA '86 required that each State agency that contracted with an HMO use an independent external organization to conduct an annual review of the quality of services furnished to Medicaid beneficiaries served by each HMO.

Between 1986 and 1997, we and the State agencies developed tools to use in implementing these quality oversight responsibilities. In 1991, we began the Quality Assurance Reform Initiative (QARI), which in 1993, resulted in the publication of, ''A Health Care Quality Improvement System for Medicaid Managed Care-A Guide for States.'' This document contained: (1) A framework for quality improvement systems for Medicaid managed care programs; (2) guidelines for internal quality assurance programs of Medicaid HMOs and similar organizations; (3) guidelines for clinical and health services focus areas and use of quality indicators and clinical practice guidelines; and (4) guidelines for the conduct of external quality reviews (EQRs) mandated in OBRA '86.

In 1995, HCFA in collaboration with the National Committee for Quality Assurance (NCQA) and the American Public Human Services Association (APHSA), produced a Medicaid version of the Health Plan Employer Data and Information Set (HEDIS), a standardized quality performance measurement system used by private sector purchasers of managed care. We also contracted with NCQA to produce, ''Health Care Quality Improvement Studies in Managed Care Settings—Design and Assessment: A Guide for State Medicaid Agencies''.

II. The Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (BBA) added to the Act a new section 1932 that pertains to Medicaid managed care. Most of the provisions of section 1932 would be implemented in accordance with a proposed rule that was published in September, 1998 and is discussed under part III C of this preamble.

Section 1932(c), added by section 4705 of the BBA, describes in detail how quality measurement and performance improvement methods should be applied to Medicaid managed care programs through two specific approaches:

• All State agencies must develop and implement a quality assessment and improvement strategy that includes: (1) standards for access to care; (2) examination of other aspects of care and services related to improving quality; and (3) monitoring procedures for regular and periodic review of the strategy. (This requirement was addressed in the September proposal.)

• State agencies that contract with Medicaid MCOs must provide for an annual external, independent review of the access to, timeliness of, and quality outcomes of the services included in the contract between the State agency and the MCO. (This requirement is addressed in this proposed rule.)

Section 1932(c) of the Act also requires the Secretary—

• In consultation with the States, to establish a method for identifying entities qualified to conduct EQR (section 1932(c)(2)(A)(ii)); and

• In coordination with the National Governors' Association (NGA), to contract with an independent quality review organization to develop the protocols to be used in EQRs (section 1932(c)(2)(A)(iii)).

For the first requirement, we obtained the input of an expert panel convened by the National Academy for State Health Policy (NASHP).

To meet the second requirement, on July 7, 1998, we issued a Request for Proposal (RFP) for one or more contractors to develop a set of review protocols for external quality review organizations (EQROs) to use in the conduct of EQRs. Two State representatives selected by the NGA were members of the panel which reviewed responding proposals. As a result of this competitive procurement, a contract was awarded to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to develop protocols for the activities we believed were most frequently conducted by EQROs. Our belief was subsequently confirmed through surveys conducted by the Department's Office of the Inspector General (OIG) and the NASHP. The JCAHO has not completed development of the protocols for EQR. Although the text of the protocols themselves will not be included in regulations text, this proposed rule does identify the areas to be covered by them and what is to be included in such protocols.

The other section 1932 provisions that are pertinent to this proposal are provisions that—(1) Require that the results of EQRs be made available to participating health care providers, enrollees and potential enrollees (section 1932(c)(2)(A)(iv)), and (2) Provide that a State agency—

• May, at its option, take steps to ensure that an EQR does not duplicate a review conducted either by a private independent accrediting organization or as part of an external review conducted under the Medicare program (section 1932(c)(2)(B)); and

• May exempt an MCO from EQR under certain specified conditions (section 1932(c)(2)(C)).

Section 4705(b) of the BBA provides for increased FFP (75%) for the costs of conducting EQR under Section 1932(c)(2)(A), providing the EQRO meets the requirements set forth in regulations. Under the OBRA '86 provision, 75% FFP is available only if EQR is conducted by a utilization and quality control peer review organization (PRO) or an entity that meets the requirements to be a PRO but does not have a PRO contract with Medicare. Accreditation organizations may also be used to conduct EQR, but their review activities are matched at the 50 percent rate under the current OBRA '86 rules.

III Development of the Proposed Rule

A. Major Purposes

In developing this proposed rule, we had two major purposes: (1) To provide flexibility for State agencies; and (2) to reflect the well-accepted advances in the technology of quality measurement and improvement.

Flexibility is particularly important because the EQR requirement is not new. States have been monitoring quality under the OBRA '86 requirements for which final regulations were never published. Accordingly, this proposal would not require State

agencies to dismantle EQR mechanisms that they have used and found to be effective and efficient. The BBA language calling for State agencies to develop their own Quality Assessment and Improvement Strategies, supports our approach of recognizing the unique characteristics of States, their managed care programs and the sophistication of the managed care marketplace within each State.

In addition, the BBA provides greater flexibility in the types of entities that State agencies may use to conduct EQR. Consequently, this rule allows State agencies to coordinate EQRs with other similar quality reviews conducted for other purposes, thereby reducing the burden to State agencies and EQROs in complying with the requirement.

Despite the necessary flexibility, the BBA ensures comparability among State EQR results by requiring us to develop protocols to be used by all State agencies and EQROs in conducting the reviews.

Although the definition of EQR (shown under part IV of this preamble) makes clear that EQR must be conducted by an EQRO, it does not preclude State agencies from using other entities to conduct additional activities to monitor quality. For example, State agencies may themselves collect performance measures or encounter data, or monitor MCOs for compliance with structural and operational quality standards, or contract with an entity other than an EQRO to perform these projects. This approach allows State agencies considerable flexibility in the conduct of quality review activities and permits them to continue current practices at the 50% administrative match rate.

With respect to the second purpose, there is growing acceptance of the health care industry's ability to measure and improve health care quality, as documented in the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, and the development of stronger tools to accomplish this measurement (such as the Consumer Assessment of Health Plans Study (CAHPS)). In developing this rule, we have incorporated best practices in the assessment and improvement of health care quality.

B. Information Used

In order to develop this proposal we needed information on—

- How States have implemented EQR requirements under OBRA '86; and
- What qualifications to require for EQROs.

State Experience Under OBRA '86

Because a final regulation for the OBRA '86 requirement was never published, State agencies have considerable latitude in defining the activities conducted as part of EQR. We knew that State agencies were using the EQR requirement to implement different approaches to quality review. For example, some State agencies use EQR to monitor HMO compliance with QARI standards, while others use EQRs to conduct focused studies on defined clinical topics, such as immunizations, to determine HMO performance. We did not know how widely State practices varied.

In order to determine the extent and the success of each variation, we relied on information from two sources. The first was a study conducted by the Department's Office of Inspector General (OIG) entitled, ''Lessons Learned From Medicaid's Use of External Quality Review Organizations'' published in September, 1998. This study reviewed the practices of seven States (Arizona, California, Massachusetts, Minnesota, Missouri, Ohio and Washington) that had considerable experience with Medicaid managed care or in working with EQROs. The study documented that focused studies of quality of care, that is, review of medical records to obtain information on services delivered to a group of individuals with the same health care needs, was the most frequent activity performed by EQROs. In these States, focused studies accounted for nearly 80 percent of their budgets for EQRO. However, in the OIG study, States expressed an awareness of the limitations of the use of focused studies alone, stating that they fail to offer a broad assessment of the care delivered to all those enrolled in a State's Medicaid managed care program. As summarized by the study: ''At best they capture a slice of care delivered to one or two sub populations. Even if a Medicaid agency designed the perfect system to capture prenatal care visits or child immunizations, this is only a tiny fraction of care provided to the Medicaid population.'' For this reason, State agencies are beginning to use EQROs to undertake other approaches to quality review, including: (1) Validation of encounter data or aggregate MCO-level performance measures; (2) individual case review; (3) evaluation of quality studies conducted by MCOs; (4) conducting beneficiary surveys; and (5) provision of technical assistance.

The OIG study also documented that these seven States had typically used Medicare PROs to conduct the EQRO function. This was generally satisfactory to the States, especially because most States use EQR to conduct focused studies. However, some State agencies expressed reservations about using PROs for other EQR functions, such as processing and verifying encounter data or conducting consumer surveys. As a result, all of the State agencies in this study contracted with entities other than their EQRO contractors to perform additional quality review activities even though the FFP rate for these services was 50%, rather than 75%. These entities included: universities, consulting groups, claims or data management groups, and survey firms. In addition, four of the seven had additional arrangements with State agencies other than the Medicaid agency, including Departments of Health, Departments of Mental Health, or State data entities. The two overall conclusions expressed by the OIG, report were that Medicaid agencies find value in using a variety of quality oversight functions in EQR, and that they would prefer to use several different types of contractors.

To obtain additional information, we contracted with the NASHP to conduct a more comprehensive survey of all State agencies using EQROs. The NASHP survey reaffirmed the OIG survey finding that focused quality of care studies were the most common EQRO activity, with additional activities including: data validation, random medical record review, surveys, data audits and validation, and contract compliance reviews. The survey also affirmed the States' desire to contract with additional types of organizations for their EQRs, although three State agencies explicitly recommended that new entities not be permitted. Those State agencies wishing to contract with new entities identified State entities other than Medicaid such as public health or insurance departments, and other entities such as universities, consulting firms and research foundations, as desirable organizations.

EQRO Qualifications

OBRA '86 as amended by OBRA '87 specified the types of entities State agencies could contract with to conduct EQR. The BBA, instead of specifying types of entities, requires the Secretary to consult with States and establish a method for the identification of entities that are qualified to conduct EQR. To fulfill this requirement, we contracted with the NASHP to convene an expert panel comprised of a majority of State representatives but also including consumer advocates and other stakeholders, an MCO representative, a

quality improvement expert and members of our staff. The expert panel met for two days to discuss the following:

- What is the skill set required to conduct the EQR scope of work?
- What does it mean for an EQRO to be ''independent''?
- Who should be the authority to designate ''qualified'' entities to serve as EQROs?
- Should these designations be made on a categorical or case-by-case basis?
- Must all EQR activities be conducted by a single entity or may several entities conduct EQR activities, and may entities use subcontractors?

We used the recommendations included as part of the NASHP report of the meeting to develop the provisions of this proposed rule.

C. Relation to Other Proposed Rules

On September 29, 1998, at 63 FR 520220, we published a proposed rule identified as HCFA–2001–P, Medicaid Managed Care Provisions (September proposal). That rule proposed to add to the Medicaid regulations a new part 438 that includes a subpart E—Quality Assessment and Performance Improvement. Under subpart E, it is a State's responsibility to arrange for an annual external independent review of the timeliness, access, and quality of the services that each contracting MCO furnishes to its Medicaid enrollees. The September proposal did not include the specific EQR provisions because we had not yet complied with the BBA's requirement to consult with States to establish a method for identifying entities that are qualified to conduct EQR. Now that we have complied with this requirement, we can propose the rules for EQR.

The September proposal includes a § 438.8(h) which lists those requirements, set forth elsewhere in part 438, that also apply to Prepaid Health Plans (PHPs). Prepaid Health Plans, like MCOs, are organizations paid on a prepaid capitation basis for services furnished to enrollees, but unlike MCOs, they do not always provide comprehensive health care services nor do they always assume risk. (Examples of PHPs, are managed dental or behavioral health plans.)

When part 438 is published in final form (following consideration of comments received on both proposed rules), we plan to amend the § 438.8(h) list to include the EQR requirements as applicable to PHPs, for the benefit of PHP enrollees. As in the case of PHP requirements generally, this requirement would be promulgated under section 1902(a)(4) of the Act which authorizes the Secretary to establish requirements necessary ''for the proper and efficient operation of the plan.'' We also believe that this is consistent with Congressional intent. In the Joint Explanatory Statement of the Committee of the Conference accompanying the BBA, the section entitled ''Current Law,'' includes the following: ''States are required to obtain an independent assessment of the quality of services furnished by contracting HMOs and prepaid health plans (those offering a non-comprehensive set of services under partial capitation), using either a utilization and quality control peer review organization (PRO) under contract to the Secretary or another independent accrediting body.'' Although the OBRA '86 requirement did not apply to PHPs, the fact that the Congress believed that it did and chose not to exempt PHPs, as it did primary care case managers, we take as a sign that the Congress perceives EQR requirements as appropriately applied to PHPs.

Currently, 42 CFR 434.53 requires States to have a system of periodic medical audits to ensure that each HMO and PHP furnishes quality and accessible health care to enrollees. Our September proposal eliminates the periodic Medical Audit requirement. We intend this new EQR requirement to replace the requirement on PHPs for periodic medical audits.

Because PHPs do not always provide comprehensive services, we intend that an EQR of a PHP will assess only the scope of services for which the State has contracted. We invite comment on our decision to apply the EQR requirement to PHPs. We will only consider comments that pertain specifically to our proposal to include EQR requirements in § 438.8(h), and not on the broader issue of subjecting PHPs to other MCO quality requirements. Comments on those other requirements would have been appropriate in response to the September proposal.

In addition to proposing that these provisions apply to PHPs, we are also proposing to apply the EQR provisions to organizations that have comprehensive risk contracts but are exempt from 1903(m) requirements, such as Health Insuring Organizations (HIOs) which began operating prior to January 1, 1986, certain county-operated HIOs in California, and entities described in section 1903(m)(2)(B). As reflected in § 438.6 of the September 29, 1998 proposed rule, only contracts with HIOs that began operating on or after January 1, 1986 are subject to MCO requirements unless they have been specifically exempted by statute from these requirements, as in the case of certain county operated HIOs in California. As discussed above, pursuant to our authority under section 1902(a)(4) to establish requirements necessary for ''proper and efficient administration,'' we have proposed to apply several beneficiary protections and quality-related requirements (including the EQR requirement proposed in this rule) to PHPs, which do not have comprehensive risk contracts.

Entities with comprehensive risk contracts that have been exempted by statute from the MCO requirements in section 1903(m) and section 1932, however, were not included in our proposed revised definition of PHP. As discussed above, we did not believe it was appropriate to subject these entities, in effect, to virtually the full range of MCO requirements (as we proposed to do in the case of PHPs) when Congress had provided these entities with explicit statutory exemptions from these requirements. We do not believe, however, that these entities should be exempted entirely from any check on the quality of the services they provide to their enrollees. We accordingly are proposing in section § 438.1 (c) to require compliance with EQR requirements by entities with comprehensive risk contracts that are statutorily exempt from the requirements in section 1903(m)(2)(A). We believe this is consistent with Congressional intent to ensure quality outcomes and timeliness of and access to services of all Medicaid beneficiaries enrolled in capitated risk arrangements. We invite comment on our decision to apply the EQR requirement to entities with statutory exemptions from section 1903(m)(2)(A) requirements.

The final rule for part 438 will probably assign a separate subpart for the rules specific to EQR.

IV. Provisions of the Proposed Rule

A. Definitions (Section 438.2)

Section 438.2 establishes ''EQR'' and ''EQRO'' as representing ''external quality review'' and ''external quality review organization'' respectively. It also defines four terms frequently used in the text:

''External quality review'' means the analysis and evaluation, by an EQRO, of aggregated information on timeliness, access, and quality of health care services furnished to Medicaid enrollees by each MCO, and other related activities performed by an EQRO.

''External quality review organization'' means an organization

that meets the competence and independence requirements set forth in § 438.354, and performs EQR.

''Quality'', as it pertains to EQR, means the degree to which an MCO maintains or improves the health outcomes of its enrollees through its structural and operational characteristics and through the provision of services. This definition recognizes structure, process, and outcomes as the variables that affect and constitute the delivery of appropriate health care and that have historically been used in the review of quality of care.

''Validation'' means the review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accord with standards for data collection and analysis.

B. State Responsibilities (Section 438.350)

Section 438.350 sets forth the State's responsibilities related to EQR. Each State agency that contracts with MCOs under section 1903(m) of the Act must ensure that—

- Except as provided in § 438.362, an annual EQR is performed by a qualified EQRO for each contracting MCO;
- The EQRO has sufficient information to use in performing the review;
- The information that the State agency provides to the EQRO is obtained through methods consistent with protocols specified by HCFA; and
- The results of the EQR are made available, upon request, to specified groups and to the general public.

The information that the State agency must make available to the EQRO is specified in § 438.358. The information that constitutes the ''results'' of the EQR is specified in § 438.364.

Section 1932(c)(2)(A) of the Act requires that each contract with an MCO ''provide for an annual (as appropriate) external independent review, conducted by a qualified independent entity* * *''. We have interpreted the parenthetical statement (for which there is no explanation in the legislative history) to be a reference to those MCOs that may be exempted from EQR under section 1932(c)(2)(C) of the Act on the basis of ''deemed compliance.'' We invite comment on other possible interpretations.

C. External Quality Review Protocols (Section 438.352)

In our RFP for the development of protocols, we defined them as ''detailed instructions to be followed by personnel performing reviews of health care quality.'' Protocols must specify: (1) The data to be gathered, that is, the substantive areas to be covered by the protocol; (2) the source of the data; (3) detailed procedures to be followed in collecting the data to promote its accuracy, validity, and reliability; (4) the proposed methods for valid analysis and interpretation of the data; and (5) all instructions, guidelines, worksheets and any other documents or tools necessary for implementing the protocol.

The protocols that the JCAHO is developing under the guidance of an expert panel are reflected in proposed section 438.358 discussed below. They will address: (1) Monitoring for compliance with structural and operational quality standards; (2) validating client-level data; (3) calculating performance measures; (4) validating performance measures produced by MCOs; (5) conducting quality-assessment and performance-improvement projects; (6) validating MCO-conducted quality-assessment and performance-improvement projects; (7) conducting studies on quality, focused on a particular aspect of clinical or non-clinical services furnished at a particular time; (8) validating consumer or provider surveys; and (9) administering consumer or provider surveys.

We have asked the JCAHO to draw from existing protocols that have been tested for reliability and validity and that have been used in the public and private sectors to conduct reviews of the quality of MCO services, consistent with current industry practice. We have also expressed a preference for protocols that are in the public domain.

We expect that the protocols will be detailed and many pages in length. This is one reason for not including them in our regulations. Another reason is the fact that quality measurement is a rapidly changing technology. Protocols developed in the private sector for validation of performance measures and administration of consumer surveys are revised at least annually. The delays inherent in revising regulations would make it difficult to make such frequent changes.

All activities that provide information for EQR must use protocols that are consistent with those that we specify. This will ensure that the conduct of the activities enhances the quality of EQR for State agencies and that the conduct of the activities is methodologically sound. However, by requiring protocols that are ''consistent'', rather than ''identical'', with those that we specify, we leave the State agencies free to improve their protocols continuously, as the art and science of quality measurement improve.

D. Qualifications of External Quality Review Organizations (Section 438.354)

Section 438.354 sets forth the requirements that an entity must meet in order to qualify as an EQRO. We worked in consultation with States, consumer advocates, and other stakeholders, under the auspices of NASHP, to determine how to ensure that EQROs are both ''competent'' and ''independent''.

This proposed rule does not define categories of entities that are qualified to perform EQR. Rather, it proposes that in order to qualify, entities must meet specified competence and independence standards. To meet the competence standards, the entity must have at least the following:

- Staff with knowledge of (1) Medicaid beneficiaries, policies, data systems, and processes; (2) managed care delivery systems, organizations, and financing; (3) quality assessment and improvement technologies; and (4) research design and methodology;
- Sufficient physical, technological, and financial resources to conduct EQR; and
- Other clinical and nonclinical skills to carry out the review and to supervise the work of any subcontractors.

To meet the independence requirement, we propose two tests:

- The EQRO and any subcontractors must be independent from the State Medicaid agency and from any MCO they review.
- The relationship between the MCO and the EQRO must be such as to preclude conflict of interest.

The first test would allow State entities to qualify as EQROs, with the following limitations:

A State entity could not qualify if it (1) Has Medicaid purchasing or managed care licensing authority; (2) delivers any health care services to Medicaid beneficiaries; or (3) conducts, on the State's behalf, any other ongoing Medicaid program operations related to oversight of the quality of MCO services. In addition, the State entity must be governed by a Board or similar body, the majority of whose members are not government employees.

We were concerned about the limitation on board membership. We wondered whether it was feasible to have a State entity with an oversight body composed predominantly of non-State employees. We found that a number of State entities do have such boards. For example, Vermont's Program for Quality in Health Care is an organization authorized by the Vermont

legislature to oversee the quality of care for both commercial and public consumers. It is a non-profit organization that is governed by a board of directors, the majority of whom, are not government employees and which includes representatives of consumers, hospitals, insurers, MCOs, employers, physicians, and State government. The organization is charged with improving the quality, efficiency, and cost effectiveness of Vermont's health care system. It measures health care quality through data collection and analysis, and works with health care providers and others to develop standards of care and indicators of quality.

Maryland's Health Care Access and Cost Commission (HCACC), created in 1993, is an independent commission with nine members who are appointed by the governor with the advice and consent of the Senate. The majority of the nine Board members are not government employees. Among its responsibilities, the HCACC is required to establish and implement a system to comparatively evaluate the quality and performance of MCOs.

The NASHP expert panel also recommended that EQROs be required to have participation by Medicaid beneficiaries. With respect to this recommendation, we welcome such participation, however, we do not propose to mandate it, for two reasons:

1. EQR is only one facet of the State's quality assessment and performance improvement strategy.

2. We believe that stakeholder input on EQR might be more effective if provided to the State agency (rather than the EQRO), as it develops that strategy.

The second test of independence from the MCO applies to all entities contracting under EQR. The NASHP summary report, based on its expert panel's input, recommended providing that an EQRO may not review an MCO if either has an ownership interest greater than 5 percent in the other, or if they share management or corporate board membership. That would be consistent with our disclosure of ownership and related information requirements under our program integrity regulations (part 420 for Medicare, and part 455 for Medicaid). However, we are proposing a broader approach that is consistent with other HCFA regulations on contracting and is based on the concept of ''affiliation'',[3] as the term is explained in 48 CFR 19.101.[4] In accordance with that regulation, an EQRO and an MCO would be considered to be ''affiliated'' if either one controls or has the power to control the other, or another entity controls or has the power to control both. We believe that this concept of ''control'' can better ensure that no actual conflicts of interest exist between the EQRO and the MCO it reviews. We request comments on how better to identify situations that create conflict of interest, on our proposing to allow State entities to qualify as EQROs, and on our decision to apply the ''independence '' requirement to subcontractors as well as contractors.

Another NASHP summary report recommendation based on its expert panel's input was that EQROs be selected by State agencies through RFPs that would not require prior approval by us, but would be subject to review later to ensure that, as a condition for FFP at the 75 percent rate, the State agency followed all applicable procedures and criteria. We note that this recommendation requires no changes or additions to current law because it is current practice for State agencies to use RFPs to select EQROs. It is also standard practice for our regional office staff to monitor implementation of Medicaid managed care initiatives. With respect to EQR, Regional Office staff may review the State's most recent RFP for external review services, the EQR contract, or the EQR reports.

E. State Contract Options (Section 438.356)

Section 438.356 sets forth requirements that State agencies must follow, and options that they may use in selecting EQROs. On the basis of the NASHP expert panel's recommendations, as well as the findings of the OIG report, we propose that State agencies may contract with more than one EQRO and each EQRO may use subcontractors. EQROs that use subcontractors are accountable for and required to oversee all EQR activities performed by the subcontractors. In addition, each contractor must meet the competency requirements and each contractor and subcontractor must meet the independence requirement.

We considered requiring only the contractor to meet the test of independence. We determined that such an approach would permit entities with conflicts of interest to serve as subcontractors under a ''shell'' contractor, and thus not ensure a truly independent review.

This section also requires that State agencies follow an open competitive procurement process that is in accordance with State law and regulation and consistent with 45 CFR part 74, as it applies to State procurement of Medicaid services.

F. Activities Related to External Quality Review (Section 438.358)

Section 438.358 requires that the EQR use information obtained from specified mandatory activities that must be performed by the State agency or the EQRO; and identifies other optional activities that the State agency may wish to perform, or have the EQRO perform, to produce additional information for use in the EQR. The mandatory activities are consistent with the requirements set forth in the September proposal. The optional activities were not included in that proposal. They are, however, activities that both the OIG and the NASHP surveys identified as activities that States have found useful in reviewing quality. Inclusion of these optional activities would permit States to use their EQROs for the full range of activities they are now conducting. This section also authorizes States to use EQROs to provide technical assistance to MCOs.

This rule proposes that each year, information to be used by the EQRO be obtained from the validation of performance improvement projects performed that year and the validation of performance measures reported that year. However, we recognize that a State, or Medicare, or a private accreditation organization may review MCO compliance with structural and operational quality standards less frequently than once a year. For example, NCQA and JCAHO generally perform their accreditation reviews once every three years. Because of this, we propose that the information used by the EQRO on this type of review must be from the most recent review performed within the previous three years.

G. Non-Duplication of Mandatory Activities (Section 438.360)

Section 438.360 is based on section 1932(c)(2)(B) of the Act which provides the option for a State agency to exempt an MCO from specified EQR-related activities that would duplicate activities conducted as part of Medicare reviews or independent accreditation surveys.

[3] That is the concept we propose to use in implementing the Medicare Integrity Program (MIP) established by the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191). The MIP proposed rule published in March 1998, identifies offerors or entities as having a conflict of interest if they are ''affiliated.''

[4] Title 48 of the CFR contains the Federal Acquisition Regulations (FAR) system, which ''is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies.'' Most government acquisition is accomplished through contracting.

For this provision, we had to determine how a State agency could obtain information about the quality of care found through Medicare reviews or accreditation if there was no EQR to provide information. Moreover, because Medicare serves the elderly and disabled, while Medicaid predominantly serves families and children, we needed to take into account that review activities usually differ for these populations in terms of the types of data collected, the measures used, and the studies conducted. These differences limit the extent to which they can be considered to duplicate each other. Accordingly, we propose that an MCO that is a certified M+C organization with a current Medicare contract—

- Qualifies for exemption if it has had an independent quality review under Medicare or is fully accredited by a private accreditation organization; but
- The exemption applies only to the activities specified in § 438.358(a)(2). Those are specific to reviewing compliance with standards for (1) availability of services; (2) continuity and coordination of care; (3) coverage and authorization of services; (4) establishment of provider networks; (5) enrollee information; (6) enrollee rights; (7) confidentiality; (8) enrollment and disenrollment; (9) grievance systems; (10) subcontractual relationships and delegation; (11) use of practice guidelines; (12) health information systems; and (13) mechanisms to detect both underutilization and overutilization of services as part of the quality assessment and performance improvement programs.

We believe that these activities are essentially the same regardless of the population served, but the activities specified in § 438.358(a)(1) are sensitive to the type of population served. For example, performance improvement projects that target the elderly would not be appropriate for addressing maternal and child health issues, and would not be considered duplicative. The rule provides one exception to this limitation: a State agency may exempt from all mandatory activities (listed in paragraphs (a)(1) and (a)(2) of proposed § 438.358) any MCO that serves only individuals who are eligible for both Medicare and Medicaid. In that situation, there is no reason for concern, since the population served is the same for both programs.

The State agency must require each MCO exempted under this section to make available to the State agency all reports and findings and the results of the Medicare quality review or the accreditation survey, in order to: (1) Provide that information to the EQRO; and (2) ensure that State agencies and Medicaid beneficiaries have access to comparative information on MCOs and M+C organizations.

H. Exemption From External Quality Review (Section 438.362)

This section implements section 1932(c)(2)(C) of the Act which provides that a State agency may exempt an MCO from the EQR requirements in section 1932(c)(2)(A) if the MCO has a current Medicare contract under Part C of title XVIII or under section 1876 of the Act; and, for at least two years, has had in effect a Medicaid contract under section 1903(m) of the Act.

In developing this proposed rule, we asked ourselves (1) how to interpret the statutory requirements for having a Medicare contract, and having had a Medicaid contract for at least two years; (2) whether the exemption should apply to an MCO whose Medicare and Medicaid contracts do not cover the same geographic area; (3) whether the Congress intended that the State agency grant an exemption without consideration of the MCO's performance during the preceding 2-year period; and (4) what information, if any, the State agency needs to obtain with respect to an exempted MCO. On the basis of our responses to those questions, we added three requirements. We particularly request comments on these requirements because they are not based on any explicit language in the statute or the Conference Committee Report.

The first requirement is that the two contracts cover all or part of the same geographic area. The purpose is to prevent exemption on the basis of a Medicare contract that covers a geographic area, for example, another State or a different part of the same State, that is completely different from the area covered by the MCO's Medicaid contract. (§ 438.362(a)(2))

We believe that an MCO that serves different areas typically has different provider networks in each area. Since research has clearly shown variations in practice patterns among physicians in different geographic areas, it is reasonable to interpret the deemed compliance provisions as requiring some common service areas.

The second added requirement is that, during each of the two years preceding the granting of an exemption, the MCO has had an EQR that found it to be performing acceptably with respect to the timeliness, access, and quality of health care services provided to Medicaid enrollees. (§ 438.362(a)(3)).

We considered several possible rationales for the statutory provision that grants exemption on the basis of two-year participation in the Medicaid program:

- After two years of dealing with the MCO as a contractor, the State agency is sufficiently familiar with its performance generally, thus making EQR unnecessary.
- Two years of serving the Medicaid population (a different population than Medicare's) is sufficient to exempt the MCO from EQR.
- During each of the two years of the Medicaid contract, the MCO will have been subject to the section 1932(c)(2)(A) requirements, and will have been able to demonstrate its performance through the annual EQR, demonstrating that the MCO's ongoing Medicare compliance is likely to remain predictive of high quality Medicaid services.

Given the importance that the Congress has placed on quality in the BBA provisions, we are proposing to interpret the two year rule to have been adopted based upon the third rationale above. Accordingly, we propose that the State agency have the option to exempt the MCO if, during the two preceding years of Medicaid contract under section 1903(m) it has been subject to EQR and been found to be performing acceptably with respect to the timeliness, access, and quality of care furnished to Medicaid enrollees. The State agency could not exempt an MCO that, during the previous two-year period had been found to have significant problems requiring corrective action. We note that our interpretation would effectively delay exercise of the option until at least two years after this rule is published in final.

The third added provision is that the State agency require each exempted MCO to provide it, annually, with copies of all Medicare reviews performed by us, or by any of our agents or any private accreditation organization, with respect to the timeliness, access, or quality of its services. (§ 438.362(b)) The rationale for this requirement is that the statutory provision exempts the MCO from EQR requirements specifically, but not from continued State agency oversight of the quality of MCO services.

I. EQR Results. (Section 438.364)

Section 438.364 requires that the EQR produce the following information:

- A detailed technical report that describes the following for each activity conducted under accordance with § 438.358: (1) The objectives; (2) the technical methods of data collection and analysis; (3) the data obtained; and (4) the conclusions drawn from the data. In addition, the report must also describe

the manner in which the data from all activities conducted in accordance with § 438.358 were aggregated, analyzed, and the conclusions were drawn as to the quality of the care furnished by the MCO.

• A detailed assessment of each MCO's strength and weaknesses with respect to timeliness, access, and quality of the health care services furnished to Medicaid enrollees.

• The recommendations for improving the quality of the services furnished by each MCO.

• Comparative data about all MCOs, as determined appropriate by the State agency.

• An assessment of the degree to which each MCO addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR.

We considered three alternatives for the level of detail of the information to be released to the public as EQR ''results.''

1. Do not provide a Federal definition of what constitutes ''results'' but allow each State agency to develop its own definition. This option would provide the greatest flexibility but was not selected because we believe that the statute intended a Federal ''definition'' to ensure that all State agencies provide sufficient information.

2. Require that all validated data and information be made available. Although this option would provide consumers with great detail about every aspect of MCO performance, the information would lack the sense of context necessary to ensure appropriate interpretation. It would impose additional burdens on State agencies for the release of large quantities of data, and would also be inconsistent with what experts have advised us is the best way to share information with consumers for their decision making, for example, to help potential enrollees choose among available MCOs.

3. Require that State agencies provide copies only of the summary findings, conclusions, and recommendations of the EQR. This would include the highest level conclusions drawn from a synthesis of all available information on MCO performance.

This proposed rule requires State agencies to provide information sufficient to enable interested parties to evaluate the conclusions of the EQR. To promote confidence in the validity of the conclusions, States may wish to release, in addition to the technical report, the more detailed underlying data to researchers or others as the States deem appropriate. However, the proposed rule does not require the States to do so. In addition, these data may be available through State-based authorities similar to Freedom of Information Act requirements for individuals to request and receive as much of the detailed information that goes into an EQR analysis and report as they want. (§ 438.364(a))

This section also (1) gives examples of groups of interested parties to which State agencies would provide copies, of the EQR results, upon request; (2) specifies that they must also give them to members of the general public who request them (§ 438.364(b)); and (3) provides that the information released may not disclose the identity of any patient (§ 438.364(c)).

J. Federal Financial Participation (FFP) (Section 438.370)

Section 438.370 provides that FFP at the 75 percent rate is available in expenditures for EQR, including the production of EQR information, performed by EQROs and at the 50 percent rate in expenditures for EQR-related activities performed by any entity that does not qualify as an EQRO. The 50 percent rate applies even if the activities are of the same type as those performed by EQROs.

V. Effective Date of the Final Rule

When this regulation is published as a final rule, we intend to make it effective 60 days following publication. Provisions that must be implemented through contracts with EQROs will be effective with contracts entered into or revised on or after 60 days following the effective data, but no longer than 12 months from the effective date.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement report is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA, requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for §§ 438.360, 438.362 and 438.364 of this document that contain information collection requirements.

Section 438.360 Nonduplication of Mandatory Activities

In order to avoid duplication, the State agency may exempt an MCO from mandatory activities (as specified in § 438.358) if the conditions of paragraph (b) or paragraph (c) of this section are met. To demonstrate compliance with these requirements an MCO must provide to the State agency, all the reports, findings, and other results of the Medicare review or the private accreditation survey.

The burden associated with these requirements is the time and effort for an MCO to disclose all the reports, findings, and other results of the Medicare review or the private accreditation survey to the State agency. Our current data indicate that there are approximately 420 MCOs and 90 PHPs providing Medicaid services. Of these, approximately 135 are Medicaid only MCOs. We believe that there is the potential for States to allow the remaining 285 MCOs to take advantage of the non-duplication provision and that these MCOs will be required to disclose the necessary information to each State agency. We further estimate that it will take each MCO 4 hours to disclose the necessary documentation to the State. Therefore, the total burden associated with this requirement is 285 MCO's × 4 hours = 1140 annual burden hours.

This section also requires that a State agency provide all the reports, findings, and other results of the Medicare review or the private accreditation survey to the appropriate EQRO. We estimate that it will take, on average, 4 hours for a State to disclose the necessary documentation to the appropriate EQRO. The total annual burden associated with this requirement is 1140 hours.

Section 438.362 Exemption From External Quality Review

Each year, exempted MCO's must provide to the State agency the most recent Medicare review findings reported to the MCO by HCFA or its agent. This information must include (1) all data, correspondence, information, and findings pertaining to the MCO's compliance with Medicare standards for access, quality assessment and performance improvement, health services, or delegation of these activities; (2) all measures of the MCO's

performance; and (3) the findings and results of all performance improvement projects pertaining to Medicare enrollees.

If an exempted MCO has been reviewed by a private accreditation organization and the survey results have been used to either fulfill certain requirements for Medicare external review under Subpart D of part 422 of this chapter or to deem compliance with Medicare requirements as provided in § 422.156, the MCO must submit a copy of all findings pertaining to its most recent accreditation survey to the State agency. These findings shall include accreditation survey results of evaluation of compliance with individual accreditation standards, noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements.

The burden associated with these requirements is not applicable for two years following the final publication of this regulation. After two years, the time and effort for an exempted MCO to disclose the findings of its most recent Medicare review or private accreditation survey to the State agency will be the burden associated with these requirements. We believe, of the approximately 285 MCOs that potentially may provide Medicare services in addition to Medicaid services, State agencies will allow for approximately 10% of the MCOs to be exempt from the EQR requirement. We further estimate that it will take each MCO 8 hours to prepare and submit the necessary documentation to the State agency. Therefore, the total burden associated with this requirement is 10% of 285 MCO's × 8 hours = 228 annual burden hours.

Section 438.364 External Quality Review Results

Each EQRO is required to submit to the State agency a detailed technical report that describes, for each EQR and each related mandatory and optional activity undertaken by the EQRO, the objectives, technical methods of data collection and analysis, data obtained, conclusions drawn from the data, and the manner in which the conclusions were drawn as to the quality of the care furnished by the MCO. In addition, the report must include: (1) A detailed assessment of each MCO's strengths and weaknesses with respect to the timeliness, access, and quality of health care services furnished to Medicaid beneficiaries; (2) recommendations for improving the quality of health care services furnished by each MCO; (3) as the State agency determines methodologically appropriate, comparative information about all MCOs, and (4) an assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR.

The burden associated with this requirement is the time and effort for a EQRO to submit to a State agency a detailed technical report for each EQR conducted. It is estimated that it will take an EQRO 160 hours to prepare and submit the necessary documentation to the State agency. Therefore, the total burden associated with this requirement is, 510 technical reports (420 MCOs + 90 PHPs) × 160 hours = 81600 annual burden hours.

This section also requires each State agency to provide copies of technical reports, upon request, to interested parties such as participating health care providers, enrollees and potential enrollees of the MCO, beneficiary advocate groups, and members of the general public.

The burden associated with this requirement is the time and effort for a State agency to disclose copies of a given technical report to interested parties. We estimate that on average, it will take a State agency 4 hours to disclose the required information. Therefore, the total burden associated with this requirement is 420 MCOs + 90 PHPs × 25 requests per MCO or PHP × 4 hours = 51000 annual burden hours.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. We will also submit the final EQR protocols upon their completion to OMB. These requirements are not effective until they have been approved by OMB. As stated in the preamble of this rule, the EQR protocols are detailed instructions to be followed by personnel performing reviews of health care quality. The JCAHO is developing these protocols under the guidance of an expert panel. All activities that provide information for EQR must use protocols that are consistent with the protocols being developed. This will ensure that the conduct of the activities enhances the quality of EQR for State agencies and that the conduct of the activities is methodologically sound.

We anticipate that the protocols will be complete in the spring of 2000. Upon their completion, a **Federal Register** notice will be published. To obtain a copy of the protocols when they become available, access them on the HCFA Internet homepage at www.hcfa.gov, or submit a request to the HCFA address below: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attention Julie Brown, HCFA–2015–P.

If you comment on any of these information collection and record keeping requirements, please mail 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; Attention Julie Brown, HCFA–2015–P and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Lori Schack, HCFA Desk Officer.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

VIII. Impact Statement

A. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and other providers and suppliers are

small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

The Unfunded Mandates Reform Act (Public Law 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual 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). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

The rule implements Medicaid provisions as directed by the BBA; thus, alternatives were not considered. The only alternative would be to seek repeal of the legislation. This would be inconsistent with the major focus of the new provisions: protection of beneficiary rights in a health care system in which MCOs have gained broad powers.

We do not anticipate that the provisions in this proposed rule will have a substantial economic impact on most hospitals, including small rural hospitals. The BBA provisions include some new requirements on State agencies and MCOs, but not directly on individual hospitals. The impact on individual hospitals will vary according to each hospital's current and future contractual relationships with MCOs. Furthermore, the impact will also vary according to each hospital's current procedures and level of compliance with existing law and regulation pertaining to Medicaid managed care. For these reasons, this proposed rule would not have a significant impact on the operations of a substantial number of hospitals. The only other small entity affected by these regulations would be the EQROs. However, this rule does not impose additional burdens on them. Instead, the rule offers these organizations the benefit of opportunities for additional revenues. Thus we certify that this rule will not have a significant economic impact on a substantial number of small entities.

We do not anticipate a significant increase in Medicaid expenditures as a result of the publication of these regulations for the following reasons. First, 44 States, accounting for nearly 98 percent of Medicaid administrative expenditures, are currently obtaining 75 percent enhanced FFP for EQR activities carried out by PRO and PRO-like organizations. Permitting these State agencies to claim 75 percent matching for EQR activities conducted by the additional types of entities allowed by these regulations would therefore not result in increased costs to the extent that State agencies switch from PRO or PRO-like organizations to these additional entities. Moreover, we believe that, by expanding the pool of organizations available to conduct EQR, these State agencies may be able to negotiate savings compared to current costs of dealing with PRO and PRO-like organizations. Additional savings may be realized through opportunities afforded by the proposed rule to coordinate EQR activities with quality reviews conducted for other purposes, as discussed above. Additional costs may arise where State agencies currently conduct quality review activities at 50 percent Federal matching rate that would now qualify for 75 percent, and from new EQR activities undertaken as a result of the BBA requirements.

In addition, even though we are proposing to extend this requirement to PHPs, again we do not expect this to significantly increase Medicaid expenditures. PHP costs account for approximately 5 percent of the payments we make to capitated arrangements. Furthermore, State agencies currently conduct quality review activities on PHPs at a 50 percent Federal matching rate. Additional costs may arise for States quality review activities that would now qualify for 75 percent and for new quality review activities undertaken as a results of the activities required in this proposed rule.

Although we cannot quantify these various cost and savings effects, we believe that their net impact would be well below the $100 million annual threshold for a major rule, and therefore that a regulatory impact analysis is not required. The impact of this proposed regulation is subsumed in estimates of the aggregate impact of the BBA, which have already been included in Medicaid baseline projections for the President's budget.

B. Federalism

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism in developing regulations. We have determined that this proposed regulation will not significantly affect States rights, roles, and responsibilities. Section 1903(a)(30)(C) of the Act currently requires an EQR for each contract a State has with a section 1903(m) organization. In accordance with section 4705 of the BBA, this proposed rule would establish requirements and procedures for EQR of Medicaid MCOs. We propose to require States to ensure that an annual EQR is performed by a qualified EQRO for each contracting MCO, the EQRO has adequate information to carry out the review, and that the results of the reviews are made available to interested parties such as participating health care providers, enrollees, advocate groups, and the general public. We propose that these EQR requirements apply to PHPs and certain entities with comprehensive risk contracts that have been exempted from section 1903(m)(2)(A) requirements. We believe this is consistent with the intent of the Congress in enacting the quality provisions of the BBA. This proposed rule would not require State agencies to dismantle EQR mechanisms that they have used to meet section 1902 (a)(30)(C) of the Act and which they have found to be effective and efficient. Rather, this proposed rule would provide States greater flexibility in the types of entities they may use to conduct EQR.

We worked closely with States in developing this regulation. Specifically, in accordance with section 1932(c)(2)(A)(ii) of the Act, which requires the Secretary to consult with States to establish a method for identifying entities qualified to conduct EQR, we met with States and other stakeholders under the auspices of the National Academy of State Health Policy to establish a criteria to identify qualified entities. Most of the recommendations made at this meeting have been incorporated into this proposed rule. For recommendations not accepted, an explanation has been provided.

In addition, section 1932(c)(2)(A)(iii) requires the Secretary to coordinate with the NGA in contracting with an independent quality review organization to develop protocols to be used in EQR. To meet this requirement, we issued a RFP for one or more contractors to develop a set of review protocols for EQROs to use in the conduct of EQRs. Two State

representatives selected by the NGA were members of the panel that reviewed and rated responding proposals. Moreover, part of the development of the EQR protocols includes convening an expert panel for review and comment of the protocols. State representatives are included in this process.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and record keeping requirements.

42 CFR Part 438

Grant Programs—health, Managed care entities, Medicaid, Quality assurance, Reporting and record keeping requirements.

42 CFR Chapter IV would be amended as set forth below.

A. PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.15 [Amended]

2. In § 433.15, the following change is made: A new paragraph (b)(10) is added to read as set forth below.

§ 433.15 Rates of FFP for administration.

* * * * *

(b) * * *

(10) Funds expended for the performance of external quality review or the related activities described in § 438.358 of this chapter when they are performed by an external quality review organization as defined in § 438.2 of this chapter: 75 percent.

B. A new part 438 is added, to read as set forth below.

PART 438—MANAGED CARE PROVISIONS

Subpart A—General Provisions

Sec.

Subparts B through D [Reserved]

Subpart E—External Quality Review

Sec.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—General Provisions

§ 438.1 Basis, scope and applicability.

(a) *Statutory basis.* This part is based on section 1932(c)(2) of the Act.

(b) *Scope.* This part sets forth requirements for annual external quality reviews of each contracting MCO, including—

(1) Criteria that States must use in selecting entities to perform the reviews;

(2) Specifications for the activities related to external quality review;

(3) Circumstances under which external quality review may use the results of Medicare quality reviews or private accreditation surveys; and

(4) Standards for making available the results of the reviews.

(c) *Applicability.* The provisions of this part apply to managed care organizations (MCOs), prepaid health plans (PHPs), and entities with comprehensive risk contracts that have been exempted by statute from the requirements in section 1903(m)(2)(A).

§ 438.2 Definitions.

As used in this subpart—

EQR stands for external quality review;

EQRO stands for external quality review organization.

External quality review means the analysis and evaluation, by an EQRO, of aggregated information on timeliness, access, and quality of the health care services furnished to Medicaid recipients by each MCO and other related activities performed by an EQRO.

External quality review organization means an organization that meets the competence and independence requirements set forth in § 438.354, and performs external quality review.

Quality, as it pertains to external quality review, means the degree to which an MCO maintains or improves the health outcomes of its enrollees through its structural and operational characteristics and through the provision of services.

Validation means the review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accord with standards for data collection and analysis.

Subparts B through D—[Reserved]

Subpart E—External Quality Review

§ 438.350 State responsibilities.

Each State that contracts with MCOs must ensure that—

(a) Except as provided in § 438.362, an annual EQR is performed by a qualified EQRO for each contracting MCO;

(b) The EQRO has information, obtained from the related activities described in § 438.358, to carry out the review;

(c) The information provided to the EQRO in accordance with paragraph (b) of this section is obtained through methods consistent with the protocols established under § 438.352; and

(d) The results of the reviews are made available as specified in § 438.364.

§ 438.352 EQR protocols.

Each protocol must specify—

(a) The data to be gathered;

(b) The sources of the data;

(c) The detailed procedures to be followed in collecting the data to promote its accuracy, validity, and reliability;

(d) The proposed method or methods for validly analyzing and interpreting the data once obtained; and

(e) All instructions, guidelines, worksheets, and any other documents or tools necessary for implementing the protocol.

§ 438.354 Qualifications of EQROs.

(a) *General rule.* The State must ensure that each organization it selects to perform EQR meets the requirements of this section.

(b) *Competence.* The organization must have at least the following:

(1) Staff with knowledge of—

(i) Medicaid recipients, policies, data systems, and processes;

(ii) Managed care delivery systems, organizations, and financing;

(iii) Quality assessment and improvement technologies; and

(iv) Research design and methodology, including statistical analysis.

(2) Sufficient physical, technological, and financial resources to conduct EQR.

(3) Other clinical and nonclinical skills to carry out the review and to supervise the work of any subcontractors.

(c) *Independence.* The organization and its subcontractors are independent from the State Medicaid agency and from the MCOs they review. In order to qualify as ''independent'' and serve as an EQRO—

(1) A State agency, department, university, or other State entity may not—

(i) Have Medicaid purchasing or managed care licensing authority;

(ii) Deliver any health care services to Medicaid recipients; or

(iii) Conduct, on the State's behalf, any other ongoing Medicaid program operations related to oversight of the quality of MCO services.

(2) A State agency, department, university, or other State entity must be governed by a Board or similar body the majority of whose members are not government employees.

(3) An EQRO may not review a particular MCO if either the EQRO or the MCO exerts control over the other. (As used in this paragraph, ''control'' has the meaning given the term in 48 CFR 19.101.)

§ 438.356 State contract options.

(a) The State must contract with one or more EQROs.

(b) Each contractor must meet the competence requirements as specified in § 438.354(b).

(c) Each contracting EQRO is permitted to use subcontractors. The EQRO is accountable for, and must oversee, all subcontractor functions.

(d) Each contractor and subcontractor must meet the requirements for independence, as specified in § 438.354(c)

(e) For each contract, the State must follow an open, competitive procurement process that is in accordance with State law and regulations and consistent with 45 CFR part 74 as it applies to State procurement of Medicaid services.

§ 438.358 Activities related to external quality review.

(a) *Mandatory activities.* The EQR must use information obtained from the following activities which must be performed by the State or its agent or, if they are not so performed, must be performed by the EQRO:

(1) Each year, for each MCO, the EQR must use information obtained from the following:

(i) Validation of performance improvement projects that were required by the State and were performed during the preceding 12 months.

(ii) Validation of performance measures that the State required and that the MCO reported during the preceding 12 months.

(2) Each year, the EQR must also use information obtained from a review, conducted within the previous 3 year period, to determine the MCO's compliance with standards established by the State for the following:

(i) Availability of services.

(ii) Continuity and coordination of care.

(iii) Coverage and authorization of services.

(iv) Establishment of provider networks.

(v) Enrollee information.

(vi) Enrollee rights.

(vii) Confidentiality.

(viii) Enrollment and disenrollment.

(ix) Grievance systems.

(x) Subcontractual relationships and delegation.

(xi) Use of practice guidelines.

(xii) Health information systems.

(xiii) Mechanisms to detect both underutilization and overutilization of services as part of the quality assessment and performance improvement programs.

(b) *Optional activities.* The review may also use information derived from the following optional activities performed by the State or its agent, or the EQRO:

(1) The validation of client level data (such as claims and encounters) reported by the MCO.

(2) The administration or validation of consumer or provider surveys of quality of care.

(3) The calculation of performance measures in addition to those reported by the MCO and validated by the EQRO.

(4) The conduct of performance improvement projects in addition to those conducted by the MCO and validated by the EQRO.

(5) The conduct of studies on quality, focused on a particular aspect of clinical or non-clinics services at a point in time.

(c) *Technical assistance.* The EQRO may, at the State's direction, provide technical guidance to groups of MCOs to assist them in conducting activities related to the mandatory and optional activities that provide information for the EQR.

§ 438.360 Nonduplication of mandatory activities.

(a) *General rule* In order to avoid duplication, the State may exempt an MCO from mandatory activities (as specified in § 438.358) if the conditions of paragraph (b) or paragraph (c) of this section are met.

(b) *Certified M+C organization.* The State may exempt an MCO from the mandatory activity specified in § 438.358(a)(2), if the following conditions are met:

(1) The MCO is also a certified M+C organization with a current Medicare contract.

(2) The MCO meets either of the following conditions:

(i) The MCO's current structure and its compliance with the standards established by the State under § 438.358(a)(2) have been evaluated and approved by HCFA or its contractor.

(ii) The MCO is currently fully accredited by a private accrediting organization that HCFA approves and recognizes as having standards and review procedures at least as stringent as those established by HCFA for the mandatory activity specified in § 438.358(a)(2).

(3) The MCO provides to the State all the reports, findings, and other results of the Medicare review or the private accreditation survey. The State provides the information to the EQRO.

(c) *MCO serves only the dually eligible.* The State may exempt an MCO from the mandatory activities specified in § 438.358(a)(1) and (a)(2) if the following conditions are met:

(1) The MCO serves only individuals who receive both Medicare and Medicaid benefits.

(2) The Medicare review activities are substantially comparable to the State-specified mandatory activities in § 438.358(a)(1) and (a)(2).

(3) The MCO provides to the State all the reports, findings, and other results of the Medicare review. The State provides the information to the EQRO.

§ 438.362 Exemption from external quality review.

(a) *Basis for exemption.* The State may exempt an MCO from EQR if the following conditions are met:

(1) The MCO has a current Medicare contract under part C of title XVIII or under section 1876 of the Act, and a current Medicaid contract under section 1903(m) of the Act.

(2) The two contracts cover all or part of the same geographic area.

(3) The Medicaid contract has been in effect for at least two consecutive years before the effective date of the exemption and during those two years the MCO has been subject to EQR under this part, and found to be performing acceptably with respect to the timeliness, access, and quality of health care services it provides to Medicaid recipients.

(b) *Information on exempted MCOs.* (1) *Information on Medicare review findings.* Each year, the State must obtain from each MCO that it exempts from EQR, the most recent Medicare review findings reported to the MCO by HCFA or its agent including—

(i) All data, correspondence, information, and findings pertaining to the MCO's compliance with Medicare

standards for access, quality assessment and performance improvement, health services, or delegation of these activities;

(ii) All measures of the MCO's performance; and

(iii) The findings and results of all performance improvement projects pertaining to Medicare enrollees.

(2) *Information on accreditation surveys.* (i) If an exempted MCO has been reviewed by a private accreditation organization, the State must require the MCO to ensure that the State receives a copy of all findings pertaining to its most recent survey if the accreditation survey has been used for either of the following purposes:

(A) To fulfill certain requirements for Medicare external review under subpart D of part 422 of this chapter,

(B) To deem compliance with Medicare requirements, as provided in § 422.156.

(ii) These findings must include, but need not be limited to, accreditation survey results of evaluation of compliance with individual accreditation standards, noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements.

§ 438.364 External quality review results.

(a) *Information that must be produced.* The State must ensure that the EQR produces at least the following information:

(1) A detailed technical report that describes the manner in which the data from all activities conducted in accordance with § 438.358 were aggregated, analyzed, and the conclusions were drawn as to the quality of the care furnished by the MCO. The report must also include the following for each activity conducted in accordance with § 438.358:

(i) Objectives;

(ii) Technical methods of data collection and analysis;

(iii) Data obtained; and

(iv) Conclusions drawn from the data.

(2) A detailed assessment of each MCO's strengths and weaknesses with respect to the timeliness, access, and quality of health care services furnished to Medicaid recipients.

(3) Recommendations for improving the quality of health care services furnished by each MCO.

(4) As the State determines methodologically appropriate, comparative information about all MCOs.

(5) An assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year's EQR.

(b) *Availability of information.* The State must provide copies of the information specified in paragraph (a) of this section, upon request, to interested parties such as participating health care providers, enrollees and potential enrollees of the MCO, recipient advocate groups, and members of the general public.

(c) *Safeguarding patient identity.* The information released under paragraph (b) of this section may not disclose the identity of any patient.

§ 438.370 Federal financial participation.

(a) FFP at the 75 percent rate is available in expenditures for EQR (including the production of EQR information), performed by EQROs and their subcontractors.

(b) FFP at the 50 percent rate is available in expenditures for EQR-related activities performed by any entity that does not qualify as an EQRO.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance)

Dated: August 2, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Approved: September 9, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–31101 Filed 11–30–99; 8:45 am]

BILLING CODE 4120–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2522 and 2525

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: We propose to amend several provisions relating to the AmeriCorps education award, including those governing the circumstances under which an AmeriCorps member may be determined eligible for a pro-rated education award and the ways in which participants may use the award.

DATES: The deadline for written comments is January 31, 2000.

ADDRESSES: Comments may be mailed or delivered to Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, D.C. 20525, sent by facsimile transmission to (202) 565–2784, or sent electronically to gkowalcz@cns.gov. Copies of all communications received will be available for review at the Corporation by members of the public.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799. This proposed rule may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), the Corporation for National and Community Service (''the Corporation''), through the National Service Trust, provides education awards and qualified student loan interest benefits to AmeriCorps participants who successfully complete a term of service in an approved national service position. The AmeriCorps education award may be used to pay for specified educational costs and to repay certain types of student loans. In addition, upon a participant's successful completion of a term of service, the National Service Trust will pay the interest that accrued during the term on certain types of student loans.

On July 12, 1999 (64 FR 37411), we published final rules governing the AmeriCorps education award and related interest benefits. This notice of proposed rulemaking proposes to clarify one provision regarding eligibility for a pro-rated education award and another provision concerning the use of the education award to pay current educational expenses.

Release for Compelling Personal Circumstances

A participant who demonstrates that compelling personal circumstances make completion of the term of service unreasonably difficult or impossible may be eligible for a pro-rated education award. In the final rule published on July 12, 1999, we listed examples of situations that could be properly classified as compelling personal circumstances. The proposed rule would eliminate one of the situations listed as an example of compelling personal circumstances. Specifically, we propose to rescind our previous determination that compelling personal circumstances are present when a participant, who is serving in a program that includes in its approved objectives the promotion of employment among participants, leaves a term of service to accept an employment opportunity. We believe that eliminating this category is

necessary to promote consistency in the provision of pro-rated education awards throughout AmeriCorps. Under the proposed rule, a participant who leaves service for employment is eligible for an education award only if the participant is a recipient of Temporary Assistance to Needy Families (TANF) making the transition from welfare to work.

Definition of Current Educational Expenses

The proposed rule expands the definition of ''current'' educational expenses to include expenses incurred after an individual enrolls as an AmeriCorps member. The final rule published on July 12, 1999, covered expenses incurred only after the completion of service. We believe that interpreting ''current'' educational expenses to include those incurred after an AmeriCorps member begins a term of service would avoid financial hardship for AmeriCorps members who serve while also attending an institution of higher education.

Executive Order 12866

We have determined that this regulatory action is not a ''significant'' rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

We have determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, we have not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the proposed changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2522

AmeriCorps, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

For the reasons stated in the preamble, chapter XXV, title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2522–AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Section 2522.230 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

* * * * *

(a) * * *

(5) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations; or

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work.

(6) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work; or

(iii) Because of dissatisfaction with the program.

* * * * *

PART 2525–NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.20 is amended by revising the definition of ''Current educational expenses'' to read as follows:

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment in an institution of higher education that begins after an individual enrolls in an approved national service position.

* * * * *

Dated: November 23, 1999.

Wendy Zenker,

Chief Operating Officer.

[FR Doc. 99–31009 Filed 11–30–99; 8:45 am]

BILLING CODE 6050–28–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–339; FCC 99–353]

Implementation of Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt limited requirements for television video description. The Commission seeks comment on ways to increase the availability of video

description. This action is intended to ensure the availability of video description for the benefit of all Americans with visual disabilities in accordance with the Telecommunications Act of 1996.

DATES: Comments are due on or before January 24, 2000; reply comments are due on or before February 23, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Bash, Policy and Rules Division, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (''*NPRM*''), FCC 99–339, adopted November 18, 1999; released November 18, 1999. The full text of the Commission's *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW, Washington, DC. The complete text of this *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. Television plays a significant role in our society. Television programming shapes public opinion and culture in myriad ways. It is the principal source of news and information and provides hours of entertainment every week to American homes. For the millions of Americans with visual disabilities—who watch television in similar numbers and with similar frequency to the general population—the difficulty of being able to follow the visual action in television programs puts them at a significant disadvantage. This disadvantage can be overcome through the use of video description, through which narrated descriptions of a television program's key visual elements are inserted during the natural pauses in the program's dialogue. Video description is typically provided through the use of the Secondary Audio Programming channel so that it is audible only to those who wish to hear the narration. The narration generally describes settings and actions that are not otherwise reflected in the dialogue, such as the movement of a person in the scene. In this *NPRM,* we propose to adopt limited requirements to ensure that video description is more available so that all Americans can enjoy the benefits of television. We expect to expand these requirements once we have gained greater experience with video description.

2. Public television has been airing described video programming for more than a decade. WGBH's Descriptive Video Service (DVS) has described more than 1600 PBS programs, and in the fall of 1998 provided video description of three daily programs, four weekly programs, selected episodes of three other series and several specials. Many commercial broadcasters also have the technical ability to air described video programming, but few have done so. Many cable systems have the capability to provide described programming, but do so only on very limited channels, such as the Turner Classic Movies channel, and none of this programming is available without the assistance of public funding. As a result, less than 1% of all programming contains video description.

3. The Commission has previously conducted inquiries on video description. The Commission issued its first Notice of Inquiry (''*NOI*'') on video description in 1995, 60 FR 65052 (December 18, 1995). Section 713(f) of the Act, added by the 1996 Act, directed the Commission to commence an inquiry on video description, and report to Congress on its findings. Using the record adduced in response to the *First NOI,* the Commission issued the required report to Congress in 1996, 61 FR 42249 (August 14, 1996). The Commission then issued a *second NOI* in 1997, 62 FR 38088 (July 16, 1997), and submitted more information to Congress on video description in its 1997 annual report on competition in the markets for the delivery of video programming, 63 FR 10222 (March 2, 1998). The availability of video description has not meaningfully improved during the past several years while these proceedings were ongoing.

4. Various parties have asked the Commission to take steps to enhance the availability of video description. As discussed, the Commission has received two specific proposals to implement the service, both of which suggest that we phase in video description over a number of years. In addition, the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters has encouraged digital broadcasters to provide video description. The Commission has also received letters of support from Congress and industry. Through this proceeding, we seek comment on ways to increase the availability of video description, without imposing an undue burden on industry.

II. Background

5. *Audience for Video Description.* Video description is designed to make television programming more accessible to persons with visual disabilities, and enable them to ''hear what they cannot see.'' Thus, the primary audience for video description is persons with visual disabilities. Estimates of the number of persons with visual disabilities range from more than eight million to nearly twelve million. The group includes persons with a problem seeing that cannot be corrected with ordinary glasses or contact lenses, with a range in severity.

6. A disproportionate number of persons with visual disabilities are older. The National Center for Health Statistics reports that eye problems are the third leading cause, after heart disease and arthritis, of restricting the normal daily activities of persons 65 years of age or older. While only 2–3% of the population under 45 years of age has visual disabilities, 9–14% of the population 75 years of age or older does. This means that as the population ages, more and more people will become visually disabled.

7. Secondary audiences for video description exist as well. For example, at least one and a half million children between the ages of 6 and 14 with learning disabilities may benefit from video description. Because the medium has both audio description and visual appeal, it has significant potential to capture the attention of learning disabled children and enhance their information processing skills. Described video programming capitalizes on the different perceptual strengths of learning-disabled children, pairing their more-developed modality with their less-developed modality to reinforce comprehension of information.

8. The secondary audience may also include persons without disabilities. Just as health club members and sports bar patrons have become beneficiaries of closed captioning, viewers who are doing several things at once, who need to attend to something during a program, or who leave the room during a program, may become beneficiaries of video description. In fact, the Narrative Television Network, which provides video description that is ''open'' and therefore cannot be turned off, reports that 60% of its audience is not visually disabled.

9. *Technology.* Video description can be either ''open'' or ''closed.'' Open description is provided as part of the main soundtrack of a program. As a result, no special equipment is needed for a broadcaster or multichannel video

programming distributor (MVPD) to transmit the descriptions or for the viewer to receive them. The descriptions cannot, however, be turned off.

10. Closed description is provided on the Secondary Audio Programming, or SAP, channel. The SAP channel allows for an additional audio soundtrack for a program, independent of or separate from the monaural and stereophonic soundtracks. A secondary carrier, or subcarrier, transmits the SAP channel audio soundtrack through a modulator. When the SAP channel is used, a programming distributor transmits two separate audio tracks. The second audio track is transmitted with the main program signal. For example, the SAP channel as currently used by PBS for its video description is transmitted with the main program signal from the network's master control facility and satellite distribution system to the local station's broadcast facility and through the local transmitter. To accommodate the additional soundtrack, changes may need to be made to some network and local stations' plant wiring and equipment. At the local transmitter, the broadcast station or cable operator must have the technical facilities to pass through the subcarrier signal to include the SAP channel information.

11. The CPB–WGBH National Center for Accessible Media (NCAM) reports that, as of 1998, 156 public television stations reaching 79 million (80%) of TV households had installed the necessary equipment to distribute descriptions via SAP. In addition, each of the four largest commercial television networks (ABC, CBS, Fox, NBC) offered Spanish audio on the SAP channel last year. According to NCAM, in the top 25 DMAs, 81% of one major commercial network's affiliates are SAP-equipped, and, in the top 50 DMAs, 69% of cable systems are. NCAM also reports that SAP has been a standard feature of stereo broadcasting for the past fifteen years; as of 1997, 650 TV stations broadcast in stereo, amounting to roughly 40% of total TV stations. For those stations that are not yet SAP-equipped, NCAM estimates that the cost to update equipment to become so is between $5,000 and $25,000, based on the experience of the noncommercial stations that are SAP-capable.

12. To receive information contained within the SAP channel, a viewer must have a receiver (TV set) capable of delivering it. According to the Consumer Electronics Manufacturers Association, as of January 1998, 59% of TV sets sold, and 90% of VCRs sold, have stereo capability, and most of these are SAP-equipped. The Commission observed several years ago that 52% of American households at the time had SAP-compatible TV sets, and 20% had such VCRs. SAP-capable TV sets and VCRs can be relatively inexpensive, less than $150, and a converter box is also available for use with TV sets and VCRs that are not SAP-capable.

13. *Prior Video Description Inquiries.* The Commission first considered video description when it issued a *NOI* on closed captioning and video description on December 4, 1995. Several months later, the Telecommunications Act of 1996 became law. Section 305(f) of the 1996 Act added new section 713 to the Communications Act of 1934. Entitled ''Video Programming Accessibility,'' section 713 addressed closed captioning and video description.

14. On July 29, 1996, the Commission released the required report, based on the record adduced in response to the *NOI.* The Commission did not issue specific guidance on the criteria enumerated in section 713, because ''the present record on which to assess video description * * * is limited, and the emerging nature of the service renders definitive conclusions difficult.'' However, the Commission noted that ''the development of rules for closed captioning, which is more widely available, can provide a useful model for the process of phasing in broadened use of video description.'' The Commission concluded that it should monitor the service and seek more information in the context of its annual report on competition in the market for the delivery of video programming.

15. On January 13, 1998, the Commission released its second report on video description, as part of its annual report to Congress on competition in the market for video programming. In the *Fourth Annual Report,* the Commission stated that ''it is certain that 'closed' video description is feasible,'' given that it is already being provided by some, such as PBS. The Commission noted the expense of providing the service, citing, for example, information provided by WGBH that the expense of describing programming was approximately $3,400 per hour, and that the expense of noncommercial broadcasters that have upgraded equipment to become SAP-capable ranged from $5000 to $25,000.

16. *Coalition and NCAM Proposals.* Following the *Fourth Annual Report,* NCAM submitted a proposal to phase in video description. This proposal was based on an earlier one submitted by the National Coalition of Blind and Visually Impaired Persons for Increased Video Access (Coalition), but modified and updated to take into account the Commission's closed captioning rules.

17. NCAM proposes that initial video description requirements apply to the largest broadcast networks (ABC, CBS, Fox, NBC, and PBS), and national non-broadcast networks, such as cable networks, that serve 50% or more of the total number of MVPD households. In order to ensure that video description provided by these distributors is capable of being received by viewers, NCAM proposes local pass-through requirements on a staggered schedule. Thus, NCAM suggests that by the end of the first year after any Commission rules become effective, affiliates of the broadcast networks identified in the top 25 markets would be required to pass through the description provided by the networks, and all cable systems in the top 25 markets would be required to pass through the description provided by those broadcasters and by national non-broadcast networks serving 50% or more of the total number of MVPD households. By the end of the second year, these requirements would be extended to the top 50 markets; by the end of the third year, to the top 100 markets; and by the end of the fourth year, to the top 200 markets.

18. Both the Coalition and NCAM propose that initial video description requirements apply to prime time and children's programming, and suggest that requirements for other programming be deferred for several years until the infrastructure for video description has developed more, and the Commission, the industry, and the public have gained more experience with the technology. Both the Coalition and NCAM propose that the requirements be phased in over a seven-year period. By the end of the first year after any Commission rules become effective, the distributors would be required to describe four hours of prime time programming per week. By the end of each succeeding year, they would be required to describe an additional three hours of prime time programming per week, until all twenty-two hours of prime time programming (excluding live newscasts) are described. In addition, by the end of the second year, both the Coalition and NCAM propose that the applicable distributors be required to describe three hours of children's programming per week.

III. Proposals and Request for Comment

19. We propose to adopt limited rules to phase ''closed'' video description into the marketplace. We hope to ensure the more widespread availability of video description, but to proceed incrementally so as not to impose a

significant burden on video programming distributors. We thus propose that the largest video programming distributors should provide a limited amount of video description of their prime time and/or children's programming. We believe that requiring these distributors to provide some video description will not be economically burdensome for them. We further believe that requiring them to provide video description of a small portion of their prime time and/or children's programming will ensure the widest availability of video description to audiences that are most likely to benefit from it. We ask for comment on these views.

20. In this section, we outline a particular proposal of the kind that we envision for the initial implementation of these rules. The proposal would require broadcasters affiliated with ABC, CBS, Fox, and NBC in Nielsen's top 25 Designated Market Areas (DMAs), and larger MVPDs, to provide some ''closed'' video description. We propose that these broadcasters and MVPDs provide a minimum of 50 hours per calendar quarter (roughly four hours per week) of described prime time and/or children's programming. Larger MVPDs would be required to carry the described programming of the broadcasters affiliated with the top 4 networks, and of nonbroadcast networks that reach 50% or more of MVPD households. We also propose that these broadcasters and MVPDs begin providing the required described programming no later than 18 months after the effective date of our rules. We further propose to adopt procedures to waive our rules if compliance would be unduly burdensome, and to adopt enforcement procedures. These proposals are described in more detail.

21. This approach is generally modeled after our closed captioning rules. Our approach here is more measured, however, because video description technology is not as developed as closed captioning technology, and all distributors may not have the technical capability now to provide described programming. As the Commission, the industry, and the public gain greater experience with video description, we will review the rules we propose to adopt now, and modify them as the public interest requires. We expect to increase the amount of required described programming over time ''in order to ensure the accessibility of video programming to persons with visual impairments,'' as envisioned by Congress in the section 713(f) of the Act.

22. We recognize that broadcasters are in the process of converting from analog to digital technology. The flexibility inherent in digital technology may make the provision of video description even easier and less costly. Given that the need for video description exists now and that the transition to digital will not occur overnight, however, we do not wish to wait for the transition to be complete before adopting video description requirements. We are thus proposing to apply the requirements outlined in this *Notice* to analog broadcasters. We do intend, however, to extend our video description requirements to digital broadcasters in the future. We are inclined not to adopt a specific timetable to apply to digital broadcasters in the *Report and Order* arising out of this *Proposed Rule,* but rather to address such specifics in a future proceeding. At that time we can craft rules based upon the experience we have gained as a result of analog broadcasters' implementation of our initial requirements. We seek comment on this approach. We also seek comment on what technical issues are raised by the provision of video description by digital broadcasters and on how the conversion to digital affects the costs associated with the provision of video description.

23. *Entities to Describe Programming.* We propose to hold programming distributors, as opposed to producers, responsible for compliance with our video description rules. We recognize that distributors may not actually describe the programming. In the closed captioning proceeding, the Commission observed that others such as producers might more efficiently caption programming, but reasoned that the Commission could more easily monitor and enforce the rules by holding distributors responsible for compliance. We believe this reasoning is equally applicable here, and therefore propose to hold distributors responsible for complying with video description requirements. We seek comment on these views.

24. We propose to apply our rules to all distributors of video programming over which we have jurisdiction. Video programming distributors include television broadcast stations, cable operators, direct broadcast satellite (DBS) operators, home satellite dish (HSD) providers, open video system (OVS) operators, satellite master antenna television (SMATV) operators, and wireless cable operators using channels in the multichannel multipoint distribution service (MMDS). We believe that as many distributors as possible should provide video description to enhance the availability of the service, as well as to ensure a level playing field among distributors. MVPDs are increasingly the primary source of video programming for most Americans, and noncable MVPDs continue to grow. Some MVPDs may require separate SAP generators for each channel they wish to distribute with audio on a SAP channel. It does appear, however, that most of the distribution technologies are capable of transmitting audio on the SAP channel or through other means. We seek comment on this proposal.

25. We believe, however, that our initial rules should only require the largest distributors to provide video description. As the Commission stated in the *Fourth Annual Report,* ''any requirements for video description should begin with only the largest broadcast stations and programming networks that are better able to bear the costs involved * * *. For example, a minimal amount of video description could be required to be provided by the larger broadcast stations in larger markets, and by the larger video programming networks.'' The costs of providing video description include the cost of having programming described, and, in some instances, the cost of upgrading equipment. We thus propose to require the affiliates of the four largest broadcast networks (ABC, CBS, Fox, and NBC) in the top 25 DMAs, and the larger MVPDs to provide video description. Our proposal is consistent with the first phase of NCAM's proposal. We seek comment on our proposal, and on how to define the larger MVPDs to which our initial rules should apply. We seek to identify those MVPDs that are comparable to the broadcast stations we have proposed to require to provide described programming. As indicated, we acknowledge and expect that programming networks, and not broadcast stations and MVPDs, will actually describe programming, but we believe, for ease of enforcement and monitoring of compliance with our rules, that we should hold distributors responsible for compliance. Our proposal would not require any noncommercial stations to provide video description at this time, given the financial difficulties that many of them face, particularly during the transition to DTV.

26. To help us better evaluate our proposal and realize our goal of maximizing video description without imposing an undue burden, we also seek further comment on the costs of video description. The Commission has previously noted that the cost of

describing prime time programming may be as much as several thousand dollars per hour, although commenters have pointed out that the cost of describing prime time programming is but a small fraction of the total budget of such programming. We seek additional comment on the costs of describing programming, including more information on the costs relative to the production budgets of programming such as prime time programming. The Commission has also noted that the cost of upgrading equipment may be between $5,000 and $25,000, although NCAM reports that 81% of one network's affiliates are SAP-equipped, and 69% of cable systems are. We seek more complete and updated information on the number of broadcasters and MVPDs that are SAP-equipped. We seek further comment on the cost of upgrading equipment, particularly from broadcasters that have already done this.

27. We also seek comment on our proposal to require the largest distributors to provide described programming beginning 18 months after the effective date of our rules. We wish to select a beginning date that ensures more widespread video description is available rapidly, but does not impose an undue burden on distributors.

28. We intend our proposal to require the largest programming distributors to provide a limited amount of video description to be a starting point for further development of the service. The experience of the largest programming distributors will provide us with concrete information upon which to propose a schedule to phase in other distributors. We seek comment on an appropriate timetable for the next phase in.

29. *Programming to be Described.* We propose that the distributors should initially provide a minimum of 50 hours per quarter (roughly four hours per week) of video description of prime time and/or children's programming. As the Commission stated in the *Video Accessibility Report,* ''initial requirements for video description should be applied to new programming that is widely available through national distribution services and attracts the largest audiences, such as prime time entertainment series.'' Our proposal to require distributors to describe roughly four hours per week of prime time programming is consistent with first phase of the Coalition's and NCAM's proposals. Although four hours per week appears to be a reasonable starting point, we prefer to express the requirement as 50 hours per quarter in order to grant distributors additional flexibility in selecting the best programming to describe. We propose also to permit distributors to meet the 50 hour video description requirement by describing children's programming in order to meet the needs of children with visual disabilities. As indicated, NCAM suggests that video description of children's programming would also provide a benefit to children with learning disabilities. Within these broad categories of programming, the distributors would have flexibility to decide which programming will reach the largest audience and be most likely to provide the intended benefits of video description. We seek comment on our proposal, and on any alternatives. Instead of requiring that the minimum number of hours of video description apply to prime time and children's programming, should we allow distributors complete flexibility to choose which programming to describe? Should we establish certain parameters to ensure that distributors select programming that has a significant audience that would benefit from video description? Whether we prescribe prime time and/or children's programming or not, is a minimum of 50 hours per quarter (roughly 4 hours per week) appropriate for the initial requirement? We seek comment on the resources currently available to describe programming. We also seek comment on how to ensure that the public, and in particular people with disabilities, know when described video programming is scheduled.

30. Commenters in our earlier *NOI* proceedings have noted that Spanish-language audio sometimes competes for use of the SAP channel. We seek comment on the extent to which Spanish or other languages use or plan to use the SAP channel, the impact, if any, of today's proposals on such services, and how such potential conflicts could be avoided or minimized. Further, although we believe that adoption of digital technology will eliminate any potential conflict between competing users of the SAP channel, we seek comment on whether there are any technical solutions to such potential conflicts in the analog environment.

31. In addition, commenters in our earlier *NOI* proceedings have argued that a second script, which may constitute a ''derivative work'' under copyright law, is necessary to provide video description. As noted, however, many distributors have provided video description for years, and apparently have not found this to be an obstacle. We seek comment on whether copyright issues could become an obstacle to video description, and, what could be done to prevent or minimize such a result.

32. The Coalition points out that public safety messages that scroll across the TV screen are totally inaccessible to persons with visual disabilities, and proposes that an aural tone be required to accompany the messages to alert such persons to turn on a radio, the SAP channel, or a designated digital channel. We believe that it is of vital importance for these emergency messages to be accessible to persons with visual disabilities. We seek comment on the Coalition's proposal, how it relates to the Commission's current standards for broadcasting emergency information, and on any other effective approaches to this problem. Could these messages be provided via ''open'' description?

33. *Waivers and Enforcement Procedures.* We also propose to adopt procedures to enforce our rules, and to waive them if compliance would result in an undue burden. The Commission adopted such procedures in its closed captioning rules. Guided by statutory factors, the Commission determined that factors relevant to a showing that compliance with its closed captioning rules would result in an undue burden are the nature and cost of captioning the programming, the impact on the operation of the petitioner, the financial resources of the petitioner, and the type of operations of the petitioner. The Commission also adopted some basic pleading requirements and timetables for petitions for waiver. In terms of enforcement, the Commission did not adopt any reporting requirements, but rather simply adopted pleading requirements and timetables. We seek comment on whether these procedures are appropriate for our initial video description rules.

IV. Jurisdiction

34. We seek comment on the question whether we possess statutory authority to adopt the proposed video description rules. We also seek comment on the question whether the existence or relative strength of such authority varies according to the type of video programming provider—broadcaster, cable operator, or DBS company, for example—potentially subject to the rules.

35. In connection with this jurisdictional question, we note that section 1 of the Act established the Commission ''[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States* * * * a rapid, efficient,

Nation-wide, and world-wide wire and radio communication service * * *.'' Also, section 2(a) grants the Commission jurisdiction over ''all interstate and foreign communication by wire or radio'' and ''all persons engaged within the United States in such communication * * *.'' In addition, section 4(i) of the Act empowers ''[t]he Commission [to] perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.'' Finally, section 303(r) directs the Commission, ''as the public interest, convenience, and necessity requires,'' to ''[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions in this Act * * *.''

36. We further observe that Congress has expressed a general legislative preference for the increased accessibility of certain communications services for persons with disabilities. Section 225 requires the Commission to ensure that ''interstate and intrastate telecommunications relay services are available, to the extent possible and in the most effective manner, to hearing-impaired and speech-impaired individuals in the United States.'' Similarly, section 255 requires manufacturers of telecommunications equipment, and providers of telecommunications services, to make such equipment and services ''accessible to and usable by individuals with disabilities, if readily achievable.'' Section 303(u) generally requires television receivers to be equipped with a closed captioning chip. Section 710 provides for compatibility between telephones and hearing aids. In addition, the 1998 amendments to section 508 of the Rehabilitation Act require federal departments and agencies to accommodate persons with disabilities, including both employees and members of the public, with respect to the accessibility of information, technology, and data.

37. Other sections of the Act may also relate to the Commission's authority to adopt video description rules. For example, in order to grant a Title III license, renew such a license, or permit the assignment or transfer of such a license, sections 309(a), 307(c)(1) and 310(d) of the Act, respectively, require the Commission to find that the ''public interest, convenience, and necessity'' will be served thereby.

38. Also potentially relevant to this inquiry is section 713(f). That provision directed the Commission to ''commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings.'' As noted, the report was to address ''appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.''

39. We seek comment on the question whether these provisions of the Act, taken together, provide sufficient authority to adopt the proposed video description regulations and on the scope of such authority as it relates to different types of programming providers.

V. Conclusion

40. We adopt this *Notice* in order to stimulate greater availability of video description, while at the same time not impose an undue burden on distributors. To meet the needs of the millions of Americans with visual disabilities, many public television stations and a few cable programmers have voluntarily provided some video described programming, and we applaud these efforts. Through the limited requirements we propose today, we hope to make this service more widely available to ensure that all Americans have access to video programming.

VI. Administrative Matters

41. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 24, 2000 and reply comments on or before February 23, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, 63 FR 24121 (May 1, 1998).

42. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

43. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554.

44. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, SW, 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 99–353), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW, CY–B402, Washington, DC 20554.

45. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov.* Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

46. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov.*

47. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding, subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

48. *Initial Regulatory Flexibility Analysis* (''IRFA''). As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *Notice.* Written public comments are requested on the IFRA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice,* and must have a distinct heading designating them as a response to the IRFA. The Reference Information Center, Consumer Information Bureau, will send a copy of this *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

49. *Initial Paperwork Reduction Act Analysis.* This *Notice* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *Notice,* as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *Notice.* Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) 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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW, Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to *fain t@al.eop.gov.*

50. *Additional Information.* For additional information on this proceeding, please contact Eric Bash, Policy and Rules Division, Mass Media Bureau, (202) 418–2130, (202) 418–1169 TTY.

VII. Ordering Clauses

51. Accordingly, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613, this *Notice of Proposed Rulemaking* is adopted.

52. The Commission's Reference Information Center, Consumer Information Bureau, shall send a copy of this *Notice,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

VIII. Initial Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules proposed in this *Notice.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided in paragraph 38. The Commission will send a copy of the *Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 603(a). In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

54. Section 713(f) of the Communications Act of 1934, as amended (''Act''), 47 U.S.C. 613, directed the Commission, within six months of its enactment, to ''commence an inquiry on video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings.'' Section 713(f) required the report to ''assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.''

Legal Basis

55. This *Notice* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

56. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act, 5 U.S.C. 601(3) (1980). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632.

57. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts, 13 CFR 121.201.

58. The *Notice* proposes to limit the TV broadcast stations that must provide described programming to the TV broadcast stations affiliated with the top four commercial networks in the top 25 Nielsen Designated Market Areas (DMAs). According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, less than five commercial TV broadcast stations subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from nontelevision affiliated companies.

59. *Small MVPDs.* The *Notice* proposes to limit the MVPDs that must provide described programming to larger MVPDs. The *Notice* seeks comment on how to define the MVPDs to which the initial rules should apply, and seeks to identify those MPVDs that are comparable to the broadcast stations affiliated with the top 4 commercial networks in the top 25 DMAs. The *Notice* thus proposes not to apply the initial rules to smaller MVPDs.

60. It is possible, however, that the MVPDs we ultimately decide to require to provide described programming may constitute a ''small business'' under some definitions. For that reason, we review the definition of ''small business'' for various MVPDs.

61. SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We will address each service individually to provide a more succinct estimate of small entities. We seek comment on the tentative conclusions.

62. *Cable Systems:* The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. We estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators under this definition.

63. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, does not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

64. *MMDS:* The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions that has been approved by the SBA.

65. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

66. *ITFS:* There are presently 2,032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

67. *DBS:* As of December, 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

68. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

69. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

70. *OVS:* The Commission has certified three OVS operators. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone (''VDT'') system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications

on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California. Because these services have been introduced so recently, little financial information is available. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Digital Broadcasting Open Video Systems, however, is a general partnership just beginning operations. Accordingly, we tentatively conclude that one OVS licensee qualifies as a small business concern.

71. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

72. The *Notice* proposes to hold certain TV broadcast stations and MVPDs responsible for providing 50 hours per quarter of described prime time and/or children's programming. Those broadcast stations and MVPDs must keep sufficient records to show that they are providing and have provided at least the required amount of described programming.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

73. As indicated, the *Notice* proposes to limit the TV broadcast stations and MVPDs that must provide described programming to larger TV broadcast stations (specifically, commercial TV broadcast stations affiliated with the four largest commercial broadcast networks in the top 25 DMAs) and larger MVPDs. The *Notice* seeks comment on how to define the MVPDs to which the initial rules should apply, and seeks to identify those MVPDs that are comparable to the broadcast stations affiliated with the top four networks in the top 25 DMAs. The Commission, therefore, has taken steps to minimize the impact of the proposed rules on small business.

74. Although the *Notice* proposes to hold the larger broadcast stations and MVPDs responsible for compliance with the initial rules, the Commission acknowledges that the broadcast and nonbroadcast networks that supply programming to the broadcast stations and MVPDs will most likely provide the actual video description of the programming. The *Notice* proposes, however, to limit the programming that must be described to that shown on the four largest commercial broadcast networks, and on nonbroadcast networks that reach 50% or more of MVPD households. The Commission has, therefore, taken steps to minimize the impact of the proposed rules on small business.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31116 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 230
Wednesday, December 1, 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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 12 noon–3 p.m.

PLACE: ADF Headquarters.

DATE: Tuesday, December 7, 1999.

STATUS: Open.

Agenda

12 noon—Chairman's Report

12:30 p.m.

President's Report

New Business

3 p.m.—Adjournment

If you have any questions or comments, please direct them to Dick Day, Coordinator, Office of Policy, Planning and Outreach, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 99–31312 Filed 11–29–99; 2:15 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the East Indiana (IN), Kansas (KS), Minot (ND), and Tri-State (OH) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in August and September 2000. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

East Indiana Grain Inspection, Inc. (East Indiana);

Kansas Grain Inspection Service, Inc. (Kansas);

Minot Grain Inspection, Inc. (Minot); and

Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before December 30, 1999.

ADDRESSES: Applications and comments must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604. Applications and comments may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations Being Announced for Renewal

Official agency	Main office	Designation start	Designation end
East Indiana	Muncie, IN	09/01/1997	8/31/2000
Kansas	Topeka, KS	09/01/1997	8/31/2000
Minot	Minot, ND	10/01/1997	9/30/2000
Tri-State	Cincinnati, OH	10/01/1997	09/30/2000

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana and Ohio, is assigned to East Indiana.

In Indiana:

Bounded on the North by the northern and eastern Grant County lines; the northern Blackford, and Jay County lines;

Bounded on the East by the eastern Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to the northern Grant County line.

Darke County, Ohio.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Colorado, Kansas, Nebraska, and Wyoming, is assigned to Kansas.

The entire State of Colorado.

The entire State of Kansas.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scoots Bluff County lines.

Goshen, Laramie, and Platt Counties, Wyoming.

Kansas' assigned geographic area does not include the following grain elevators inside Kansas' area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of North Dakota, is assigned to Minot.

Bounded on the North by the North Dakota State line east to State Route 14;

Bounded on the East by State Route 14 south to State Route 5; State Route 5 east to State Route 60; State Route 60 southeast to State Route 3; State Route 3 south to State Route 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83 northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Harvey Farmers Elevator, Harvey, Wells County (located inside Grand Forks Grain Inspection Department, Inc.'s, area); and Benson Quinn Company, Underwood, and Wilton Farmers Union Elevator at Washburn Station, Washburn, both in McLean County (located inside Grain Inspection, Inc.'s, area).

d. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Ohio, is assigned to Tri-State.

Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties, Indiana.

Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties, Kentucky.

In Ohio:

Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

2. Opportunity for Designation

Interested persons, including East Indiana, Kansas, Minot, and Tri-State, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

DESIGNATION TERMS

East Indiana and Kansas	09/01/2000 to 06/30/2003
Minot and Tri-State	10/01/2000 to 06/30/2003

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the East Indiana, Kansas, Minot, and Tri-State official agencies. Commenters are encouraged to submit pertinent data concerning the East Indiana, Kansas, Minot, and Tri-State official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 19, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–31085 Filed 11–30–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the California, Kankakee (IL), Washington, Alabama, and Springfield (IL) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

California Department of Food and Agriculture (California);

Kankakee Grain Inspection, Inc. (Kankakee);

Washington Department of Agriculture (Washington);

Alabama Department of Agriculture and Industries (Alabama); and

Springfield Grain Inspection, Inc. (Springfield).

EFFECTIVE DATES: February 1, 2000, for California, Kankakee and Washington, and March 1, 2000, for Alabama and Springfield.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the July 1, 1999, **Federal Register** (64 FR 35586), GIPSA asked persons interested in providing official services in the geographic areas assigned to California, Kankakee, Washington, Alabama, and Springfield to submit an application for designation. Applications were due by July 30, 1999. California, Kankakee, Washington, Alabama, and Springfield, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them. Since

California, Kankakee, Washington, Alabama, and Springfield were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that California, Kankakee, Washington, Alabama, and Springfield are able to provide official services in the geographic areas for which they applied.

The following organizations are designated to provide official services in the geographic areas specified in the April 1, 1999, **Federal Register**.

Official agency	Designation start	Designation end	Telephone
California	02/01/2000	12/31/2002	916–654–0743
Kankakee	02/01/2000	12/31/2002	815–365–2268
Washington	02/01/2000	12/31/2002	360–902–1921
Alabama	03/01/2000	12/31/2002	334–415–2531
Springfield	03/01/2000	12/31/2002	217–522–5233

California's geographic area specified in the July 1, 1999, **Federal Register** was amended by the August 13, 1999, **Federal Register** (64 FR 44196), to include the geographic area formerly assigned to Los Angeles Grain Inspection Service, Inc. (Los Angeles). GIPSA canceled Los Angeles' designation on August 27, 1999, according to their request.

Interested persons may obtain official services by calling the telephone numbers listed above.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 19, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–31086 Filed 11–30–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 9 p.m. on December 20, 1999. The Committee will reconvene at 8:30 a.m. and adjourn at 12 p.m. on December 21, 1999, The meeting site for both days will be at the Best Western Inn Starlite, 214 Washington, Waterloo, Iowa 50701. The purpose of the meeting is to hold a community forum on ''How to File a Discrimination Complaint.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–31131 Filed 11–30–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Reviews

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

ACTION: Notice of initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Kathryn B. McCormick Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560 or (202) 482–1698, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–533–809	A–639	India	Forged Stainless Steel Flanges.
A–583–821	A–640	Taiwan	Forged Stainless Steel Flanges.
A–588–829	A–643	Japan	Defrost Timers.
A–421–805	A–652	Netherlands	Aramid Fiber.
C–475–812	C–355	Italy	Grain-Oriented Electrical Steel.
A–588–831	A–660	Japan	Grain-Oriented Electrical Steel.
A–475–811	A–659	Italy	Grain-Oriented Electrical Steel.
A–588–832	A–661	Japan	Color Negative Photo Paper & Chemical Components.
A–421–806	A–662	Netherlands	Color Negative Photo Paper & Chemical Components.
A–570–831	A–683	China	Garlic.
A–570–826	A–663	China	Paper Clips.

DOC Case No.	ITC Case No.	Country	Product
A–570–827	A–669	China	Cased Pencils.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*e.g.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address:

''http://www.ita.doc.gov/import__admin/records/sunset/''.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1999)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations,* if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: November 24, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31216 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations,* 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1999), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506; A–583–505]

Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods From Canada and From Taiwan

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

ACTION: Notice of final results of expedited sunset review: Oil country tubular goods from Canada.

SUMMARY: On May 3, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on oil country tubular goods (''OCTG'') from Canada and from Taiwan (64 FR 23596) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230;

telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 1, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to these antidumping duty orders is OCTG from Canada and from Taiwan. This includes American Petroleum Institute (''API'') specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by these reviews include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD has not been mechanically tested or has failed those tests.[1] The merchandise is currently, classifiable under the Harmonized Tariff Schedules (''HTSUS'') item numbers 7304.20, 7305.20, and 7306.20. The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The order on OCTG from Canada covers all manufacturers and exporters of Canadian OCTG, excluding Welded Tube of Canada, Ltd. (''Welded Tube'') and Ipsco, Inc. (''Ipsco'').[2] The order on OCTG from Taiwan covers all manufacturers and exporters of Taiwanese OCTG.

History of the Orders

The antidumping duty order on OCTG from Canada was published in the **Federal Register** on June 16, 1986 (51 FR 21782).[3] The Department, in the antidumping duty order, as amended, established deposit rates for the following producers and/or exporters: 13.00 percent for Algoma Steel Corporation, Ltd. (''Algoma''), 33.78 percent for Ipsco, and 3.18 percent for Sonco Steel Tube, Ltd. (''Sonco''). The Department also established a 16.65 percent deposit rate for all other producers and/or exporters.

Since that time, the Department has conducted six administrative reviews.[4] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise, excluding Welded Tube and Ipsco.

The antidumping duty order on OCTG from Taiwan was published in the **Federal Register** on June 16, 1986 (51 FR 22098). The Department, in the antidumping duty order, established a deposit rate of 26.32 percent for Far East Manufacturing Company (''Far East''). The Department also established a 26.32 percent deposit rate for all other producers and/or exporters. The Department has not conducted any administrative reviews of this order. We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On May 3, 1999, the Department initiated sunset reviews of the antidumping duty orders on OCTG from Canada and from Taiwan (64 FR 23596), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of North Star Steel Ohio (''North Star''), Lone Star Steel Company (''Lone Star''), Maverick Tube Corporation (''Maverick''), U.S. Steel Group (''U.S. Steel''), and USS/Kobe Steel Company (''USS/Kobe'') (collectively, the ''domestic interested parties'') on May 18, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.[5] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of OCTG. We received complete substantive responses from the domestic interested parties on June 2, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

In its response, Lone Star stated that it participated in the original investigations of OCTG from Canada and from Taiwan. Furthermore, Lone Star and Maverick stated that they had participated in subsequent administrative reviews of the Canadian order. U.S. Steel and USS/Kobe stated that neither has participated before the Department in prior proceedings of the Canadian OCTG order. We did not

[1] The Department determined, on April 30, 1991, that seamless mechanical tubing/certain coupling stock meeting criteria are excluded from the scope of the order (*see Notice of Scope Rulings*, 56 FR 19833 (April 30, 1991)).

[2] Welded Tube was excluded from the Department's less than fair value determination (*see Antidumping; Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value*, 51 FR 15029 (April 22, 1986)). In addition, the Department revoked this order with respect to Ipsco (*see Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order*, 61 FR 49733 (September 23, 1996)).

[3] The antidumping duty order was subsequently amended. *See Oil Country Tubular Goods (OCTG) From Canada: Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order*, 51 FR 29579 (August 19, 1986) and *Oil Country Tubular Goods From Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand*, 54 FR 41576 (October 10, 1989).

[4] *See Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order*, 61 FR 49733 (September 23, 1996); *Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review*, 60 FR 35898 (July 12, 1995); *Oil Country Tubular Goods From Canada, Final Results of Antidumping Duty Administrative Review*, 59 FR 34409 (July 5, 1994); *Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada*, 56 FR 41890 (August 23, 1991); *Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada*, 56 FR 38408 (August 13, 1991); *Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada*, 55 FR 50379 (December 10, 1990); *Oil Country Tubular Goods From Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand*, 54 FR 41576 (October 10, 1989); *Oil Country Tubular Goods (OCTG) From Canada: Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order*, 51 FR 29579 (August 19, 1986); *Antidumping Duty Order: Oil Country Tubular Goods (OCTG) From Canada*, 51 FR 21782 (June 16, 1986); and *Antidumping; Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value*, 51 FR 15029 (April 22, 1986).

[5] USS/Kobe only provided a substantive response to the Notice of Initiation of the sunset review of OCTG from Canada. USS/Kobe did not participate in the Department's sunset review of OCTG from Taiwan.

receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on August 31, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than November 29, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty orders, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the orders are revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) Imports of the subject merchandise ceased after the issuance of the order, or (c) Dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argued that revocation of this antidumping duty orders would likely lead to continuation or recurrence of dumping by Canadian and Taiwanese producers and/or exporters of the subject merchandise. With respect to whether dumping continued at any level above *de minimis* after the issuance of the orders, the domestic interested parties argued that dumping has continued throughout the life of the orders at above *de minimis* levels. Furthermore, USS/Kobe argued that the dumping margins for some Canadian producers and/or exporters have not only continued throughout the life of the order, but have consistently increased.

The domestic interested parties also argued that import volumes have declined significantly since the issuance of the orders. Specifically, the domestic interested parties argued that imports of OCTG from Canada in the year prior to the imposition of the order amounted to over 150,000 tons but have since almost completely ceased. Specifically, North Star stated that imports of OCTG from Canada have dropped to less than 1,500 tons per year. Furthermore, USS/Kobe provided data which indicates that imports of OCTG from Canada in 1998 were less than 2,000 tons and have not exceeded 8,100 tons in any year since 1991.

With respect to the Taiwanese order, Lone Star and Maverick argued that imports of OCTG from Taiwan were nearly 10,000 tons prior to the imposition of the order but have since almost completely disappeared. In fact, Lone Star and Maverick stated that there were no shipments of the subject merchandise from Taiwan in 1998.

In summary, the domestic interested parties argued that the Department should determine that there is a likelihood that dumping would continue were the orders revoked because (1) Dumping margins above *de minimis* levels have been in place since the imposition of the orders and (2) Imports of the subject merchandise have declined significantly since the imposition of the orders.

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels have continued to exist for shipments of the subject merchandise throughout the life of the orders.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the orders. The Department, utilizing U.S. Census Bureau IM146 reports, agrees with the domestic interested parties that imports of the subject merchandise decreased sharply following the imposition of the orders. Furthermore, the Department agrees with Lone Star and Maverick that there were no imports to the United States of Taiwanese OCTG in 1998. However, imports of Taiwanese OCTG did resume in 1999. Despite the dramatic decline in imports of OCTG from Canada and Taiwan and the cessation of imports of Taiwanese OCTG in 1998, the Department can confirm that imports of the subject merchandise continue from both countries.

Based on our analysis of the records in these proceedings, the Department finds that the existence of dumping margins after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of OCTG by all Canadian and Taiwanese manufacturers and/or exporters subject to the orders.[7] Therefore, given that

[6] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 48579 (September 7, 1999).

[7] As noted above, with respect to the Canadian order, Welded Tube was excluded from the Department's less than fair value determination and the order was revoked with respect to Ipsco (*see*

dumping has continued over the life of the orders and respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in the antidumping duty order on OCTG from Canada, as amended, established deposit rates for the following producers and/or exporters: 13.00 percent for Algoma, 33.78 percent for Ipsco, and 3.18 percent for Sonco. The Department also established a 16.65 percent deposit rate for all other producers and/or exporters (51 FR 21782 (June 16, 1986)).[8] We note that, to date, the Department has not issued any duty absorption findings in this case.

The Department, in the antidumping duty order on OCTG from Taiwan, established a deposit rate of 26.32 percent for Far East. The Department also established a 26.32 percent deposit rate for all other producers and/or exporters (51 FR 22098 (June 16, 1986)). We note that, to date, the Department has not issued any duty absorption findings in this case.

Antidumping; Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value, 51 FR 15029 (April 22, 1986) and *Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order,* 61 FR 49733 (September 23, 1996)).

[8] The antidumping duty order was subsequently amended. *See Oil Country Tubular Goods (OCTG) From Canada: Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order,* 51 FR 29579 (August 19, 1986) and *Oil Country Tubular Goods From Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand,* 54 FR 41576 (October 10, 1989).

In its substantive responses, the domestic interested parties argued that the Department should report to the Commission the deposit rates established in the original investigations of these orders because, as stated in the *Sunset Policy Bulletin*, they are the only calculated rates that reflect the behavior of producers and/or exporters without the discipline of the order. Furthermore, with respect to the order on OCTG from Canada, USS/Kobe argued that for two additional producers not examined in the original investigation, Christianson Pipe, Ltd. and Prudential Steel, Ltd., the Department should report the all others rate from the original investigation.

The Department agrees with the domestic interested parties. We find that the dumping margins calculated in the original investigations are the only calculated rates that reflect the behavior of exporters without the discipline of the orders. Consistent with the *Sunset Policy Bulletin,* we determine that the margins calculated in the Department's original investigations are probative of the behavior of Canadian and Taiwanese producers and/or exporters of OCTG if the orders were revoked. Therefore, we will report to the Commission the company-specific and ''all others'' rates from the original investigations contained in the Final Results of Review section of this notice.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the margins listed below:

	Margin (percent)
Canadian manufacturers/exporters:	
Algoma	13.00
Sonco	3.18
Ipsco	Revoked.
Welded Tube	Excluded.
All Others	16.65
Taiwanese manufacturers/exporters:	
Far East	26.32
All Others	26.32

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 24, 1999.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31225 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112299A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Dolphin and Wahoo Advisory Panel (AP) and Scientific and Statistical Committees (SSC).

DATES: The AP meetings will be held January 5, 2000, and the SSC meeting will be held January 12, 2000. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held in Kenner and New Orleans, Louisiana. See SUPPLEMENTARY INFORMATION for specific locations.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

The AP meeting is scheduled to begin at 8:30 a.m. on January 5, 2000, and will conclude by 4:00 p.m. The AP meeting will be held at the at the New Orleans Airport Hilton Hotel, 901 Airline Highway, Kenner, Louisiana; telephone 504–469–5000. The Dolphin Wahoo AP will convene to review a ''Draft Fishery Management Plan for the Dolphin, Coryphaena hippurus, and Wahoo, Acanthocybium solandri, Fishery in the

Atlantic, Caribbean, and Gulf of Mexico'' (Dolphin/Wahoo FMP) that has been prepared by the South Atlantic, Gulf, and Caribbean fishery management councils. The first 10 actions, with options, of the Dolphin/Wahoo FMP contain measures that are applicable to the dolphin and wahoo stocks in the jurisdictions of all three councils. These include measures to: define the management units; address dealer, vessel, and operator permits; consider data reporting requirements; identify estimates of maximum sustainable yield, optimum yield, and overfishing criteria; and framework options to enable seasonal adjustments to the management structure. Other actions, with options, are separately applicable to each council's area of jurisdiction, and include actions that may be implemented through the framework procedures, e.g. minimum size limits, bag limits, trip limits, and allocations. Based on this review, the Dolphin and Wahoo AP may make recommendations to the Council of preferred actions.

The SSC meeting is scheduled to begin at 1:00 p.m. on January 12, 2000, and will conclude by 5:00 p.m. The SSC meeting will be held at the Doubletree Hotel, 300 Canal Street, New Orleans, Louisiana; telephone 504–581–1300. The SSC will convene to review the same information and formulate their recommendations based on a scientific perspective. Copies of the agenda can be obtained by calling 813–228–2815.

Although non-emergency issues not contained in these agendas may come before the AP/SSC for discussion, those issues may not be the subject of formal AP/SSC action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 29, 1999.

Dated: November 26, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–31204 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112699B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees in December, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between Monday, December 13 and Tuesday, December 21, 1999. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: Meetings will be held in Portsmouth, NH, Portland, ME and Danvers, MA. See SUPPLEMENTARY INFORMATION for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, December 13,1999, 8:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Independent meeting of the Groundfish Advisory Panel from 8:30–9:00 a.m. to discuss its role and responsibilities; the joint meeting convenes at 9:00 a.m.

1. The committee will continue development of recommendations and options regarding exemptions for access to groundfish closed areas; options will be included in the Northeast Multispecies Fishery Management Plan (FMP) annual adjustment; the committee's recommendations may address exemptions for recreational party/charter vessels, scallop gear, handline gear, and any other fishing gears currently listed as ''exempted'' with respect to the multispecies fishery.

2. Possible development of recommendations for management measures for recreational groundfish fisheries also to be included in the multispecies annual adjustment; recommendations may include bag limits, catch restrictions in groundfish closed areas, or any other recreational measures that can be implemented through a framework adjustment to the Multispecies FMP.

3. Discussion and development of recommendations regarding access to the Georges Bank closed areas by scallop vessels; these may include seasons for access, boundaries of the areas to be opened to scallop vessels, multispecies trip limits, and bycatch total allowable catches (TACs) for multispecies.

Tuesday, December 14, 1999, 10:00 a.m.—Capacity Committee Meeting

Location: Holiday Inn by the Bay Hotel, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Review and prioritization of identified fishing capacity issues; initial identification of options for addressing capacity issues; review of a proposed outline for a report to the Council on fishing capacity issues; preliminary briefing on the development by the Northeast Fisheries Science Center of an economic model that estimates the economic impacts of the fishing industry on a community; discussions on information necessary to support future committee deliberations.

Tuesday, December 14, 1999, 9 a.m., and Wednesday, December 15, 1999, 8:30 a.m.—Experimental Fisheries and Research Steering Committee

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Discussion of committee organization, purpose, tasks, process and information needs, followed by a brief report on the status of sea scallop TAC research set-aside associated with Framework Adjustment 12 to the Scallop FMP.

Tuesday, December 21, 1999, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Discussion of NMFS' request for comments on the Essential Fisher Habitat interim final rule; discussion of a structured process to designate Habitat Areas of Particular Concern (HAPCs); discussion of issues concerning the development of a dedicated habitat research area, including a review of materials for scoping and a workshop.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting.

Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 26, 1999.

Richard W. Surdi,

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

[FR Doc. 99–31203 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 23, 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: 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 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 import restraint limits for textile products, produced or manufactured in Hong Kong 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. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

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 23, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 464, 469pt.[3], 600–629, 666, 669pt.[4] and 670, as a group.	254,856,238 square meters equivalent.
Sublevels in Group I	
219	45,361,264 square meters.
218/225/317/326	77,152,142 square meters of which not more than 4,249,239 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
611	7,151,815 square meters.
617	4,512,292 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	121,450,414 square meters equivalent.
Within Group I subgroup	
200	391,087 kilograms.
226/313	81,368,365 square meters.
314	21,944,072 square meters
315	10,849,223 square meters.
369(1) (shoptowels)	891,586 kilograms.
604	268,455 kilograms.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	878,157,003 square meters equivalent.
Sublevels in Group II	
237	1,311,724 dozen.
331	4,399,357 dozen pairs.
333/334	319,184 dozen.
335	349,791 dozen.
338/339[14] (shirts and blouses other than tank tops and tops, knit).	2,973,125 dozen.
338/339(1)[15] (tank tops and knit tops).	2,233,725 dozen.
340	2,847,080 dozen.
345	485,530 dozen.
347/348	6,895,362 dozen of which not more than 6,805,362 dozen shall be in Categories 347–W/348–W[16]; and not more than 5,157,360 dozen shall be in Category 348–W.
352	7,715,391 dozen.
359(1) (coveralls, overalls and jumpsuits).	668,262 kilograms.
359(2) (vests)	1,392,796 kilograms.
433	10,817 dozen.
434	11,612 dozen.
435	78,271 dozen.
436	101,942 dozen.
438	837,232 dozen.
442	95,944 dozen.
443	64,319 numbers.
444	43,444 numbers.
445/446	1,383,834 dozen.
447/448	69,593 dozen.
631	728,026 dozen pairs.

Category	Twelve-month restraint limit
633/634/635	1,431,705 dozen of which not more than 535,489 dozen shall be in Categories 633/634; and not more than 1,099,388 dozen shall be in Category 635.
638/639	4,991,263 dozen.
641	862,469 dozen.
644	49,379 numbers.
645/646	1,368,011 dozen.
647	605,620 dozen.
648	1,210,184 dozen of which not more than 1,195,394 dozen shall be in Category 648–W [17].
649	932,414 dozen.
650	192,819 dozen.
652	5,377,750 dozen.
659(1) (coveralls, overalls and jumpsuits).	738,604 kilograms.
659(2) (swimsuits)	307,909 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	60,115 numbers.
Group II subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	164,827,032 square meters equivalent.
Within Group II subgroup	
336	253,347 dozen.
341	2,881,900 dozen.
342	593,499 dozen.
350	147,976 dozen.
351	1,217,185 dozen.
636	340,961 dozen.
640	1,040,678 dozen.
642	271,145 dozen.
651	369,252 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt. [18], as a group.	47,594,094 square meters equivalent.
Sublevels in Group III	
834	13,876 dozen.
835	118,130 dozen.
836	179,520 dozen.
840	701,706 dozen.
842	278,910 dozen.
847	376,841 dozen.
Limits not in a group	
845(1) [19] (sweaters made in Hong Kong).	1,132,745 dozen.
845(2) [20] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,711,360 dozen.
846(1) [21] (sweaters made in Hong Kong).	183,176 dozen.
846(2) [22] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	441,385 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[4] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[15] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[16] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[17] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[19] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[20] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[21] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[22] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

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 30, 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.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

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. 99–31057 Filed 11–30–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/144,683 entitled ''High Noise Communication System'' Navy Case No. 79,054 and U.S. Patent Application Serial No. 09/207,903 entitled ''High Noise Suppression Microphone'' Navy Case No. 79,603.

ADDRESSES: Requests for copies of the patent applications cited should be directed to Coastal Systems Station, Dahlgren Division NSWC, 6703 W. Hwy. 98, Code CP20L, Panama City, FL 32407–7001, and must include the Navy Case Number.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, Code CP20L, 6703 W. Hwy 98, Panama City, FL 32407–7001, telephone (850) 234–4646.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)
Dated: November 16, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–31198 Filed 11–30–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the midterm briefing of the Technology Hedging Strategies Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to technology hedging strategies.

DATES: The meeting will be held on December 14, 1999 from 10 a.m. to 11 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: November 18, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–31199 Filed 11–30–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–4226–001 and EL00–16–000]

Ameren Operating Companies; Notice of Initiation of Proceeding and Refund Effective Date

November 24, 1999.

Take notice that on November 23, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL00–16–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL00–16–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–31140 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–009]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1999.

Take notice that on November 19, 1999, CNG Transmission Corporation (CNG) filed revised tariff sheets to comply with the letter order of Director of the Office of Pipeline Regulation dated November 17, 1999.

As explained in the filing, CNG has renumbered its proposed tariff sheets to eliminate duplicate tariff sheet numbers.

CNG states that copies of its letter of transmittal and enclosures are being served upon parties to the proceeding and to interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31152 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–74–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1999.

Take notice that on November 18, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 20, 1999:

Eighth Revised Sheet No. 1

Twenty-Fifth Revised Sheet No. 31
Third Revised Sheet No. 189
Second Revised Sheet No. 190–193
Third Revised Sheet No. 194
Fourth Revised Sheet No. 195
Second Revised Sheet No. 196
Second Revised Sheet No. 197
First Revised Sheet No. 198
First Revised Sheet No. 466
Original Revised Sheet Nos. 467–474

CNG states that the purpose of this filing is to implement a new rate schedule and associated form of service agreement, Rate Schedule TTT, authorizing CNG to provide title transfer tracking services. TTT service is an administrative service, under which CNG provides buyers and sellers of gas with accounting locations (Eligible Points) for the nomination of title transfers on the CNG system. As with CNG's existing Mainline Pooling Service (Rate Schedule MPS), the Eligible Points for proposed TTT Service will correspond to one location for receipts upstream (or south) of CNG's Valley Gate Junction, and one relating to quantities downstream (or north) of Valley Gate.

CNG states that copies of its letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31153 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–031 (Phase II)]

Columbia Gas Transmission Corporation; Notice of Filing of Refund Report

November 24, 1999.

Take notice that on November 19, 1999, Columbia Gas Transmission Corporation (Columbia Gas) filed a refund report in the above referenced docket, pursuant to section 154.501(e) of the Commission's regulations.

Columbia Gas states that on October 19, 1999, Columbia Gas made refunds as a result of and pursuant to its approved Stipulation and Agreement settling the referenced docket, which settlement was approved by the Commission on September 15, 1999. Pursuant to section 154.501 of the Commission's regulations, the refunds include applicable interest through October 19, 1999. Parties who received refunds also received a schedule of the computation of the principal and interest amounts.

Columbia Gas states that copies of its filing have been mailed to all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 1, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31150 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–26–000]

Commonwealth Edison Company, on Behalf of Itself and Its Public Utility Affiliates and PECO Energy Company, on Behalf of Itself and Its Public Utility Affiliates; Notice of Filing

November 24, 1999.

Take notice that on November 22, 1999 Commonwealth Edison Company (ComEd) and PECO Energy Company (PECO), on their behalf and on behalf of their public utility affiliates (collectively, Applicants), tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, 18 CFR Part 33 (1999), for an order approving the proposed merger of ComEd and PECO (Application).

Applicants request all authorizations necessary to undertake the proposed merger. Upon consummation of the merger, Applicants will form a registered public utility holding company system.

Applicants request that the Commission approve the merger on an expedited basis and without an evidentiary hearing. Applicants state that they have, by overnight mail, served a copy of the Application, including all non-confidential attached materials, on the Illinois Commerce Commission, on the Pennsylvania Public Utility Commission and on all other interested entities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31142 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–71–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1999.

Take notice that on November 18, 1999, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of November 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Transcontinental Gas Pipeline Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31143 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–4–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1999.

Take notice that on November 19, 1999, El Paso Natural Gas Company (El Paso) tendered for filing a firm Transportation Service Agreement (TSA) between El Paso and MGI Supply, Ltd. (MGI) and Fourteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSA, is proposed to become effective on January 1, 2000.

Any person desiring to be heard or top protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31149 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–476–001]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1999.

Take notice that on November 18, 1999, Gas Transport, Inc. (GTI) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, with a proposed effective date of August 1, 1999.

GTI states that the purpose of this filing is to comply with the Commission's letter order issued on September 15, 1999 (Order) in the above-referenced proceeding. The Order directed GTI to file revised tariff sheets to rectify certain matters with respect to GTI's filing on August 20, 1999, made to comply with the Commission's Order No. 587–K. Specifically, the revised tariff sheets address the Order by incorporating GISB Standards 4.3.17 through 4.3.35 as well as 1.3.3 and 2.3.16, Version 1.3, by reference in GTI's General Terms and Conditions, Section 22.

GTI states that copies of this filing were served upon its firm customers and interested state commissions. Copies were also served on all interruptible customers as of the date of the Compliance filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31147 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–290–004]

Michigan Gas Storage Company; Notice of Compliance Filing

November 24, 1999.

Take notice that on November 16, 1999, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Sub Fourth Revised Tariff Sheet No. 4 (to be effective January 1, 1997), Second Sub Fifth Revised Tariff Sheet No. 4 (to be effective June 1, 1997), Second Sub Fifth Revised Tariff Sheet No. 5 (to be effective January 1, 1997), and Third Sub Sixth Revised Tariff Sheet No. 5 (to be effective October 1, 1997), along with accompanying workpapers and other materials.

MGS states that the filing is being made in compliance with the Commission's April 5, 1999 Order on Initial Decision and November 1, 1999 Order Granting Rehearing in this docket.

MGSCo states that copies of this filing have been served on all customers and applicable state regulatory agencies and on all those on the official service list in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31151 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–75–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1999.

Take notice that on November 19, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourteenth Revised Sheet No. 25, to be effective January 1, 2000.

Natural states that the purpose of this filing is to implement the Gas Research Institute (GRI) Surcharge in accordance with Section 39 of the General Terms and Conditions of Natural's Tariff. The GRI surcharges were approved by the Federal Energy Regulatory Commission's (Commission) Order issued September 29, 1999, at Docket No. RP99–323–000, to be effective January 1, 2000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective January 1, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31155 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket Nos. ER98–1890–000, ER98–1890–003, and ER98–1890–005]

Northern States Power Company (Minnesota and Wisconsin); Notice of Filing

November 24, 1999.

Take notice that on November 22, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively NSP), tendered for filing a request to withdraw its February 17, 1998, proposed amendment, filed with the Commission in Docket No. ER98–1890–000, to the curtailment procedures in Sections 13.6 and 14.7 of its Open Access Transmission Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31139 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–72–000]

Questar Pipeline Company; Notice of Tariff Filing

November 24, 1999.

Take notice that on November 18, 1999, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2000:

First Revised Volume No. 1

Twelfth Revised Sheet No. 5
Eleventh Revised Sheet No. 5A

Original Volume No. 3

Twenty-Third Revised Sheet No. 8

On June 1, 1999, GRI filed an abbreviated application seeking approval of funding for its year 2000 research, development and demonstration program and its 2000–2004 five-year plan. The Commission issued an order on September 29, 1999, in Docket No. RP99–323–000 approving GRI's funding plans. This filing incorporated the approved GRI surcharge rates in the Statement of Rates to Questar's tariff.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31146 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP000–24–000 and CP00–25–000]

Sabine Pipe Line Company; Sabine Pipe Line LLC; Notice of Applications

November 24, 1999.

Take notice that on November 15, 1999, Sabine Pipe Line Company (Company), 1111 Bagby Street, Houston, Texas 77002, filed in Docket No. CP00–24–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations to restructure the operations of the Sabine pipeline system as a limited liability company in order to take advantage of state and franchise tax savings available to limited liability companies and to have the business and financing flexibility offered by that structure. Company seeks authority to abandon all of its jurisdictional facilities and services by transfer to Sabine Pipe Line LLC (Sabine LLC). Concurrently, sabine LLC requests a certificate of public convenience and necessity authorizing it to acquire and operate Company's jurisdictional facilities and to perform the services authorized by the Commission, in the same manner as Company operates the facilities and performs the services. Sabine LLC, 1111 Bagby Street, Houston, Texas 77002, filed in Docket No. CP00–25–000 an application pursuant to Sections 7(b) of the Natural Gas Act to abandon a 43-mile segment of the sabine pipeline system in Louisiana and Texas that is underutilized, all as more fully set forth in the applications which are on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 of assistance.

[Docket No. CP00–24–000]

According to Company, there will be no other changes associated with this application and that, upon approval, Sabine LLC will perform the same services at the same rates and under the same terms and conditions as Company. Company asks that the Commission transfer to Sabine LLC all certificates and authorizations that have been issued for the construction and operation of the Sabine pipeline system. According to Company, Sabine LLC will adopt Company's currently effective tariff and rates, an will refile the tariff to reflect the proposed change in business structure. Company states that the proposed application is not intended to accomplish anything other than to change the legal structure of the owner and operator of the pipeline company from a corporation to a limited liability company.

[Docket No. CP00–25–000]

Sabine LLC proposes to abandon approximately 43 miles of 16-inch mainline transmission facilities, which extend from a point on the west bank of the Neches River in Jefferson County, Texas, to point on the east bank of the Calcasieu River in Calcasieu Parish, Louisiana, by sale to Texaco Petrochemical LLC for use in liquids service. The proposed abandonment will entail the isolation of the 16-inch line from the remainder of the Sabine pipeline system and the abandonment of the receipt and delivery points of the 16-inch line. The points that will be abandoned include those points designated as: (1) Midcoast; (2) Dynegy; (3) Neches/Dupont; (4) Spindletop: (5) Channel; (6) Neches/Firestone; (7) Gulf States Utilities: (8) Bridgeline/Lake Charles; and, (9) Bridgeline/Citgo. Sabine LLC proposes to move two of the delivery points, designated as the Dynegy and Midcoast points, to the pipeline's parallel 18-inch line under blanket certificate authority in order to ensure continuity of service.

Sabine LLC states that the proposed abandonment will reduce the amount of available firm capacity on the Sabine pipeline system by 65,000 dts per day in the geographic area where the abandoned pipe is located, but that there should not be any appreciable impact on the services provided by the pipeline. According to Sabine LLC, throughput on the system has been declining on the 16-inch line while operation and maintenance costs have increased. The Sabine pipeline system operates primarily as a market center in South Louisiana and transportation on the east/west corridor between Texas and Louisiana has declined significantly over the past few years. Sabine LLC contends that the receipt and delivery points that they propose to abandon are either inactive or underutilized and that the cost of operating most of these points exceeds the revenues derived from such points. Sabine LLC requests that the Commission grant the authorization by February 29, 2000.

Any questions regarding this petition should be directed to Wade Hopper, 1111 Bagby Street, Houston, Texas 77002 at (713) 752–7188, or Deborah L. Plattsmier, President, P.O. Box 4781, Houston, Texas 77210–4781 at (713) 752–7714, or Linda L. Geoghegan, Attorney, P.O. Box 4596, Houston, Texas 77210–4596 at (713) 752–6067.

Any person desiring to be heard or to make a protest with reference to said application should, on or before December 15, 1999, file with the Federal Energy Regulatory Commission (888 First Street, NE, Washington, DC 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. 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 is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Company and Sabine LLC to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–31159 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–000; ER98–2550–000; ER98–495–000; ER98–1614–000; ER98–2145–000; ER98–4300–000; ER98–2668–000; ER98–2669–000; ER98–4296–000; ER98–496–006; ER98–2160–004; ER98–441–001; ER98–495–001; ER98–496–001; ER98–4300–001; ER99–1127–000; ER98–2668–001; ER98–2669–001; ER98–4296–001; and ER99–1128–000]

Southern California Edison Co.; California Independent System Operator Corp.; El Segundo Power, LLC; Pacific Gas and Electric Co.; Duke Energy Moss Landing LLC, and Duke Energy Oakland, LLC; San Diego Gas & Electric Co; Southern California Edison; Pacific Gas and Electric Co.; San Diego Gas & Electric Co.; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; Notice of Filing

November 24, 1999.

Take notice that on November 12, 1999, San Diego Gas & Electric Company (SDG&E), tendered for filing with the Commission certain cost data specified in Article IV.E. of the Stipulation and Agreement filed in these dockets on April 2, 1999, and approved by the Commission on May 28, 1999. SDG&E states that Article IV.E. requires such data, as at December 31, 1998 to be filed by the owners of certain Reliability Must Run (RMR) generating units. SDG&E further states that, although it no longer owns the units in question, it is submitting the data as an accommodation to the new owners, since SDG&E owned or leased the units on December 31, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 3, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31158 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–73–000]

Tennessee Gas Pipeline Company; Notice of Compliance and Tariff Filing

November 24, 1999.

Take notice that on November 18, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, Third Revised Sheet No. 366, with an effective date of December 19, 1999.

Tennessee states that Sheet No. 366 is being filed to comply with the Commission's September 29, 1999 Order Approving Disposition of Jurisdictional Facilities in Docket No. EC99–73. El Paso Energy Corporation and Sonat Inc., 88 FERC (61,302 (1999) (hereinafter, ''the September 29th Order''). In the September 29th Order, the Commission approved the application of El Paso Energy Corporation and Sonat Inc. requesting Commission approval of the proposed merger between the two companies. Tennessee further states that Sheet No. 366 effectuates that commitment of the respective companies to file tariff sheets, for each of their jurisdictional pipeline companies that serve the Southeast, committing that future pipeline expansion capacity will be offered to all shippers on a non-discriminatory basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31154 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–017]

Transcontinental Gas Pipe Line Corporation; Notice of PBS Revenue Sharing Refund Report

November 24, 1999.

Take notice that on November 19, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on November 18, 1999, Transco submitted PBS revenue sharing refunds (total principal and interest amount of $697,553.47) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Section 3.4 of Transco's Rate Schedule PBS provides that, during the effectiveness of the Docket No. RP97–71 rate period, which began on May 1, 1997, Transco shall refund annually 75% of the fixed cost component of all revenues collected under Rate Schedule PBS to maximum rate firm

transportation, maximum rate interruptible transportation and maximum rate firm storage Buyers (collectively, Eligible Shippers). Transco has calculated that the refund amount for the annual period from May 1, 1998 through April 30, 1999 equals $697,553.47. Pursuant to Section 3.4 of Rate Schedule PBS, Transco refunded that amount to Eligible Shippers based on each eligible Shipper's actual fixed cost contribution as a percentage of the total fixed cost contribution of all such Eligible Shippers (exclusive of the fixed cost contribution pertaining to service purchased by Seller from third parties).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 1, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31148 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–19–000]

Wells Rural Electric Company; Notice of Filing

November 24, 1999.

Take notice that on November 19, 1999, Wells Rural Electric Company (WREC) tendered for filing with the Commission a Request for Waiver of the Requirements of Order Nos. 888 and 889 and Certain Other Commission Regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 20, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31141 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–76–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filingst

November 24, 1999.

Take notice that on November 19, 1999, Wyoming Interstate Company (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Third Revised Sheet No. 4B, with an effective date of December 1, 1999.

WIC states that the tariff sheet reflecting a decrease in the percentage for Fuel, Lost and Unaccounted-for Gas (''FL&U Percentage'') from .80% to .54% for its Existing System transport and an decrease from 1.76% to 1.72% for its Power River Incremental transport, based on the data contained in the twelve month data collection period ending August 31, 1999.

WIC states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions, and is otherwise available for public inspection at WIC's office in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31156 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–004 New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Draft Environmental Assessment

November 24, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Oswego River Hydroelectric Project, located on the Oswego River in Oswego County, New York, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426 and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Oswego River Project No. 2474–004'' to all comments. For further information, please contact Charles T. Raabe at (202) 219–2811.

David P. Boergers,

Secretary.

[FR Doc. 99–31145 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2032–001 Wyoming]

Lower Valley Power & Light, Inc.; Notice of Availability of Draft Environmental Assessment

November 24, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 386, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Strawberry Hydroelectric Porject (Project), and has prepared a Draft Environmental Assessment (DEA). The project is located on Strawberry Creek near Bedford, within lands of the Bridger National Forest, in Lincoln County, Wyoming. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426, and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Carter Kruse, Environmental Coordinator, at (202) 219–3023.

David P. Boergers,

Secretary.

[FR Doc. 99–31144 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–060]

El Dorado Irrigation District and Pacific Gas and Electric Company; Notice of Scoping Meetings, Site Visit, and Intent To Prepare an Environmental Assessment

November 24, 1999.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a non-capacity related amendment to license for the El Dorado Project (FERC No. 184) to permit the planned restoration of the project diversion dam, to replace the original dam which was largely destroyed by flood waters, and the construction of a new, 9,400-foot-long bypass tunnel from Mill Creek to Bull Creek, to replace damaged portions of the project's canal. The El Dorado Project, co-licensed to the El Dorado Irrigation District (EID) and Pacific Gas and Electric Company (PG&E) is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California.

The Commission intends to prepare an Environmental Assessment (EA) for the El Dorado Project, which will be used by the Commission to determine whether, and under what conditions, to issue the amendment to the license for the project. To support and assist our environmental review, we are beginning the public scoping process to ensure that all pertinent issues are identified and analyzed, and that the environmental document is thorough and balanced.

We invite the participation of governmental agencies, non-governmental organizations, and the general public in the scoping process, and have prepared Scoping Document 1 (SD1) to provide information on the proposed project and to solicit written and verbal comments and suggestions on our preliminary list of issues and alternatives to be addressed in the EA. The SD1 has been distributed to parties on the Service List for this proceeding, as well as other individuals and organizations that we have identified as having previously expressed an interest in this project. The SD1 is available from our Public Reference Room at (202) 208–1371. It can also be accessed online at http://rimsweb1.fern.fed.us/rims/.

We will hold two scoping meetings to receive input on the scope of the EA. A public meeting will be held on December 15, 1999 at the Radisson Hotel, 500 Leisure Lane, in Sacramento, California, from 2 to 4 pm and on December 16, 1999 at the County Board of Supervisors Office, Bldg. A, 33 Fair Lnae, in Placerville, California, from 7 to 9 pm. The public and agencies may attend either or both meetings. We also will visit the project site on December 16, 1999. We will meet at Camp 5 El Dorado Irrigation District Headquarters, at 7225 U.S. Highway 50, at 10 am. More information on the meetings and site visit is provided in the SD1.

Please review the SD1 and, if you wish to provide oral or written input, follow the instructions in section 3.0. Please note that scoping comments must be received by the close of business on January 10, 2000. All correspondence should clearly show at the top of the first page ''El Dorado Project, FERC No. 184–060.'' Address all communications to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.

Please direct any questions about the scoping process to John M. Mudre at (202) 219–1208.

David P. Boergers,

Secretary.

[FR Doc. 99–31157 Filed 11–30–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34143A; FRL–6397–4]

Dimethoate, Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for one organophosphate pesticide, dimethoate, to interested stakeholders. This public meeting, called a ''Technical Briefing,'' will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for dimethoate. In addition, representatives of the U.S. Department of Agriculture (USDA) will also provide ideas on possible risk management for dimethoate.

DATES: The technical briefing will be held on Tuesday, December 14, 1999, from 9 a.m. to noon.

ADDRESSES: The technical briefing will be held at Holiday Inn Hotel and Suites-Old Town, 625 First St., Alexandria, VA, telephone number: 703–548–6300.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and

Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any 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/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, a brief summary of the dimethoate revised risk assessments are now available at http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2.

2. *In person*. The Agency has established an official record for the organophosphate dimethoate under docket control number OPP–34143A. 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, 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. What Action is the Agency Taking?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide dimethoate. The Agency is presenting the revised risk assessments for dimethoate to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the dimethoate revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 23, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–31049 Filed 11–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34174B; FRL–6397–5]

Organophosphate Pesticides; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, propetamphos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34174B, must be received by EPA on or before January 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.''

To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34174B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on propetamphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document and other related documents 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/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In Person*. The Agency has established an official record for this action under docket control number OPP–34174B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as 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 Rm. 119, Crystal Mall #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.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34174B in the subject line on the first page of your response.

1. *By mail*. Submit comments 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.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34174B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, propetamphos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the propetamphos preliminary risk assessments, which where released to the public, January 15, 1999 (64 FR

2644) (FRL–6056–9), through a notice in the **Federal Register**.

As part of the pilot public participation process, EPA and USDA may hold public meetings (called Technical Briefings) to provide interested stakeholders with opportunities to become more informed about revised organophosphate risk assessments. During the Technical Briefings, EPA describes the major points (e.g., risk contributors), use data that were used (e.g., data from USDA's Pesticide Data Program (PDP)), and discusses how public comments impacted the assessment. USDA provides ideas on possible risk management. Stakeholders have an opportunity to ask clarifying questions, and all meeting minutes are placed in the OPP public docket. Technical Briefings may not be held for chemicals that have limited use patterns or low levels of risk concern. The use patterns for propetamphos are for indoor pest control and the products are predominately used by professional pesticide applicators; therefore, no Technical Briefing is planned. In cases where no Technical Briefing is held, the Agency will make a special effort to communicate with interested stakeholders in order to better ensure their understanding of the revised assessments and how they can participate in the organophosphate pilot public participation process. EPA has a good familiarity with the stakeholder groups associated with the use of propetamphos who may be interested in participating in the risk assessment/risk management process, and will contact them individually to inform them that no Technical Briefing will be held. EPA is willing to meet with stakeholders to discuss the propetamphos revised risk assessments. Minutes of all meetings will be docketed.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for propetamphos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the pesticides specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific propetamphos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, for example, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before January 31, 2000, at the addresses given under the ''ADDRESSES'' caption. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 23, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–31050 Filed 11–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34211; FRL–6395–3]

Availability of Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 90–day public comment period on the Reregistration Eligibility Decision (RED) document for the active ingredient triphenyltin hydroxide (TPTH). The RED represents the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket control number OPP–34211, must be received on or before February 29, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34211 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Budig, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–8029; and e-mail address: budig.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those persons who use this chemical in agricultural production. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any 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/.

To access the TPTH RED document and RED fact sheet electronically, go to the REDs table on the EPA Office of Pesticide Programs home page, http://www.epa.gov/REDs. For related

information, see http://www.epa.gov/pesticides.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34211. 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, 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34211 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34211. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticide active ingredient TPTH. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides initially registered before November 1984, to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is substantially complete. This RED addresses issues raised by the Food Quality Protection Act of 1996 (''FQPA''), and any tolerance assessment procedures required under FQPA.

All registrants of pesticide products containing the active ingredient TPTH have been sent the appropriate RED document and must respond to labeling requirements and product specific data requirements within 8 months of receipt. Products containing other pesticide active ingredients in addition to TPTH will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 90–day comment period. Although the 90–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the REDs. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this reregistration eligibility decision falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, which directs that ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration'' before calling in data on products and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection.

Dated: November 22, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–31213 Filed 11–30–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2605]

Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests, if possible, to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69. The term ''DTV stations'' here includes DTV allotments, authorized or requested increases in DTV allotment facilities and proposals for new or modified DTV allotments. The window shall open upon the release of this document and close on March 17, 2000.

DATES: The window filing opportunity begins November 22, 1999, and closes March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This window is available for (1) amendments (other than channel changes) to pending applications for new full-service NTSC television stations on channel 2 through 59, (2) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 60 through 69 (in addition, authorized NTSC stations and DTV allotments on channels 60 through 69 can seek permission to relocate to a lower channel at any time, including during this filing window, if they can identify a suitable channel) (3) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 2 through 59 at locations inside of the ''TV Freeze Areas'' and (4) amendments to pending rule making petitions to amend the TV Table of Allotments to add NTSC television allotments.

All application amendments, petitions for rule making and amendments to petitions for rule making seeking a new NTSC channel must be filed during this window. Pursuant to the Commission's directive, we will thereafter dismiss all remaining applications on channels 60 through 69, all freeze-area applications on channel 2 through 59 that conflict with a DTV station, and all rulemaking petitions requesting a channel above 59 or a channel that conflicts with a DTV station.

In a related proceeding initiated on September 22, 1999, the Commission is considering the creation of a new ''Class A'' television service, providing some elements of primary status for some low power TV (LPTV) stations. See *Notice of Proposed Rulemaking,* MM Docket No. 99–292, 64 FR 56999 (10/22/99). A question is posed in that proceeding about whether protection should be afforded to NTSC applications and rule making petitions that are pending when the new Class A rules take effect. If the Commission decides in that proceeding that pending NTSC applications and rule making petitions are not to be protected from new Class A stations, and Class A stations are created that conflict with such pending applications or rule making petitions, those NTSC applications and rule making petitions would be dismissed or denied. If the Commission decides that the pending NTSC proposals have priority, applicants for Class A licenses could be required to protect these service proposals.

Background

This window filing opportunity is available only to (1) those persons who filed petitions for rule making on or before July 25, 1996, to add an NTSC channel to the TV Table of Allotments, and (2) persons with applications for new full-service NTSC television stations that were filed on or before September 20, 1996, or applications filed after that date in response to a valid cutoff list. These were the deadlines that the Commission set in its DTV *Sixth Further Notice of Proposed Rule Making* for the filing of rulemaking petitions to add channels to the TV Table of Allotments and new applications for analog stations on vacant allotments. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Further Notice of Proposed Rulemaking,* 61 FR 43209 (8/21/96) (*Sixth Further Notice*). In that *Sixth Further Notice,* the Commission indicated that petitions for rule making that had been filed and open rule making proceedings would be addressed on a case-by-case basis, taking into account the impact on the draft DTV allotment table.

On January 6, 1998, the Commission issued a *Report and Order* in ET Docket No. 97–157 wherein it reallocated the 746–806 MHz band (television channels 60 through 69) for public safety use and commercial fixed, mobile and broadcasting services. See Reallocation of Television Channels 60–69, the 746–806 MHz Band, *Report and Order,* 63 FR 06669 (2/10/98) (*Report and Order*). In that *Report and Order,* the Commission acknowledged that there were pending applications for new NTSC television stations on pre-existing channel 60–69 allotments and also petitions for rulemaking to add new allotments on these channels to the TV allotment table. The Commission decided to not authorize any more new full-service NTSC television stations on channels 60 through 69. Nevertheless, it recognized that those persons with pending applications and/or petitions for new full-service NTSC television stations on those channels had already invested time, money and effort into their applications and petitions. Therefore, the Commission stated that it would not summarily terminate the pending applications and petitions, and it would, at a later date, provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to a channel below channel 60.

On December 18, 1998, the Commission issued a *Second Memorandum Opinion and Order* in MM Docket No. 87–268 wherein it addressed petitions for reconsideration of its earlier decisions in the DTV proceeding. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Order,* 63 FR 13546 (3/20/98) (*Second MO&O*). The Commission acknowledged that there were pending applications for new NTSC television stations at locations for which the Commission had previously frozen the acceptance of applications in order to preserve spectrum for DTV use (TV freeze areas). The Commission had previously not protected these freeze-area applications in the development of the DTV Table of Allotments. Nevertheless, the Commission believed that it was desirable to provide freeze-area applicants with the option to pursue their applications wherever such

application would not conflict with NTSC or DTV stations. Therefore, the Commission stated that it would allow freeze-area applicants whose applications conflict with DTV stations to request a change in their requested NTSC channel or to amend their application to eliminate all such conflicts.

Amendments to Applications (Excluding Channel Changes)

All applicants that are part of a single mutually exclusive (MX) group because their applications now seek the use of the same channel allotment (below 60) must decide as a group whether to pursue a channel change through the petition for rule making process. Members of an MX group that have chosen to remain on their allotted channel may file a settlement agreement with a single corrective amendment to the proposed surviving application. Members of an MX group that do not file a settlement agreement and do not jointly request a channel change in a rule making petition, must each amend their application to eliminate any technical conflict with DTV stations.

Each application amendment filed during this window opportunity must conform with all pertinent legal and technical requirements, including criteria for interference protection to both NTSC and DTV services. Application amendments must meet the minimum distance separations between NTSC stations (47 CFR 73.610) and must protect DTV stations as provided in § 73.623(c), but without any allowance to create *de minimis* interference as defined in § 73.623(c)(2). As indicated, the term ''DTV stations'' here includes DTV authorizations, applications, allotments and rule making proposals. November 1, 1999 was the scheduled due date for most commercial television stations to file DTV construction permit applications. The Mass Media Bureau is currently entering into its computer database the many applications that were filed and expects to complete this entry by the end of the year.

Application amendments may include changes in the ERP, directional antenna pattern, antenna height or site location requested in the application. Application amendments may also request DTV operation, as the Commission indicated in paragraph 41 of the *Second MO&O.* An application amendment to specify DTV operation will be evaluated under the criteria for changing an initial DTV allotment set forth in § 73.622(a) of the rules. Specifically, the channel may be in the range from 2 through 59, and DTV and NTSC stations must be protected by meeting the engineering criteria of § 73.623(c) of the rules. Applying these criteria is consistent with the Commission action in the *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* that allows these stations to be converted to DTV operation, even if their channel is outside the core range of 2 through 51. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order,* 63 FR 15774 (4/1/98) (*Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*).

Petitions for Rule Making To Specify a New Channel or Amendments of Petitions

A change of an NTSC allotment channel must be requested by filing a petition for rule making seeking such a change. A channel change may *not* be requested through an amendment to a pending application. However, there are 2 applications (for channel 64 in Charlottesville, VA) that have been through an extended process of comparative hearing, court appeal, and remand to the Commission. They currently have pending a settlement agreement and an application amendment that specify a different channel. Because of the age and unique history of those applications and because they are currently before the Commission, the Bureau will not require the filing of a rule making petition. Rulemaking petitions or amendments to pending petitions must retain the community of license specified in the pending television application or rulemaking petition.

Such petitions for rule making filed during this window by freeze-area applicants on channels below 60 must also demonstrate that interference to a DTV station (which could be a DTV allotment, a proposed change in a DTV allotment, or an application to change a DTV station's facilities) would be caused if the requested channel change is not made. Such a petition may request a DTV channel as the replacement for the NTSC channel allotment, as the Commission indicated in paragraph 42 of the *Second MO&O.* A petition seeking a DTV allotment under these circumstances will be evaluated under the criteria for changing an initial DTV allotment set forth in § 73.622(a) of the rules. Specifically, the channel may be in the range from 2 through 59, and DTV and NTSC stations must be protected by meeting the engineering criteria of § 73.623(c) of the rules.

Where multiple applications have been filed for a single NTSC channel allotment, a petition for rulemaking must propose a single replacement channel (below 60), to which all applicants agree to modify their applications.

Persons with pending rulemaking petitions for channels 60 through 69 should amend their petitions to specify a channel below channel 60. Persons with pending rulemaking petitions for channels 2 through 59 should amend their petitions to specify a different channel below channel 60 if their requested channel is in conflict with a DTV station. New and amended rulemaking petitions submitted during this window filing opportunity will be subject to our normal notice and comment procedures. However, as the Commission indicated in the *Sixth Further Notice* and reiterated in the *Second MO&O,* new proposals for additional NTSC channel allotments will not be accepted. Therefore, new parties may not counterpropose a new NTSC allotment in the same or nearby communities. The opportunity for filing counterproposals is limited to those parties with existing petitions and applications that are the subject of this filing window. When a rule making proceeding has been started by a Notice of Proposed Rule Making, conflicting proposals must be filed in initial comments, pursuant to the procedures for consideration of counterproposals. Rulemaking petitions and amendments to pending petitions filed during this window opportunity must conform with all pertinent legal and technical requirements, including pertinent criteria for interference protection to NTSC and DTV services. Allotment proposals must meet the minimum distance separations between NTSC stations (47 CFR 73.610). Petitions to *change* the channel of an existing allotment must protect DTV stations as provided in § 73.623(c), but without any allowance to create *de minimis* interference as defined in § 73.623(c)(2). Amendments to existing petitions to *add* a new NTSC channel allotment must meet the minimum distance separations to DTV stations as provided in § 73.623(d). As indicated above, the term ''DTV stations'' here includes DTV authorizations, applications, allotments and proposals. November 1, 1999 was the scheduled due date for most commercial television stations to file DTV construction permit applications. The Mass Media Bureau is currently entering into its computer database the many applications that were filed and

expects to complete this entry by the end of the year.

In developing proposed amendments to the allotment table, petitioners are advised that they should consider, to the extent possible, authorized LPTV and TV translator stations. An allotment Report and Order that adds a new channel to the NTSC table of allotments will specify a period of time for the filing of applications (using FCC Form 301) for a new NTSC TV station construction permit.

Associated applications will remain pending as long as there is pending a petition for rulemaking seeking an alternate channel. An allotment Report and Order changing a channel allotment will specify a period of time for the filing of amendments to pending applications (using FCC Form 301), for the modified channel allotment. Such amendments to pending applications will be considered minor and the applications will retain their original file numbers.

MX Group Resolution

To encourage settlements among mutually exclusive applicants, we will waive for this special window filing opportunity the rule that limits reimbursements of applicants to legitimate and prudent expenses. See 47 CFR 73.3525(a)(3). Those applications for particular commercial channel allotments below 60 that continue to be mutually exclusive after the completion of the amendment process will be resolved by use of the Commission's new broadcast competitive bidding rules. Consistent with those rules, wherever two or more applications were pending for the same allotment before July 1997, the group is closed and no additional applications for the allotment (on the new channel) will be accepted. Wherever a single application was pending for an allotment before July 1997, and that application has not been ''cutoff'' against the filing of competing applications, the application (as amended) will be subject to competing applications in accordance with the Commission's auction filing window procedures to be announced at a later date.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31115 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–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.: 201094

Title: Tampa—Harborside Refrigerated Marine Terminal Agreement

Parties: Tampa Port Authority
Harborside Refrigerated Services, Inc.

Synopsis: The proposed agreement provides for a wharfage incentive. The agreement runs through November 25, 2000.

Dated: November 26, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–31206 Filed 11–30–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants.

E & H Transport Network, Inc., 2180 Las Palmas Drive, Carlsbad, CA 92009; Officers: Oren Zaslansky, President (Qualifying Individual), Ella Heldes, Secretary

Galax, Inc., 147–27 175th Street, Jamaica, NY 11434; Officers: Elio Levy, Exec. Vice President (Qualifying Individual), Cyril Charbaut, Vice President

Shanghai Jin Hai-Jet Air International, Forwarding Company Limited, Shartez Plaza, Suite 2502, No. 88, Zun Yi Nan, Shanghai, China; Officers: Bonko Chan, Exec. Vice President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Delmar Steamship Agency, Inc., 1670 N.W. 94th Avenue, Miami, FL 33172–2836; Officers: Rosa Del Dago, Vice President (Qualifying Individual), Manuel Del Dago, President

U.S. Brokers (OS) Inc., 331–333 Northern Avenue, Boston, MA 02110; Officer: Louise Mailly, President (Qualifying Individual)

NCD Global Inc., 400 Maltese Drive, Totowa, NJ 07512; Officers: Charles Drumm, President (Qualifying Individual), Maria McKenna, Vice President

Palumbo USA Inc., 1 Exchange Place, Suite 1000, Jersey City, NJ 07302–3911; Officers: Ralph Di Rado, Vice President (Qualifying Individual), Anthony J. Pruzinsky, Director

Ocean Freight Forwarders—Ocean Transportation Intermediary, Applicants

Hexcorps Inc., 14730 Treborway Drive, Houston, TX 77014–1127; Officers: Samad A. Lateef, President (Qualifying Individual), Mussadqa B. Lateef, Vice President

GFAST Inc., 18201 Viscount Bldg. G, Suite 300, Houston, TX 77032; Officers: Gail W. Milholland, Operations Manager (Qualifying Individual), Brahim Abid Charef, Vice President

5K Logistics, Inc., 1040 Sandy Ridge Road, Doylestown, PA 18901; Officer: Paul J. McGrath, President (Qualifying Individual)

Transcar Auto Shippers Inc., 2401 Houston Street, Grand Prairie, TX 75050; Officers: Sandra Kay Lester, President (Qualifying Individual), Ernst U. Grossmann, Vice President

International Forwarders Inc., 501–C Industrial Street, Lake Worth, FL 33461; Officer: Christopher L. Atwell, President (Qualifying Individual)

Dated: November 26, 1999.

Bryant L. VanBrakle,

Secretary,

[FR Doc. 99–31205 Filed 11–30–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. William Baker Benton, Jr., Hughes, Arkansas; to acquire additional voting shares of Lakeside Bancshares, Inc., Hughes, Arkansas, and thereby indirectly acquire additional voting shares of The Planters National Bank of Hughes, Hughes, Arkansas.

Board of Governors of the Federal Reserve System, November 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31120 Filed 11–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The Bancorp.com, Inc., Wilmington, Delaware; to bcome a bank holding company by acquiring 100 percent of the voting shares of TB.com Bank, Wilmington, Delaware.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Clintonville Bancshares, Inc., Clintonville, Wisconsin; to acquire 100 percent of the voting shares of Nichols Bancorp, Inc., Nichols, Wisconsin, and thereby indirectly acquire Neighborhood State Bank, Nichols, Wisconsin.

Board of Governors of the Federal Reserve System, November 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31119 Filed 11–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First National Bancshares, Inc., Spartanburg, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Spartanburg (in organization), Spartanburg, South Carolina.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community National Bancorporation, Ashburn, Georgia; to merge with Tarpon Financial Corporation, Tarpon Springs, Florida, and thereby indirectly acquire First National Bank, Tarpon Springs, Florida.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belvedere Capital Partners, LLC; California Community Financial Institutions Fund, L.P.; and Sacramento Capital Co.; all of San Francisco, California; to acquire 100 percent of the voting shares of Sacramento Commercial Bank, Sacramento, California.

Board of Governors of the Federal Reserve System, November 26, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–31211 Filed 11–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Century South Banks, Inc., Dahlonega, Georgia; to acquire Haywood Bancshares, Inc., Waynesville, North Carolina, and thereby indirectly acquire Haywood Savings Bank, Inc., SSB, Waynesville, North Carolina, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31121 Filed 11–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Cera Foundation, Cera Management, Cera Ancora NV, Cera Holding, all of Leuven, Belgium; Almanij NV, Antwerp, Belgium; and KBC Bank & Insurance Holding Company, NV and KBC Bank NV, both of Brussels, Belgium; to acquire KBC Financial Products (USA), Inc., New York, New York, and thereby engage *de novo* in underwriting and dealing, to a limited extent, in securities that a national bank or state member bank is not authorized to underwrite and deal in, *See J.P. Morgan & Co., Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989). These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, November 26, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–31210 Filed 11–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 991 0306]

Reckitt & Coleman plc.; 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 January 10, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Michael Antalics, FTC/H–374, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. (202) 326–2574 or 326–3821.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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. 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 24, 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, D.C. 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, D.C. 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 Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Reckitt & Colman plc (''Reckitt & Colman''), which is designed to remedy the anticompetitive effects resulting from Reckitt & Colman's acquisition of the voting securities of Benckiser N.V. from NRV Vermogensverwaltung GmbH (''Vermogensverwaltung''). Under the terms of the Decision & Order, Reckitt & Colman will be required to divest Benckiser's Scrub Free® and Delicare® businesses to Church & Dwight Co., Inc. (''Church & Dwight'') after the date upon which the Commission preliminarily accepts the Consent Agreement. Church & Dwight produces a number of household products under the Arm & Hammer® brand name.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments from 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 Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision & Order.

On July 27, 1999, Reckitt & Colman and entities controlled by Vermogensverwaltung entered into a Merger Agreement under which Reckitt & Colman agreed to purchase all of the voting securities of Benckiser N.V. for approximately $2.7 billion. The Commission's Complaint alleges that the merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for the research, development, formulation, manufacture, marketing and sale of hard surface bathroom cleaners and fine fabric wash products.

Hard surface bathroom cleaners are products specially formulated, sold and used by consumers to remove built-up soils and stains from bathroom surfaces. Reckitt & Colman, which sells Lysol,® and Benckiser, which sells Scrub Free,® are two significant U.S. suppliers of hard surface bathroom cleaners. Fine fabric wash products are specially formulated, sold and used by consumers to launder fine fabrics such as silks, woolens or other delicate fabrics. Reckitt & Colman, which sells Woolite,® and Benckiser, which sells Delicare,® are the two largest suppliers of fine fabric wash products.

The United States is the relevant geographic area in which to evaluate the effects of the proposed acquisition of Benckiser by Reckitt & Colman. It is unlikely that the competition eliminated by the proposed transaction would be replaced by foreign manufacturers of hard surface bathroom cleaners and fine fabric wash products. Foreign manufacturers of these products are unable to compete effectively in the U.S. because they lack the necessary brand recognition among U.S. consumers and face substantial transportation costs, which make importing their products into the U.S. uneconomical.

The hard surface bathroom cleaner and fine fabric wash markets are highly concentrated in the United States, and the proposed acquisition would substantially increase concentration in each market. In the hard surface bathroom cleaner market, the acquisition would result in an increase in the Herfindahl-Hirschman Index (''HHI'') to approximately 2300 points, which is an increase of about 500 points over the premerger HHI level. In the fine fabric wash market, the post-merger HHI would be approximately 8500 points, which is an increase of about 700 points over the premerger HHI level.

By eliminating competition between these competitors in these highly concentrated markets, the proposed acquisition could allow Reckitt & Colman unilaterally to exercise market power or could facilitate coordinated interaction among the remaining competitors in the hard surface bathroom cleaner market, and could allow Reckitt & Colman unilaterally to exercise market power in the fine fabric wash market, thereby increasing the likelihood that consumers of hard surface bathroom cleaners and fine fabric wash products would be forded to pay higher prices.

In addition, new entry would not deter or counteract the anticompetitive effects likely to flow from the proposed transaction. A new entrant into either the hard surface bathroom cleaner or fine fabric wash market would need to undertake the difficult, expensive and time-consuming process of developing a competitive product, creating brand recognition among U.S. consumers, and establishing a viable retail distribution network. Because of the difficulty of accomplishing these tasks new entry into either market could not be accomplished in a timely manner. Moreover, because of the high sunk costs involved, it is not likely that new entry into either market would occur at all, even in response to a small, nontransitory increase in price in either market after the transaction. Similarly, entry through brand name product line extension is not likely. Large, vertically integrated manufacturers of household cleaners are set up for high volume production and not for the production of small or individual stock keeping units for niche markets.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the hard surface bathroom cleaner and fine fabric wash markets by requiring Reckitt & Colman to divest Benckiser's Scrub Free® and Delicare® businesses to a third party. These assets include all Scrub Free® and Delicare® trademarks and related intellectual property, trade secrets, technical and manufacturing know-how, and customer and vendor lists and information. Pursuant to the Consent Agreement,the Benckiser businesses must be divested to Church & Dwight after the Commission accepts this Consent Agreement for public comment, but on or before the date that Reckitt & Colman acquires Benckiser. Church & Dwight is a well established, financially viable company that offers value priced consumer cleaning products under established brands including Arm & Hammer®, Parsons®, Brillo® and Sno Bol®. In order to ensure an orderly transition, Reckitt & Colman will provide Church & Dwight with short-term integration assistance, including production planning and order and billing processing. In the event that these businesses are not divested to Church & Dwight, the Decision & Order contains a provision that requires Reckitt & Colman to divest Benckiser's Scrub Free® and Delicare® businesses to an alternative acquirer approved by the Commission within ninety (90) days of the date the Decision & Order becomes final. At the alternative acquirer's option, additional related assets may be divested including fixtures, machines, buildings, structures, vehicles, real property, or other tangible assets used in the research, development, formulation, manufacture, sale, or distribution of these businesses.

In the event that the Benckiser Scrub Free® and Delicare® businesses are not divested to Church & Dwight or to an alternative acquirer within 90 days of the date the Commission's Decision & Order becomes final, the Decision & Order provides that the Commission may appoint a trustee to divest these assets, and, at the purchaser's option, to

divest additional related assets to a Commission-approved purchaser.

The Order also requires Reckitt & Colman 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, every thirty (30) days thereafter until Reckitt & Colman has completed the required divestiture, and every ninety (90) days thereafter until Reckitt & Colman has completed its divestiture obligations under the Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–31183 Filed 11–30–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of meeting and request for public comments on oversight of genetic testing.

Pursuant to Public Law 92–463 notice is hereby given of a meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 8:45 a.m. to 5 p.m. on January 27, 2000 at the University of Maryland, School of Nursing, 655 W. Lombard Street, Baltimore, Maryland 21201. The meeting will be open to the public from 8:45a.m. to adjournment with attendance limited to space available. The public is encouraged to register for the meeting through the SACGT website or by contacting the SACGT at 301–496–9838. Further information about the meeting is available at the following website address: http://www4.od.nih.gov/oba/sacgt.htm. A draft meeting agenda will be posted to the website prior to the meeting. Individuals who plan to attend and need special assistance, such assign language interpretation or other reasonable accommodations, should inform the contact person listed below in advance of the meeting. All comments received before the end of the consultation period will be considered by SACGT and will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5:00 p.m. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892. Questions about this request for public comments can be directed to Susanne Haga, Ph.D., Program Analyst, SACGT, by email (hagas@od.nih.gov) or telephone (301–496–9838).

The Secretary's Advisory Committee on Genetic Testing (SACGT) is seeking diverse public perspectives on the adequacy of current oversight of genetic testing in the United States. SACGT was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. This notice provides background information prepared by SACGT about genetic tests, including their current limitations, benefits and risks, and the provisions for oversight now in place. It presents five specific issues for public comment along with related questions and a sixth set of questions to enable the public to comment on other issues relevant to genetic testing. SACGT is also seeking public comments through a website consultation, a targeted mailing, and a public meeting on January 27, 2000 in Baltimore, Maryland.

The public is encouraged to submit written comments on the oversight of genetic testing to SACGT. In order to be considered by SACGT, public comments need to be received by January 31, 2000. Comments can be submitted by mail or facsimile. Members of the public with Internet access can submit comments through email or the SACGT website consultation. The SACGT mailing address is: SACGT, National Institutes of Health, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892. SACGT's facsimile number is 301–496–9839. Comments can be sent via email to: *sc112c@nih.gov.* To participate in SACGT's website consultation, please visit the SACGT website: http://www4.od.nih.gov/oba/sacgt.htm Questions about this request for public comments can be directed to Susanne Haga, Ph.D., Program Analyst, SACGT, by email (hagas@od.nih.gov) or telephone (301–496–9838).

A Public Consultation on Oversight of Genetic Testing

Part I: Introduction

Overview

Decades of research in genetics have brought about many important medical and public health benefits. Gene discoveries have provided a better understanding of the genetic basis of disease and opened new avenues for diagnosis, treatment, and prevention of disease. The pace of the discovery of new genes and the development of new genetic tests is expected to increase in the future. The Human Genome Project, a major international collaborative effort established and supported by public and private groups, including the U.S. Department of Energy (DOE) and the National Institutes of Health (NIH), is expected to complete the sequencing of the human genome by the year 2003. The unprecedented amount of genetic information produced by the Human Genome Project will enable scientists to make more rapid progress in understanding the role of genetics in many common complex diseases and conditions—such as heart disease, cancer, and diabetes—and to increase knowledge that may lead to the development of individually tailored medical treatments. These scientific and technological advances are expected to bring about revolutionary changes in clinical and public health practice and to have a significant impact on society.

The Secretary's Advisory Committee on Genetic Testing (SACGT) was established to advise the Department of Health and Human Services (DHHS) on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. The formation of SACGT was recommended by the NIH-DOE Task Force on Genetic Testing and the Joint NIH-DOE Committee to Evaluate the Ethical, Legal and Social Implications Program of the Human Genome Project. At SACGT's first meeting in June 1999, the Assistant Secretary for Health and Surgeon General asked the Committee to assess, in consultation with the public, the adequacy of current oversight of genetic tests.

Statement of the Issue

Advances in knowledge about the structures and functions of human genes and the development of new laboratory technologies for the analysis of genetic material are helping to produce many new genetic tests for a wide range of conditions and purposes. Genetic tests can be used to diagnose disease, confirm a diagnosis, provide prognostic information about the course of disease, confirm the existence of a disease in individuals who do not yet have symptoms, and, with varying degrees of effectiveness, predict the risk of future disease in healthy individuals. Currently, several hundred genetic tests are in clinical use, with many more under development, and their number and variety are expected to increase rapidly over the next decade. These

advances stem in large part from research funded and conducted by agencies within DHHS, especially NIH.

The Task Force on Genetic Testing, which was charged to review genetic testing in the United States and to make recommendations to ensure the development of safe and effective genetic tests, began its work in 1995 and published its final report two years later. In its final report, the Task Force concluded that although genetic testing is developing successfully in the United States, some concerns about it exist. These can be grouped into four main areas:

- The way in which tests are introduced into clinical practice;
- The adequacy and appropriate regulation of laboratory quality assurance;
- The understanding of genetics on the part of health care providers and patients; and
- The continued availability and quality of testing for rare diseases.

The Task Force recommendations were intended primarily to enhance the way in which tests are developed, reviewed, and used in clinical practice. The Task Force explored the question of how tests should be assessed, considered how comprehensive data gathering efforts could incorporate new data, and made suggestions about the need for external review of tests. Although the Task Force recommended that revisions to the current review process may be needed to assess the effectiveness and usefulness of genetic tests, it did not specify how the review of laboratory-based genetic tests should be changed.

DHHS requested that SACGT build on the work of the Task Force by assessing whether current programs for assuring the accuracy and effectiveness of genetic tests are satisfactory or whether other measures are needed. This assessment requires consideration of the potential benefits and risks (including socioeconomic, psychological, and medical harms) to individuals, families, and society, and, if necessary, the development of a method to categorize genetic tests according to these benefits and risks. Considering the benefits and risks of each genetic test is critical in determining its appropriate use in clinical and public health practice. If, after public consultation and analysis, SACGT finds that other oversight measures for genetic tests are warranted, it has been asked to recommend options for such oversight.

It is important to note that although this paper focuses on Federal oversight of genetic tests in laboratory and clinical settings, the training and education of health care providers and the promotion of greater public understanding of genetics are also critical issues. More genetics training and education of health care providers who prescribe genetic tests and use the results for clinical decision-making is widely regarded as another way in which to enhance the safe and effective development and use of genetic tests. It is helpful to keep training and education of health care providers and promotion of public understanding in mind while considering the Federal role in oversight. SACGT intends to address the training and education issue after this current assignment is completed.

Importance of Public Consultation

The question of whether more oversight of genetic tests is needed has significant medical, social, ethical, legal, economic, and public policy implications. Additional oversight may ensure that genetic tests are appropriately used and accurately interpreted, and it may increase the confidence of providers and individuals in using or having genetic tests. Such oversight might increase the willingness of health insurers to cover the costs of genetic tests if their usefulness can be established, but might also increase the costs of those tests. On the other hand, subsequent acceptance and widespread use of a genetic test may increase the demand for it and thereby lower the costs of a test. The development of genetic tests and their use in clinical practice may be slowed by more oversight measures. Finally, further oversight can be expected to require additional funds.

Because this issue may greatly affect those who undergo genetic testing, those who provide tests in health care practice, and those who work or invest in the development of such tests, DHHS has sought to ensure that public perspectives on oversight for genetic testing are considered. Such public involvement in this process will enhance SACGT's analysis of the issues and the advice it provides to DHHS. SACGT is hoping to reach a broad audience and to receive a wide range of perspectives from both professionals and the general public, including diverse communities. SACGT is using five approaches to gather public perspectives: (1) A notice in the **Federal Register**; (2) a targeted mailing to interested organizations and individuals; (3) a website consultation (*http://www4.od.nih.gov/oba/sacgt.htm*); (4) a public consultation meeting on January 27, 2000 in Baltimore, Maryland; and, (5) a retrospective review and analysis of the literature. The Committee looks forward to receiving public comments and to being informed by the public's perspectives on oversight of genetic testing.

Organization of This Paper

Because the issues surrounding genetic testing are complex and highly technical, this paper first provides basic background information about genetic tests, including a discussion of their current limitations, benefits and risks. The provisions for oversight that currently are in place are outlined. Then, the paper presents the specific issues that SACGT and the public have been asked to consider, along with some possible approaches or options for addressing them.

Part II: Background Information About Genes, Genetics Research, and Genetic Testing

Overview

Much of the information presented in the following sections regarding genes, genetics research, and genetic testing is adapted from Understanding Gene Testing, a booklet produced by the National Cancer Institute and the National Human Genome Research Institute. The booklet is available at *http://www.accessexcellence.org/AE/AEPC/NIH/index.html.*

Genes and Gene Mutations

Genes are made of DNA, a long, threadlike molecule coiled inside cells. Within the cell, the DNA is packaged into 23 pairs of chromosomes. Each chromosome, in turn, contains thousands of genes. Genes, which are segments of DNA, are packets of instructions that tell cells how to behave. They do so by specifying the instructions for making particular proteins. The gene instructions are written in a four-letter code, with each letter corresponding to one of the chemical constituents, or bases, of DNA: A, G, C, T. The number of bases in the human genome (the complete sequence of the DNA molecule) is estimated to be 3 billion to 4 billion. The human genome is estimated to contain 100,000 to 140,000 genes.

If the DNA sequence, the order of the four-letter code, becomes altered in any way, the cell may make the wrong protein, or too much or too little of the right one—mistakes that often result in disease. In some cases, such as sickle cell anemia, just a single misplaced base is sufficient to cause the disease. Genetic mistakes can be inherited (called an inherited mutation) or they can develop during an individual's

lifetime (an acquired mutation). Inherited mutations are found in every cell of the body, while acquired mutations occur sporadically in individual cells.

Mutations in genes are responsible for an estimated 3000 to 4000 clearly hereditary diseases and conditions. Some of these—including Huntington disease, cystic fibrosis, neurofibromatosis, Duchenne muscular dystrophy—are caused by the mutation of a single gene. Gene mutations also play a role in cancer, heart disease, diabetes, and many other complex diseases. Genetic alterations may increase a person's risk of developing one of these more complex disorders, although it is the cumulative effects of the interaction of genetic and environmental factors, such as diet and smoking, that result in the development of disease.

Genetics Research

The process of discovering and understanding genetic mutations is an extremely complex one. Reaching a complete understanding of the relationship between a mutation and a disease or condition can involve many years of investigation, and the discovery of a mutation usually is only the first step. Scientists looking for a gene that contributes to a particular disease or condition typically begin by studying DNA samples from members of families in which many relatives over several generations have developed the same illness—colon cancer, for example. Scientists start looking for detectable traits or distinctive segments of DNA (called genetic markers) that are consistently inherited by relatives with the disease or condition but that are not found in relatives who do not have it. Then, scientists work to narrow down the target DNA area, identify possible genes, and look for specific mutations within those genes.

Because the genome is vast, discovering a specific disease gene has, up to now, been a difficult and time consuming effort. In the case of Huntington disease, for example, scientists worked for ten years before they found the gene that causes the disease. The Human Genome Project combined with new developments in technology, such as tandem mass spectrometry, microarrays, and gene chips, will speed up the pace of the discovery of disease genes and mutations.

Once the entire sequence of the human genome has been mapped, scientists will have the tools they need to better understand the contribution of each gene to the development and function of the human body. Even then, however, the role played by a specific gene mutation in disease will not be completely understood because of complicating factors such as gene-gene interactions and environmental influences (for example, smoking and diet). As a result, understanding what gene mutations mean for a person's future health and well-being will require more research, including population-based studies that focus on clarifying the significance of gene-gene and gene-environment interactions.

Genetic Testing

Genetic testing involves the analysis of chromosomes, genes, and/or gene products to determine whether a mutation is present that is causing or will cause a certain disease or condition. It does not involve treatment for disease, such as gene therapy, although test results can sometimes suggest treatment options.

Genetic tests are performed for a number of purposes, including prenatal diagnosis, newborn screening, carrier testing, diagnosis/prognosis, presymptomatic testing, and predictive testing. Prenatal diagnosis is used to diagnose a genetic disorder or condition in a developing fetus. Newborn screening is used to detect certain genetic diseases in newborns, and it is performed on a public health basis by the States. The disorders screened for are those that, if detected early, have significant treatment or prevention benefits. Carrier screening is performed to determine whether an individual carries a copy of a mutated gene for a recessive disease (recessive means that the disease will occur only if both copies of a gene are mutated). Carriers are not affected with the disease, but they have a 50 percent risk of passing the mutation on to their children. If the partner of a carrier is screened and found also to be a carrier, each child they conceive will have a 25 percent risk of being affected with the disorder. Diagnostic testing is used to identify or confirm the diagnosis of a disease or condition in an affected individual. Diagnostic testing can also be used for prognostic purposes to help determine the course of a disease. Presymptomatic testing is used to determine whether individuals who have a family history of a disease, but no current symptoms, have the gene mutation. Predictive testing determines the probability that a healthy individual with or without a family history of a certain disease might develop that disease.

At present, genetic testing is clinically available for more than 300 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 325 diseases or conditions. (These statistics were provided by GeneTests, a directory of clinical laboratories providing testing for genetic disorders, which can be found at the following website: *http://www.genetests.org*). A recent survey of genetic testing laboratories found that over a recent three-year period, the total number of genetic tests performed increased by at least 30 percent each year, rising from 97,518 in 1994 to 175,314 in 1996. Most of the tests are conducted for diagnostic, carrier, and presymptomatic purposes for rare genetic disorders. Recently, tests have been developed to detect mutations for about 25 more common, complex conditions—such as breast, ovarian, and colon cancer—whose effects generally do not appear until later in life. These tests are currently used for presymptomatic purposes in individuals with a family history of the disorder. Although the tests could be used for predictive purposes, they are not recommended for this purpose because more must be learned about the significance of the mutation in someone without a family history of the disease.

A concern has recently been raised about the impact that patenting human genes may be having on genetic testing. The Patent and Trademark Office has been issuing patents on gene sequences since 1980. Approximately 12,000 patents have been issued on plant, animal, and human genes and patent applications have been made on another 30,000 genes. While patenting genes generally provides incentives for the development of useful gene-based products, some gene patent holders have begun to restrict the use of their gene discoveries by charging high fees for the license rights, establishing exclusive licenses, or refusing to license the discovery altogether. These restrictions can have an adverse effect on the accessibility, price, and quality assurance of genetic tests. A recent survey conducted by the American College of Medical Genetics, a professional organization representing clinical and laboratory geneticists, found that 25 percent of its members had discontinued offering certain genetic tests because of patent/licensing complexities.

Important Concepts About the Accuracy and Effectiveness of Genetic Tests

Several standard terms are used in discussing the accuracy and effectiveness of laboratory tests. These terms—analytical validity, clinical validity, and clinical utility—apply not

only to genetic tests but also to other kinds of tests, such as cholesterol or pap smear tests. An understanding of these terms is helpful in considering the possibilities for oversight of genetic tests.

Analytical validity is an indicator of how well a test measures the property or characteristic it is intended to measure. (In the case of a genetic test, the property can be DNA, proteins, or metabolites.) An analytically valid test would be positive when the relevant gene mutation is present (analytical sensitivity) and negative when the gene mutation is absent (analytical specificity). Another element of the test's analytical validity is reliability—meaning that the test obtains the same result each time. During the process of validating a new genetic test, how well it performs will be compared to how well the best existing method or ''gold standard'' performs. Sometimes, if a gold standard does not exist for a new genetic test, the test's performance must be based on how well it performs in samples from individuals known to have the disease.

Clinical validity is a measurement of the accuracy with which a test identifies or predicts a clinical condition. A clinically valid test would be positive if the individual being tested has the disease or predisposition (clinical sensitivity) and negative if the individual does not have the disease or predisposition (clinical specificity). To be clinically valid, a test would be positive if the individual being tested has or will get the disease or condition (positive predictive value) and negative if the individual being tested does not have or will not get the disease or condition (negative predictive value). Determining the clinical validity of a test may be more challenging when different mutations within the same gene cause the same disease and different mutations can result in different degrees of disease severity. In addition, gene mutations may or may not lead to disease depending on how ''penetrant'' or completely expressed they are.

Clinical utility refers to the degree to which benefits are provided by positive and negative test results. If a test has utility, it means that the results—positive or negative—provide information that is of value to the person who is tested. The availability of an effective treatment or preventive strategy, for example, would make such information valuable. However, even if no interventions are available to treat or prevent the disease or condition, there may be benefits associated with knowledge of a result. On the other hand, social, psychological, and economic harms can result from such knowledge, particularly in the absence of privacy and discrimination protections. Thus, determining the clinical utility of a test requires obtaining information about the benefits and risks of both positive and negative test results.

A final point can be made about the challenge of assessing the clinical validity and utility of genetic tests used for predictive purposes and for rare diseases. For genetic tests used for predictive purposes in diseases or conditions whose effects do not become apparent for many years, clinical validity and utility will need to be evaluated over time. For genetic tests for rare diseases, gathering sufficient data to assess clinical validity and utility may never be possible because of the low prevalence of the diseases. Consequently, different approaches to the evaluation of clinical validity and utility for predictive tests and for rare disease tests may be necessary.

Current Limitations of Genetic Testing

Genetic tests currently have certain limitations that are relevant to the issue of oversight. One important limitation is that a test may not detect every mutation a gene may have. A single gene can have many different mutations, and they can occur anywhere along the gene. Moreover, not all mutations have the same effects. For example, more than 800 different mutations of the cystic fibrosis gene have been identified, some of which cause varying degrees of disease severity and some of which appear to cause no symptoms at all. This means that a positive test for a specific cystic fibrosis mutation may not provide a clear picture of how the disease is likely to affect the individual. A negative test result cannot completely rule out the disease because the test will usually focus only on the more common mutations and will not detect rare ones. Furthermore, because of varying genetic and environmental factors, even the same mutations may present different risks to different people and to different populations. The same mutation in the cystic fibrosis gene in individuals from different populations may have different clinical effects as a result of variations in genetic and environmental factors. In addition, the frequency of common cystic fibrosis mutations varies among population groups. Determining the clinical validity of a genetic test requires a thorough analysis of all these factors without which the likelihood of error may be high.

Another current limitation of genetic tests, especially if used for predictive purposes, relates to the complexities of how diseases develop. Diseases and conditions can be caused by the interaction of many genetic and environmental factors. Thus, predictive tests cannot provide certain answers for everyone who might be at risk for a disease such as breast or colon cancer. For example, mutations in the breast cancer 1 gene (BRCA1) occur in about half of families with histories of multiple cases of breast and ovarian cancer. If a woman with no family history of the disease has the BRCA1 mutation, it may not mean that she will develop breast or ovarian cancer. Likewise, if she does not have the mutation, she still cannot be sure she will never develop breast cancer.

Another important consideration related to the limitations of genetic testing is that effective treatments are not available for many diseases and conditions now being diagnosed or predicted through genetic testing, and, in some instances, they may never be available—a situation sometimes called the ''therapeutic gap.'' While knowledge that a disease or condition will or could develop may not provide any direct clinical benefit, it may lead to increased monitoring which could help manage the disease or condition more effectively. At the same time, information about risk of future disease can have significant emotional and psychological effects and, in the absence of privacy and anti-discrimination protections, can also lead to discrimination or other forms of misuse of personal genetic information.

Potential Benefits and Risks of Genetic Tests

Information provided by genetic tests has potential benefits and risks. Understanding the benefits and risks of a genetic test is critical in determining its appropriate use in clinical and public health practice. The benefits and risks of any particular test to individuals or particular populations may change over time as more information is gathered.

Potential Benefits. Individuals with a family history of a disease live with troubling uncertainties about their and their children's futures. Having a genetic test may relieve some of those uncertainties. If the test result is positive, it can provide an opportunity for counseling and for the introduction of risk-reducing interventions such as regular screening practices and healthier lifestyles. Early interventions (for example, annual colonoscopies to check for precancerous polyps, the earliest signs of colon cancer) could prevent thousands of colon cancer deaths each

year. If the test result is negative (they do not have the mutation), in addition to feeling tremendous relief, individuals may also no longer need frequent checkups and screening tests, some of which may be uncomfortable and/or expensive.

Genetic tests can sometimes provide important information about the course a disease may take. For example, certain cystic fibrosis mutations are predictive of a mild form of the disease. Other gene mutations may identify cancers that are likely to grow aggressively.

Genetic tests can provide information to improve treatment strategies. Because genetic factors may affect how individuals respond to drugs, the knowledge that an individual carries a particular genetic mutation can help health care providers tailor therapy. For example, individuals with Alzheimer disease (AD) who have two copies of a certain gene mutation do not respond to the drug Tacrine. In individuals with AD who do not have both copies of the mutation, however, the drug seems to slow progression of the disease.

Potential Risks. Genetic testing poses potential physical, medical, psychological, and socioeconomic risks to individuals being tested and to members of their families. For the most part, the physical risks of genetic testing are minimal because most genetic tests are performed on blood samples or cells obtained by swabbing the lining of the cheek. The procedures required to carry out prenatal genetic testing can, in rare circumstances, cause miscarriage.

The medical risks of genetic testing relate to actions taken in response to the results of a genetic test. Positive test results can have an impact on a person's reproductive and other life choices. Individuals with positive test results may choose not to have children. They may opt to take extraordinary preventive measures, such as surgical removal of the breasts to prevent the possible development of cancer. Individuals with negative test results may forgo screening or preventive care because they mistakenly believe they are no longer at risk for developing a given disease. Incorrect test results or misinterpretation of test results have substantial risks. False negative test results can mean delays in diagnosis and treatment. False positive results can lead to follow-up testing and therapeutic interventions that are unnecessary, inappropriate, and sometimes irreversible. Genetic test results have potential psychological risks. The emotional impact of positive test results can be significant and can cause persistent worry, confusion, anger, depression, and even despair. Individuals who have relatives with a disorder have a fairly clear, and perhaps frightening, picture of what their own future may hold. Negative test results also can have significant emotional effects. While most people will feel greatly relieved by a negative result, they may also feel guilty (survivor guilt) for escaping a disease that others in the family have developed. A negative test result may provide a false sense of security because the individual may still bear the same risk of disease as the general population.

Because genetic test results reveal information about the individual and the individual's family, test results can shift family dynamics in pronounced ways. For example, if a baby tests positive for sickle-cell trait during newborn screening, it means that one of the parents is a carrier. It is also possible for genetic tests to inadvertently disclose information about a child's paternity.

Genetic test results present potential socioeconomic risks for individuals. Some people have reported being denied health insurance and losing jobs or promotions as a result of genetic test results. People have reported being rejected as adoptive parents because of their genetic status. Some people seeking adoptions have requested genetic testing for the child before finalizing the adoption.

Genetic test results can pose risks for groups if they lead to group stigmatization and discrimination. Concerns about the potential risks of discrimination and stigmatization are particularly acute among minority groups who have experienced other forms of discrimination. Regrettably, the African American experience with sickle cell anemia screening provides an example of the potential for and consequences of discrimination and is one of the reasons why the particular risks of genetic testing for minority groups must be considered. In the 1970s, a major effort was made in many States, with Federal Government support, to screen African American children and young adults for sickle cell disease. Many of the screening programs were based on an inadequate knowledge of the genetics of sickle cell disease, and in some instances, the accuracy and validity of the test itself was in question. Also, many programs were implemented without sufficient sensitivity to ethnocultural issues and the potential for misuse of personal test results. Individuals who were actually carriers of the mutation were incorrectly identified as having sickle cell disease. Carriers were ostracized, deprived of employment and educational opportunities, and denied health and life insurance.

It is important to point out that the potential risks described above relate to genetic testing for conditions that are solely health-related. In the future, it may be possible to develop tests that could be used to diagnose conditions that are related to certain predispositions, such as to obesity, alcohol abuse, or nicotine addiction, or to predict future behavior. Although the assumption that single genes, or even many genes, can predict complex human actions is simplistic, the possibility of such tests raises profound concerns because their potential psychological and socioeconomic harms are so significant and the potential misuse of such information is so great.

Case Studies: From Gene Discovery to the Development and Use of Genetic Tests

After a gene has been shown to cause or play a role in a specific disease or condition (through analysis of DNA from affected individuals), the function of this gene in both healthy and disease states must then be understood. Each step along the research path adds to and reshapes existing knowledge in this constantly evolving area of study. In the following sections, seven case studies are provided to illustrate the different kinds of genetic testing that are performed, the way in which genetic tests evolve from research to clinical and public health practice, and some of the difficulties that can arise when a test moves from research to clinical use due to limitations in the data on clinical validity and utility. Although each example primarily describes one use of the test, it is possible that the same test could be used for other purposes. For example, a diagnostic test also may be used for predictive purposes. Indeed, the fact that tests may be used for multiple and overlapping purposes is one of the significant challenges of any effort to identify distinct categories of genetic tests.

Prenatal Diagnosis. An example of a genetic test used for prenatal diagnosis is the test for the recessive disorder called Tay-Sachs disease. (Genetic tests are also used for Tay-Sachs carrier screening, but this case study focuses on its use in prenatal diagnosis.) Tay-Sachs is a neurological disease that results from a buildup of sugar fats in brain cells and is caused by a defect in a gene that is responsible for the breakdown of those fats. Infants with Tay Sachs generally appear healthy at birth, but begin to develop motor weakness between 3 and 5 months of age. Progressive weakness continues,

characterized by poor head control and failure to achieve major developmental milestones, such as crawling or sitting unsupported. After 8 to 10 months of age, the disease progresses rapidly, and the child becomes completely unresponsive. Most children with Tay-Sachs survive to 2 to 4 years of age; most succumb to pneumonia. Currently, palliative and supportive treatment is the only therapy for Tay-Sachs disease.

Prenatal diagnosis of Tay-Sachs disease was first achieved in 1970. The test involves measuring the activity of a particular enzyme in cells from a developing fetus. The fetal cells are obtained through two principal methods—chorionic villus sampling (CVS) and amniocentesis. CVS, which is performed at 9 to 12 weeks of pregnancy, involves examining a sample of fetal cells taken from the placenta. Amniocentesis is a procedure, done at 16 to 18 weeks of pregnancy, in which a sample of the fluid surrounding the fetus (the amniotic fluid) is withdrawn from the womb and examined. These procedures carry a risk of miscarriage (1 case in 100 for CVS and 1 case in 200 to 300 for amniocentesis). When the results of the Tay-Sachs test are positive, many couples face an agonizing decision about whether to continue the pregnancy. Most, but not all, elect to terminate the pregnancy. Although prenatal diagnosis for Tay-Sachs disease initially was used only for couples to whom affected children had already been born, it is now also offered to couples who are identified by carrier screening to be at risk.

Over the last two decades, the analytical validity and clinical validity of prenatal testing for Tay-Sachs disease have been established, and the clinical utility of the test is now also fairly well understood. Tay-Sachs disease testing is limited primarily to populations in which the disease is known to be prevalent, including people of Ashkenazi Jewish or French Canadian descent. The incidence of Tay-Sachs disease in the Ashkenazi Jewish population is approximately 1 in 4,000 births; in the general population the incidence is tenfold less (1 in 40,000).

Newborn Screening. Phenylketonuria (PKU) results from a defect in a gene that encodes for a liver enzyme that is important for the breakdown of an essential protein building block, phenylalanine. The defect leads to the buildup of phenylalanine levels in the blood, resulting in brain damage. It was first described in 1934, when an association was observed between mental retardation and the presence of chemicals known as phenylketones in the urine of two siblings. In 1953, it was demonstrated that lowering blood phenylalanine levels by placing affected persons on a phenylalanine-restricted diet improves outcomes for individuals with PKU. In 1959, the introduction of a restricted diet in PKU-affected newborns was shown to prevent brain damage. The overall incidence of PKU is approximately 1 in 10,000 live births.

In 1963, a simple, inexpensive test to screen for elevated phenylalanine in the blood of newborns became available. A trial test was conducted on a group of individuals with mental retardation, and it identified correctly all persons who were previously diagnosed with PKU. After publication of the test method, the PKU screening test was accepted by the medical and scientific communities and became part of routine neonatal screening programs across the country. In fact, PKU was the first genetic disease for which newborn screening was developed. Newborn PKU screening is required by law in nearly all States.

The gene responsible for the major form of PKU was found in 1986, and since then more than 100 different mutations in the gene have been identified. Because DNA analysis of the PKU gene cannot always be correlated with disease severity, analysis of enzyme function and measurement of phenylalanine metabolites are more reliable indicators of clinical severity.

In the nearly 40 years since the PKU screening test was first used, a significant amount of data has been collected to establish its analytical and clinical validity and clinical utility. The test's clinical utility is especially significant because the most serious consequence of untreated PKU—mental retardation—can be prevented through a phenylalanine-restricted diet.

Carrier Screening. Cystic fibrosis (CF), which was first described in the 1930s, primarily affects the lungs and pancreas and often results in the onset of chronic lung disease. Recurrent infections and deficiencies of pancreatic enzymes can prevent normal digestive function. The median survival of individuals with CF has increased from 18 years in 1976 to 30 years in 1995, thanks to aggressive management of disease complications. CF is most common in people of northern and central European origin, with an incidence of 1 in 2,000, but it is much less common in other populations.

The CF gene was identified in 1989. Seventy percent of affected individuals carry the same mutation in the CF gene, and about 30 other mutations account for another 20 percent of CF cases. The remaining 10 percent have been found to have one of at least 800 additional mutations, and new mutations are still being identified. More than 85 percent of individuals with CF are born to parents who have no family histories of the disorder.

Results from a CF carrier test can only reduce—not eliminate—the risk that one may be a carrier, because it is not practical to test for all of the possible rare mutations. Carrier screening is recommended for those individuals with family histories of CF or for those who have a relative identified as a CF carrier. An NIH consensus development conference in 1997 concluded that carrier screening should be offered to all pregnant women and couples contemplating pregnancy, but this recommendation is in the early stages of implementation. Further research is needed to correlate the many different gene mutations with disease severity, population differences, and penetrance. Information from these studies may aid in an assessment of the clinical validity and clinical utility of broader based carrier screening.

Diagnostic/Presymptomatic Testing. Testing for myotonic dystrophy can be both diagnostic and presymptomatic. First described in 1908, myotonic dystrophy is an autosomal dominant, multisystem disorder mainly involving the heart, smooth and skeletal muscle, central nervous system, and eyes. The incidence of myotonic dystrophy is 1 in 8,000. It is characterized by a symptom known as myotonia-delayed muscular relaxation or stiffness and is extremely variable in severity both within and between families. The disease has been shown to have an earlier onset and increasingly severe clinical features as it is passed from one generation to the next.

The gene for myotonic dystrophy was identified in 1985. The mutation is located at one end of the gene, where a series of duplicate DNA sequences called repeats is found. In the normal gene, the number of repeats is fewer than 50. Carriers of the myotonic dystrophy gene have 50 to 80 repeats; affected adults have between 100 to 500 repeats. Several studies have found a correlation between a higher number of repeats and earlier age of onset and disease severity.

Molecular testing for diagnostic and presymptomatic purposes has been used for myotonic dystrophy since 1990, and DNA testing is now an acceptable form of diagnosis for this disease. More than 1,000 individuals have been studied through DNA analysis, and thus far, no mutation other than the increased number of repeat sequences has been found. Data on the analytical validity and clinical validity of this test are

fairly complete, but unfortunately, no specific therapy is available that will slow or significantly modify the progressive muscular changes that occur in individuals with myotonic dystrophy. Although the test is able to provide a definitive diagnosis and is considered useful for some individuals, the clinical utility of the test is less clear-cut because of the lack of effective treatment. Scientists are hopeful that further research on the function of the myotonic dystrophy gene may explain the underlying causes of the disease and lead to the development of new therapies.

Diagnostic Testing (with effective treatment). Genetic testing for hereditary hemochromatosis (HH) is currently conducted for diagnostic purposes. Studies are underway to determine whether the genetic test should be used for predictive purposes in the general population. HH was first described in 1889. It is an autosomal recessive disease that results in increased accumulation of iron in the body. When the body's storage capacity for iron is surpassed, the iron is deposited in the tissues of multiple organs, causing tissue damage. This iron overload can cause cirrhosis of the liver, diabetes, fatigue, and heart disease, among other conditions, and persons with HH are more likely to die from liver failure or primary liver cancer. However, HH is one of the few genetic diseases for which an effective and relatively simple therapy exists if the disease is diagnosed before tissue damage has occurred. The therapy involves removing excess iron by periodic phlebotomy, or bloodletting.

In 1972, a simple biochemical test was developed to measure iron levels in the blood. The accuracy of the test was evaluated through several investigational studies. It is currently the most common screening strategy for the disease. The incidence of HH is estimated to be about 3 in 1,000 in people of northern European descent, an estimate that is based on screening trials that used biochemical measures of iron overload to identify affected persons. The proportion of people with positive test results who progress to symptomatic disease or life-threatening complications is unknown, however, and information on the incidence of HH in other populations is less complete.

In 1996, more than 100 years after HH was first described, the gene responsible for HH was identified. Based on research studies of HH affected individuals, one specific mutation in the gene has been found to be responsible for 85 percent of HH cases, and a second mutation is responsible for a much smaller proportion of cases. More than a dozen different genetic testing methods are now available for the detection of the two described mutations. Genetic testing for HH has been used to identify presymptomatic persons with a family history, and it may eventually replace liver biopsy as the definitive test for HH because it is safer and noninvasive. Broad-based population screening by DNA analysis has not been implemented for HH because of the uncertain link between positive test results and severity of disease, the environmental and other genetic factors that may be involved in the disease process, and the possibility that other mutations may exist that have not yet been identified. Studies are underway to address these knowledge gaps and to assess the clinical validity of the DNA based test.

Diagnostic/Predictive Testing (without effective treatment). Alzheimer disease (AD), which was first described in the early 1900s, is a progressive disease that causes impairment in multiple brain functions, including memory, language, orientation, and judgment. The only definitive diagnosis for AD is the examination of brain tissue after death. At the present time, a checklist of clinical symptoms is used to diagnose AD and to rule out other possible disorders. Thus, a definitive diagnostic test for AD would be an important medical advance. Three genes have recently been associated with AD, although inherited cases of AD make up only a small proportion (less than two to five percent) of AD sufferers. Diagnostic and presymptomatic testing based on DNA analysis is recommended only for the small number of families that have a dominant pattern of inheritance of AD in multiple generations. A fourth gene, known as APOE, is the most recent gene found to be associated with AD. One variant of the gene, referred to as APOE4, is thought to be a risk factor for AD. Although the majority of AD cases occur at random, individuals with one or two copies of this gene are thought to be at greater risk for developing AD than the general population.

Not long after the discovery of this association, the test was commercialized as a tool to predict heightened risk for AD, although the clinical validity and clinical utility of the test had not yet been established. Subsequently, APOE4 predictive testing was withdrawn from the market, and the test is now available only to aid in the confirmation of a diagnosis of AD in a patient showing signs of dementia. APOE4 predictive DNA testing for AD is not recommended for several reasons. First, it is associated at a population level with an increased risk of AD, but its predictive value for individuals is limited because many people with one or two copies of APOE4 will never develop AD, and conversely, many people with AD do not carry the gene variant. In addition, science's understanding of other risk factors that may play a role in the development of the disease in people who carry APOE4 is limited. Finally, the social and psychological burdens of predictive AD testing are not understood fully, and treatment and preventive strategies are lacking. More research into the genetic basis of AD will be necessary before predictive genetic testing of AD in the general population would be appropriate.

The ongoing commercial availability of this test as a tool in diagnosing AD complicates oversight issues, because without appropriate oversight, the APOE4 test could be used for predictive purposes, even though this use is not recommended. In addition, a positive result from APOE4 testing in an individual suspected of having AD automatically provides information to relatives about their probability of developing the disease, information that could be misused. As this example shows, the boundary between predictive and diagnostic uses of tests often is not distinct.

Presymptomatic/Predictive Testing. Breast cancer is an example of a disease in which genetic testing is used to predict disease in individuals with a family history of the disease. According to recent estimates, breast cancer is the second leading cause of cancer death in women in the United States. One out of every eight American women is at risk for developing breast cancer during her lifetime. There are a number of treatment options for breast cancer, including radiation, lumpectomy or mastectomy, and multiple drug treatments for both first diagnosis and metastatic disease. However, there is no guaranteed cure, and, once diagnosed, women never know whether they will be able to overcome the disease. Women with a strong family history of breast cancer, which may suggest the presence of a genetic factor, are at greater risk, although only 5 to 10 percent of breast cancer cases are believed to be related to genetic predisposition.

Because of the strong family history documented in some women who develop breast cancer, scientists began an intensive search for the gene that contributes to the development of this disease. DNA from women with familial breast cancer was analyzed, and in 1990, a region on chromosome 17 was found to be linked to increased risk for

the development of breast and ovarian cancer. In 1994, the BRCA1 gene was identified as a cancer-susceptibility gene. A second gene, BRCA2, was later discovered. Mutations in these two genes account for a significant portion of inherited cases of breast and ovarian cancer.

Development of commercial tests for these genes quickly followed. However, difficulties in assessing the analytical and clinical validity of BRCA1/2 test results have been demonstrated in some studies. Hundreds of mutations have been detected in the two BRCA genes, and different mutations in these genes may have different risks for breast cancer and ovarian cancer, or possibly different affects of tumor progression or severity. This suggests that further research is necessary to clarify the relationship between gene mutations in BRCA1/2 and the risk of developing breast and/or ovarian cancer. Studies have shown that the same mutations in different families have resulted in different disease outcomes, and environmental and other modifying factors also may determine how a particular mutation behaves, further contributing to the difficulty in interpreting BRCA 1/2 test results.

The complexities associated with genetic testing of BRCA1/2 raise further concerns, because some of the options a woman may choose if she tests positive, such as the surgical removal of breasts or ovaries, are irreversible. Further research on different populations and on women with no family history of breast cancer are necessary to establish analytical and clinical validity for BRCA1/2 testing in the general population. Such research should also increase understanding of the risks and benefits of testing for these groups, which may be different for women with no family history of the disease.

Part III: Current Oversight of Genetic Tests

In considering whether additional oversight measures for genetic tests are needed, it is important to understand the provisions for oversight that already are in place. Currently, genetic and non-genetic tests receive the same level of oversight from governmental agencies. Genetic tests are regulated at the Federal level through three mechanisms: (1) The Clinical Laboratory Improvement Amendments (CLIA); (2) the Federal Food, Drug, and Cosmetic Act; and (3) during investigational phases, regulations for the Protection of Human Subjects (45 CFR 46, 21 CFR 50, and 21 CFR 56). In addition to the Federal role, oversight of genetic tests is provided by States and private sector organizations.

This section summarizes the roles of five DHHS organizations in providing oversight of genetic tests: the Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), Health Care Financing Administration (HCFA), Office for Protection from Research Risks (OPRR), and National Institutes of Health (NIH). Although it does not have a regulatory function, the NIH supports research activities that generate knowledge about genetics and genetic testing. The roles of the States and the private sector in oversight also are described.

The Roles of CDC and HCFA

All laboratory tests performed for the purpose of providing information for the health of an individual must be conducted in laboratories certified under CLIA. Tests are regulated according to their level of complexity: waived, moderate, and high complexity. The regulatory requirements applied to these laboratories increase in stringency with the complexity of the tests performed. Under CLIA, HCFA's Division of Laboratories and Acute Care in partnership with CDC's Division of Laboratory Systems develops standards for laboratory certification. In addition, the CDC conducts studies and convenes conferences to help determine when changes in regulatory requirements are needed. The advice of the Clinical Laboratory Improvement Advisory Committee (CLIAC) may also be sought regarding these matters.

The CLIA program provides oversight of laboratories through on-site inspections conducted every two years by HCFA using its own scientific surveyors or employing surveyors of deemed organizations or State-operated CLIA programs that have been approved for this purpose. The oversight provided includes a comprehensive evaluation of the laboratory's operating environment, personnel, proficiency testing, quality control, and quality assurance. The laboratory director, who must be certified, plays a critical role in assuring the safe and appropriate use of laboratory tests. Laboratory directors are required to take specific actions to establish a comprehensive quality assurance program, which ensures that the continued performance of all steps in the testing process is accurate. Although laboratories under CLIA are responsible for all aspects of the testing process (from specimen collection through specimen analysis and reporting of the results), to date, CLIA oversight has emphasized intra-laboratory processes as opposed to the clinical uses of test results. CLIA has not specifically addressed other aspects of oversight that are critical to the appropriate use of a genetic test, including the clinical validity and clinical utility of a given test. Also unaddressed to date are other important issues such as informed consent and genetic counseling. (See Part IV for a discussion of steps being taken by CDC and HCFA to strengthen CLIA regulations for genetic testing.)

The Role of FDA

All laboratory tests and their components are subject to FDA oversight under the Federal Food, Drug, and Cosmetic Act. Under this law, laboratory tests are considered to be diagnostic devices, and tests that are packaged and sold as kits to multiple laboratories require premarket approval or clearance by the FDA. This premarket review involves an analysis of the device's accuracy as well as its analytical sensitivity and specificity. Premarket review is performed based on data submitted by sponsors to scientific reviewers in the Division of Clinical Laboratory Devices in the FDA's Office of Device Evaluation. In addition, for devices in which the link between clinical performance and analytical performance has not been well established, the FDA requires that additional analyses be conducted to determine the test's clinical characteristics, or its clinical sensitivity and specificity. In some cases, the FDA requires that the predictive value of the test be analyzed for positive and negative results.

The majority of new genetic tests are being developed by laboratories for their own use. These are referred to as in-house tests or ''home brews.'' The FDA has stated that it has authority, by law, to regulate home brew laboratory tests, but the agency has elected, as a matter of enforcement discretion, not to exercise that authority. However, the FDA has taken steps to establish a measure of regulation of home brew tests by instituting controls over the active ingredients (analyte-specific reagents) used by laboratories to perform genetic tests. This regulation subjects reagent manufacturers to certain general controls, such as good manufacturing practices. However, with few exceptions, the current regulatory process does not require a premarket review of the reagents. (The exceptions involve certain reagents that are used to ensure the safety of the blood supply and to test for high-risk public health problems such as HIV and tuberculosis.) The regulation restricts the sale of reagents to laboratories capable of performing high-complexity tests and requires that certain information

accompany both the reagents and the test results. The labels for the reagents must, among other things, state that ''analytical and performance characteristics are not established.'' Also, the test results must identify the laboratory that developed the test and its performance characteristics and must include a statement that the test ''has not been cleared or approved by the U.S. FDA.'' In addition, the regulation prohibits direct marketing of home brew tests to consumers.

The Role of Human Subjects Regulations

Additional oversight is provided during the research phase of genetic testing if the research involves human subjects or identifiable samples of their DNA. Regulations governing the protection of human research subjects are administered by the OPRR and FDA. OPRR oversees the protection of human research subjects in DHHS-funded research. The FDA oversees the protection of human research subjects in trials of investigational (unapproved) devices, drugs, or biologics being developed for eventual commercial use. Fundamental requirements of these regulations are that experimental protocols involving human subjects must be reviewed by an organization's Institutional Review Board (IRB) to assure the safety of the subjects and that risks do not outweigh potential benefits. The regulations apply if the trial is funded in whole or in part by a DHHS agency or if the trial is conducted with the intent to develop a test for commercial use. However, FDA regulations do not apply to laboratories developing home-brew genetic tests, because at present these tests are not subject to the FDA's enforcement authority. OPRR regulations would apply if the laboratory was DHHS-funded or was carrying out the research at an institution that receives DHHS funding. In a 1995 survey of biotechnology companies, the Task Force on Genetic Testing found that 46 percent of respondents did not routinely submit protocols to an IRB for any aspect of genetic test development.

The Role of NIH

The mission of NIH is to support and conduct medical research to improve health. This research encompasses basic, clinical, behavioral, population-based, and health services research. In addition to funding a substantial amount of genetics research, including the Human Genome Project, and assuring that the research is conducted in accordance with human subjects regulations and other pertinent guidelines, NIH supports a number of other programs that have an important role in disseminating knowledge and technology to the public and private sectors. These activities help promote the appropriate integration and application of scientific knowledge into clinical and public health practice. The following are examples of research, dissemination, and integration activities supported wholly or in part by NIH that might specifically contribute to a better understanding of the validity and utility of genetic tests.

- The Ethical, Legal, Social Issues (ELSI) Program, a major program established as an integral part of the Human Genome Project, supports research on the ethical, legal, and social implications of human genetics research.
- A five-year epidemiologic study of iron overload and hereditary hemochromatosis is beginning to gather data on the prevalence, genetic and environmental determinants, and potential clinical, personal, and societal impact of the disorder. The knowledge gained from this study will be used to determine the feasibility, benefits, and risks of a broad-based screening program.
- The Cancer Genetics Network, a consortium of academic cancer centers around the country, serves as a national resource to support multi-center investigations into the genetic basis of cancer susceptibility, to integrate new research data into medical practice, and to identify psychological, ethical, legal, and public health issues related to cancer genetics.
- GeneTests, a directory of clinical laboratories providing testing for genetic disorders, disseminates information about diseases and diagnostic and treatment options to health care providers and the public.
- The National Coalition for Health Professional Education in Genetics promotes genetics education and information dissemination to health professionals.

NIH also produces consensus statements and technology assessment statements on issues important to health care providers, patients, and the general public. Topics related to genetic testing have included newborn screening for sickle cell disease, genetic testing for cystic fibrosis, and screening for and management of PKU.

The Role of the States

State health agencies, particularly state public health laboratories, have an oversight role in genetic testing, including the licensure of personnel and facilities that perform genetic tests. State public health laboratories and State-operated CLIA programs, which have been deemed equivalent to the Federal CLIA program, are responsible for quality assurance activities. A few States, such as New York, have promulgated regulations that go beyond the requirements of CLIA. States also administer newborn screening programs and provide other genetic services through maternal and child health programs.

The Role of the Private Sector

The private sector provides oversight in partnership with HCFA and the CDC by serving as agents for the Government in accreditation activities. The private sector also develops laboratory and clinical guidelines and standards. A number of organizations are involved in helping to assure the quality of laboratory practices and in developing clinical practice guidelines to ensure the appropriate use of genetic tests. These organizations include the College of American Pathology (CAP), which develops standards for its membership and establishes and operates proficiency testing programs; the NCCLS (formerly called the National Committee on Clinical Laboratory Standards), which develops consensus recommendations for the standardization of test methodologies; and, the American College of Medical Genetics (ACMG), which develops guidelines for the use of particular tests and test methodologies and works with CAP to provide proficiency tests for certain genetic tests. Other organizations, such as the American Academy of Pediatrics, American College of Obstetrics and Gynecology, American Society of Human Genetics, and National Society of Genetic Counselors, are also involved in the development of guidelines and recommendations regarding the appropriate use of genetic tests.

The Roles Combined

It is likely that no single agency or organization will be able to address all the issues raised by genetic tests. Instead, the combined expertise of all entities may be needed.

Part IV: Recommendations of the NIH–DOE Task Force on Genetic Testing

The Task Force on Genetic Testing made a number of recommendations related to the oversight of genetic tests. The Task Force identified the type of data needed in order to assess the validity and utility of genetic tests, methods of data collection, preliminary criteria for tests that require stringent scrutiny, the need for external review of genetic tests, steps for enhancing

laboratory quality assurance, and special concerns related to rare diseases. These recommendations are summarized below, and the full report of the Task Force is available at *www.nhgri.nih.gov/ELSI/TFGT__final/.* The actions taken by the Federal agencies in response to the Task Force recommendations are also outlined.

Data needed for assessing tests. The Task Force recommended that data regarding analytical and clinical validity and clinical utility should be gathered to determine when a test is ready for clinical application and that validation should occur for each intended use of a test.

Collection of data. The Task Force recommended that NIH and the CDC support consortia and other collaborative efforts to facilitate data collection on test safety and effectiveness. It recommended that the CDC play a coordinating role in data gathering and serve as a repository for data submitted by genetic test developers.

Tests requiring stringent scrutiny. The Task Force recommended that certain kinds of genetic tests might require a higher level of scrutiny, and it suggested some criteria for determining which kinds of tests these might be. The criteria included whether

- The tests are used for predicting future disease in healthy or apparently healthy people;
- The tests cannot be independently confirmed;
- The tests have low sensitivity and low positive predictive value;
- The tests are for conditions for which an intervention is not available or has not been proven effective in those with positive test results;
- The tests are for disorders of high prevalence;
- The tests are for screening; and
- The tests are likely to be used selectively in ethnocultural groups with higher incidence or prevalence of a disorder.

Review of genetic tests. The Task Force recommended that test developers submit their clinical validity and utility data to independent internal and external reviewers and to interested professional organizations. It said that the reviews should ensure that the data are interpreted correctly, that test limitations are described, and that the populations for which the test may or may not be appropriate are defined.

Enhancing laboratory quality assurance. The Task Force recommended that CLIA regulations be augmented to strengthen clinical laboratory practices for genetic tests by requiring specific provisions for quality control, personnel qualifications and responsibilities, patient test management, proficiency testing, quality assurance, confidentiality, and informed consent. The Task Force recommended that clinical laboratories should not offer a genetic test unless its clinical validity has been established or data on its clinical validity are being collected either under an IRB-approved protocol or a conditional premarket approval agreement from the FDA. It also recommended that clinical laboratories pilot a test in order to verify that all steps in the testing process are operating appropriately.

Ensuring continuity and quality of tests for rare diseases. The Task Force pointed out that although the vast majority of single-gene diseases are rare, a total of 10 to 20 million Americans are afflicted with rare diseases. The Task Force recommended that laboratories providing genetic testing services for rare diseases should be CLIA-certified, subject to the same internal and external reviews as other clinical laboratories, and required to validate tests used in clinical practice. It further suggested that, because of difficulties in obtaining sufficient data on test validity, consideration should be given to developing less stringent regulations—without sacrificing quality—for genetic testing of rare diseases. The Task Force highlighted the important role of the NIH Office of Rare Diseases in disseminating information about the availability of safe and effective tests for rare diseases.

Progress Since Publication of Task Force Report

Since receiving the final report of the Task Force on Genetic Testing, DHHS agencies have acted on several of the Task Force recommendations that relate to the oversight of genetic tests. The FDA promulgated the regulation described in Part III for components of tests, thereby introducing a degree of FDA oversight of commercial, laboratory-based testing services. The FDA also has established an advisory panel on genetics to provide expertise needed for the review of genetic test kits.

HCFA and CDC have taken steps to develop recommendations for more specific requirements for the performance of genetic tests under CLIA. After careful review of existing requirements, CLIAC recommended changes to ensure that CLIA specifically addresses genetic testing. The CLIAC recommendations include provisions for the pre-and post-analytical phases of the testing process. The pre-analytical provisions include attention to the need for informed consent prior to collecting the sample. The informed consent process helps individuals understand the risks and benefits of a specific test so that they can make informed decisions regarding genetic testing. Clinical information, including ethnic background, when appropriate, would need to be submitted to the laboratory performing the test in order to enhance the accuracy of the interpretation of results. This is because although a given test may be likely to predict disease in some populations, it may produce unacceptable false positive results in another ethnic group. To ensure accuracy, samples would have to be transported to the testing laboratory in a manner that would preserve the integrity of the DNA, RNA, protein, or metabolite to be studied. For the post-analytical phase, CLIAC recommended additional requirements for assuring the confidentiality of test results as they are returned to the provider. The security of test information is essential to protecting the privacy of test results, especially when a number of locations require access to the information or results are communicated using computers. To avoid over- or under-interpreting the meaning of test results, CLIAC recommended that they be described clearly, including detailed information about the methods used and the specific factors tested. Counseling must be readily available to help individuals understand the meaning of the specific test that was performed and the significance of the findings to other family members. These and other post-analytical factors require thoughtful design and implementation in order to ensure that the performance of the genetic test maximizes benefits to individuals and families and minimizes socioeconomic risks. The CLIAC recommendations will be published in the **Federal Register** for public comment. Comments will be reviewed and carefully considered before final changes are made to CLIA.

CDC has established the Human Genome Epidemiology Network to advance the collection, analysis, dissemination, and use of peer-reviewed epidemiologic information on human genes. The Network promotes the use of this knowledge base for making decisions involving the use of genetic tests and services for disease prevention and health promotion by health care providers, researchers, members of industry and government, and the public.

CDC is leading an interagency effort to explore how voluntary, public-private partnerships might help encourage and facilitate the gathering, review and

dissemination of data on the clinical validity of genetic tests. Such data collection through a consortium approach is important for several reasons. In addition to the increasing number of predictive tests for common chronic diseases and potential for commercialization and premature use of genetic tests, there is a need for making consistent information available to providers, consumers, and policymakers. Also, the evaluation of tests may require longitudinal clinical and epidemiologic data, data that are generated from both public and private sources. The goals of the public/private partnership include identifying data elements needed for the evaluation of genetic tests, exploring a framework for data collection and dissemination, and facilitating the review of data for a smoother transition from gene discovery to clinical and public health. Two pilot data collection efforts for cystic fibrosis and hereditary hemochromatosis are in the preliminary stages.

The CDC, NIH, the Health Resources and Services Administration (HRSA), and the Agency for Health Care Policy and Research (AHCPR) are beginning to collaborate more closely to promote and support the development of genetic knowledge and technology and to ensure that this knowledge and technology is used appropriately to improve the health and well being of the Nation. The goal of this collaboration is to enhance agency programs involving technical assistance, professional and public education, data collection and surveillance, applied genetic research and assessment, policy development, and quality assurance.

Part V: Critical Issues To Be Addressed

SACGT has been asked to assess, in consultation with the public, whether current programs for assuring the accuracy and effectiveness of genetic tests are satisfactory or whether other oversight measures are needed for some or possibly all genetic tests. This assessment requires consideration of the potential benefits and risks (including socioeconomic, psychological, and medical harms) to individuals, families, and society, and, if necessary, the development of a method to categorize genetic tests according to these benefits and risks. Considering the benefits and risks of each genetic test is critical in determining its appropriate use in clinical and public health practice. If, after public consultation and analysis, SACGT finds that other oversight measures are warranted, it has been asked to recommend options for such oversight. The advantages and disadvantages of each option must be considered carefully before a final determination is made.

SACGT has been asked to address these five specific issues.

Issue 1: What criteria should be used to assess the benefits and risks of genetic tests?

Issue 2: How can the criteria for assessing the benefits and risks of genetic tests be used to differentiate categories of tests? What are the categories and what kind of mechanism could be used to assign tests to the different categories?

Issue 3: What process should be used to collect, evaluate, and disseminate data on single tests or groups of tests in each category?

Issue 4: What are the options for oversight of genetic tests and the advantages and disadvantages of each option?

Issue 5: What is an appropriate level of oversight for each category of genetic test?

These five issues are discussed in more detail below. This discussion is provided in order to foster public discussion and deliberation. Following the discussion of each major issue, SACGT presents a number of related questions. SACGT encourages public comment on all or any one of the major issues and approaches and on the related questions. SACGT presents a sixth set of other related questions relevant to genetic testing and encourages public input on these as well.

Issue 1: What Criteria Should Be Used To Assess the Benefits and Risks of Genetic Tests?

Assessing the benefits and risks of genetic tests is a process that occurs in stages. Before a test is used in clinical or public health practice, a determination must be made regarding the test's effectiveness in the laboratory—that is, whether a test is analytically valid. The degree of complexity of the test is a particularly important factor in assessing analytical validity. The second step in assessing the benefits and risks of genetic tests is to evaluate how well tests perform in the clinical environment, which is the principal focus of discussion for this issue.

In considering this issue, SACGT identified three primary criteria that could be used to assess the benefits and risks of a genetic test. One criterion is clinical validity, which refers to the accuracy of the test in diagnosing or predicting risk for a health condition. Clinical validity is measured by the sensitivity, specificity, and predictive value of the test. The second criterion is clinical utility, which involves identifying the outcomes associated with positive and negative test results. Because clinical validity and clinical utility of a genetic test may vary depending upon the health condition and the population to be tested, these criteria must be assessed on an individual basis for each test. The third criterion relates to the social context within which genetic testing is performed.

Factors To Be Considered in Assessing Clinical Validity

Because clinical validity considers many aspects of genetics that make genetic testing complex, it is a measure that is essential to the assessment of the benefits and risks of genetic tests. A test's clinical validity is influenced by a number of factors beyond the laboratory, including the purpose of the test, the prevalence of the disease or condition tested for, and the adequacy of relevant information.

Purpose of test. Genetic tests have a number of purposes, and some are used for more than one purpose. The acceptable level of a predictive value of a genetic test may vary depending on the purpose for which the test is used (for example, for diagnosing or predicting a future health risk). In addition, a higher predictive value may be required of a stand-alone test than of a test that is used to confirm other laboratory or clinical findings.

Prevalence. Clinical validity, particularly predictive value, is influenced by the prevalence of the condition in the population. Assessing clinical validity may be particularly challenging in the case of tests for rare diseases. This is because gathering statistically significant data may be difficult, as relatively few people have these diseases. Thus, prevalence may be a factor in determining how much data on test performance should be available before a test is offered in patient care.

Adequacy of information. For many genetic tests, particularly those used for predicting risk, knowledge of the test's clinical validity may be incomplete for many years after the test is developed. When information that may affect clinical validity is incomplete, the potential harms of the test may increase and must be considered more carefully.

Factors To Be Considered in Assessing Clinical Utility

Clinical utility is the second criterion that is critical to assessing the benefits and risks of genetic tests. Clinical utility takes into account the impact and usefulness of the test results to the individual, the family, and society. The benefits and risks to be considered include the social and economic consequences of testing as well as the implications for health outcomes. Decisions about the use of a genetic test

should be based upon a consideration of the risks of any follow-up tests required to confirm an initial positive test, of the degree of certainty with which a diagnosis can be made, and of the potential for adverse socioeconomic effects versus beneficial treatment if a diagnosis is made. Factors affecting clinical utility include the potential benefits and risks of test results, the nature of the health condition and its potential outcomes, the purpose of the test, uncertainties of genetic test results, the provision of information concerning other family members, and the quality of evidence for assessing outcomes.

Potential benefits and risks of genetic test results. There are a number of potential benefits and risks of genetic testing. The benefits and risks of true positive and negative test results must be considered, as must the risks of false positive and negative results (see list of benefits and risks below). A true positive result means that the test result is positive, and the condition or predisposition is actually present. A true negative result means that the test result is negative, and the condition or predisposition is not present. False results can also be both positive and negative. A false positive occurs when the test indicates a positive result when in fact the condition or predisposition is not present. A false negative occurs when the test indicates a negative result but the condition or predisposition is present.

Potential benefits of a positive test result:

- May provide knowledge of diagnosis or risk status.
- May allow preventive steps or treatment interventions to be taken.
- May identify information about risk status in other family members (also a potential harm).

Potential benefits of a negative test result:

- May rule out specific genetic diagnosis or risk.

May eliminate the need for unnecessary screening or treatment.

Potential risks of a positive test result:

- May expose individuals to unproven treatments.
- May cause social, psychological and economic harms, including stigmatization and potential exclusion from health insurance and employment.
- May identify information about risk status in other family members (also a potential benefit).
- For false positive test results, individuals may be exposed to unnecessary screening and treatment.

Potential risks of a negative test result:

- May give false reassurance regarding risk due to nongenetic causes. May have psychological effects, such as ''survivor guilt.''
- For false negative test results, may delay diagnosis, screening, and treatment.
- *Nature of health condition and health outcomes.* The nature (severity, degree of associated disability, or potentially stigmatizing characteristics) of the health condition being tested for is an important factor in assessing clinical utility. For example, a genetic test for periodontal disease may raise less concern than a test for cancer, and genetic tests developed for conditions such as alcoholism or mental illness might cause even greater concern. Health outcomes, as measured by such indicators as morbidity and mortality, are important in assessing clinical utility of genetic testing, and they can be affected by both the nature of the health condition as well as the availability, nature, and efficacy of treatment. As uncertainties increase about the health outcomes associated with a test result, so do the potential harms of the test. This is an important consideration in genetic testing for common health problems such as cancer and cardiovascular disease, since health outcomes typically are the result of the combined effects of genetic, environmental, and behavioral risk factors.

Purpose of the genetic test. The purpose of the test is an important factor in assessing clinical utility. Genetic tests used to predict a disease or condition will have different risks and uncertainties associated with it as compared to a diagnostic test. For example, the use of a test to aid in the diagnosis of cystic fibrosis in a person who has symptoms has different implications than the use of a test to determine whether a woman with no symptoms has a risk for breast and ovarian cancer because she possesses a BRCA1 or BRCA2 mutation. Tests used for diagnostic purposes will most likely be conducted as part of a clinical evaluation to diagnose a specific disease or will be used for clearly inherited diseases or conditions.

Genetic tests used for predictive purposes in healthy persons are associated with greater uncertainties and risks. Currently, tests used for predictive purposes will give an estimate of the risk a person may have of developing a particular disease or condition. Due to incomplete knowledge, however, the risk assessment may be inaccurate because of other genetic and environmental factors that have not been accounted for or are not yet known. Predictive genetic tests may have profound effects on the lives of otherwise healthy individuals. Even though degree of risk is uncertain, a positive test result for breast cancer may affect treatment, reproductive, and lifestyle plans. A negative test result for a BRCA1 mutation does not eliminate the risk of breast cancer, because BRCA1 mutations account for only a small percentage of breast cancer cases overall. A woman with a negative test result still carries, at minimum, the breast cancer risk of the average woman and she should still continue with preventive screening measures.

The use of a genetic test in population screening may raise greater concern than the use of the same test in an individual seeking information about his or her health. In population screening, a large number of healthy people may receive unexpected test results that may or may not provide definitive information. Decisions about whether to use genetic tests for screening should take into account the prevalence of the condition. The higher the prevalence of the genetic condition, the greater the number of people who will be subjected to false positive and false negative results. On the other hand, if treatment options are available, screening for highly prevalent diseases may have significant public health value.

Uncertainties of genetic test results. The assessment of a test's clinical utility is affected by the accuracy of test results. False negative results are more common in the early stages of the development of diagnostic tests, including genetic tests. Genetic tests in early development may identify only a portion of mutations associated with a given health outcome. If a woman is from a family in which multiple cases of early breast cancer have occurred, she is likely to be at risk for an inherited susceptibility to breast cancer even if genetic testing has failed to identify a specific cancer-associated mutation in her family.

Information about family members. Because genetic information may have implications for family members, the potential of the test to reveal information about family members is another factor to be considered in assessing a test's clinical utility. For example, DNA-based tests for cystic fibrosis, sickle cell anemia, or other conditions will identify carriers for the condition as well as those who are affected. If a woman with breast cancer tests positive for a BRCA1 mutation, her first-degree relatives are then known to have a 50 percent chance of carrying the same mutation. Some of these relatives may not wish to discover their risk, while others may wish to use the test

results of their relatives to make a decision about their own genetic testing.

Quality of evidence for outcomes assessment. The quality of evidence for assessing outcomes of genetic test results is a factor in the clinical utility of a genetic test. Often, evidence to assess relevant factors, especially those related to potential social or economic harms, is limited or lacking. In assessing potential risks under these circumstances, incomplete information and the potential for harms that have not yet been documented must be considered. Established methods for evaluating the quality of the evidence should be used to assess outcomes.

Factors To Be Considered in Assessing Social Issues

Important social considerations may heighten the risks of certain tests, even if they are accurate and clinically meaningful. Tests for certain health conditions may carry special risks because of the social implications of the health condition, *e.g.,* conditions associated with mental illness or dementia. Thus, the social context of a disease may be an important factor for an individual to consider prior to taking a genetic test. In addition to affecting the individual, these special risks may affect entire populations. In particular, special consideration should be given to genetic stigmatization and discrimination, genetic testing in specific U.S. populations, and the possible development and use of genetic tests for non-health related conditions.

Genetic stigmatization. Genetic test results can change how people are viewed by their family, friends, and society, and how they view themselves. People diagnosed with or at risk for genetic diseases or conditions may be affected by the way others begin to see and interact with them. Having or being at risk for a disease or condition that is viewed by society in a negative light can result in stigmatization, and emotional and psychological harms. In addition to changes in how they are seen by others, social influences can affect self-perception and have a profound impact on life decisions.

Genetic discrimination. Diagnostic or predictive genetic information about an individual may lead to discrimination in health insurance, life insurance, and education and employment. The potential for discrimination may be particularly acute for people with, or at risk for, diseases or conditions that are chronic, severely disabling, and lack effective or affordable treatments. Educational opportunities may be restricted, further limiting future life possibilities. Fears of genetic discrimination have made the establishment of Federal privacy and confidentiality protections a high priority for many.

As important as legal protections are, however, they cannot prevent all adverse consequences of genetic information. For example, the stigma associated with certain genetic diseases or conditions can affect personal choices, such as marriage and child bearing.

Special considerations for U.S. populations. Significant social concerns have grown out of the strong memories of the American eugenics movement and the painful history of programs that tested minority populations for conditions such as sickle cell disease. In some cases, these programs heightened discrimination against those tested. Given this history, tests developed for use in particular population groups, whose incidence of a condition may be higher, or in circumstances where the meaning of the test could be interpreted only within a certain population, may carry higher risks. This issue is of great concern in the United States because of the exceptional diversity of the population. Specific genetic diseases or conditions occur with different frequencies in different populations. As genetic testing becomes more common, the potential for stigmatization of groups increases. Educational programs, legal protections, and the involvement of ethnocultural group representatives in assessing the risks and benefits of genetic tests are needed to reduce the risk of stigmatization of groups.

In addition, social categories used to classify ethnocultural differences often do not accurately reflect actual genetic variation within a population. For example, since the categories ''Hispanic'' and ''Asian'' encompass populations from different parts of the world, genetic variations are likely to exist within these populations. Thus, care should be taken in determining the ethnocultural background of individuals in order to ensure accurate interpretation of genetic test results. A further note of caution is also necessary. In developing genetic tests, it will be important to assure their accuracy when used in different populations. In so doing, however, the erroneous assumption that there is a straightforward, one-to-one relationship between one's genes and one's ethnocultural identity may be inadvertently reinforced. This could result in stigmatization because even accurate tests could reinforce misguided cultural notions about genetic determinism.

Tests for conditions not commonly regarded as medical or health-related. In the future, it may be possible to develop genetic tests that could be used to identify predispositions to certain patterns of behavior, such as risk-taking, shyness, or other complex features of personality. Although the assumption that single genes, or even many genes, can predict complex human actions is simplistic, the possibility of such tests raises profound ethical questions and concerns because their potential psychological and socioeconomic harms are so significant and the potential misuse of such information is so great. The boundaries between ''health-related'' and ''non-health related'' are not clear cut, and they may shift over time. It will, therefore, be difficult to avoid harm from genetic tests simply by limiting their use to situations of diagnosing or predicting disease. For example, genetic tests might be used to predict susceptibility to conditions that are health-related but where a strong behavioral component exists, such as obesity, alcohol abuse, or nicotine addiction. Individuals identified as at risk for stigmatized conditions such as these may suffer special harms.

Questions Related to Issue 1:

1.1 What are the benefits/risks of having of a genetic test?

1.2 What are the major concerns regarding the different genetic tests that are currently available?

1.3 What expectations do individuals have about genetic tests, such as whether they have a high level of accuracy and can be used to help make health or important personal decisions?

1.4 In deciding whether to have a genetic test, does it matter whether a treatment exists for the condition or disease being tested for? Is the information provided by the test important or useful by itself?

1.5 Do concerns about the ability to keep genetic test results confidential influence an individual's decision to have a genetic test?

1.6 Are genetic tests different from other medical tests, such as blood tests for diabetes or cholesterol? Should genetic test results be treated more carefully with more confidentiality than other medical records?

Issue 2: How Can the Criteria for Assessing the Benefits and Risks of Genetic Tests Be Used To Differentiate Categories of Tests? What Are the Categories and What Kind of Mechanism Could Be Used To Assign Tests to the Different Categories?

In attempting to address this issue, SACGT considered whether the criteria

of clinical validity and clinical utility could be used to characterize the potential risks associated with a given test, which would allow tests to be grouped according to the risks that are associated with them. Using this information, tests might be organized into categories such as ''high risk'' and ''low risk.'' Such a categorization would not be simple or straightforward, however, because it would depend upon a combination of factors, including test characteristics, availability of safe and effective treatments, and the social consequences of a diagnosis or identification of risk status. For example, a test of high predictive value that identifies a nonstigmatizing condition with a safe and effective treatment might fall into a low-risk category, while a test that has high predictive value and that identifies a genetic risk for a serious condition for which treatment is unproven might fall into a high-risk category.

As these general examples illustrate, categorizing tests will require the weighing of several different aspects of the test and of the disease that the test is used to diagnose or predict. Developing an appropriate mechanism for this process poses a challenge, and it is likely that such a mechanism will involve at least three steps. In the first step, data concerning the test would be collected perhaps using a standardized format to ensure that all of the required data are reported. In the second step, the data would be analyzed to determine risk category. One possible approach would be to initially sort tests into a readily identifiable low-risk category (possibly tests with well-defined characteristics that meet a previously defined low-risk threshold). For tests not falling within the low-risk category (possibly tests for rare diseases or complex, common diseases), a third step involving a more detailed evaluation of available data would be required to make a final determination of risk category.

Thus, determining the risk category of a test will involve evaluating the data available regarding the analytical and clinical validity of the test and the outcomes of positive and negative test results. This evaluation should consider socioeconomic factors, such as the potential for stigmatization and other social risks, including the likelihood that a test would be used in particular population groups. For tests that are determined to be high risk or potentially high risk, the analysis likely will require a diverse range of technical expertise and input.

Questions Related to Issue 2:

2.1 Do some genetic tests raise more ethical, legal, medical, and social concerns than others and should they be in a special category and require some special oversight? If so, what tests or types of tests would fall into such a category?

2.2 Are there some genetic tests that raise no special concerns and therefore need no special oversight? If so, what tests or types of tests would fall into this category?

Issue 3: What Process Should Be Used To Collect, Evaluate, and Disseminate Data on Single Tests or Groups of Tests in Each Category?

Currently, data about genetic tests are collected by a number of different organizations. Some of these data are publicly available; others are not. It appears that in the future, a laboratory that develops a particular test will need to continuously collect data regarding its analytical validity, and at a minimum, a summary of the results of the evaluation should become available as part of the information on analytical validity contained in the test labeling.

Data on clinical application of a test could be collected and evaluated by a number of sources, including professional organizations, individual laboratories, academic institutions, and/or governmental agencies. One option is to continue to rely on the current practice of allowing laboratories to base decisions on information they collect and analyze, including their own data or data they glean from other sources, such as research publications or consensus conferences. A second option is to make each laboratory that offers a test responsible for collecting and analyzing the information that is required to support its claims for the test according to national standards. A third choice would be for a Government agency, possibly the CDC, to coordinate the creation and collection of information on clinical applications of tests that detect particular mutations and perhaps to define appropriate claims for tests as well. (See Part IV for a discussion of CDC's current efforts in this area.) A fourth option, discussed as part of Issue 4, would be to form a consortium of government, professional associations, and industry that would create, collect, and analyze information about clinical applications. More than likely, data on any genetic test will be incomplete and must be collected on a continuous basis. If the data available at the time of the initial evaluation suggest benefit of the test in clinical practice, the test may be approved on the condition that data will continue to be collected and will be reviewed again at a future date.

Another approach to data collection on validity and utility of genetic tests could be modeled after tumor registries. Tumor registries document and store information about a patient's history, diagnostic findings, treatment, and outcome. Information within a tumor registry may be used to generate a variety of reports on topics such as patient quality of care and long-term results of specific treatments.

Regardless of the option chosen for data collection, once the data have been collected and evaluated, they must be disseminated to health care practitioners and the public. This must include not only data generated prior to offering the test for clinical use, but also data generated as part of any postmarket evaluation. One option is to require laboratories to release summaries of data on clinical application as part of the process of offering the test. Such summaries could be directed to health care professionals, to the general public, or to both. In addition, different methods of collection and distribution of information may be used for different tests. Guidelines or regulations might be required to make those distinctions. One method would be to rely upon publications and professional societies to inform readers and members, with the expectation that practitioners will inform the public over time. Alternatively, the Federal Government or a consortium could be responsible for ensuring that relevant data are available for both professional and public use.

Questions Related to Issue 3:

3.1 Given that collection of data is an ongoing process, what type of system or process should be established to collect, evaluate, and disseminate data about the analytical validity, clinical validity and clinical utility of genetic tests?

3.2 How can the system or process for data collection, evaluation, and dissemination be structured in such a way as to protect the privacy and confidentiality of the data that is collected?

Issue 4: What Are the Options for Oversight of Genetic Tests and the Advantages and Disadvantages of Each Option?

SACGT has been asked to focus on oversight of the accuracy and effectiveness of genetic tests—especially, the development, use, and marketing of genetic tests developed by clinical laboratories. SACGT recognizes that there are many areas beyond test development, use, and marketing that might have an equally important impact in assuring the safety and effectiveness of a genetic test. For example, the

training and education of health care providers who prescribe genetic tests and use their results for clinical decision making is a critical issue, in particular as it relates to their ability to stay abreast of new information on the uses, capabilities, and limitations of these tests. The effect that gene patenting is having on the cost, accessibility, and quality assurance of genetic tests is another critical issue, as is the potential for workplace and insurance discrimination that could result from genetic testing. Oversight of genetic tests that provide non-health related information is another area of inquiry. SAGCT will focus its attention on these other high priority oversight issues once it completes its current work.

Current Oversight of Genetic Tests

As a starting point, it is important to recognize that some oversight of the development, manufacturing, use, and marketing of genetic tests is already in place. Currently, genetic and nongenetic tests receive the same level of oversight from governmental agencies. These oversight provisions are discussed in Part III and reiterated here briefly. All laboratory tests, including genetic tests, performed for the purpose of providing information for the health of an individual must be conducted in laboratories certified under CLIA. The CLIA program provides oversight through inspections conducted by HCFA using its own scientific surveyors or surveyors of deemed organizations or State-operated CLIA programs that have been approved for this purpose. The oversight provided includes a comprehensive evaluation of the laboratory's operating environment, personnel, proficiency testing, quality control, and quality assurance. To date, CLIA oversight has emphasized intra-laboratory processes. As discussed in Part IV, HCFA and CDC have taken steps to develop recommendations for more specific requirements for the performance of genetic tests under CLIA.

Under the medical device regulations, the FDA requires that genetic tests packaged and sold as kits to laboratories require premarket approval or clearance by the FDA. The premarket review would evaluate the test's accuracy and analytical validity. For devices in which the link between clinical performance and analytical performance has not been well established, the FDA requires that additional analyses be conducted to determine the test's clinical characteristics, or its clinical sensitivity and specificity. In some cases, the FDA requires that the predictive value of the test be analyzed for positive and negative results. The FDA has not attempted to extend its authority to regulate home brew tests (tests developed by laboratories for their own use). All of the genetic tests described in Part II are home brew tests. FDA has implemented regulation of the active ingredients of genetic tests, or analyte-specific reagents (ASRs). Manufacturers of ASRs are required to comply with good manufacturing practices, restriction of sales to laboratories capable of performing complex tests, and requirements that certain information accompany both the reagents and the test results.

Additional oversight protections are provided by professional organizations and state health departments. Organizations such as CAP, ACMG, and NCCLS have developed guidelines and standards for the development and use of genetic tests. State health departments may require laboratory facilities and personnel that perform genetic tests be licensed.

Possible Areas of Oversight

In considering areas of oversight, SACGT has focused on several key issues. While these are not the only areas in which additional oversight might be considered, and public comment on other issues would be welcome, SACGT expects to consider at least the following issues.

Introducing Laboratory-Developed Tests into Clinical Practice. Analytical Validity. It seems clear that a genetic test should not be used in clinical practice (i.e., for other than research purposes) unless it has been shown to detect reliably the mutation that it is intended to detect. CLIA now requires a laboratory that offers a test to determine the analytical validity of the test before it is used in clinical practice. In the current system, the laboratory intending to offer a test decides when it has met CLIA's requirement, a judgment that may later be audited during a CLIA inspection. Most believe that the current system needs review. Some have suggested that voluntary or mandatory standards should be enhanced to assist laboratories in deciding when a test's analytical validity has been determined and is acceptable, or that laboratories should be required to obtain the concurrence of an independent third party before a test is offered for use in clinical practice.

Clinical Validity. Similar questions arise with respect to the appropriate level of knowledge about a test's ability to generate information about the presence, or possibility of future occurrence, of a disease. Determining a genetic test's clinical validity is a complex and usually long term process (often requiring decades of work). At the same time, many people want to see gene discoveries translated into practical use as soon as the discoveries are made, often before the clinical validity of the test is fully established. The use of the test is then refined as new information becomes available. No Federal standards guide laboratory decision making with respect to when enough is known about a genetic test for it to be used in clinical practice or the extent to which uncertainties about a test's characteristics must be disclosed.

Clinical Utility. Also important is the degree to which benefits are provided by positive and negative test results. Some have argued that genetic tests should not be available unless they can provide information useful in making health-related decisions and that consumers are likely to assume that a test would not be made available unless it has a health benefit. For example, a negative genetic test result may provide a useful basis of information for informed decision-making. Others have argued that access to information, even it if does not lead to an health-related intervention, is itself useful. There is currently no requirement that the clinical utility of a genetic test be assessed before it is used in clinical practice, and some observers have suggested that additional oversight is needed to ensure greater awareness of the utility of the test.

Changes in Test Methodology. When test manufacturing methods and materials change, either deliberately or inadvertently, the performance characteristics of a test can change as well, which can change the analytical validity, clinical validity, and clinical utility of the test. Some have suggested that stronger incentives should be created to re-qualify tests when methods and materials change.

Patient Safeguards. Informed consent in the research phase of development. In some cases, laboratories that are developing genetic tests for eventual use in clinical practice conduct studies using identifiable patient samples. Unless the study is conducted with Federal funding or is intended for submission to FDA, there is no Federal requirement that laboratories obtain informed consent from a patient participating in that study.

Informed consent for tests used in clinical practice. Even after a test has been accepted into clinical practice, some observers have suggested that due to the predictive power of genetic tests and the impact test results may have on the individual and their families, tests

should not be administered unless the individual has been fully informed of the test's risks and benefits and a written informed consent obtained. There is currently no requirement for such an informed consent.

Availability of genetic education and counseling. Current oversight does not specifically address whether genetic education and qualified counseling should be made available for all genetic tests. Genetic test results may be difficult to interpret and present in an understandable manner, raise important questions related to disclosure of test results to family members, and sometimes involve difficult treatment decisions. Because of these intricate issues, some have suggested that those who offer genetic tests should be encouraged or required to make genetic education or counseling available to individuals.

Post Market Data Collection. Many tests are put into clinical use before full information about their validity and utility has been obtained. Virtually everyone agrees that it is critical that data continue to be collected after such tests reach the market. Yet, no comprehensive method for data collection now exists. Many observers believe that ongoing mechanisms to collect data need to be put in place. A number of potential mechanisms to accomplish data collection are outlined in the discussion of Issue 3.

Information Disclosure and Marketing. Data disclosure. There is no current requirement that data about a test's analytical validity, clinical validity, or clinical utility, or lack thereof, be disclosed to health care providers or patients. Some observers believe that laboratories should be encouraged or required to make such information available and to ensure that the data is accurate and complete.

Promotion and marketing. Although the Federal Government requires that promotion and marketing of products and services (which sometimes takes the form of educational materials), be truthful and not deceptive, Federal agencies have taken little enforcement action against false or deceptive claims involving genetic tests. While some believe that false or deceptive claims are not currently a problem, others have suggested that promoting or advertising genetic tests, especially to patients/consumers, should be prohibited. Another suggestion is that promotion and advertising of genetic tests may be permitted, but emphasis should be placed on taking action against false or deceptive claims.

Possible Directions and Implications of Further Oversight

SACGT welcomes public input on whether further oversight measures are needed, and if so, how additional oversight might be addressed. If, from its deliberations and public consultation, SACGT determines that further oversight is needed, possible directions that could be taken include the strengthening and expansion of current CLIA or FDA regulations or voluntary standards and guidelines, the formation of interagency review boards, or the formation of a consortium of representatives from government, industry, and professional organizations.

In assessing whether further oversight is warranted, it is important to consider the implications that further oversight may have on the current system and all parties involved. Among other issues, any new proposals to provide additional oversight of this rapidly growing technology should take into consideration the trade-offs involved as well as the evolving nature of genetic research and technology.

Trade-offs. In considering whether additional oversight is warranted, the risks, benefits, and economic implications (both short and long term) associated with oversight must be considered. More stringent oversight, for example, may ensure greater certainty that a test has been shown to be accurate and useful, that patient safeguards are in place, and that health care dollars are not spent on tests of little value. On the other hand, additional oversight may delay the introduction of new tests (or improvements to existing tests) into clinical practice and increase the costs of test development, which may in turn discourage the development of new tests. The provision of any type of additional oversight is likely to have resource implications that may affect the costs of genetic tests and public access to them.

Evolving nature of genetic research and technology. New information on genetics and human diseases and conditions are published on an almost daily basis, and new technologies are emerging rapidly. Due to this pace of discovery and technological change, the assessment of the analytic validity, clinical validity, and clinical utility of a genetic test is likely to change in light of new findings. For example, data from population studies or the identification of additional genes or mutations will change and, in most cases, improve knowledge about a specific genetic disease or condition in a specific population. Observers have suggested that laboratories will need to be able to access and assimilate new information continuously in order to update the clinical validity and utility of their tests and that oversight methods will need to monitor, guide, and sample the flow of new information rather than take snapshots of what is known at a given moment in time. According to this view, health care providers and oversight groups will need to recognize and adapt their methods to the conditions created by continuous knowledge generation.

Questions Related to Issue 4:

4.1 Information about the accuracy, validity, and usefulness of genetic tests is being gathered through research studies. At what point should an experimental test be considered ready for general use? Is it important for a test to be immediately available even if its validity has not been fully established? Might the point at which a test is considered ready for general use be different for different types of genetic tests? Since data on the validity of tests for rare diseases are especially difficult to collect, should special considerations be given to rare disease testing to ensure access to these tests and, if so, what should the considerations be?

4.2 What level of confidence should individuals have, or might they want to have, in the information they receive about a genetic test? Would the level of confidence change depending on the type of disease (e.g., cancer versus gum disease) or the type of testing being done (e.g., predictive versus diagnostic testing)?

4.3 Is making information available to the consumer about a genetic test, such as information about its accuracy, predictive power, and available therapy, a sufficient form of oversight?

4.4 Would one form of oversight be to review or inspect promotional material directed to consumers (such as commercials, billboards, or Internet marketing) and health care providers (such as package inserts) to make sure that claims made are accurate? Is this sufficient oversight?

4.5 Should genetic education/counseling provided by an individual with special training always be available when genetic tests are offered? Should this apply for every genetic test or only for some kinds of genetic tests?

4.6 Certain trade-offs may be necessary in order to ensure that genetic tests are safe and effective. Are consumers willing to pay for the cost of additional oversight of genetic tests (in the form of higher prices, health insurance premiums, or taxes)? Are consumers willing to wait for the effectiveness of genetic tests to be

demonstrated before having access to a new genetic test?

Issue 5: What Is an Appropriate Level of Oversight for Each Category of Genetic Test?

Different levels of oversight may be appropriate for tests that present different or unknown levels of risk, have different purposes, and are at different stages of development. Until SACGT has had an opportunity to consider public comment, it is premature for SACGT to formulate or offer any views on whether additional oversight is needed, and if so, what form it should take. SACGT welcomes public comment on this subject.

Question Related to Issue 5:

5.1 How can oversight be made flexible enough to incorporate and respond to rapid advances in knowledge of genetics?

Issue 6: Are There Other Issues in Genetic Testing of Concern to the Public?

6.1 Is the public willing to share, for research purposes, genetic test results and individually identifiable information from their medical records in order to increase understanding of genetic tests? For example, tumors removed during surgery are often stored and used by researchers to increase understanding of cancer. Should samples from individuals with genetic disorders or conditions be managed in a manner similar to cancer specimens? Or does the public feel that this could cause confidentiality problems? If so, are there special informed consent procedures that should be used?

6.2 Research studies involving human subjects or identifiable human tissue samples that are funded by the Government or are subject to regulations of the FDA must be reviewed by an Institutional Review Board (IRB). (An IRB is a specially constituted review body established or designated by an organization to protect the welfare of human subjects recruited to participate in biomedical or behavioral research.) Some studies involving genetic tests do not fall into either of these categories and, therefore, are not required to be reviewed by an IRB. For example, a private laboratory developing a test for its own use would not be required to obtain IRB review. Should all experimental genetic tests be required to be reviewed by an IRB?

6.3 When some medical tests (e.g., routine blood counts) are performed, patients do not sign a written consent to have the test performed. Should health care providers be required to obtain written informed consent before proceeding with a genetic test? Should this apply to all tests or only certain tests? Should testing laboratories be required to obtain an assurance that informed consent has been obtained before providing test services?

6.4 Does the public support the option of being able to obtain a genetic test directly from a laboratory without having a referral from a health care provider? Why or why not?

6.5 Should any additional questions or issues be considered regarding genetic testing?

Part VI. Conclusion

SACGT was chartered to advise the DHHS on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. At SACGT's first meeting in June 1999, the Assistant Secretary for Health and Surgeon General asked the Committee to assess, in consultation with the public, whether current programs for assuring the accuracy and effectiveness of genetic tests are satisfactory or whether other measures are needed. This assessment requires consideration of the potential benefits and risks (including socioeconomic, psychological, and medical harms) to individuals, families, and society, and, if necessary, the development of a method to categorize genetic tests according to these benefits and risks. Considering the benefits and risks of each genetic test is critical in determining its appropriate use in clinical and public health practice.

The question of whether more oversight of genetic tests is needed has significant medical, social, ethical, legal, economic, and public policy implications. The issues may affect those who undergo genetic testing, those who provide tests in health care practice, and those who work or invest in the development of such tests. SACGT is endeavoring to encourage broad public participation in the consideration of the issues. Such public involvement in this process will enhance SACGT's analysis of the issues and the advice it provides to DHHS. SACGT looks forward to receiving public comments and to being informed by the public's perspectives on oversight of genetic testing.

Comment Period and Submission of Comments

In order to be considered by SACGT, public comments need to be received by January 31, 2000. Comments can be submitted by mail or facsimile. Members of the public with Internet access can submit comments through email or participate in the SACGT website consultation.

Secretary's Advisory Committee on Genetic Testing, National Institutes of Health, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892, 301–496–9839 (facsimile), sc112c@nih.gov (email), http://www4.od.nih.gov/oba/sacgt.htm (website).

Dated: November 24, 1999.

Sarah Carr,

Executive Secretary, SACGT.

[FR Doc. 99–31226 Filed 11–30–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]

Food Labeling: Health Claims and Label Statements for Dietary Supplements; Strategy for Implementation of *Pearson* Court Decision

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is informing the public of its strategy to implement a recent court decision in *Pearson* v. *Shalala* (*Pearson*). The agency is taking this action to ensure that interested persons are aware of the steps it plans to follow to carry out the decision. FDA is also announcing how it plans to process petitions for dietary supplement health claims during the interim implementation period.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HFS–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–6733.

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 1999, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999). In *Pearson*, the plaintiffs had challenged FDA's health claim regulations for dietary supplements and FDA's decision not to authorize health claims for four specific nutrient-disease relationships: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the claim that 0.8 mg of folic acid in dietary supplement form is more effective in

reducing the risk of neural tube defects than a lower amount in conventional food form.

The court held in *Pearson* that, on the administrative record compiled in the challenged rulemakings, the first amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that no disclaimer would eliminate the potential deception. Accordingly, the court invalidated the regulations prohibiting the four health claims listed above and directed the agency to reconsider whether to authorize the claims. The court further held that the Administrative Procedure Act requires FDA to clarify the ''significant scientific agreement'' standard for authorizing health claims, either by issuing a regulatory definition of significant scientific agreement or by defining it on a case-by-case basis.

The Government filed a petition for rehearing en banc (reconsideration by the full court of appeals). The U.S. Court of Appeals for the D.C. Circuit denied the petition for rehearing on April 2, 1999.

After the petition for rehearing was denied, FDA's Center for Food Safety and Applied Nutrition updated its 1999 Program Priorities document to state that developing a strategy to implement the *Pearson* decision would be a high priority for calendar year 1999.

II. Components of the Implementation Strategy

The components of the strategy are to: (1) Update the scientific evidence on the four claims at issue in *Pearson*; (2) issue guidance clarifying the ''significant scientific agreement'' standard; (3) hold a public meeting to solicit input on changes to FDA's general health claim regulations for dietary supplements that may be warranted in light of the *Pearson* decision; (4) conduct a rulemaking to reconsider the general health claims regulations for dietary supplements in light of the *Pearson* decision; and (5) conduct rulemakings on the four *Pearson* health claims. Because of FDA's obligation to implement the court decision promptly, the agency intends to work on the components of the strategy concurrently whenever possible. As noted above, implementation of *Pearson* is one of the items on the Center for Food Safety and Applied Nutrition's (CFSAN's) 1999 Program Priorities list, which constitutes CFSAN's priority work plan for the year, and CFSAN will include *Pearson* implementation as one of its high priority items for fiscal year 2000.

III. Updating the Scientific Evidence on the Four *Pearson* Claims

As a first step toward re-examining the evidence supporting the four claims at issue in *Pearson*, FDA published a notice in the **Federal Register** of September 8, 1999 (64 FR 48841), requesting that interested persons submit any available scientific data concerning the substance-disease relationships that are the subject of the four claims. In that notice, FDA requested that written comments be submitted to the agency by November 22, 1999. In addition, CFSAN entered into a contract with a nongovernment firm to conduct a literature review for the four claims to identify relevant scientific information that became available after the agency's initial 1990 to 1993 review of these claims. This data gathering and literature review is needed for FDA to determine the current nature of the scientific evidence relating to the four claims and is an essential step in re-considering the claims. The contracted literature review for the four claims is due to the agency this fall.

In response to a request from several of the *Pearson* plaintiffs, the agency has agreed to extend or reopen the comment period on the September 8, 1999, notice for 75 days after the agency issues its guidance on the significant scientific agreement standard (described below). The agency will give careful consideration to any additional data it receives during the second 75-day comment period.

IV. Guidance on the Significant Scientific Agreement Standard

The agency is preparing to issue guidance clarifying the meaning of the significant scientific agreement standard. FDA expects to issue such guidance before the end of calendar year 1999.

V. Rulemakings and Public Meeting

FDA is planning to initiate several rulemakings in response to *Pearson*. First, the court's decision requires the agency to reconsider whether to authorize the four claims that were at issue in the case. The agency intends to conduct four rulemakings, one for each claim. In each instance, the agency will first evaluate whether the evidence supporting the claim meets the significant scientific agreement standard; if not, the agency will then proceed to consider whether there is any qualifying language that could render the claim nonmisleading. If FDA believes that the answer to either question is yes, the agency will propose to authorize the claim; otherwise, the agency will propose not to authorize it.

Second, FDA intends to initiate rulemaking to consider changes to its general health claims regulations for dietary supplements that may be warranted in light of *Pearson*. A public meeting during the first quarter of calendar year 2000 will precede this rulemaking. FDA will publish a **Federal Register** notice announcing the date and location of the public meeting. In that notice, FDA will provide a list of topics or questions to focus public input on how the agency's approach to the regulation of health claims for dietary supplements could be changed in light of *Pearson*.

Written comments received in response to the notice, and participation at the public meeting, will assist the agency in the rulemaking to reconsider its general health claims regulations for dietary supplements.

VI. Interim Process for Petitions

Until the rulemaking to reconsider the general health claims regulations for dietary supplements is complete, FDA intends to deny, without prejudice, any petition for a dietary supplement health claim that does not meet the significant scientific agreement standard in 21 CFR § 101.14(c). Once the rulemaking is complete, the agency will, on its own initiative, reconsider any petitions denied during the interim period. Petitions will be reconsidered in the order they were originally received. This process does not apply to the four claims at issue in *Pearson*, which will be handled as previously described.

FDA takes seriously its obligation to implement *Pearson*. The agency believes that the fastest and most efficient way to fully implement the decision is to conduct a rulemaking to reconsider the general procedures and standards governing health claims for dietary supplements before ruling on individual petitions that do not meet the current regulatory standard for health claim authorization. If the agency attempted to proceed case-by-case without establishing a regulatory framework applicable to all petitions, confusion among regulatees, inconsistent agency action, and waste of private and agency resources could result.

This practice is consistent with the practice FDA adopted immediately following the passage of the Nutrition Labeling and Education Act of 1990, which provided explicit statutory authority for health claims on conventional foods and dietary supplements. In a **Federal Register** notice

published March 14, 1991 (56 FR 10906), the agency announced that it would deny, without prejudice, any health claim petition that was submitted before issuance of final regulations concerning the submission and content of such petitions.

Dated: November 23, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–31122 Filed 11–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5013]

Draft Guidance for Industry on Labeling of Over-the-Counter Human Drug Products Using a Column Format; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Labeling of Over-the-Counter Human Drug Products Using a Column Format.'' This draft guidance is intended to provide information on the use of columns as part of the standardized format and standardized content requirements for the labeling of over-the-counter (OTC) drug and drug-cosmetic products.

DATES: Submit written comments on the draft guidance for industry by January 31, 2000.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance entitled ''Labeling of Over-the-Counter Human Drug Products Using a Column Format'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow or Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Labeling of Over-the-Counter Human Drug Products Using Column Format.'' This is the first of a series of guidances the agency plans to issue to help manufacturers, packers, and distributors implement the recently issued final rule establishing standardized format and content requirements for the labeling of all OTC drug products.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule establishing a standardized format and standardized content requirements for the labeling of all OTC drug products including drug-cosmetic products (products that consist of both drug and cosmetic components or a single component marketed for both drug and cosmetic uses). This rule is intended to standardize labeling for all OTC drug products so consumers can easily read and understand OTC drug product labeling and use these products safely and effectively.

The regulatory requirements for this new standardized labeling require manufacturers to present OTC drug and drug-cosmetic labeling information in a certain prescribed order and format. This new format will require the revision of all existing labeling.

The final rule did not include examples where Drug Facts information (presented in a defined box or similar enclosure) appeared in column format on the same side of the outside container of a retail package, or side-by-side on the immediate container label. This draft guidance is intended to explain how Drug Facts information can be presented using a column format that is consistent with the final rule. This draft guidance includes examples of such labeling in columns.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). This draft guidance represents the agency's current thinking on using a column format in the labeling of OTC human drug products (21 CFR part 201). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

Interested persons may, on or before January 31, 2000, submit written comments on the draft guidance to the Dockets Management Branch (address above). 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 draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–31124 Filed 11–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–285]

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: Request for Retirement Benefit Information.

Form No.: HCFA–R–285 (OMB# 0938–0769).

Use: This form will be used to obtain information regarding whether a beneficiary is receiving retirement payments based on State or local government employment, how long the claimant worked for the State or local government employer, and whether the former employer or pension plan subsidizes the beneficiary's Part A premium. The purpose in collecting this information is to determine and provide those eligible beneficiaries, with free Part A Medicare coverage.

Frequency: On occasion.

Affected Public: State, Local or Tribal Government, and Individuals or Households.

Number of Respondents: 1,500.

Total Annual Responses: 1,500.

Total Annual Hours: 375.

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 10, 1999.

John Parmigiani,

Manager, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–31200 Filed 11–30–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4490–N–02]

Notice of Regional Meeting on Draft HUD Tribal Consultation Policy

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Executive Order 13084 directs Federal agencies to ''have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' In accordance with the Executive Order, HUD is in the process of developing tribal consultation policy. On November 2, 1999, HUD published a notice in the **Federal Register** announcing three regional meetings sponsored by HUD for the purposes of receiving tribal input on the appropriate scope and content of HUD's tribal consultation policy. This notice announces a future meeting being sponsored by HUD for this purpose. All comments received at the meetings will be considered in the development of HUD's final tribal consultation policy. Before finalizing consultation policy, HUD will publish the draft policy in the **Federal Register** for additional public comment.

DATES: The regional meeting will be held on December 6, 1999. The meeting will begin at approximately 1:30 pm and end at approximately 4:30 pm (local time).

ADDRESSES: The regional meeting will be held at the Sacramento Convention Center, 1030 15th Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 14, 1998, President Clinton signed Executive Order 13084 (entitled ''Consultation and Coordination with Indian Tribal Governments''). The Executive Order directs Federal agencies to ''have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' In accordance with the Executive Order, HUD is in the process of developing a tribal consultation policy.

HUD is sponsoring a series of regional meetings for the purposes of receiving tribal input on the appropriate scope and content of HUD's consultation policy. Six meetings have already been held.

The first meeting was held on September 28, 1999 in Pocatello, Idaho in conjunction with the meeting of the Affiliated Tribes of Northwest Indians. The second meeting was held on October 19, 1999 in Anchorage, Alaska in conjunction with the meeting of the Alaska Federation of Natives. The third meeting was held on October 27, 1999 in Oneida, New York in conjunction with the meeting of the United South and Eastern Tribes.

On November 2, 1999 (64 FR 59196), HUD published a notice in the **Federal Register** announcing three additional regional meetings. The fourth meeting was held on November 9, 1999 in Oklahoma City, Oklahoma. The fifth meeting was held on November 16, 1999 in Phoenix, Arizona. The sixth meeting was held on November 17, 1999 in Denver, Colorado.

This notice announces a seventh regional consultation meeting. The meeting will be held at the place and time identified in the **DATES AND ADDRESSES** section of this notice.

All comments received at the regional consultation meetings will be considered in the development of HUD's final tribal consultation policy. Before finalizing a consultation policy, HUD will publish the draft policy in the **Federal Register** for additional public comment.

Interested persons who are unable to attend one of the regional consultation meetings are encouraged to submit written comments to the Office of Native American Programs, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: November 22, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–31114 Filed 11–30–99; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office for Equal Opportunity, Office of the Secretary, DOI.

ACTION: Notice.

SUMMARY: In compliance with the section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office for Equal Opportunity announces the proposed public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by January 31, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office for Equal Opportunity, Attn: Michael Dole, Department of the Interior, 1849 C St N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Michael Dole, (202) 208–5183. The collection instrument is also available on the internet at: http://www.doi.gov/diversity/doc/di__1935.pdf.

SUPPLEMENTARY INFORMATION: DOI is below parity with the relevant Civilian Labor Force representation for many of our mission critical occupations, and has developed a 5 year Strategic Plan to improve representation and be more responsive to the changing demographics of the country. The only way to determine if there are barriers in the recruitment and selection process is to track the groups that apply and the groups at each stage of the selection process. There is no other objective way to make these determinations, and no source of this information other than directly from applicants.

The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from this form is entered into the Personnel File of the individual selected, and the records of those not selected are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with the new OMB requirements, and are identical to those which will be used in the year 2000 census. This form is a simplification and update of a similar applicant background survey used by DOI for many years. The form received a six month emergency approval from OMB while we solicited comment in the **Federal Register**. We are currently requesting public comment on a three year extension of the OMB approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected: and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Title, Associated Form, and OMB Number: Applicant Background Survey, DI form 1935; OMB Control No.: 1091–0001.

Needs and Uses: This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

Affected Public: Applicants for DOI jobs.

Annual Burden Hours: 9,960.

Number of Respondents: 120,000.

Responses Per Respondent: 1.

Average Burden Per Response: No more than 5 minutes.

Frequency: 1 per application.

Dated: November 22, 1999.

Michael Dole,

Affirmative Employment Program Administrator, Department of the Interior.

[FR Doc. 99–31138 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
Western Geophysical (Anadarko)	Exploration	October 25, 1999.
Western Geophysical (ARCO)	Exploration	October 25, 1999.
ARCO Alaska, Inc. (Meltwater North)	Exploration	October 27, 1999.
ARCO Alaska, Inc. (Spark #1)	Exploration	October 27, 1999.
ARCO Alaska, Inc. (Rendezvous A&B)	Exploration	October 28, 1999.
ARCO Alaska, Inc. (Lookout A)	Exploration	October 28, 1999.
ARCO Alaska, Inc. (Moose's Tooth A&C)	Exploration	October 28, 1999.
ARCO Alaska, Inc. (Clover A&B)	Exploration	October 28, 1999.
ARCO Alaska, Inc. (Cairn)	Exploration	October 28, 1999.
Western Geophysical (BP Exploration)	Exploration	October 29, 1999.
Kuukpik/Fairweather Geophysical	Exploration	October 29, 1999.
BP Exploration (West Gwydyr Bay)	Exploration	November 9, 1999.
ARCO Alaska, Inc. (NW Eleen)	Exploration	November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (64 FR 4328; January 28, 1999).''

Dated: November 17, 1999.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 99–31135 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Oneida Nation of New York Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the

Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983). I certify that the Oneida Nation of New York Liquor Ordinance was duly adopted and certified by Resolution No. 97-06 of the Oneida Nation of New York Tribal Council on August 2, 1999. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Oneida Nation of New York, under the jurisdiction of the Oneida Nation of New York, and is in conformity with the laws of the State of New York.

DATES: This ordinance is effective as of December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, Division of Self Determination and Tribal Government Assistance, 1849 C Street, NW, MS 4631 MIB, Washington, DC 20240–4401; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Oneida Nation of New York Liquor Licensing Ordinance is to read as follows:

Oneida Indian Nation

Alcoholic Beverage Control Ordinance

Ordinance No.: 0–99–06

Pursuant to the authority vested in the Oneida Indian Nation (the ''Nation'') by virtue of its sovereign and inherent powers of self-government, the Nation hereby establishes standards for the sale, introduction and possession of alcoholic beverages on the Nation's reservation and within all Indian country under the jurisdiction of the Nation.

Article I—Introduction, Sale and Possession

The introduction, sale or possession of alcoholic beverages shall be lawful on the Nation's reservation and within all Indian country under the jurisdiction of the Nation, provided that such introduction, sale or possession is in compliance with the laws, regulations and ordinances of the Nation, which, at all times, shall conform with or exceed the laws, regulations and ordinances of the State of New York. Without limiting the generality of the foregoing in any way, the possession of alcohol by, or the sale or distribution of alcohol to, anyone under the age of twenty-one (21) is prohibited under all circumstances.

Article II—License Required

No person shall manufacture for sale or sell at wholesale or retail any alcoholic beverages on the Nation's reservation or within any Indian country under the jurisdiction of the Nation unless such person has been duly licensed by the Oneida Nation Alcoholic Beverage Control Commission (the ''Commission''). The Nation shall, through its representative(s), appoint the members of the Commission and shall have the exclusive power to (a) remove or replace any member of the Commission, and (b) increase or reduce the size of the Commission.

Article III—License Application

No alcoholic beverage license shall be issued under this Ordinance to any person not possessing the qualifications and satisfying the conditions set forth herein. Any person or persons desiring an alcoholic beverage license shall file a sworn application for license with the Commission. The application shall contain a full and complete showing of the following:

A. Payment of a fee of $25.00 for the sale of alcoholic beverages for off-premises consumption and payment of a fee of $50.00 for the sale of alcoholic beverages for on-premises consumption.

B. Proof satisfactory to the Commission that the applicant is not a member of the Commission and that he or she satisfies each of the licensing requirements established by the Commission.

Article IV—License; Terms and Conditions

A. Alcoholic beverage licenses issued by the Commission shall be for a term of one (1) year, commencing on the date of issuance.

B. No transfer, conveyance or assignment of an alcoholic beverage license issued by the Commission may occur without the prior written consent of the Commission.

Article V—Issuance of Alcoholic Beverage Licenses

A. An alcoholic beverage license shall be issued to the applicant by the Secretary/Treasurer of the Commission after such applicant's application has been approved by the Commission.

B. Fees for an alcoholic beverage license issued pursuant to this Ordinance shall be paid to the Secretary/Treasurer of the Commission. Such fees shall be deposited by the Commission in the general fund of the Nation.

Article VI—Criminal Jurisdiction

This Ordinance does not in any way confer upon the Nation criminal jurisdiction over non-Indians.

Article VII—Interpretation

A. The Oneida Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.

B. Nothing in this Ordinance shall constitute, or be construed as, the Nation's consent to the extension of jurisdiction by the State of New York or by any municipality over matters coming within the purview of this Ordinance.

C. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

Article VIII—Effective Date

This Ordinance shall be effective as a matter of tribal law as of the date of its adoption by the Tribal Council, and effective as a matter of Federal law on such date as the Assistant Secretary—Indian Affairs certifies and publishes the same in the **Federal Register**.

Dated: November 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–31184 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1020–00–241A]

Call for Nominations for Resource Advisory Council

AGRENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacancy on the Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC). The RAC provides advice and recommendations to the BLM on land use planning and management of the public lands within the geographic area, which includes southern Nevada. Public nominations will be accepted for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues relating to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, the interests represented by the individuals appointed to the RACs must be balanced and representative of the various issued concerned with the management of the public lands. The current vacancy is within Category One (of three), which includes:

Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

Individuals may nominate themselves or others. Nominees must be residents of the State of Nevada, in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, experience, and their knowledge of the geographical are of the

RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simulaneous with this notice, the BLM Nevada State Office will issue a press release providing additional information for submitting nominations. Nominations for RAC membership should be sent to the BLM office as follows: Jo Simpson, Nevada State Office, 1340 Financial Boulevard, (Postal ZIP 89502–7147) P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6786.

Dated: November 16, 1999.

Robert V. Abbey,

Nevada State Director.

[FR Doc. 99–31134 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–99–1220–00]

Central Montana Advisory Council Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Council will meet December 7 and 8, 1999, at the Yogo Inn in Lewistown, Montana. These meetings are open to the public.

The December 7 session will begin at 1 p.m. with a public comment period lasting until 1:30 p.m. The council will use the remainder of the meeting to work toward finalizing a report concerning future options for public land features in the Missouri River Breaks for the Secretary of the Interior. The meeting will adjourn around 4 p.m.

The December 8 meeting will begin at 8 a.m. and will adjourn at 3 p.m. The council will use this meeting to finalize their report to the Secretary. The meeting is open to the public however, there is no public comment period scheduled.

DATES: December 7 and 8, 1999.

LOCATION: Yogo Inn, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Field Manager, Malta Field Office, Bureau of Land Management, 501 South 2nd Street East, Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The meetings are open to the public and there will be a public comment period on December 7, as detailed above.

Dated: November 15, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–31133 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–61332]

Public Land Order No. 7417; Withdrawal of Public Land for the Rough Canyon Area of Critical Environmental Concern; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,373 acres of public land from surface entry and mining for 50 years for the Bureau of Land Management to protect the sensitive plants and animals species, outstanding scenic values, and cultural resource values in the Rough Canyon Area of Critical Environmental Concern. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the Rough Canyon Area of Critical Environmental Concern:

Sixth Principal Meridian

T. 12 S., R. 100 W., Protraction Diagram No. 13, Accepted January 22, 1965.
Sec. 29, that portion of the S½SW¼ lying southerly of Bureau of Land Management Road No. 7150, from the west boundary of sec. 29 easterly to the westerly side of the crossing of the streambed of Rough Canyon, thence continuing easterly along a line parallel to and 10 feet northerly of the mean high water line of the Rough Canyon watercourse to an intersection with the east boundary of the S½SW¼ of sec. 29;
Sec. 30, that portion lying southerly and westerly of a line parallel to and 200 feet southerly of the centerline of Bureau of Land Management Road No. 7150, from the east boundary of the section to a point 1500 feet east of the west boundary of said sec. 30, thence north along a line parallel to the west boundary of said section to the intersection with the north boundary thereof, thence westerly along said northern boundary of the northwest corner of sec. 30;
Sec. 31;
Sec. 32, W½.

T. 12 S., R, 101 W.,
Sec. 25, lots 2 to 4, inclusive, SE¼NW¼, and SW¼;
Sec. 26, N½SE¼;
Sec. 35, lot 14;
Sec. 36, lots 1 to 6, inclusive, NW¼, and N½SW¼.

T. 13 S., R.100 W. Protraction Diagram No. 13, accepted January 22, 1965.
Sec. 5, NW¼;
Sec. 6, N½NE¼ and SE¼NE¼.

The area described contains approximately 2,737 acres in Mesa County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994)), the Secretary determines that the withdrawal shall be extended.

Dated: November 17, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–31201 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1430–01; NMNM 42909 et al.]

Public Land Order No. 7416; Revocation of Executive Orders Dated June 24, 1914, April 28, 1917, February 11, 1918, July 10, 1919, May 25, 1921, and February 7, 1930, and Partial Revocation of Executive Order Dated April 17, 1926; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes 6 Executive orders in their entirety and partially revokes an Executive order insofar as they affect 6,426 acres of lands withdrawn for Public Water Reserve Nos. 21, 50, 53, 65, 77, 107, and 129. These lands do not meet the criteria for a public water reserve. This action will open 4,651 acres to surface entry and nonmetalliferous mining. The remaining 1,775 acres are either withdrawn for other purposes, held in trust for the Jemez Pueblo, or no longer in Federal ownership. The Executive orders did not close any of the lands to metalliferous mining or to mineral leasing.

EFFECTIVE DATE: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Orders dated June 24, 1914, April 28, 1917, February 11, 1918, July 10, 1919, May 25, 1921, and February 7, 1930, which established Public Water Reserve Nos. 21, 50, 53, 65, 77, and 129 respectively, are hereby revoked in their entirety as they affect the following described lands:

New Mexico Principal Meridian

Public Water Reserve No. 21 (NMNM 42909)

T. 14 N., R. 10 W.,
Sec. 12, N½ and SE¼.

Public Water Reserve No. 65 (NMNM 42910)

T. 25 N., R. 10 E.,
Sec. 25, NW¼SE¼ and S½SE¼.
T. 3 S., R.13 W.,
Sec. 31, lot 3.
T. 15 S., R. 4 E.,
Sec. 3, SE¼NE¼ and NE¼SE¼.
T. 18 S., R. 19 W.,
Sec. 5, SW¼;
Sec. 5, SW¼;
Sec. 6, lots 3, 4, and 5, SE¼NW¼ and N½ SE¼.

Public Water Reserve No. 129 (NMNM 42915)

T. 18 N., R. 1 E.,
Sec. 5, E½NW¼ and NE¼SW¼;
Sec. 17, lots 3 and 4.

Public Water Reserve No. 50 (NMNM 42940)

T. 14 S., R. 17 W.,
Sec. 25, SW¼NW¼, N½SW¼, SE¼ SW¼, and SW¼SE¼.

Public Water Reserve No. 53 (NMNM 42941)

T. 18 S., R. 17 W.,
Sec. 28, SE¼NE¼.
T. 23 S., R. 30 E.,
Sec. 10, SW¼NW¼;
Sec. 28, NW¼NE¼.

Public Water Reserve No. 77 (NMNM 42942)

T. 9 S., R. 13 E.,
Sec. 5, lot 8;
Sec. 6, lot 11.

The areas described aggregate approximately 1,634 acres.

2. The Executive Order dated April 17, 1926, which created Public Water Reserve No. 107, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

Public Water Reserve No. 107

(NMNM 42913)

T. 23 N., R. 1 W.,
Sec. 32, SE¼SE¼.

(NMNM 42914)

T. 31 N., R. 11 E.,
Sec. 6, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

(NMNM 42916)

T. 30 N., 15 W.,
Sec. 8, E½SW¼ and SW¼SE¼;
Sec. 17, N½NE¼, SE¼NE¼, and NE¼SE¼.

(NMNM 42920)

T. 20 N., R. 10 W.,
Sec. 30, NE¼SW¼.
T. 17 S., R. 21 W.,
Sec. 18, lot 2.

(NMNM 42944)

T. 25 S., R. 10 E.,
Sec. 24, NE¼NE¼.
T. 26 S., R. 10 E.,
Sec. 24, SW¼NE¼.
T. 26 S., R. 11 E.,
Sec. 26, NE¼NE¼.

(NMNM 42947)

T. 17 S., R. 3 E.,
Sec. 11, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 12, SW¼NW¼ and W½SW¼.

(NMNM 42948)

T. 15 S., R. 4 W.,
Sec. 21, N½NE¼SE¼SW¼, W½SE¼SW¼, and S½SE¼SE¼SW¼;
Sec. 28, SE¼NW¼.

(NMNM 42949)

T. 20 S., R. 29E.,
Sec. 5, NE¼SE¼;
Sec. 31, SE¼SW¼.

(NMNM 42950)

T. 20 S., R. 34 E.,
Sec. 8, NE¼SW¼.

(NMNM 42951)

T. 20 S., R. 33 E.,
Sec. 24, NE¼NW¼.

(NMNM 42952)

T. 14 S., R. 4 E.,
Sec. 20, S½NE¼.
T. 14 S., R. 22 E.,
Sec. 20, NW¼SW¼.

(NMNM 42953)

T. 16 S., R. 4 E.,
Sec. 17, SW¼SW¼.

(NMNM 42954)

T. 16 S., R. 1 W.,
Sec. 23, SE¼NE¼.
T. 17 S., R. 1 W.,
Sec. 24, SW¼NW¼.
T. 18 S., R. 1 W.,
Sec. 24, NW¼NW¼.
T. 15 S., R. 1 E.,
Sec. 26, SE¼NE¼.
T. 17 S., R. 1 E.,
Sec. 18, SW¼NE¼.
T. 9 S., R. 4 E.,
Sec. 26, SW¼NE¼.
T. 11 S., R. 4 E.,
Sec. 14, SW¼SE¼.
T. 21 S., R. 4 E.,
Sec. 33, NE¼SW¼.
T. 21 S., R. 4 W.,
Sec. 30, NW¼NE¼.
T. 10 S., R. 5 E.,
Sec. 17, SW¼SE¼.
T. 21 S., R. 6 W.,
Sec. 1, lot 1.
T. 8 S., R. 8 E.,
Sec. 11, NW¼NW¼.
T. 10 S., R. 8 E.,
Sec. 31, NW¼SE¼.
T. 18 S., R. 8 E.,
Sec. 10, SE¼NE¼;
Sec. 25, NW¼SE¼.
T. 22 S., R. 8 E.,
Sec. 8, SE¼SE¼;
Sec. 17, SW¼SE¼;
Sec. 30, lot 4.
T. 25 S., R. 8 W.,
Sec. 14, lot 1;
Sec. 23, NE¼NE¼ and NE¼SE¼.
T. 6 S., R. 9 E.,
Sec. 19, NE¼SE¼.
T. 7 S., R. 9 E.,
Sec. 19, lot 4.
T. 8 S., R. 9 E.,
Sec. 15, lot 15.
T. 10 S., R. 9 E.,
Sec. 30, NW¼SE¼ and NE¼SW¼.
T. 12 S., R. 9 E.,
Sec. 35, NW¼SE¼.
T. 19 S., R. 9 E.,
Sec. 17, SE¼SW¼.
T. 21 S., R. 9 W.,
Sec. 17, SW¼SW¼.
T. 28 S., R. 9 W.,
Sec. 17, SE¼SE¼.
T. 15 S., R. 10 E.,
Sec. 5, SE¼SE¼.
T. 21 S., R. 10 E.,
Sec. 33, lot 2.
T. 24 S., R. 10 E.,
Sec. 34, SE¼NW¼;
T. 25 S., R. 11 W.,
Sec. 7, NW¼SW¼.
T. 26 S., R. 11 W.,
Sec. 31, NE¼SW¼.
T. 27 S., R. 11 W.,
Sec. 1, NW¼SW¼.
T. 28 S., R. 11 W.,
Sec. 11, NE¼SE¼;
T. 23 S., R. 12 W.,
Sec. 9, SW¼SW¼.
T. 28 S., R. 12 W.,
Sec. 12, NE¼SW¼;
T. 25 S., R. 13 W.,
Sec. 26, SW¼NW¼.
T. 26 S., R. 13 W.,
Sec. 18, SE¼NE¼.
T. 28 S., R. 13 W.,

Sec. 26, SE¼SE¼.
T. 25 S., R. 14 E.,
Sec. 19, lot 2.
T. 26 S., R. 14 E.,
Sec. 30, lot 4.
T. 30 S., R. 14 W.,
Sec. 5, NE¼SW¼.
T. 24 S., R. 15 W.,
Sec. 5, lot 1 and SE¼NE¼;
Sec. 23, NE¼NW¼.
T. 26 S., R. 18 W.,
Sec. 20, SW¼NW¼.
T. 25 S., R. 19 W.,
Sec. 19, SE¼NE¼.
T. 26 S., R. 19 W.,
Sec. 35, NE¼SW¼.
T. 27 S., R. 19 W.,
Sec. 25, NW¼NE¼.
T. 28 S., R. 19 W.,
Sec. 20, SE¼NE¼;
Sec. 25, NW¼SE¼.
T. 27 S., R. 20 W.,
Sec. 33, NE¼SE¼.
T. 29 S., R. 20 W.,
Sec. 1, SE¼SW¼;
Sec. 27, NE¼SW¼.
T. 21 S., R. 22 E.,
Sec. 22, NE¼SW¼.
T. 21 S., R. 24 E.,
Sec. 19, lot 12.
T. 22 S., R. 24 E.,
Sec. 21, SE¼NW¼.
T. 15 S., R. 25 E.,
Sec. 21, SE¼NE¼.

(NMNM 42955)

T. 17 S., R. 21 W.,
Sec. 33, lot 3 and NE¼SE¼;
Sec. 34, SW¼NE¼.

(NMNM 42956)

T. 26 S., R. 14 W.,
Sec. 27, SW¼NW¼ and NW¼SW¼;
Sec. 28, SE¼NE¼ and NE¼SE¼.
T. 26 S., R. 15 W.,
Sec. 15, SW¼SW¼;
Sec. 34, SW¼SW¼.

(NMNM 42957)

T. 20 S., R. 4 E.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼.
T. 23 S., R. 26 E.,
Sec. 8, SE¼SW¼.

(NMNM 42958)

T. 15 S., R. 1 W.,
Sec. 34, NE¼SW¼.
T. 24 S., R. 19 W.,
Sec. 35, SW¼SW¼.
T. 7 S., R. 9 E.,
Sec. 28, SW¼SW¼;
Sec. 29, SE¼SE¼;
Sec. 33, NW¼NW¼.
T. 8 S., R. 9 E.,
Sec. 7, lot 1.
T. 10 S., R. 17 E.,
Sec. 24, SW¼SW¼.
T. 22 S., R. 24 E.,
Sec. 31, SE¼NW¼.

The areas described aggregate approximately 4,792 acres.

The total areas described in Paragraphs 1 and 2 aggregate approximately 6,426 acres.

3. The lands described below are either withdrawn for other purposes, held in trust for the Jemez Pueblo, or no longer in Federal ownership:

T. 18 N., R. 1 E.,
Sec. 5, E½NW¼ and NE¼SW¼;
Sec. 17, lots 3 and 4.
T. 23 N., R. 1 W.,
Sec. 32, SE¼SE¼.
T. 17 S., R. 3 E.,
Sec. 11, S½NE¼, SE¼NW¼, E½ SW¼, and SE¼;
Sec. 12, SW1/4NW1/4 and W½SW¼.
T. 9 S., R. 4 E.,
Sec. 26, SW¼NE¼.
T. 11 S., R. 4 E.,
Sec. 14, SW¼SE¼.
T. 14 S., R. 4 E.,
Sec. 20, S½NE¼.
T. 15 S., R. 4 E.,
Sec. 3, SE¼NE¼ and NE¼SE¼.
T. 16 S., R. 4 E.,
Sec. 17, SW¼SW¼.
T. 20 S., R. 4 E.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼.
T. 21 S., R. 4 E.,
Sec. 33, NE¼SW¼.
T. 10 S., R. 5 E.,
Sec. 17, SW¼SE¼.
T. 10 S., R. 8 E.,
Sec. 31, NW¼SE¼.
T. 22 S., R. 8 E.,
Sec. 8, SE¼SE¼;
Sec. 17, SW¼SE¼;
Sec. 30, lot 4.
T. 21 S., R. 10 E.,
Sec. 33, lot 2.
T. 24 S., R. 10 E.,
Sec. 34, SE¼NW¼.
T. 25 S., R. 10 E.,
Sec. 24, NE¼NE¼.
T. 18 S., R. 19 W.,
Sec. 6, lots 3, 4, and 5, SE¼NW¼, and N½SE¼.
T. 17 S., R. 21 W.,
Sec. 33, lot 3 and NE¼SE¼;
Sec. 34, SW¼NE¼.

The areas described aggregate approximately 1,775 acres.

4. At 10 a.m. on January 3, 2000, the lands described in Paragraph 1 and 2, excluding those described in Paragraph 3, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 3, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on January 3, 2000, the lands described in Paragraphs 1 and 2, excluding those described in Paragraph 3, will be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 17, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–31202 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–00–1420–BJ00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land, is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tp. 7 N., R. 36 E.

The plat, representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former banks of Islands A and B, in the Yellowstone River, lying within section 26 and the survey of the new meanders of the present banks of Islands A and B, in the Yellowstone River, lying within section 26 and certain division of accretion lines, Township 7 North, Range 36 East, Principal Meridian, Montana, was accepted September 1, 1999.

This survey was requested by the Powder River Resource Area office, Miles City District and was necessary to identify the boundary lines of Federal Interest Lands.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all

protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Dr., P.O. Box 36800, Billings, Montana 59107–6800.

Dated: November 19, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–31132 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection request.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on the ICR describing the information collection, its expected costs and burdens, and how the data will be collected.

DATES: Written comments should be received on or before January 3, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0104), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is *RMP.comments@mms.gov.*

PUBLIC COMMENT PROCEDURE: Your comments and copies of your comments may be submitted to the addresses listed above. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Certification for Not Performing Accounting for Comparison (Dual Accounting), Form MMS–4410, OMB Control Number 1010–0104, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certification for Not Performing Accounting for Comparison (Dual Accounting).

OMB Control Number: 1010–0104.

Abstract: The Secretary of the Interior is responsible for collecting royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws; we perform these royalty management functions for the Secretary.

On August 10, 1999, the Minerals Management Service (MMS) published in the **Federal Register** (64 FR 43506) the notice of a final rulemaking titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' with an effective date of January 1, 2000. In that Notice, MMS requires that lessees submit the Form MMS–4410, Certification For Not Performing Accounting for Comparison, when gas is never processed prior to entering the pipeline with an index located in an index zone or into a mainline pipeline not in an index zone.

The certification form is part of MMS's final rulemaking amending its regulations governing the valuation, for royalty purposes, of natural gas produced from Indian leases. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation). The new regulations resulted from a negotiated rulemaking between Indian tribes and allottees, oil and gas industry, and Government.

Most Indian lease terms require accounting for comparison (dual accounting) when gas produced from the lease is processed. Under the rule, to not perform dual accounting, a lessee must certify, on Form MMS–4410, that the gas was never processed prior to entering the pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. The lessee will be required to sign the certification form for each lease having production that is exempt from dual accounting. This is a one-time certification that will remain in effect until there is a change in lease status or ownership. This certification will allow MMS and the tribes to better monitor compliance with the dual accounting requirement of Indian leases.

In most cases, the lessee will know the disposition of the gas. If gas is sold at the wellhead, the lessee may have to consult with the purchaser of the gas to determine its disposition. The MMS or tribal auditors, Indian representatives, MMS's Royalty Valuation Division, and the Office of Indian Royalty Assistance, may use the information provided on the form.

The current OMB inventory of 5,412 hours is decreased to 2,880 hours. This adjusted decrease of 2,532 burden hours is the result of our originally overestimating the number of Indian leases that would be required to submit Form MMS–4410.

Respondents/Affected Entities: Companies that pay royalties on gas produced from tribal and allotted Indian leases.

Frequency of Response: One-time certification in effect until a change of lease status or ownership.

Estimated Number of Respondents: 720.

Estimated Total Annual Reporting and Recordkeeping Burden: 2,880 hours

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency A * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 3, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 23, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–31112 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection request.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on the ICR describing the information collection, its expected costs and burdens, and how the data will be collected.

DATES: Written comments should be received on or before January 3, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0103), 725 17th Street, NW, Washington, DC 20503 (telephone (202) 395–7340). You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is *RMP.comments@mms.gov.*

PUBLIC COMMENT PROCEDURE: Your comments and copies of your comments may be submitted to the addresses listed above. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Safety Net Report, Form MMS–4411, OMB Control Number 1010–0103, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Safety Net Report.

OMB Control Number: 1010–0103.

Abstract: The Secretary of the Interior is responsible for collecting royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws; we perform these royalty management functions for the Secretary.

On August 10, 1999, the Minerals Management Service (MMS) published in the **Federal Register** (64 FR 43506) the notice of a final rulemaking titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' with an effective date of January 1, 2000. In that Notice, MMS requires that lessees submit the Safety Net Report, Form MMS–4411, when gas production from an Indian lease is sold beyond the first index pricing point.

The Safety Net Report is part of MMS's final rulemaking amending its regulations governing the valuation, for royalty purposes, of natural gas produced from Indian leases. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation). The new regulations resulted from a negotiated rulemaking between Indian tribes and allottees, oil and gas industry, and Government.

The safety net calculation establishes the minimum value, for royalty purposes, of natural gas produced from Indian leases. This reporting requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts. The rule requires the lessee to calculate the safety net price using prices received for gas sold downstream of the first index pricing point. It will include only the lessee's or lessee's affiliate's arm's-length contracts and will not require detailed calculations for the costs of transportation. By June 30 following any calendar year, the rule requires the lessee to calculate for each month of the previous calendar year a safety net price. The rule requires the lessee to submit a separate Form MMS–

4411 for each index zone where the lessee has an Indian lease. The safety net price will capture the significantly higher values for sales occurring beyond the first index pricing point. The lessee will submit its safety net prices to MMS annually (by June 30) using the Form MMS–4411.

The Safety Net Report will allow MMS and the tribes to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. In the safety net calculation, the lessee will only include sales under those arm's-length contracts that establish a delivery point beyond the first index pricing point to which the gas flows. Moreover, those contracts must include any gas produced from or allocable to one or more of the lessee's Indian leases in the index zone. The MMS or tribal auditors, Indian representatives, MMS's Royalty Valuation Division, and the Office of Indian Royalty Assistance, may use the information provided on the form.

The current OMB inventory of 37,400 hours is decreased to 10,500 hours. This adjusted decrease of 26,900 burden hours is the result of our originally overestimating the number of companies submitting Form MMS–4411 and overstating the number of index zones for which each company would have to submit this form.

Respondents/Affected Entities: Companies that pay royalties on gas produced from tribal and allotted Indian leases.

Frequency of Response: Annually.

Estimated Number of Respondents: 140 companies.

Estimated Total Annual Reporting and Recordkeeping Burden: 10,500 hours.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 3, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 23, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–31113 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Construction of Visitor and Education Center, Great Basin National Park, White Pine County, NV; Scoping Notice

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare a supplemental environmental document for proposed construction of a facility serving visitor information, research, and education needs in Baker, Nevada. This new environmental compliance process could entail amending the General Management Plan (GMP) completed in 1993. During the ensuing environmental impact analysis process, suitable alternatives will be developed to address the design and construction of the proposed facility. The new conservation planning process will be conducted in consultation with affected federal agencies, State and local governments, Tribal groups, and interested organizations and individuals.

Background

The National Park Service completed an EIS and GMP for Great Basin National Park in 1993, which set forth direction and priorities for developing visitor and administrative facilities six miles east of the park on a federally owned parcel in the town of Baker, and a site on the eastern border of the park. This new environmental impact analysis effort is intended to implement or refine that management direction, with the focused objective of preparing an environmental assessment or supplemental EIS regarding the administrative, information, research support, and education program envisioned in 1993 for Great Basin National Park.

The forthcoming environmental compliance document will identify, analyze, and recommend management actions necessary to locate and construct a centralized facility designed to serve both the visiting public, as well as educational and research institutions throughout the Great Basin Region. It is envisioned that the proposed complex could include: Office space; one or more conference classrooms; library; laboratory facilities; museum and records storage; natural history association sales outlet and storage space; restrooms; exhibit space; auditorium and a lobby. In addition, the proposal could include construction of hiking trails and a picnic pavilion. Anticipated area of impact is approximately two acres, located primarily on a previously disturbed site.

Depending on alternatives proposed and specific action selected, the proposal to construct this facility may differ from the GMP which envisioned information contact, administrative, visitor center, and other related functions on separate sites. It is now desired to co-locate these functions at one site, thereby reducing overall environmental impact. This alteration could result in construction of only one complex, but one which may provide a somewhat larger, integrated facility that meets all the needs originally forecast for two sites.

Scoping

The NPS is hereby initiating the scoping phase with a request for interested individuals, organizations, and agencies to provide information relevant to the design and construction of such a facility. Renewed collaboration with individuals and organizations familiar with Great Basin National Park is desired, but comments received on the 1993 GMP will also be reviewed. At this time it is uncertain what level of environmental compliance will be undertaken, and public feedback on this proposal will aid in this determination. This scoping process will be undertaken in a manner sufficient to fulfill the requirements for an EIS should that option be subsequently chosen. If it is determined that an EIS will be prepared, this will be communicated via a Notice of Availability of a draft EIS published in the **Federal Register,** as well as via direct mailings to those who respond during this scoping phase. Written comments must be postmarked not later than January 30, 2000, and should be directed to the Superintendent, Great Basin National Park, Baker, NV 89311.

Review and Decision Process

At this time an environmental document is anticipated to be available for public review and comment not sooner than spring, 2000. Availability of the document for review and written comment will be announced through local and regional news media, the internet, and direct mailing. At this time it is anticipated that a decision will be made not sooner than summer or fall, 2000. This will be recorded in either a Finding of No Significant Impact or a Record of Decision, and duly publicized. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Great Basin National Park.

Dated: November 22, 1999.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 99–31176 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on December 14–15, 1999, in the Capital Room of The Hotel Washington, 515—15th Street, NW, Washington, DC. On December 14, the Board will convene from 9 a.m. until 12 Noon. National Park Service Director Robert Stanton will address the Board, followed by an orientation session. A tour of national monument sites is scheduled for the afternoon.

The Board will reconvene on December 15, at 9 a.m., and adjourn at approximately 4 p.m. The Board will be addressed by Deputy Director of the National Park Service Denis Galvin. The Board will consider organization and procedural matters relating to the Board, and deliberate issues relating to the National Park System. National Historic Landmark nominations will be reviewed by the Board during the afternoon session.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: November 23, 1999.

Robert Stanton,

Director, National Park Service.

[FR Doc. 99–31175 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 20, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 16, 1999.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Contra Costa County

Tucker House, 110 Escobar St., Martinez, 99001563

Imperial County

Southwest Lake Cahuilla Recessional Shoreline Archeological District, Address Restricted, Salton City Vicinity, 99001567

Placer County

Colfax Freight Depot, 7 Main St., Colfax, 99001564

San Diego County

San Diego Trust and Savings Bank Building, 530–540 Broadway, San Diego, 99001565

Tulare County

Tulare Union High School Auditorium and Administration Building, 755 E. Tulare Ave., Tulare, 99001566

CONNECTICUT

Fairfield County

Greenwood Avenue Historic District, Roughly along Greenwood Ave., P.T. Barnum Sq., Depot Pl., and South St., Bethel, 99001568

ILLINOIS

Sangamon County

Brunk Farmstead, KOA Campground Rd., 1 mi. S. of E. Lake Dr., Rochester vicinity, 99001569

IOWA

Dallas County

Feller, Robert William Andrew, Farmstead, 2965 340th Tr., Van Meter vicinity, 99001570

LOUISIANA

Plaquemines Parish

St. Patrick's Catholic Church, 21997 LA 23, Wast Pointe a'la Hache, 99001571

MASSACHUSETTS

Bristol County

Al Mac's Diner—Restaurant (Diners of Massachusetts MPS), 135 President Ave., Fall River, 99001572

MICHIGAN

Allegan County

Second Street—Gun River Bridge (Highway Bridges of Michigan MPS), 2nd St. over Gun River (Martin Township), Hooper vicinity, 99001573

Antrim County

M–88—Intermediate River Bridge (Highway Bridges of Michigan MPS), MI 88 over Intermediate R., Bellaire, 99001574

Berrien County

Avery Road—Galien River Bridge (Highway Bridges of Michigan MPS), Avery Rd. over Galien R. (Weesaw Township), New Troy vicinity, 99001577

Blossomland Bridge (Highway Bridges of Michigan MPS), MI 63 over St. Joseph R., Saint Joseph, 99001576

North Watervliet Road—Paw Paw Lake Outlet Bridge (Highway Bridges of Michigan MPS), N. Watervliet Rd. over Paw Paw Lake outlet (Watervliet township), Watervliet vicinity, 99001575

PENNSYLVANIA

Lancaster County

Landis Valley Museum, 2451 Kissel Hill Rd. (Manheim Township), Landis Valley vicinity, 99001578

Philadelphia County

Philadelphia Naval Shipyard Historic District, S. Broad St., Philadelphia, 99001579

SOUTH DAKOTA

Brule County

Ashley Shanty and Privy (Federal Relief Construction in South Dakota MPS), RR1, Box 100, Pukwana vicinity, 99001580

Clay County

Johnsen, Calle Nissen, Farm, 31494 453rd Ave., Gayville vicinity, 99001581

Jerauld County

Methodist Episcopal Church of Wessington Springs, SE Corner of Main and State Sts., Wessington Springs, 99001582

Lake County

Holdridge, A.W., Home, 616 NE 5th St., Madison, 99001583

Pennington County

Gramberg Ranch, 14895 Lower Spring Rd., Hermosa vicinity, 99001584

South Dakota Department of Transportation Bridge No. 52–824–300 (Historic Bridges in South Dakota MPS), Local Rd. over Cheyenne R., Wasta vicinity, 99001585

South Dakota Department of Transportation Bridge No. 52–575–383 (Historic Bridges in South Dakota MPS), Local Rd. over Rapid Cr., Caputa vicinity, 99001586

TENNESSEE

Benton County

Rushing, John, Farm, 5760 N. TN 69A, Camden vicinity, 99001587

Humphreys County

Greyhound Half—Way House, 124 E. Main St., Waverly, 99001588

[FR Doc. 99–31174 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Review)]

Aramid Fiber From The Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on aramid fiber from the Netherlands.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on aramid fiber from the Netherlands would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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:

Background

On June 24, 1994, the Department of Commerce issued an antidumping duty order on imports of aramid fiber from the Netherlands (59 FR 32678). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is the Netherlands.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: all aramid fiber formed of poly para-phenylene terephthalamide.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of all aramid fiber formed of poly para-phenylene terephthalamide. The Commission included the subcontractors of E.I. DuPont de Nemours & Co. as part of the Domestic Industry.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 24, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–044, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company

transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31219 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review)]

Certain Bearings From China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), 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: Effective August 23, 1999, the Commission established a schedule for the conduct of the subject reviews (64 FR 46949, August 27, 1999). 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), and is hereby revising its schedule.

The Commission's new schedule for the reviews is as follows: the prehearing staff report will be placed in the nonpublic record on March 1, 2000; the deadline for filing prehearing briefs is March 10, 2000; requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 13, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 16, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 21, 2000; the deadline for filing posthearing briefs is March 30, 2000; the Commission will make its final release of information on May 18, 2000; and final party comments are due on May 22, 2000.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

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.

Issued: November 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31195 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Review)]

Cased Pencils From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on cased pencils from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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:

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–049, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Background

On December 28, 1994, the Department of Commerce issued an antidumping duty order on imports of cased pencils from China (59 FR 66909). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: cased pencils, including raw pencils.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of all cased pencils. The Commission excluded one domestic producer, Pentech International, Inc., from the Domestic Industry under the related parties provision. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 28, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response To This Notice Of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in gross and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in gross and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in gross and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for

the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31224 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–393 (Final) and 731–TA–829–840 (Final)]

Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping and countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigations Nos. 701–TA–393 (Final) and 731–TA–829–840 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain cold-rolled steel products that are subsidized by the Government of Brazil, and by reason of less-than-fair-value imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain cold-rolled steel products are subsidized by the Government of Brazil, and imports of certain cold-rolled steel products from Argentina, Brazil, Japan, Russia, South Africa, Thailand, and Venezuela are being sold in the United States at less than fair value within the meaning of sections 703 and 733 of the Act (19 U.S.C. 1671b and 19 U.S.C. 1673b). The investigations were requested in petitions filed on June 2, 1999, by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA.

The petitions also alleged that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded by imports sold at less than fair value from China, Indonesia, Slovakia, Taiwan, and Turkey. The Commission made affirmative preliminary injury determinations with regard to those imports. Commerce has postponed its preliminary determinations concerning whether imports from these countries are sold at less than fair value. In the event Commerce makes affirmative preliminary determinations the Commission will activate the final phase of these antidumping investigations. The briefing schedule, hearing, and other deadlines as outlined below will also apply to these investigations.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file

an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 6, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 20, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 12, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 18, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 13, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 27, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 27, 2000. On February 16, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 18, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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 Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31194 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–661–662 (Review)]

Color Negative Photo Paper & Chemicals From Japan and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the suspended investigations on color negative photo paper and chemicals from Japan and the Netherlands.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigations on color negative photo paper and chemicals from Japan and the Netherlands would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–046, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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 August 12, 1994, the Department of Commerce suspended antidumping duty investigations on imports of color negative photo paper and chemicals from Japan and the Netherlands (59 FR 43539, Aug.24, 1994). The Commission is conducting reviews to determine whether termination of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Japan and the Netherlands.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original preliminary determinations, the Commission found one Domestic Like Product: amateur and professional color negative photo paper and all chemicals used in its production.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original preliminary determinations, the Commission found one Domestic Industry: producers of amateur and professional color negative photo paper and all chemicals used in its production.

(5) The Order Date is the date that the investigations were suspended. In these reviews, the Order Date is August 12, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR § 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in square feet and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in square feet and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in square feet and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31221 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–643 (Review)]

Defrost Timers From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on defrost timers from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on defrost timers from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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:

Background

On March 2, 1994, the Department of Commerce issued an antidumping duty order on imports of defrost timers from Japan (59 FR 9957). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: defrost timers for residential refrigerators. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry: producers of defrost timers for residential refrigerators. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is March 2, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–043, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31218 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–639–640 (Review)]

Forged Stainless Steel Flanges From India and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on forged stainless steel flanges from India and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on forged stainless steel flanges, both finished and not-finished, from India and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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 F.R. 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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, US 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 February 9, 1994, the Department of Commerce issued antidumping duty orders on imports of forged stainless steel flanges, both finished and not-finished, from India and Taiwan (59 FR 5994). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are India and Taiwan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: stainless steel flanges, both finished and unfinished.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–042, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: the domestic producers of forgings and finished stainless steel flanges, consisting of both forger/finishers and converters. The Commission also excluded one domestic producer, Flow Components, from the Domestic Industry under the related parties provision. Two Commissioners defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 9, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity

specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1992.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31217 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Review)]

Fresh Garlic From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–047, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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 F.R. 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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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:

Background

On November 16, 1994, the Department of Commerce issued an antidumping duty order on imports of fresh garlic from China (59 F.R. 59209). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found in the affirmative for one Domestic Like Product: fresh garlic. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found in the affirmative for one Domestic Industry: producers of fresh garlic, excluding crop tenders. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is November 16, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/ business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise

produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31222 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–355 (Review) and 731–TA–659–660 (Review)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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:

Background

On the dates listed below, the Department of Commerce issued countervailing duty and antidumping duty orders on the subject imports:

Order date	Product/Country	Inv. No.	FR cite
6/7/94	Grain-oriented silicon electrical steel/Italy	701–TA–355	59 FR 29414
6/10/94	Grain-oriented silicon electrical steel/Japan	731–TA–660	59 FR 29984
8/12/94	Grain-oriented silicon electrical steel/Italy	731–TA–659	59 FR 41431

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Italy and Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product: grain-oriented silicon electrical steel.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found one Domestic Industry: producers of grain-oriented silicon electrical steel.

(5) The Order Dates are the dates that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–045, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the

following information on your firm's operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31220 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Review)]

Paper Clips From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on paper clips from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 20, 2000. Comments on the adequacy of responses may be filed with the Commission by February 11, 2000.

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: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or 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

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–048, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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 25, 1994, the Department of Commerce issued an antidumping duty order on imports of paper clips from China (59 FR 60606). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found one Domestic Like Product: certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e.g.*, copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products may have a rectangular or ring-like shape and include, but are not limited to, clips commercially refererred to as ''No. 1 clips,'' ''No. 3 clips,'' ''Jumbo'' or ''Giant'' clips, ''Gem clips,'' ''Frictioned clips,'' ''Perfect Gems,'' ''Marcel Gems,'' ''Universal clips,'' ''Nifty clips,'' ''Peerless clips,'' ''Ring clips,'' and ''Glide-On clips.'' Specifically excluded are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not made wholly of wire of base metal.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one Domestic Industry consisting of producers of the Domestic Like Product as defined above.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is November 25, 1994.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 20, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 11, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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. Also, in accordance with sections 201.16(c) and

207.3 of the Commission's 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 APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/ which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions,

please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31223 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–459 (Review)]

Polyethylene Terephthalate (PET) Film From Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year review.

EFFECTIVE DATE: November 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 October 1, 1999, the Commission established a schedule for the conduct of this expedited five-year review (64 FR 55958, October 15, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited review from October 29, 1999 to January 27, 2000. In order to have the benefit of the Department of Commerce's findings, the Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the five-year review is as follows: the staff report will be placed in the nonpublic record on January 4, 2000; the deadline for interested party comments (which may not contain new factual information) on the staff report is January 7, 2000; the deadline for interested party comments (which may not contain new factual information) on Commerce's final results is January 31, 2000; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the review by any person that is neither a party to the five-year review nor an interested party is January 31, 2000.

For further information concerning this five-year review, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: This five-year review is being conducted under authority of title VII of the Tariff Act of 1930; the Commission is using its authority under 19 U.S.C. 1675(c)(5)(B) to extend the deadline for this review. Further, this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 24, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31196 Filed 11–30–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2028–99]

Direct Mail Program for Persons on Active Duty in the Armed Forces of the United States Filing Form N–400 With the Service Center in Lincoln, NE

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (Service) is adjusting its Direct Mail program to require all persons currently serving in an active duty status in the armed services of the United States who are applying for naturalization based on qualifying military service, to file their Form N–400, Application for Naturalization, with the service center in Lincoln, Nebraska. This action is necessary to centralize and facilitate processing of all Form N–400 filings by armed forces personnel.

DATES: This notice is effective December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald Casale, Adjudications Officer, Immigration and Naturalization Service, Immigration Services Division, 801 I Street NW, Room 900, Washington, DC 20536, Telephone (202) 514–0788.

SUPPLEMENTARY INFORMATION:

What Is the Direct Mail Program?

Under the Service's Direct Mail program applicants for naturalization mail the Form N–400 directly to a service center for processing instead of to a local office. The purpose and strategy of the Direct Mail program have been discussed in detail in previous rulemaking and notices (see 59 FR 33903 and 59 FR 33985).

The Service is refining its Direct Mail processing of Form N–400 by requiring all active duty military persons who are filing for naturalization based on qualifying military service to file their applications with the service center in Lincoln, Nebraska. Applicants who apply for naturalization while serving in the armed services must be in active duty status at the time of filing and meet all of the requirements for naturalization stated in 8 CFR part 328 or 8 CFR part 329.

Where Should Active Duty Members of the Armed Services File Their Form N–400, Application for Naturalization?

Effective [Insert date of publication in the **Federal Register**], all active duty members of the armed services who apply for naturalization based on that service must mail their Form N–400 applications directly to the following address: Nebraska Service Center, Attention: N–400 Naturalization Facilitation Unit, P.O. Box 87426, Lincoln, Nebraska 68501–7426.

What Will Happen to Form N–400s Filed at Other Service Centers?

During the first 60 days following the effective date of this notice, the Vermont, California, and Texas Service Centers will forward to the Nebraska Service Center any Form N–400 that they receive from a person who is applying for naturalization on the basis of current active duty status in the armed services. They will also notify the applicant that the application is being forwarded to the Nebraska Service Center for processing. Applications forwarded from the other service centers will be receipted and filed when they arrive at the Nebraska Service Center. The applicants will receive written notification of the date, place, and time of their interview for naturalization.

After the 60-day transition period, any applicants for naturalization based on current military service who attempt to file the Form N–400 application at a location other than the Nebraska Service Center will be directed to mail their application directly to the Nebraska Service Center for processing.

Dated: November 24, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–31310 Filed 11–29–99; 2:31 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 24, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHAS, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Aerial Lifts, Manufacture's Certification Record of Modification.

OMB Number: 1218–0230.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit; Federal government; State, local or tribal government.

Number of Respondents: 900.

Estimated Time Per respondent: Three minutes.

Total Burden Hours: 45 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employees as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the standard on Aerial Lifts (29 CFR 1910.67) requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacture, the modification must be certified by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory to be in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard, to be at least as safe as the equipment was before modification. The employer is required to maintain the certification record and to disclose to an OSHA Compliance Officer upon request.

Agency: Occupational Safety and Health Administration.

Title: Servicing Multi-Piece and Single Piece Rim Wheels, Manufacturer's Certification Record.

OMB Number: 1218–0219.

Frequency: Annually.

Number of Respondents: 80.

Estimated Time per Response: 5 minutes.

Total Burden Hours: 6.

Description: The standard on Servicing Multi-Piece and Single Piece Rim Wheels, under 29 CFR 1910.177(d)(3)(iv), requires that when a damaged restraining device needs structural repair, such as component replacement or rewelding, the repairs must be certified by either the manufacturer or a registered professional engineer as meeting the strength requirements of paragraph 1910.177(d)(3)(I). The information collection requirement (the manufacturer's certification record) ensures that employers protect employees from hazards of a damaged restraining device in the event of a rim wheel separation or the sudden release of pressurized air. In addition, OSHA compliance officers may require employers to disclose the required certification record at the time of an inspection.

Agency: Occupational Safety and Health Administration.

Title: Overhead and Gantry Cranes, Inspection Certification Records.

OMB Number: 1218–0224.

Frequency: Varies (annually, semi-annually).

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 30,000.

Estimated Time Per Response: Varies from 15 minutes to 30 minutes.

Total Burden Hours: 367,500.

Description: The inspection certification records required in 29 CFR 1910.179(j)(2)(iii), (j)(2)(iv)(m)(1), and (m)(2) are necessary to ensure compliance with the requirement for overhead and gantry cranes. They are intended to ensure that these cranes have periodic and recorder maintenance checks and that they are operating in a safe and reliable condition. In addition, OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

Agency: Occupational Safety and Health Administration.

Title: Forging Machines, Inspection Certification Records.

OMB Number: 1218–0228.

Frequency: Bi-Weekly.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 27,000.

Estimated Time per Response: 10 minutes.

Total Burden Hours: 244,868

Description: The inspection certification records required in the standard on Forging Machines, 29 CFR 1910.218(a)(2)(i) and (a)(2)(ii) are necessary to ensure that forging machines have periodic and regular maintenance checks and that guards and point of operation protection devices have scheduled and recorded inspections. In addition, OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

Agency: Occupational Safety and Health Administration.

Title: Hazard Communications (29 CFR 1200: 1915, 1917, 1918, 1926, 1928).

OMB Number: 1218–0072.
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal government; State, local or tribal government.
Number of Respondents: 5,041,918.
Estimated Time Per Respondent: Ranges from 10 minutes for establishments to obtain and maintain material safety data sheets to 8 hours for manufacturers or importers to conduct a hazard determination.
Total Burden Hours: 7,301,762 hours.
Description: The Hazard Communication Standard's collection of information requirements are designed to ensure that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish a hazard communication program, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs. Implementation of these collection of information requirements will ensure all employees have the ''right-to-know'' the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illness and injuries.

Ira L. Mills,

Deparmental Clearance Officer.

[FR Doc. 99–31178 Filed 11-30-99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Roof Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before January 31, 2000.

ADDRESSES: Send comments to Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to dhill@msha.gov, along with an original printed copy. Ms. Hill can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Hill can be reached at dhill@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 846, requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be first approved by the Secretary of Labor (Secretary) before implementation by the operator. The plan must show the type of support and spacing approved by the Secretary, and the plan must be reviewed at least every 6 months by the Secretary.

Under 30 CFR 75.221, the information required to be submitted and approved in the roof control plan includes the following: (1) the name and address of the company; (2) the name, address, mine identification number, and location of the mine; (3) the name and title of the company official responsible for the plan; (4) a description of the mine strata; (5) a description and drawings of the sequence of installation and spacing of supports for each method of mining used; (6) the maximum distance that an ATRS system is to be set beyond the last row of permanent support (if appropriate); (7) specifications and installation procedures for liners or arches (if appropriate); (8) drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars; (9) a list of all support materials required to be used in the roof, face and rib control system; (10) the intervals at which test holes will be drilled (if appropriate); and (11) a description of the methods to be used for the production of persons. Under 30 CFR 75.215, the roof control plan for each longwall mining section is required to specify the methods that will able used to maintain a safe travelway out of the section through the tailgate side of the longwall and the procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

Roof control plans are evaluated by Mine Safety and Health Administration (MSHA) specialists on the basis of the criteria set forth in 30 CFR 75.222. The District Manager may require additional measures in plans and may approve roof control plans that do not conform to the applicable criteria in this section, provided that effective control of the roof, face, and ribs can be maintained.

Under 30 CFR 75.223, a mine operator is required to proposed revisions to the roof control plan when conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts, or when accident and injury experience at the mine indicates the plan is inadequate. The regulation also requires mine operators to plot on a mine map each unplanned roof or rib fall and coal or rock burst that occurs in the active workings when certain criteria are met. Finally, the regulation requires MSHA to review the plan every 6 months.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Roof Control Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions or responses.

A copy of the proposed information collection request may be obtained by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

Falls of roof, face and rib continue to be a leading cause of injuries and death in underground coal mines. All underground coal mine operators are required to develop and submit roof control plans to MSHA for evaluation and approval. These plans provide the means to instruct miners, who install roof supports, in the minimum requirements and placement of roof supports. The plan also provides a reference for mine supervisors to assist them in compliance with the plan requirements. In that regard the plan is a working document for the miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Roof Control Plan (30 CFR 75.215, 75.220, 75.221, 75.222, and 75.223).

Agency Number: 1219–0004.

Recordkeeping: Indefinite.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
75.220	10	On occasion	10	24 hours	240
75.223	1,020	On occasion	1,107	5 hours	5,535
75.223(b)	1,020	On occasion	2,400	5 minutes	192
Totals	2,050		3,517	1.7 hours	5,967

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $5,585.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 24, 1999.

Jay Mattos,

Acting Director, Program Evaluation and Information Resources.

[FR Doc. 99–31177 Filed 11–30–99; 8:45 am]

BILLING CODE 4510–43–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 9, 1999 and Friday, December 10, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on December 9, and 9 a.m. on December 10.

The Commission will discuss post-acute care quality initiatives, the home health prospective payment system, outpatient therapy services, a skilled nursing facility update framework, beneficiaries' financial liability and access to care, Medicare's role in the safety net, coding of evaluation and management services, a single update mechanism across ambulatory care settings, hospital capital payment, Medicare hospital inpatient payments, the expanded hospital inpatient transfer policy, the most-of-Medicare margin, rebasing hospital inpatient payments, and ESRD payment reform.

Agendas will be mailed on Tuesday November 30, 1999. the final agenda will be available on the Commission's website (www. MedPAC.gov)

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 635–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–31169 Filed 11–30–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting; Amended Tine

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting; amended time.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups. This notice amends the time of the meeting. The meeting will be held from 10 a.m. to 12 noon on Friday, December 10, 1999. The meeting notice was originally published on Nov. 23, 1999 at 64 FR 65734–65735.

TIME AND PLACE: The meeting will be held from 10 a.m. to approximately 12 p.m. on Friday, December 10, 1999, at The Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314.

AGENDA: The agenda for the Board Meeting will include and update from the Board's committees and presentations from representatives of the Sales & Service Voluntary Partnership (SSVP) and Manufacturing Skill Standards Council (MSSC).

PUBLIC PARTICIPATION: .The meeting, from 10 a.m. to 12 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Leslie Donaldson at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Dave Wilcox, Deputy Executive Director at (202) 254–8628.

Signed at Washington, D.C., this 24 day of November, 1999.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 99–31179 Filed 11–30–99; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219–OLA–2; ASLBP No. 00–773–02–OLA]

GPU Nuclear Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

GPU Nuclear Corp.; Oyster Creek Nuclear Generating Station

This Board is being established pursuant to the request for hearing submitted by the Nuclear Information and Resource Service. The petition for leave to intervene was filed in response to a notice issued by the NRC staff for consideration of a proposed amendment to the license of GPU Nuclear Corp. for the Oyster Creek Nuclear Generating Station. The requested amendment would allow the use of the reactor building crane to handle loads up to and including forty-five tons during power operations. A notice of the proposed amendment was published in the **Federal Register** at 64 FR 54,925 (Oct. 8, 1999).

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

All correspondence, documents, and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 24th day of November 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–31189 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]

Atomic Safety and Licensing Board; In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49) Change in Time and Location of Prehearing Conference

November 24, 1999.

Before Administrative Judges: Charles Bechhoefer, Chairman; Dr. Richard F. Cole; Dr. Charles N. Kelber.

Notice is hereby given that the time and location of the prehearing conference scheduled for December 13–14, 1999, announced by the Atomic Safety and Licensing Board's Notice of Prehearing Conference dated November 2, 1999, published at 64 FR 60854 (November 8, 1999), has been changed. The conference will commence at 9:00 a.m. on Monday, December 13, 1999, at Ballroom 3, Radisson Hotel, 35 Gov. Winthrop Blvd., New London, Connecticut 06320, and will continue (to the extent necessary) at 9:00 a.m. on Tuesday, December 14, 1999, at the same location.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. 99–31190 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 115th meeting on December 14–16, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 12, 1998 (63 FR 63337).

Tuesday, December 14, 1999

8:30 A.M.–8:40 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:40 A.M.–9:30 A.M.: ACNW Planning and Procedures (Open/Closed)—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. This will include strategic planning and self assessment as well as topics for the next Commission briefing. The Committee will discuss ACNW-related activities of individual members. The Committee may also discuss potential ACNW members. (Note: The new members portion may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6)).

9:30 A.M.–12:15 P.M.: Department of Energy's Yucca Mountain Draft Environmental Impact Statement (DEIS) (Open)—The Committee will discuss various aspects of the DEIS with representatives of the Department of Energy. Topics will likely include a discussion on transportation issues, the nature of public comments to date, and future activities on the part of the DOE.

1:15 P.M.–5:00 P.M.: Planning and Procedures (Open)—Continuation of previous items plus preparation for its next day meeting with the Commission.

Wednesday, December 15, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–11:30 A.M.: Prepare for and Meet with the NRC Commissioners (Open)—The Committee will meet with the Commissioners to discuss items of mutual interest. Topics are expected to include: risk communications, repository design white paper, NRC's proposed high-level waste regulation, decommissioning issues, and the ACNW action plan and self assessment.

12:30 P.M.–2:00 P.M.: Clearance Rule (Open)—The Committee will discuss this proposed rule. The rule will address the level of radioactive contamination on solid material that is acceptable for unrestricted release.

2:00 P.M.–3:30 P.M.: NRC Staff's Strategic Planning Efforts (Tentative) (Open)—The Committee will discuss with the NRC staff their recent strategic planning efforts. The Committee will use this information in drafting their Year 2000 Action Plan.

3:45 P.M.–5:30 P.M.: Preparation of ACNW Reports (Open)—The Committee will discuss planned reports on the following topics: the Yucca Mountain DEIS, rubblization decommissioning option, waste related research, the role of safety assessment in regulatory decision making, defense in-depth, the proposed NRC high-level waste regulation, and other topics discussed during this and previous meetings as the need arises.

Thursday, December 16, 1999

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:30 A.M.: Meeting with the Director of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards (NMSS) (Open)—The Committee will meet with the Director to discuss items of mutual interest.

9:30 A.M.–3:00 P.M.: Preparation of ACNW Reports (Open)—The Committee will continue preparation of ACNW reports.

3:00 P.M.–3:30 P.M.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of 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 ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

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. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual 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 and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: November 24, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–31191 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program Evaluation Panel; Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announced the establishment of the Pilot Program Evaluation Panel (PPEP). The PPEP will function as a management-level Oversight group to monitor and evaluate the success of the Commission's Reactor Oversight Process Improvements program. A Charter governing the PPEP functions as a Federal Advisory Committee was filed with Congress on June 30, 1999, after consultation with the Committee Management Secretariat, General Services Administration. The PPEP will hold its forthcoming meetings on December 8 and 9, 1999, at the Nuclear Regulatory Commission Headquarters, 11545 Rockville Pike, Rockville, Maryland 20852, Room T–2 B3.

The PPEP meeting participants are listed below along with their affiliation:

Frank P. Gillespie—Nuclear Regulatory Commission

Mohan C. Thadani—Nuclear Regulatory Commission

James T. Wiggins—Nuclear Regulatory Commission

Heidi Hahn—Los Alamos National Laboratories

Bruce Mallet—Nuclear Regulatory Commission

Geoffrey Grant—Nuclear Regulatory Commission

Kenneth E. Brockman—Nuclear Regulatory Commission

James Lieberman—Nuclear Regulatory Commission

Steve Floyd—Nuclear Energy Institute

David Garchow—Public Service Electric and Gas

Masoud Bajestani—Tennessee Valley Authority

George Barnes—Commonwealth Edison Company

James Chase—Omaha Public Power District

Gary Wright—Illinois Department of Nuclear Safety

David Lochbaum—Union of Concerned Scientists

These meetings are scheduled to develop consensus on the PPEP's final report. The PPEP will discuss the comments provided by the PPEP members, and resolve the differences of views if any. The product of this two day meeting will be the final report of the panel. To ensure flexibility, the panel will not follow any specific chronological agenda.

Meetings of the PPEP are open to the members of the public. Oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Frank P. Gillespie (Telephone 301/415–1004, e-mail FPG@nrc.gov) or Mr. Mohan C. Thadani (Telephone 301/415–1476, e-mail MCT@nrc.gov) five days prior to the meeting date, 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 will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Frank P. Gillespie or Mr. Mohan C. Thadani between 8:00 a.m. and 4:30 p.m. EDT.

PPEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page at the address below: http://www.nrc.gov/NRR/OVERSIGHT/index.html.

Transcripts of previous PPEP meetings can be viewed as background material at the above web site.

Dated: November 24, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–31187 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on December 15–16, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 15, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the staff's programs for risk-based analysis of reactor operating experience, including special studies for common-cause failure analyses, system and component analyses, accident sequence precursor analyses, and related matters.

Thursday, December 16, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss NRC staff efforts in the area of risk-informed technical specifications and associated industry initiatives proposed by the Risk-Informed Technical Specification Task Force. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 24, 1999.

Paul A. Boehnert,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–31188 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Coordination Meeting With Standards Development Organizations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC has committed through its Strategic Plan to utilize consensus standards to increase the involvement of licensees and others in the NRC's regulatory development process, consistent with the provisions of Public Law (Pub. L.) 104–113, the National Technology and Transfer Act of 1995, and Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment.'' As part of this commitment, periodic coordination meetings with key standards development organizations (SDOs) and other stakeholders will be held to foster better communication of SDOs' ongoing activities, and NRC needs regarding standards development and their use.

DATES: December 8, 1999—Registration will be from 1 p.m. to 1:30 p.m. The meeting will begin at 1:30 p.m. and will last approximately four hours.

LOCATION: U.S. Nuclear Regulatory Commission Headquarters, Two White Flint North, Room T–3B45, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

CONTACT: Wallace E. Norris, USNRC, Telephone: (301) 415–6796; Fax: (301) 415–5074; Internet: wen@nrc.gov.

ATTENDANCE: This meeting is open to the general public. All individuals planning to attend, including SDO representatives, are requested to preregister with Mr. Norris by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

PROGRAM: The purpose of the meeting is to foster better communication between SDOs and NRC regarding standards development and use. By holding periodic coordination meetings, the SDOs will be able to describe their on-going and planned activities, and the NRC will be able to discuss activities and issues related to specific standards that are being developed or revised to meet its regulatory needs. The meeting will be coordinated by the NRC Standards Executive.

The first meeting between NRC and SDOs was held on May 26, 1999. The following issues were identified at the May 26, 1999, for discussion at this meeting:

(1) *Policy:* A proposal for the participating organizations to fill the void resulting from the dissolution of the ANSI Standards Nuclear Board (SNB) by addressing policy issues such as standards implementation problems, needs, and priorities was favorably discussed. It is requested that SDO representatives consider processes for implementing this proposal.

(2) *Timeliness:* The length of time between identification of the need for a standard and endorsement by the NRC is excessive. Some SDOs are presently implementing trial standards development and approval programs in an attempt to speed up the process. A status summary is requested from those organizations implementing trial programs.

(3) *Pub. L. 104–113:* Questions related to implementation of the public law were raised. To provide direction in implementing Pub. L. 104–113 and OMB Circular A–119, the NRC issued Management Directive 6.5, ''NRC Participation in the Development and Use of Consensus Standards,'' on November 2, 1999. A copy of the Management Directive will be provided to those in attendance, and NRC staff will provide an overview.

(4) *Status:* A continuing item will be SDO discussion of standards under development to address emerging issues.

Dated in Rockville, Maryland this 24th day of November, 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

NRC Standards Executive.

[FR Doc. 99–31186 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 29, December 6, 13, and 20, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 29

There are no meetings scheduled for the Week of November 29.

Week of December 6—Tentative

Wednesday, December 8

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

Week of December 13—Tentative

Wednesday, December 15

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: Dr. John Larkins, 301–415–7360)

Thursday, December 16

9 a.m. Meeting on NRC Response to Stakeholders' Concerns Location: (NRC Auditorium, Two White Flint North)

Friday, December 17

9:30 a.m. Briefing on Status of RES Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Week of December 20—Tentative

Wednesday, December 22

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

* The schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 26, 1999.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary.

[FR Doc. 99–31270 Filed 11–29–99; 10:49 am]

BILLING CODE 7590–01–M

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) 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 November 6, 1999, through November 19, 1999. The last biweekly notice was published on November 17, 1999 (64 FR 62704).

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 Review and Directives Branch, Division of Freedom of Information and Publications 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 January 3, 2000, 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.

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: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. 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).

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 12, 1999.

Description of amendment request: This proposed technical specification change removes the anticipatory reactor scram signal for turbine electro-hydraulic control (EHC) low oil pressure trip from the reactor protection system (RPS) trip function.

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:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change removes the Turbine EHC Control Oil Pressure-Low scram function and the associated Limiting Safety System Setting (LSSS). The purpose of the Turbine EHC Control Oil Pressure scram is to anticipate the pressure transient which would be caused by imminent control valve closure on loss of control oil pressure. This

function does not serve as an initiator for any accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). In addition, this trip function is not credited in any design basis event and is functionally redundant to the Turbine Control Valve Fast Closure RPS trip function during a postulated loss of EHC control oil event. The Turbine Control Valve Fast Closure will initiate a scram on a loss of control oil event coincident with turbine control valve closure.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The removal of this function does not represent a change in operating parameters or introduce a new mode of operation. The pressure switches associated with the Turbine Control Valve Fast Closure function provide equivalent protection from a loss of EHC oil event. For this reason, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Operation under the proposed amendment will not change any plant operation parameters, nor any protective system actuation setpoints other than removal of the Turbine EHC Control Oil Pressure-Low scram function. The scram function associated with the Turbine Control Valve Fast Closure provides equivalent protection for events involving fast turbine control valve closure including the loss of EHC control oil pressure. For this reason, eliminating the EHC Control Oil Pressure-Low scram function, which is redundant to other protective instrumentation, does not reduce 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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Station, Unit No. 2, Westchester County, New York

Date of amendment request: September 23, 1999.

Description of amendment request: The proposed amendment would relocate items associated with instrumentation for toxic gas monitoring from the Technical Specifications (TSs) 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:

The proposed changes do not involve a significant hazards consideration because:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The Specifications and associated Bases will be transferred verbatim to the UFSAR.

These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operating of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current TSs remain unchanged. Therefore, the proposed changes to the subject TS would not increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As stated above, the proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility, and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes, therefore, the proposed changes will not initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or physical design, the UFSAR design basis, accident assumptions are not affected. Therefore, the proposed changes will not result in a reduction in the margin of safety.

The proposed changes have been reviewed by both the Station Nuclear Safety Committee (SNSC) and the Con Edison Nuclear Facility Safety Committee (NFSC). Both Committees concur that the proposed changes do not represent a significant hazards consideration.

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: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 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 amendment request: November 3, 1999.

Description of amendment request: The amendments would revise Section 3.8.1, ''AC [alternating current] Sources—Operating,'' of the Technical Specifications. Specifically, this would revise: (1) Surveillance Requirement (SR) 3.8.1.9 to delete the power factor requirement from the diesel generator (DG) load rejection test; (2) SR 3.8.1.13 to allow performance of the diesel generator non-emergency automatic trip bypass test at any operational power level; and (3) SR 3.8.1.14 to allow performance of the 24-hour diesel generator run at any operational power level and delete the power factor requirement. No plant modification is involved with this proposed amendment.

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. 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 reduction in a margin of safety.

First Standard

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 effect on accident probabilities or consequences. The DGs and their associated emergency buses are not accident initiating equipment; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the equipment is not being modified by these proposed changes. In addition, the ability of the DGs to respond to a design basis accident will not be adversely impacted by these proposed changes. There will be no significant increased likelihood of causing a blackout of a safety bus by the proposed changes in testing. Therefore, there will be no significant impact on any accident consequences.

Second Standard

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. Equipment will be operated in the same configuration with the exception of the plant

mode in which the testing is conducted. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Third Standard

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. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The equipment referenced in the revised TS for these proposed changes is already capable of performing as designed. 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: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

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: November 3, 1999.

Description of amendment request: The proposed amendments would revise Section 3.8.1, ''AC [alternating current] Sources—Operating,'' of the Technical Specifications. Specifically, this would revise: (1) Surveillance Requirement (SR) 3.8.1.9 to allow performance of the diesel generator (DG) load rejection test at any operational power level and to delete the power factor requirement; (2) SR 3.8.1.10 to allow performance of the diesel generator full load rejection test at any operational power level; and (3) SR 3.8.1.14 to allow performance of the 24-hour diesel generator run at any operational power level and delete the power factor requirement. No plant modification is involved with this proposed amendment.

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. 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.

First Standard

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 effect on accident probabilities or consequences. The DGs and their associated emergency buses are not accident initiating equipment; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the equipment is not being modified by these proposed changes. In addition, the ability of the DGs to respond to a design basis accident will not be adversely impacted by these proposed changes. There will be no significant increased likelihood of causing a blackout of a safety bus by the proposed changes in testing. Therefore, there will be no significant impact on any accident consequences.

Second Standard

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. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Third Standard

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. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The equipment referenced in the revised TS for these proposed changes is already capable of performing as designed. 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: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 7, 1999.

Description of amendment request: Grand Gulf Nuclear Station (GGNS) requests approval to revise its licensing basis for the release of fission products following an accident. The basis for the proposed change makes use of one of the insights established in NUREG–1465, ''Accident Source Terms for Light Water Nuclear Power Plants,'' which defines alternative source terms for use in the licensing of light water reactors. Specifically, this application credits the insight that there is a delay in the release of fission products from the reactor fuel following a postulated design basis loss-of-coolant accident (LOCA). The timing of fission product release from fuel perforation, i.e., gap activity release, is based on the boiling water reactor (BWR)—specific value of the timing of the gap activity release phase of a LOCA as calculated in the Boiling Water Reactor Owners Group (BWROG) Report, ''Prediction of the Onset of Fission Gas Release From Fuel in Generic BWR.'' This BWROG Report has been previously reviewed and approved by the Nuclear Regulatory Commission (NRC) staff. The licensing basis change to Updated Final Safety Analysis Report (UFSAR) Section 15.6.5.5.2 proposed by GGNS replaces the assumption of an instantaneous release of gap activity phase fission products into the drywell with a more accurate scenario in which the gap activity release is delayed by up to 121 seconds as calculated in the BWROG Report. Approval of this change will allow GGNS to increase the containment isolation valve closure times credited for limiting post-accident doses to both control room personnel and to offsite individuals. While this new basis would be applicable to all of the containment isolation valves, it addresses only the dose mitigation aspects of the closure requirements. There are currently some valves for which the closure time is limited based on other functional performance requirements (e.g., line break isolation). This submittal does not propose any changes that would

eliminate any of these other requirements. The allowable closure times for these valves would not be affected by this proposed change.

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:

GGNS staff has evaluated the proposed change to incorporate a delay in the post-accident fission product release into its licensing basis. This change recognizes one of the revised source term insights discussed in NUREG–1465. This change in the licensing basis will provide the basis for revising the Technical Requirements Manual to increase Primary Containment Isolation Valve (PCIV) maximum isolation times. These changes have been evaluated using the standards in 10CFR50.92 and it is concluded that they do not involve any significant hazards considerations. Specifically, the proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated,

The proposed change takes credit for a new source term insight that recognizes that the fission product release from a fuel assembly is not instantaneous with a design basis accident. Implementation of this change into the licensing basis will be used to justify an increase in the maximum allowable PCIV isolation times. These changes do not affect the precursors for any accident or transient evaluated in Chapter 15 of the GGNS UFSAR. Therefore, there is no increase in the probability of any accident previously evaluated.

A plant specific radiological analysis has been performed to evaluate the effect on the dose consequences of extending the maximum allowable closure time. This evaluation considered the initial two-minute period of the accident during which, according to new source term insights developed in NUREG–1465 and in a BWROG report, fission product releases are not expected to occur. Releases from the break and from containment during this period consist of coolant radioactivity only. The total release during this period was found to result in an offsite dose of less than 0.60 rem. This dose represents only a small fraction of the LOCA dose evaluated in the UFSAR. As this submittal is for a limited scope application of the NUREG–1465 insights (in this case, timing and duration of the coolant activity phase) and addresses only the first 121 seconds of the accident scenario, the total long-term dose determined using the TID–14844 assumptions is not changed by this submittal.

In reality, the other insights offered in the NUREG would be expected to result in an overall dose reduction. In any event, the dose consequences of the proposed change do not result in an increase in the consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated;

The primary containment isolation system is designed to prevent, as much as practicable, the unfiltered release of radioactive material to the environs following an accident. As such, the system is relied upon for accident dose consequence mitigation. Neither the revision of the licensing basis to recognize that fission product releases are not instantaneous as is assumed in the current analysis, nor the extension of the valve closure times affects the ability of the valves to perform their accident mitigation function. It is also noted that the increased closure time allowables will only be applied to valves which do not have an alternate constraining performance requirement for closure time; the safety functions of other supported components and systems are not affected. Thus, the proposed change does not create the potential for a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

The proposed change revises the bases for the offsite dose calculation to credit, in the initial 2 minutes of the accident scenario, the fact that there is no fuel failure expected during this time. That is, for the first two minutes of the event, only coolant activity is released. The other assumptions, bases and methodologies for offsite dose calculations used to evaluate the long-term offsite dose consequences of accidents described in FSAR [Final Safety Analysis Report] Chapter 15 are not affected by this change. The margin between calculated dose consequences described in the FSAR and regulatory limits is not reduced.

A recent GGNS analysis of the LOCA scenario considering the only release in the first 121 seconds is from the reactor coolant resulted in an EAB [exclusion area boundary] dose of less than 1 rem thyroid during this period. The total dose for the 0- to 2-hour period is not expected to increase due to the delay in the fission product release; the total amount of radioactivity released will remain the same. Both the recently evaluated 2-minute dose and the 24.9 rem in two hours as presented in the UFSAR are insignificant in comparison to the 300 rem acceptance limit for this scenario. The GGNS SER [safety evaluation report] acknowledges the conservatism of the old analysis methodology. An independent analysis done by the staff during their evaluation of the GGNS FSAR estimated doses could decrease about 95% if the fission product release were to be delayed by 2 minutes.

The bases for PCIV closure times described in the Technical Specifications remain unchanged. The inconsistency between the assumption of immediate containment isolation in the dose analysis and allowable isolation valve closure times of one to two minutes is eliminated by this change. Plant specific analysis has shown that the expected dose resulting from the PCIVs remaining open during this period is insignificant.

Actual safety benefits are expected to result from valve performance and reliability improvements, elimination of unnecessary reports and system performance improvements such as minimization of water hammer events. Therefore, the increase in maximum isolation time for certain PCIVs proposed in this submittal will not result in 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: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania.

Date of amendment request: August 20, 1999.

Description of amendment request: The proposed license amendment would modify the Technical Specifications (TSs) to allow revision of the 4KV Engineered Safeguards Bus Undervoltage Relay Degraded Voltage calibration to be performed at an annual interval rather than its present refueling interval and change the bases to state that the degraded voltage relay setpoint tolerance is being changed from an ''as left'' reading to an ''as found'' reading. Additionally, the new calculations supporting the request identified a need to compensate for lack of voltage margin through reliance on manual action in lieu of full automatic voltage protection, as implied by Chapter 8 of the Updated Final Safety Analysis Report (UFSAR). Such actions would involve load manipulations following a loss of coolant accident (LOCA) with post LOCA conditions in combination with extremely low switchyard voltage. An additional limit of operation with a maximum of 5 Circulating Water pumps while in single 230KV auxiliary transformer operation is also added to the 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. The proposed changes to the degraded voltage relay setpoint tolerance and calibration interval are intended to reduce the total degraded voltage relay setpoint uncertainties. These changes will provide greater confidence that minimum voltages necessary to operate NSR [nuclear safety related] equipment are not exceeded. In combination, the proposed changes for degraded voltage relay setpoint tolerance and

calibration interval will reduce the probability that ES [engineered safeguards] buses will be separated from their offsite power source during low grid voltage conditions. This will reduce challenges to the onsite emergency power systems. The proposed changes will enhance the ability of the undervoltage protection scheme to perform in accordance with its intended design, and will improve the ability of the scheme to respond to low voltage conditions caused by malfunction of equipment important to safety.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated in the SAR.

2. The proposed setpoint tolerance and calibration interval changes are consistent with the specifications and intended design of the degraded voltage protection scheme and do not introduce the possibility of any new failure modes to the protection scheme or the electrical distribution system. The proposed changes reduce the probability of insufficient voltage to NSR loads and reduce the probability of separation of ES buses from the offsite power source. Therefore, operation of the facility in accordance with the proposed changes do not create a possibility of a new or different type of accident than any previously evaluated in the SAR.

3. The proposed setpoint tolerance and calibration interval changes are intended to reduce the total degraded voltage relay setpoint uncertainties. The changes will provide greater confidence that minimum voltages necessary to operate NSR equipment will not be exceeded. The proposed changes will also reduce the probability that the ES buses will be separated from their offsite power source during low grid voltage conditions. These effects will enhance the objective [of] providing a reliable source of power for BOP auxiliaries and [a] continuously available power supply for the ES equipment as required by TS [technical specification] 3.7 bases. Therefore, operation of the facility in accordance with the proposed changes would 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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: November 3, 1999.

Description of amendment requests: The proposed amendments would allow use of fuel rods with ZIRLO cladding, specify an alternate methodology to determine the integral fuel burnable absorber (IFBA) requirements for Westinghouse fuel assemblies stored in the new fuel storage racks, and delete the designation of the fuel assembly types allowed in the spent fuel storage racks and the new fuel storage racks.

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 of occurrence or consequences of an accident previously evaluated?

The proposed T/S [Technical Specification] change to allow storage and use of fuel rods clad with ZIRLO does not significantly increase the probability of occurrence of an accident. Fuel assemblies are not an initiator or precursor to any previously evaluated accident. The proposed T/S change does not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. Use of ZIRLO fuel cladding does not adversely affect fuel performance or impact nuclear design methodology. Therefore, accident analysis results are not impacted. The operating limits are not changed and the analysis methods to demonstrate operation within the limits remain in accordance with NRC-approved methodologies. Other than the changes to the fuel rod cladding there are no physical changes to the plant associated with this T/S change. A safety analysis is still required to be performed for each specific reload cycle to demonstrate compliance with fuel safety design bases. The 10 CFR 50.46 emergency core cooling system acceptance criteria are applied to the ZIRLO clad fuel rods. The use of fuel assemblies containing ZIRLO clad fuel rods does not result in a change to the reload design and safety analysis limits. The clad material is similar in chemical composition and has similar physical and mechanical properties as Zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. ZIRLO cladding improves corrosion performance and dimensional stability. Since the dose predictions in the safety analyses are not sensitive to the fuel rod cladding material used, the radiological consequences of accidents previously evaluated in the safety analysis remain valid.

The proposed T/S change to specify an alternate NRC-approved methodology used to determine the IFBA requirements for Westinghouse fuel assemblies stored in the new fuel storage racks does not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. This alternate methodology is more conservative with respect to determining the reactivity of the stored fuel assemblies than the methodology currently specified in the T/S. Therefore, the probability of an accidental criticality is less with the proposed T/S change than currently assumed. Since a criticality accident is precluded by the proposed T/S change, the consequences of a criticality accident are not changed by the use of this alternate methodology.

The proposed T/S change to delete designation of the fuel assembly types allowed in the spent fuel storage racks and new fuel storage racks is administrative, and does not alter the design and analysis requirements that ensure storage of fuel in safe configurations. The existing T/S requirements for maximum enrichment, reactivity, and spacing of fuel assemblies in the spent fuel storage racks and new fuel storage racks are not altered by this change.

Based on the above discussions, design basis accident analyses affected by these T/S changes remain valid, and the consequences of an accident previously evaluated are not significantly increased by these changes.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed T/S change to allow storage and use of fuel rods clad with ZIRLO cannot create a new or different kind of accident. Fuel assemblies with ZIRLO clad fuel rods satisfy the same design bases as those used for fuel assemblies with Zircaloy-4 clad fuel rods. The design and performance criteria continue to be met and no new failure mechanisms have been identified. Since the original design criteria are met, the ZIRLO clad fuel rods cannot be an initiator for any new accident. The ZIRLO cladding material offers improved corrosion resistance and structural integrity. The proposed changes do not affect the design or operation of any other system or component in the plant. The safety functions of the other structures, systems, or components are not changed in any manner, nor is the reliability of any other structure, system, or component reduced. The changes do not affect the manner by which the facility is operated and do not change any other facility design feature, structure, or system. No new or different types of permanent plant equipment are installed by this proposed T/S change. In addition, the use of ZIRLO fuel assemblies does not involve any alterations to permanent plant equipment or plant operating procedures that would introduce any new or unique operational mode or accident precursor.

The proposed T/S change to specify an alternate NRC-approved methodology used to determine the IFBA requirements for Westinghouse fuel assemblies stored in the new fuel storage racks ensures that a conservative methodology is used to verify the licensing basis reactivity limits are not exceeded. The proposed change does not affect any permanent plant equipment or plant operating procedures, and cannot be an initiator of an event.

The proposed T/S change to delete designation of the fuel assembly types allowed in the spent fuel storage racks and new fuel storage racks is an administrative

change only. The proposed change does not affect any permanent plant equipment or plant operating procedures, and cannot be an initiator of an event.

Since there is no change to the permanent facility or plant operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, it is concluded that the change 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 proposed T/S change to allow storage and use of fuel rods clad with ZIRLO does not change the reactor fuel reload design and safety analysis limits. The use of these fuel assemblies takes into consideration the core operating conditions allowed in the T/S. For each cycle reload core, the fuel assembly design and core configuration are evaluated using NRC-approved reload design methods, including consideration of the core physics analysis peaking factors and core average linear heat rate effects. The design basis and modeling techniques for fuel assemblies with Zircaloy-4 clad fuel rods remain valid for fuel assemblies with ZIRLO clad fuel rods. Use of ZIRLO cladding material has no effect on the criticality analysis for the spent fuel storage racks and the new fuel storage racks. Furthermore, it has no effect on the thermal-hydraulic and structural analysis for the spent fuel pool. Therefore, the design and safety analysis limits specified in the T/S are maintained with this proposed change.

The proposed T/S change to specify an alternate NRC-approved methodology used to determine the IFBA requirements for Westinghouse fuel assemblies stored in the new fuel storage racks ensures that a conservative methodology is used to verify the licensing basis reactivity limits are not exceeded. Therefore, the existing T/S margin for reactivity control in the new fuel storage racks is maintained by this proposed change.

The proposed T/S change to delete designation of the fuel assembly types allowed in the spent fuel storage racks and new fuel storage racks is an administrative change, and does not alter any of the existing T/S limits governing storage and use of reactor fuel.

Therefore, the proposed changes do 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 requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: October 16, 1998, as supplemented by letters dated December 30, 1998, May 10, June 15, July 30, August 2, 11, 16, 19, 27, September 10, and 30, 1999.

Description of amendment request: Associated with a Niagara Mohawk Power Corporation (NMPC or the licensee) application to convert from the Curent Technical Specifications (CTS) for the Nine Mile Point Nuclear Power Station, Unit No. 2, to Improved Technical Specifications (ITS) as contained in Revision 1 of NUREG–1433, and Revision I of NUREG–1434, ''Standard Technical Specifications for General Electric Plants, BWR/4 and BWR/6'' dated April 1995, the licensee proposed to allow two hydrogen recombiners to be inoperable for up to 7 days provided that the alternate hydrogen control system is found to be acceptable to the NRC staff as described below.

CTS 3.6.6.1 ACTION only permits one hydrogen recombiner to be inoperable. If two hydrogen recombiners are inoperable, CTS 3.0.3 is entered. CTS 3.6.6.1 ACTION has been modified to incorporate Standard Technical Specification (STS) 3.6.3.1 ACTION B which allows two hydrogen recombiners to be inoperable for up to 7 days. The use of STS 3.6.3.1 ACTION B is allowed, as specified in a Bases Reviewer's Note, provided that the alternate hydrogen control system is found to be acceptable to the NRC staff. Therefore, the licensee proposed to allow credit be taken for an alternate hydrogen control system in the event of both hydrogen recombiners are determined to be inoperable for up to 7 days.

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:

In accordance with the criteria set forth in 10 CFR 50.92, NMPC has evaluated this proposed Technical Specifications change and determined it does not represent a significant hazards consideration. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change extends the functional test frequency of the hydrogen recombiner system. The hydrogen recombiners are not considered as initiators for any previously evaluated accidents. Therefore, the probability of an accident previously evaluated is not significantly increased. The proposed change does not impact the Surveillance Requirement itself nor the way in which the Surveillance is performed. The proposed change does not affect the availability of the hydrogen recombiners to mitigate an accident because of the availability of the redundant hydrogen recombiner. Furthermore, an historical review of surveillance test results indicated that all failures identified were unique, non-repetitive, and not related to any time-based failure modes, and indicated no evidence of any failures that would invalidate the above conclusions. 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 change does not involve any design changes, plant modifications, or changes in plant operation. The system will continue to function in the same way as before the change. In addition, the Surveillance Requirement itself and the way the Surveillance is performed will remain unchanged. Furthermore, a historical review of surveillance test results indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The design, function, and OPERABILITY requirements for the hydrogen recombiner system are unchanged with this proposed revision. Although the proposed change will result in an increase in the interval between surveillance tests, the impact on hydrogen recombiner availability is small based on the redundant hydrogen recombiner, and there is no evidence of any failures that would impact the availability of the hydrogen recombiners. Therefore, the assumptions in the licensing basis are not impacted, and 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Sheri R. Peterson.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: October 25, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add the Oscillation Power Range Monitor (OPRM) Upscale function and allow the proposed activation of the OPRM function of automatically detecting and suppressing reactor instability conditions. Activation of the OPRM is in response to Generic Letter 94–02, ''Long-Term Solutions and Upgrade of Interim Operating Recommendations for Thermal-Hydraulic Instabilities in Boiling Water Reactors,'' licensee's associated commitment to implement stability solution Option III as described in Licensing Topical Report NEDO–31960–A, ''BWR Owners' Group Long-Term Stability Solutions Licensing Methodology,'' and previous Nine Mile Point Unit 2 (NMP2) License Amendment 80 dated March 31, 1998. The proposed changes would add the OPRM as a Reactor Protection Sytem (RPS) Functional Unit, including operability requirements and surveillance tests. Specifically, the proposed amendment would revise TS 2.2, ''Limiting Safety System Settings,'' TS 3/4.3.1, ''Reactor Protection System Instrumentation,'' TS 3/4.4.1, ''Recirculation System,'' and TS 6.9.1.9, ''Administrative Controls-Core Operating Limits Report.'' The proposed changes to support activation of the OPRM function are generally consistent with the changes proposed in Licensing Topical Report NEDC–32410P–A, ''Nuclear Measurement Analysis and Control Power Range Neutron Monitor (NUMAC PRNM) Plus Option III Stability Trip Function,'' Supplement 1, dated November 1997. The licensee's submittal also provides changes to the associated TS Bases and the TS Index (page ix).

The proposed changes would be made to NMP2's current TS, as well as to NMP2's improved TS addressed in a previous notice (64 FR 56518, October 20, 1999).

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 operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the OPRM Upscale functional unit to TSs involves a system that is intended to detect the symptoms of instability events and initiate mitigative actions. The worst case failure of the system involved would be a failure to initiate mitigative actions (i.e., scram), but no failure can cause an accident. The removal of certain RCS [Recirculation System] operational restrictions is justified with the addition of the OPRM functional unit which will provide an automatic scram in the event of reactor instabilities. Therefore, the proposed change will not result in a significant increase in the probability of any accidents previously evaluated.

The addition of the OPRM Upscale functional unit to the NMP2 TSs will permit activation of the OPRM. Activation of the OPRM, together with the NUMAC-PRNM, provides NMP2 the ability to detect and suppress reactor instabilities. The existing RPS functional units as well as other plant equipment will continue to perform their intended function in the event of an accident. The addition of the OPRM functional unit fulfills the intended purpose of the TS-required RCS operational restrictions. Therefore, the proposed change will not result in a significant increase in the consequences of any accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the OPRM Upscale functional unit to the NMP2 TSs will permit activation of the OPRM. Activation of the OPRM, together with the NUMAC–PRNM, provides NMP2 the ability to detect and suppress reactor instabilities. The OPRM is a mitigative system whose addition as an RPS functional unit will not create the possibility of a new or different accident or adversely affect existing RPS functional units. The worst case failure of the systems involved would be failure to initiate mitigative actions, but no failure can cause an accident. Except for the activation of the OPRM, no new plant configurations are created. The OPRM Upscale functional unit fulfills the intended purpose of the existing TS-required RCS operational restrictions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed TS changes will not adversely affect the performance characteristics of RPS instrumentation nor will it affect the ability of the subject instrumentation to perform its intended function.

The addition of the OPRM Upscale functional unit to the NMP2 TSs will permit activation of the OPRM. Activation of the OPRM, together with the NUMAC-PRNM, provides NMP2 the ability to detect and suppress reactor instabilities (stability solution Option III) thereby meeting the requirements of GDC [General Design Criteria] 10 and 12. The NRC has reviewed and accepted the Option III methodology described in Licensing Topical Report NEDO-31960–A and concluded that the solution will provide the intended function. The surveillance testing and frequencies proposed will assure reliability of the OPRM Upscale function. The purpose of the existing TS operational restrictions on the RCS will be met by the automatic scram feature of the OPRM.

Therefore, the proposed changes do 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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Sheri Peterson.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, (LGS) Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 14, 1999.

Description of amendment request: The proposed amendments, if approved, would revise the LGS, Units 1 and 2, Technical Specifications (TSs), Sections 2.2., ''Safety Limits and Limiting Safety System Settings,'' and 3.0/4.0, ''Limiting Conditions for Operation and Surveillance Requirements.'' The proposed revisions are required to support installation of a new Power Range Neutron Monitoring (PRNM) System and incorporate long-term thermal-hydraulic stability solution hardware.

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.

As discussed in the Nuclear Measurement Analysis & Control (NUMAC) PRNM [Power Range Neutron Monitor] Licensing Topical Report (LTR), the NUMAC PRNM modification and associated changes to the TS involve equipment that is designed to detect the symptoms of certain events or accidents and initiate mitigating actions. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram or rod block), but no failure can cause an accident. The PRNM replacement system is designed to perform the same operations as the existing Power Range Monitor System and meets or exceeds all operational requirements. Therefore, it is concluded that the probability of an accident

previously evaluated is not increased as a result of replacing the existing equipment with the PRNM equipment.

The PRNM System reduces the need for tedious operator actions during normal conditions and allows the operator to focus more on overall plant conditions. The automatic self-test and increased operator information provided with the replacement system are likely to reduce the burden during off-normal conditions as well. The replacement equipment qualifications fully envelope the environmental conditions, including electromagnetic interference, in the LGS control room.

The replacement equipment has been specifically designed to assure that it fully meets the response time requirements in the worst case. As a result, due to statistical variations resulting from the sampling and update cycles, the response time is typically faster than required in order to assure that the required response time is always met. Setpoints are changed only when justified by the improved equipment performance specifications and by setpoint calculations which show that safety margins are maintained. There is no impact to the Control Rod Drop accident analysis because the PRNM System maintains all existing system functions with a reliability equal to or better than the existing Power Range Monitor System.

The replacement equipment includes up to 5 LPRM [Local Power Range Monitor] inputs on a single module compared to one per module on the current system. Up to 17 LPRM signals are processed through one preprocessor. The recirculation flow signals are processed in the same hardware as the LPRM processing. The net effect of these architectural aspects is that there are some single failures that can cause a greater loss of ''sub-functionality'' than in the current system. Other architectural and functional aspects, however, have an offsetting effect. Redundant power supplies are used so that a single failure of Reactor Protection System (RPS) AC power has no effect on the overall PRNM System functions while still resulting in a half scram as does the current system. Continuous automatic self-test also assures that if a single failure does occur, it is much more likely to be detected immediately. The net effect is that from a total system level, unavailability of the safety-related functions in the replacement system is equal to or better than the current Power Range Monitor System.

Based on the extensive and thorough verification and validation program used in the PRNM design and field operating experience, common cause failures in software controlled functions are judged to not be a significant failure mode.

However, in spite of that conclusion, means are provided within the system to mitigate the effects of such a failure and alert the operator. Therefore, such a failure, even if it occurred, will not increase the consequences of a previously evaluated accident.

To reduce the likelihood of common cause failure of software controlled functions, thorough and careful verification and validation activities are performed both for the requirements and the implementing software design. In addition, the software is designed to limit the loading that external systems or equipment can place on the system, thus significantly reducing the risk that some abnormal dynamic condition external to the system can cause system functional performance problems due to processing ''overload'' (i.e., ''slowing down'' or stopping the processing).

As a conservatism, however, despite these verification and validation activities, common cause failures of software-controlled functions due to residual software design faults are assumed to occur. Both the software and hardware are designed to manage the consequences of such failure (and also cover potential common cause hardware failures). Safety outputs are designed to be fail safe by requiring dynamic update of output modules or data signals, where failure to update the information is detected by simple receiving hardware, which, in turn, forces a trip. This aspect covers all but rather complex failures where the software or hardware executes a portion of the overall logic but fails to process some portion of new information (inputs ''freeze'') or some portion of the logic (outputs ''freeze'').

To help reduce the likelihood of complex failures, a watchdog timer is used which is updated by a very simple software routine that in turn monitors the operational cycle time of all tasks in the system. The software design is such that as long as all tasks are updated at the design rate, it is likely that software controlled functions are executing as intended. Conversely, if any task fails to update at the design rate, that is a strong indication of at least some unanticipated condition. If such a condition occurs, the watchdog timer will not be updated, the computer will be automatically restarted, and the system will detect an abnormal condition and provide an alarm and trip.

The information available to the operator is at least the same as with the current system and, in many cases, improved. No actions are required by the operator to obtain information normally used and equivalent to that available with the current equipment. However, the replacement system does provide more directly accessible information regarding the condition of the equipment, including automatic self-test, which can aid the operator in diagnosing unusual situations beyond those defined in the licensing basis.

In summary, the reliability of the new PRNM System and its ability to detect and mitigate abnormal flux transients have either remained the same or improved over the existing Power Range Monitor System. Since these postulated reactivity transients are mitigated by the new system as effectively and reliability [reliably] as the existing system, the consequences of these transients have not changed. Therefore, the proposed TS changes do not involve a significant increase in the probability 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.

LGS Modification P00224 uses digital processing with software (firmware) control for the main signal processing part of the modification. The remainder of the equipment in the modification uses conventional equipment similar to the current system (e.g., penetrations, cables, interface panels).

The digital equipment has ''control'' processing points and software-controlled digital processing where as the current system has analog and discrete component processing. The result is that the specific failures of hardware and potential software common cause failures are different from the current system. The effects of software common cause failure are mitigated by hardware design and system architecture, but are of a ''different type'' of failure than those evaluated in the LGS Updated Final Safety Analysis Report (UFSAR). Therefore, the replacement system may have a malfunction of a different type from those evaluated in the LGS UFSAR[. . .] However, when these PRNM failures are evaluated at the system level, there are no new effects.

LGS Modification P00224 involves equipment that is intended to detect the symptoms of certain transients and accidents and initiate mitigating action. The worst case failure of the equipment involved in the modification is a failure to initiate mitigating action (scram), but no failure can cause an accident. This is unchanged from the current system. Software common cause failures could result in the system failing to perform its safety function, but this possibility is addressed in Section 1, above. In that case, it might fail to initiate action to mitigate the consequences of an accident, but would not cause one. No new system level failure modes are created with the PRNM System.

Therefore, LGS Modification P00224 does 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 the margin of safety.

The PRNM System response time and operator information is either maintained or improved over the current Power Range Monitor System.

The PRNM System has improved channel trip accuracy compared to the current system and meets or exceeds system requirements assumed in setpoint analysis. The channel response time exceeds the requirements. The channel indicated accuracy is improved over the current system and meets or exceeds all of the system requirements.

The PRNM System was developed to detect the presence of thermal-hydraulic instabilities and automatically initiate the necessary corrective actions to suppress the oscillations prior to violating the Minimum Critical Power Ratio (MCPR) Safety Limit. The NRC has reviewed and approved the PRNM Licensing Topical Report (LTR) concluding that the PRNM System will provide the intended protection.

Therefore, LGS Modification P00224 does not result in 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: 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.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 9, 1996, as supplemented on June 6, 1997, and June 7, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to revise TS Section 6 to delete requirements for Plant Operating Review Committee review of the fire protection program and implementing procedures.

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:

Operation of the Indian Point 3 plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete the Plant Operating Review Committee (PORC) review of changes to the fire protection program and implementing procedures. The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

No physical changes to the plant or changes to equipment operating procedures are proposed. The changes are administrative and will not have any direct effect on equipment important to safety. Therefore the changes cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Adequacy of the fire protection program and implementing procedures is assured by the fire protection license condition, the procedure review and approval process implemented by Amendment 159, the provisions of 10 CFR 50.59, and inspections and audits performed under the cognizance of the SRC [Safety Review Committee]. Consequently, deleting PORC's responsibility for review of the fire protection program and implementing procedure will not degrade the fire protection program. Therefore, the proposed changes do 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 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 E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Sheri R. Peterson.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: November 8, 1999 (PCN 454).

Description of amendment requests: The licensee proposed to revise Surveillance Requirement (SR) 3.8.1.18 of Technical Specification (TS) 3.8.1, ''A.C. Sources-Operating.'' Currently, SR 3.8.1.18 reads: Verify interval between each sequenced load block is within plus or minus 10% of design interval for each emergency and shutdown load programmed time interval load sequence. The licensee proposed to revise the SR to read: Verify the timing of each sequenced load block is within its timer setting plus or minus 10% or plus or minus 2.5 seconds, whichever is greater, with the exception of the 5 second load group which is minus 0.5, plus 2.5 seconds, for each programmed time interval load sequence.

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 any accident previously evaluated?

Response: No.

The proposed change would expand the current surveillance acceptance criteria to more accurately reflect the characteristics of the installed plant equipment. The diesel generators (DG's) have sufficient capacity to maintain adequate voltage and frequency during load sequencing with the expanded tolerance. The overall Engineered Safety Features (ESF) response times in the Technical Specifications and safety analyses are maintained even though the timer tolerance is increased. Therefore, the consequences of any accident previously evaluated are not increased. The DG load sequence timers are not of themselves a credible initiator of any accident, so the probability of an accident has not been increased. The timers will function acceptably to support the equipment needed for accident mitigation, so the consequences of an accident are not increased. Therefore, the probability or consequences of any accident previously evaluated are not increased.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request does not involve any change to plant equipment or operation. In the event of a loss of preferred power, the ESF electrical loads are automatically connected to the DG's in sufficient time to provide for safe reactor shutdown and to mitigate the consequences of a Design Basis Accident such as a loss of coolant accident. Increasing the timer tolerance will not create the possibility of a new or different kind of accident from any 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.

This amendment does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operations are determined. The actual response times have not been altered by this amendment. Therefore, operation of equipment will not be affected. Accordingly, this 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 requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Date of amendment request: November 12, 1999 (PCN 505).

Description of amendment requests: The licensee proposed to revise Technical Specification (TS) 5.5.2.13, ''Diesel Fuel Oil Testing Program.'' Specifically, the following changes are proposed:

1. The at least once per 92 days test is deleted for water and sediment,

American Petroleum Institute (API) gravity or an absolute specific gravity, and kinematic viscosity for the diesel fuel oil in the Emergency Diesel Generator fuel oil storage tanks. The requirement to test these properties prior to addition of new fuel to the storage tank remains unchanged.

2. A requirement is added to test new fuel oil prior to addition to the storage tank to verify that the flash point is within limits.

3. A requirement is added to test new fuel oil within 31 days of delivery for ''other properties for ASTM [American Society for Testing and Materials] 2D fuel.''

4. The acceptance criteria for the properties listed, with the exception of the particulate criterion, are replaced with the phrase ''within limits.'' The statement which requires sampling in accordance with ASTM–D4057–81 is deleted. Acceptance criteria and reference to the applicable standard for sampling are currently provided in the Bases for Surveillance Requirement 3.8.3.3.

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) 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.

This change is an administrative change to make Technical Specification (TS) 5.5.2.13, ''Diesel Fuel Oil Testing Program,'' consistent with the existing Bases for Surveillance Requirement (SR) 3.8.3.3. The specific changes are:

1. The at least once per 92 days diesel fuel oil test is deleted for water and sediment, American Petroleum Institute (API) gravity or an absolute specific gravity, and kinematic viscosity. The requirement to test these properties prior to addition of new fuel to the storage tank remains unchanged.

2. A requirement is added to test new fuel oil prior to addition to the storage tank to verify that the flash point is within limits.

3. A requirement is added to test new fuel oil within 31 days of delivery for ''other properties for ASTM 2D fuel.''

4. The acceptance criteria for the properties listed, with the exception of the particulate content, are replaced with the phrase ''within limits.'' Acceptance criteria are currently provided in the Bases for Surveillance Requirement 3.8.3.3.

These changes are all consistent with the existing Bases for SR 3.8.3.3 and NUREG 1432.

Therefore, this change does 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 kind of accident from any accident previously evaluated?

Response: No.

This change is an administrative change to make TS 5.5.2.13, ''Diesel Fuel Oil Testing Program,'' consistent with the existing Bases for Surveillance Requirement 3.8.3.3.

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been 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.

This change is an administrative change to make TS 5.5.2.13, ''Diesel Fuel Oil Testing Program,'' consistent with the existing Bases for Surveillance Requirement 3.8.3.3.

Therefore, there will be no significant reduction in a margin of safety as a result of this change.

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 requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of amendment request: April 19, 1999, as supplemented by letter dated November 1, 1999.

Description of amendment request: The proposed change would revise Surveillance Requirement (SR) 3.3.5.2 and associated Bases to allow the loss of voltage and degraded voltage trip setpoints to be treated as nominal values in the same manner as the trip setpoints for the Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation. The November 1, 1999, letter removes a note proposed in the April 19, 1999, amendment request. This revision does not change the scope of the April 19, 1999, application and the initial proposed no significant hazards consideration.

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 proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change affects only the presentation of the trip setpoints for loss of voltage and degraded voltage in SR 3.3.5.2 in the VEGP Units 1 and 2 TS [Technical Specifications]. The calibration of the channels whose setpoints are specified in SR 3.3.5.2 will continue to be performed in a manner consistent with the setpoint methodology used to determine the trip setpoints. There will be no adverse effect on the ability of those channels to perform their safety functions as assumed in the safety analyses. Since there will be no adverse effect on the trip setpoints or the instrumentation associated with those trip setpoints, there will be no increase in the probability of any accident previously evaluated. Similarly, since the ability of the instrumentation to perform its safety function is not adversely affected, there will be no increase in the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change affects only the presentation of the trip setpoint requirements of SR 3.3.5.2. Plant operation will not be changed, and the response of safety related equipment as assumed in the accident analyses would not be adversely affected. Therefore, the proposed change does not involve a new or different kind of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. As described above, the loss of voltage and degraded voltage instrumentation will remain capable of performing its safety function as assumed in the accident analyses. The treatment of trip setpoints as nominal values is consistent with the methodology used to establish those setpoints. As such, margin is not affected by the proposed change.

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. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 8, 1999, as supplemented by letter dated November 9, 1999. The September 8, 1999, application was originally noticed in the **Federal Register** on November 3, 1999 (64 FR 59806).

Description of amendment request: The proposed amendments would revise Technical Specification 3/4.8.1, ''A.C. Sources, Operating,'' and associated Bases, by relocating the 18-month surveillance to subject the standby diesel generator to inspections, in accordance with procedures prepared in conjunction with its manufacturer's recommendations, to the Technical Requirements Manual.

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 moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the Technical Requirements Manual (TRM). The change does not result in any hardware or operating procedure changes. The requirement being removed from the Technical Specifications is not the initiator of any analyzed event. The TRM is maintained using the provisions of 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed without prior NRC approval. Therefore, the changes do 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 change moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the TRM. The change does not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. The change does not impose different requirements. The change does not alter assumptions made in the safety analysis and licensing basis. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change moves the requirement to perform manufacturer's recommended inspections of the Standby Diesel Generators from the Technical Specifications to the TRM. The change does not reduce the margin of safety since the location of details has no impact on any safety analysis assumptions. In addition, the requirement being transposed from the Technical Specification to the TRM is the same as the existing Technical Specification. Also, the TRM is maintained using the provisions of 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no significant reduction in a margin of safety will be allowed without prior NRC approval.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

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 Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: November 5, 1999.

Description of amendment requests: The proposed license amendments would revise Technical Specification (T/S) Surveillance Requirement 4.5.1.c to require verification that power is removed from each emergency core cooling system accumulator isolation valve operator instead of verification that each accumulator isolation valve breaker is removed from the circuit. In addition, the proposed license amendments would revise T/S 3.5.1 to change ''pressurizer pressure'' to ''reactor coolant system pressure'' in the applicability and action statement requirements. The Bases for T/S 3/4.5.1 will also be revised to reflect both changes. Additionally, administrative changes are proposed to the page format.

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 of occurrence or consequences of an accident previously evaluated?

The ECCS [emergency core cooling system] accumulators are used to mitigate the consequences of an accident after the event has occurred and do not initiate any accident previously evaluated. Demonstrating how power is removed from the valve operator does not initiate an accident. Inadvertently closing the valves cannot initiate an accident. Therefore, there is no significant increase in the probability of occurrence of an accident previously evaluated.

The ECCS accumulators will still perform their function of injecting borated water into the reactor coolant loops following a large break loss-of-coolant accident, as described in Section 14.3.1 of the Updated Final Safety Analysis Report (UFSAR). A spurious closure of an accumulator outlet isolation valve is not a credible event. Performing T/S Surveillance Requirement 4.5.1.c provides assurance that one of the two actions required for spurious closure of the valve is precluded. The proposed change to the surveillance continues to provide assurance that power will be removed from each accumulator isolation valve operator so that the valves remain open. The consequences of accidents previously evaluated remained bounded because the accumulators will still function as assumed in the UFSAR accident analysis. Therefore, there is no significant increase in the consequences of any accident previously evaluated.

Changing ''pressurizer pressure'' to ''RCS [reactor coolant system] pressure'' has no significant effect on the applicability of the T/S requirements. RCS pressure and pressurizer pressure instrumentation measure a similar parameter in the primary coolant system. Since the RCS is a closed-loop fluid system, pressure instruments should indicate approximately the same value. There is no significant difference between the instrument readings because they are corrected for range, height, and accuracy. There is no significant change in the margin of pressure between when the accumulators are required to be aligned at 1000 psig and the upper limit specified in T/S 3.5.1.d of 658 psig.

The proposed format changes are administrative and have no impact on plant operation.

Therefore, the proposed changes do not increase the probability of occurrence 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 changes to T/S 3/4.5.1 and the associated Bases do not involve any physical changes to the plant, but do change the way the plant is operated by changing the method for ensuring spurious closure of the accumulator isolation valve will not occur. The proposed change to T/S Surveillance Requirement 4.5.1.c does not create any new operator actions. The position of the accumulator isolation valve remains open in Modes 1, 2, and 3 with RCS pressure greater than 1000 psig, which meets its design safety function. The proposed change does not increase the possibility of the accumulator valve repositioning. In order for repositioning to happen, the operator must close the molded-case circuit breaker coupled with either an active single failure or deliberate operator action in the control room. The proposed change of verifying that power is removed from the accumulator isolation valve provides the same level of protection. Two positive actions are required for the accumulator isolation valve to reposition.

The proposed format changes are administrative and have no impact on plant operation.

Therefore, the proposed changes do 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?

T/S Surveillance Requirement 4.5.1.c provides requirements that ensure that a single action will not cause an inadvertent closure of the accumulator isolation valves. The proposed change continues to ensure that two positive actions, an operator action to restore the breaker and a single failure, are required for valve closure.

Changing ''pressurizer pressure'' to ''RCS pressure'' does not impact operation of the accumulators. The proposed changes do not impact the nitrogen cover pressure as stated in T/S 3.5.1.c. The accumulators would not be expected to inject borated water until RCS pressure lowers to 658 psig (the upper limit specified in T/S 3.5.1.d). The change does not affect when this would occur after an accident. Therefore, changing ''pressurizer pressure'' to ''RCS pressure'' has no impact on plant operation.

The proposed format changes are administrative and have no impact on plant operation.

Therefore, there is no 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 requests involves no significant hazards consideration.

Attorney for licensee: David W Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

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).

Arizona Public Service Company, et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of application for amendment: October 8, 1999, as supplemented October 29, 1999.

Brief description of amendment: The amendment revises Surveillance Requirement 3.8.4.8 of Technical Specification 3.8.4, to allow the licensee to forego the performance of this surveillance until entry into MODE 4 coming out of the ninth refueling outage for Unit 1.

Date of issuance: November 19, 1999.

Effective date: November 19, 1999.

Amendment No.: 121.

Facility Operating License No. NPF–41: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 19, 1999 (64 FR 56369).

The October 29, 1999, supplement provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1999.

No significant hazards consideration comments received: No

Commonwealth Edison Company, Docket No. 50–373, LaSalle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: July 7, 1999, as supplemented on October 14, 1999.

Brief description of amendment: The amendment revised Section 2.1 of the Technical Specifications to reflect a change in the Minimum Critical Power Ratio.

Date of issuance: November 9, 1999.

Effective date: Immediately, to be implemented prior to the startup of Cycle 9.

Amendment No.: 137.

Facility Operating License No. NPF–11: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 11, 1999.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1999.

No significant hazards consideration comments received: No.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: January 29, 1998, as supplemented by letters dated November 9, 1998, and June 14, 1999.

Brief description of amendment: This amendment authorized changes to the Beaver Valley Power Station, Unit No. 2 (BVPS–2) Updated Final Safety Analysis Report (UFSAR). The amendment authorizes changes to the UFSAR to reflect revisions to the radiological dose calculations for the locked rotor accident analysis. This revision of the calculation was performed in order to incorporate more conservative

assumptions than those used in the previous analysis for a postulated locked rotor event.

These changes are not the result of hardware changes to the plant or any change in operating practices. They reflect revised analysis results only and allow revision of the licensing basis to reflect conservative assumptions used in the revised analyses.

The June 14, 1999, letter withdrew a portion of the amendment which would have revised the UFSAR description of the small-break loss-of-coolant accident radiological consequences.

Date of issuance: November 18, 1999.

Effective date: As of the date of issuance.

Amendment No: 103.

Facility Operating License No. NPF–73. Amendment approved changes to the UFSAR.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11919).

The November 9, 1998, and June 14, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1999.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 29, 1999, as supplemented by letters dated August 6, 1999, October 14, 1999, and October 26, 1999.

Brief description of amendment: The proposed change to the Arkansas Nuclear One, Unit No. 2 Technical Specifications would allow the performance of a special inspection of the steam generator tubes during an upcoming mid-cycle outage. This mid-cycle outage is planned for the purpose of performing inspections in selected areas of the steam generator tube bundle where previous inspections have revealed tube degradation. The proposed change would limit the initial inspection scope to these identified areas and includes scope expansion criteria to address unexpected results.

Date of issuance: November 5, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 210.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 6, 1999 (64 FR 54375).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1999.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 6, 1999.

Brief description of amendment: The amendment incorporates the Technical Specification changes necessary for redefining the minimum critical power ratio safety limit for Cycle 11 operation with a mixed core of Siemens Power Corporation fuel and General Electric fuel.

Date of issuance: November 17, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No: 140.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: August 25, 1999 (64 FR 46434).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1999.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio.

Date of application for amendment: July 26, 1999.

Brief description of amendment: This amendment—

(1) Relocates the requirements in TS 3/4.3.3.2, ''Instrumentation—Incore Detectors,'' TS 3/4.3.3.9, ''Instrumentation—Waste Gas System Oxygen Monitor,'' and TS 3/4.4.4.7, ''Reactor Coolant System—Chemistry,'' to the Davis-Besse Nuclear Power Station (DBNPS) Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM);

(2) Revises TS 3/4.11.2, ''Radioactive Effluents—Explosive Gas Mixture,'' to reflect the relocation of TS 3/4.3.3.9;

(3) Revises the requirements of TS 3/4.4.6.1, ''Reactor Coolant System Leakage—Leakage Detection Systems,'' to require one monitor (gaseous or particulate) of the containment atmosphere radioactivity monitoring systems to be operable, rather than requiring both systems to be operable simultaneously; and

(4) Revises TS 3/4.3.3.1, ''Radiation Monitoring Instrumentation,'' to be consistent with the revision to TS 3/4.4.6.1.

Date of issuance: November 16, 1999

Effective date: November 16, 1999.

Amendment No.: 234.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 25, 1999 (64 FR 46436).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1999

No significant hazards consideration comments received: No

NASA Aeronautics Space Administration (NASA), Docket No. 50–30, NASA Test Reactor, Erie County, Ohio

Date of application for amendment: March 25, 1999, as supplemented on August 10, 1999.

Brief description of amendment: This amendment changes Lewis Research Center (LeRC) to Glenn Research Center (GRC).

Date of issuance: November 16, 1999.

Effective Date: November 16, 1999.

Amendment No: 10.

Facility License No. TR–3: The amendment changes facility name.

Date of initial notice in **Federal Register**: October 6, 1999 (64 FR 54377).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1999.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 16, 1998, as supplemented June 21, 1999.

Brief description of amendment: Amendment changes Technical Specifications to limit reactor power oscillations during a reactor trip and allows operation in the Extended Load Line Limit Analysis region of the power/flow operating curve.

Date of issuance: September 21, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 168.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71968) as corrected January 27, 1999 (64 FR 4148).

The June 21, 1999, letter provided supporting information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1999.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 29, 1998, as supplemented by letters dated March 8 and April 7, 1999.

Description of amendment request: To revise Facility Operating License No. NPF–86 to reflect the transfer of the license, to the extent held by Montaup Electric Company, to Little Bay Power Corporation.

Date of issuance: November 19, 1999.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 65.

Facility Operating License No. NPF–86: Amendment revised the License.

Date of initial notice in **Federal Register**: December 14, 1998 (63 FR 68801). The March 8 and April 7, 1999 supplements provided clarifying information and did not change the staff's proposed no significant hazards determination. The Commission received comments which were addressed in the staff's Safety Evaluation dated August 3, 1999. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1999.

No significant hazards consideration comments received: Yes.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendments: April 19, 1999, as supplemented August 25, October 14, and November 3, 1999.

Brief description of amendments: The amendment deletes most of the current Technical Specifications to implement the Permanently Defueled Technical Specification. Portions of the April 19, 1999, request related to fuel storage pool water level, crane operability, and crane travel with a spent fuel cask will be addressed at a later date.

Date of issuance: November 9, 1999.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 106.

Facility Operating License No. DPR–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 30, 1999 (64 FR 35208).

The August 25, 1999, letter provided clarifying information that did not change the scope of the April 19, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1999.

No significant hazards consideration comments received: No

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone

Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 7, 1998, as supplemented January 22, 1999.

Brief description of amendment: The amendment revises the licensing basis to address the addition of the dose from the Refueling Water Storage Tank back leakage into the design basis loss-of-coolant accident analysis and Chapter 15 of the Final Safety Analysis Report.

Date of issuance: November 4, 1999.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 176.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35991). The January 22, 1999, supplement provided clarifying information that did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1999.

No significant hazards consideration comments received: No

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: August 5, 1999.

Brief description of amendment: The amendment corrects editorial errors in the Technical Specifications Sections 3.8.3.2, 4.6.2.1, 4.8.1.1, and 4.9.12. The amendment also corrects minor editorial and reference errors in Bases Sections B 3/4.3.2, B 3/4.4.11, B 3/4.6.1.2, and B 3/4.8.4.

Date of issuance: November 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 177.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 8, 1999 (64 FR 48858).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1999.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 29, 1998, as supplemented by letters dated July 30 and October 12, 1999.

Brief description of amendments: The amendments revise Technical Specifications (TS) 6.9.1.8, ''Core Operating Limits Report,'' of the current TSs and TS 5.6 of the improved TSs, to allow the use of NRC approved addenda to WCAP–10054–P–A, ''Westinghouse Small Break ECCS Evaluation Model Using NOTRUMP Code,'' August 1985, to determine core operating limits. The improved TSs were issued in Amendment Nos. 135 for Diablo Canyon Power Plant, Units 1 and 2 dated May 28, 1999, but have not yet been implemented.

Date of issuance: November 15, 1999.

Effective date: November 15, 1999, and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—136; Unit 2–136.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19562). The July 30 and October 12, 1999, supplemental letters provided additional clarifying information and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated November 15, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of amendment request: January 12, 1999, as supplemented January 29, March 10, and September 20, 1999.

Description of amendment request: This amendment revised Technical Specifications (TSs) Section 3/4.4.2, ''Safety/Relief Valves,'' and TS Bases Sections B 3/4.4.2, B 3/4.5.1 and B 3/4.5.2 to increase the allowable as-found main steam safety relief valve (SRV) code safety function lift setpoint tolerance from plus or minus 1% to plus or minus 3%. Also, the required number of operable SRVs in operational conditions 1, 2, and 3 will be increased from 11 to 12.

Date of issuance: November 10, 1999.

Effective Date: As of date of issuance and shall be implemented prior to completion of the spring 2000 refueling outage for Limerick Generating Station, Unit 1.

Amendment No: 137.

Facility Operating License No. NPF–39. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1999 (64 FR 9194).

The January 29, March 10, and September 20, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 10, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of application for amendment: June 7, 1999.

Brief description of amendment: The amendment revised the technical specifications (TSs) to reflect the permanent deactivation in the closed position of the ''wet'' instrument reference leg isolation valve HV–61–102. Specifically, TS Table 3.6.3.1, ''Primary Containment Isolation Valve,'' and its associated notations were revised to reflect this current plant configuration.

Date of issuance: November 18, 1999.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 138.

Facility Operating License No. NPF–39. This amendment revised the TSs.

Date of initial notice in **Federal Register**: October 6, 1999 (64 FR 54380).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 24, 1998, as supplemented May 25 and September 27, 1999.

Brief description of amendments: These amendments revise Technical Specification (TS) Table 3.3.8.1–1 related to loss of power instrumentation set points and limits of allowable values for the 4 kV emergency buses.

Date of issuance: November 16, 1999.

Effective date: These license amendments are effective as of their date of issuance. Phase 1 applies to Functions 2 and 3 in TS Table 3.3.8.1–1 and shall be implemented within 30 days of the date of issuance of the amendment. Phase 2 applies to Functions 4 and 5 in TS Table 3.3.8.1–1 and shall be implemented no later than March 1, 2000. Note (a) shall be implemented within 30 days of the date of issuance of the amendment and shall be voided upon completion of modification 96–01511, but no later than March 1, 2000.

Amendments Nos.: 230 and 235.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications. The May 25 and September 27, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24199).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1999.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 14, 1997, as supplemented July 23, 1998, December 3, 1998, February 25, 1999, and September 29, 1999.

Brief description of amendment: The amendment revises Technical Specifications to permit use of additional spent fuel storage racks.

Date of issuance: November 10, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 256.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 24, 1998 (63 FR 45096).

The July 23, 1998, December 3, 1998, February 25, 1999, and September 29, 1999, applications provided supplemental information that did not affect the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1999.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: November 14, 1997, as supplemented on August 25, 1999.

Brief description of amendments: The amendments revise the TSs to make administrative and editorial changes to correct errors in the TSs that have either existed since initial issuance or were introduced during subsequent changes. In addition, surveillance requirements are added that should have been incorporated within the TSs when the applicable amendment to the TSs was approved by the NRC.

Date of issuance: November 2, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 225 and 206.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (63 FR 66141). The August 25, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

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.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendments: March 18, 1996, as supplemented April 28, 1997, and February 16, 1999.

Brief description of amendment: The amendment authorizes changes to the design-basis accident analysis (postulated cask drop accident) to be incorporated into the Defueled Safety Analysis Report (DSAR) and revises the Permanently Defueled Technical Specifications to reflect the changes to the cask drop analysis.

Date of issuance: November 12, 1999.

Effective date: November 12, 1999, with the Technical Specifications to be implemented within 30 days. Implementation also includes incorporation of the changes into the DSAR at the next update of the DSAR in accordance with the schedule in 10 CFR 50.71(e).

Amendment No.: 127.

Facility Operating License No. DPR–54: The amendment revised the Technical Specifications and the Defueled Safety Analysis Report.

Date of initial notice in **Federal Register**: August 25, 1999 (64 FR 46442).

The April 28, 1997, and February 16, 1999, supplements provided additional clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1999.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: October 20, 1998 (PCN 485), as supplemented August 13, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.3.9 by adding a surveillance requirement for response time testing for the control room isolation signal.

Date of issuance: November 15, 1999.

Effective date: November 15, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—160; Unit 3—151.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 12, 1999 (64 FR 55311).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 7, 1998, as supplemented by letters dated May 20, June 16, September 30, October 20, and October 21, 1999.

Brief description of amendments: The amendments changed the Technical Specifications (TSs) to reflect reactor coolant system flow differences between the existing Model E and replacement Model ®94 steam generators (SGs) by adding a new flow rate requirement to TS 3.2.5, Departure from Nucleate Boiling (DNB) Parameters, that is applicable to the Model ®94 SGs. Related changes to Bases 3/4.2.5, DNB Parameters, were also made. The licensee withdrew all changes proposed in the May 7, 1998, application that were superseded by the previously approved amendments 115/103 dated September 2, 1999.

Date of issuance: November 8, 1999.

Effective date: November 8, 1999.

Amendment Nos.: Unit 1—117; Unit 2—105.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35996).

The May 20, June 16, September 30, October 20, and October 21, 1999, supplements provided additional clarifying information. The September 30, 1999, supplement also provided updated TS pages. This information was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 31, 1998, as supplemented by letters dated April 19, August 18, and October 21, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.4.9.3 by revising the cold overpressure mitigation curve to accommodate the replacement steam generators and by adding two surveillances (for the centrifugal charging pumps and the emergency core cooling system accumulators) to ensure the operability of the cold overpressure mitigation system.

Date of issuance: November 9, 1999.

Effective date: November 9, 1999, to be implemented within 30 days.

Amendment Nos.: Unit 1—118; Unit 2—106.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 8, 1999 (64 FR 48867).

The October 21, 1999, supplement provided a revised implementation date. This information was within the scope of the original application and **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 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 January 3, 2000, 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).

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 29, 1999, as supplemented November 2, 1999.

Description of amendment request: The amendment revises the Technical Specification administrative controls regarding the containment leak rate testing program and the core operating limits report. These changes are necessary to reflect changes in the accident analyses and core design methodologies for the next operating cycle.

Date of issuance: November 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 188.

Facility Operating License No. DPR–20: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the staff by close of business November 12, 1999. The notice was published in the Herald Palladium on November 6–8, 1999. No public comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 15, 1999.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Dated at Rockville, Maryland, this 23rd day of November 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31037 Filed 11–30–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Tour of Printing and Processing Plants

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

DATES: The visits are scheduled for December 6–8, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: Members of the Postal Rate Commission will visit the R.R. Donnelley printing plant at Spartanburg, South Carolina on the afternoon of Monday, December 6, 1999. The Commission will discuss logistics and support issues, and problems with and procedures for preparation of mail for dropshipping. On the morning of Tuesday, December 7, 1999, the group will tour the BMG fulfillment facility in Duncan, South Carolina, and discuss mailing practices that incorporate the use of multiple subclasses and services by a major music club. That evening, the group will observe operations at the Orlando, Florida terminal facility used by members of the Florida Gift Fruit Shippers Association (FGFSA) to prepare items for shipment to distant postal facilities.

On Wednesday, December 8, 1999 the group will tour the packinghouse operation of a shipper-member of FGFSA to get a complete understanding of parcel movement from producers to consumers using the Postal Service delivery network, and then meet with several shippers to obtain a balanced picture of the varying needs of different sized operations. Finally, during the evening of December 8, the group will observe the operation of the Orlando Priority Mail processing center operated for the Postal Service by Emery.

Dated: November 24, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–31170 Filed 11–30–99; 8:45 am]

BILLING CODE 7710–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24176; 812–11402]

INVESCO Bond Funds, Inc., et al.; Notice of Application

November 24, 1999.

AGENCY: Securities and Exchange commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment management companies to participate in a joint lending and borrowing facility.

APPLICANTS: INVESCO Bonds Funds, Inc., INVESCO Combination Stock and Bond Funds, Inc., INVESCO Global Health Sciences Fund, INVESCO International Funds, Inc., INVESCO Money Market Funds, Inc., INVESCO Sector Funds, Inc., INVESCO Speciality Funds, Inc., INVESCO Stock Funds, Inc., INVESCO Treasurer's Series Funds, Inc., and INVESCO Variable Investment Funds, Inc. (collectively, the ''Companies''), INVESCO Funds Group, Inc. (''INVESCO Funds Group,'' and together with any entity controlling, controlled by, or under common control with INVESCO Funds Group, ''INVESCO''), and any other registered open-end investment company advised by INVESCO (together with the Companies, the ''Funds'').

FILING DATES: The application was filed on November 13, 1998, and amended on October 15, 1999. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 7800 East Union Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the named Funds, except INVESCO Global Health Sciences Funds (''Global''), is registered under the Act as an open-end management investment company and is organized as a Maryland corporation. Global, organized as a Massachusetts business trust, is registered under the Act as a closed-end management investment company.[1] INVESCO Funds Group, Inc. is registered under the Investment Advisers Act of 1940. Each Fund has entered into an investment advisory agreement with INVESCO under which INVESCO exercises discretion to purchase and sell securities for the Funds. INVESCO is an indirect wholly-owned subsidiary of AMVESCAP PLC, a publicly traded holding company that through its subsidiaries, including AIM Management Group, Inc., engages in investment management.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.,* overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

3. If the Funds were to borrow money from their custodians under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-terms loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements to the Cash Reserves Fund, a series of INVESCO Money Market Funds, Inc. or any general money market fund registered under the Act and advised by any entity controlling, controlled by, or under common control with INVESCO having the greatest amount of assets (the ''Money Market Fund''). The Bank Loan Rate for any day would be calculated by INVESCO each day an Interfund Loan is made according to a formula established by the Funds' directors or trustees (the ''Trustees'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based

[1] All Funds that presently intend to rely on the order are named as applicants. Any other Funds that subsequently rely on the order will comply with the terms and conditions in the application.

upon a publicly available rate (*e.g.,* Federal Funds plus 25 basic points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

9. The credit facility would be administered by INVESCO money market investment professionals (including the portfolio manager for the Money Market Fund) and fund accounting department (collectively, the ''Cash Management Team''). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. INVESCO on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the Money Market Fund's portfolio management on the Cash Management Team). Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Fund portfolio manager. After allocating cash for Interfund Loans, INVESCO will invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Fund.[2] The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions, and Global will participate in the credit facility only as a lender.

[2] Certain of the Funds have obtained an order permitting INVESCO to deposit uninvested cash balances that remain at the end of the trading day in one or more series of INVESCO Money Market Funds, Inc., or any other money market series of any of the Funds or of any other registered investment company advised by INVESCO which holds itself out to investors as a money market fund subject to rule 2a–7 under the Act. See INVESCO Bond Funds, Inc., Investment Company Act Release Nos. 23788 (April 16, 1999), and 23833 (May 12,1999) (order).

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transactions.

11. INVESCO would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. INVESCO would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. INVESCO or companies affiliated with it may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Fund discloses the extent to which the respective Fund may borrow money for temporary purposes and the extent to which the respective Fund is able to mortgage or pledge securities to secure permitted borrowing. If the requested relief is granted, the statement of additional information (''SAI'') for each Fund participating in the interfund lending arrangements will disclose the existence of the arrangements. The maximum amount that any Fund may borrow or lend is 33⅓% of total assets, and the maximum amount of securities which any Fund may pledge or mortgage is 15% of net assets. Each Fund that desires to engage in interfund lending arrangements, and that has existing fundamental policies that would restrict participation in such arrangements, will obtain shareholder approval to amend its policies to the extent necessary to permit it to participate in such arrangements on the conditions set forth in the application.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having INVESCO as their common investment adviser, and because of the overlap of Trustees and officers of the Funds.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements

satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) INVESCO would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than other similar investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obatining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affilitiated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit the the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that INVESCO would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security excpet that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coveage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' invludes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:[3]

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, INVESCO will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield on the Money Market Fund, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that required collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any even not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

[3] For purposes of these conditions, the term ''INVESCO'' refers to registered investment advisers.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes (and not for leveraging). In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds (except the portfolio manager of the Money Market Fund acting in his or her capacity as a member of the Cash Management Team). All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Fund's portfolio manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio manager of the Money Market Fund has access to loan demand data). INVESCO will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the Money Market Fund.

13. INVESCO will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Trustees of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, INVESCO will promptly refer the loan for arbitration to an independent arbitrator selected by the Trustees of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in any easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on the Money Market Fund, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. INVESCO will prepare and submit to the Trustees for review an initial report describing the operations of the

[4] If the dispute involves Funds with separate Boards of Trustees, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, INVESCO will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates INVESCO's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Rate will be higher than the Repo Rate and the yield on the Money Market Fund, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31208 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24175, 812–11816]

MAS Funds, et al.; Notice of Application

November 23, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit series of a registered open-end management investment company to participate in a joint leading and borrowing facility.

APPLICANTS: MAS Funds (the ''Fund'') and Miller Anderson & Sherrerd, LLP (the ''Adviser'').

FILING DATES: The application was filed on October 14, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Tower Bridge, West Conshohocken, PA 19428.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The Fund is registered under the Act as an open-end management investment company and currently consists of the following investment portfolios: Equity Portfolio, Mid Cap Growth Portfolio, Mid Cap Value Portfolio, Small Cap Growth Portfolio, Small Cap Value Portfolio, Value Portfolio, Cash Reserves Portfolio, Domestic Fixed Income Portfolio, Fixed Income Portfolio, Fixed Income II Portfolio, Global Fixed Income Portfolio, High Yield Portfolio, Intermediate Duration Portfolio, International Fixed Income Portfolio, Limited Duration Portfolio, Multi-Market Fixed Income Portfolio, Municipal Portfolio, Special Purpose Fixed Income Portfolio, Targeted Duration Portfolio, Balanced Portfolio, Multi-Asset-Class Portfolio, Advisory Mortgage Portfolio, Advisory Foreign Fixed Income Portfolio, Growth Portfolio, Value II Portfolio, Balanced Plus Portfolio and New York Municipal Portfolio (the ''Portfolios''). Applicants request that any relief granted pursuant to the application also apply to future investment portfolios of the Fund.

2. The Adviser serves as investment adviser to each Portfolio. Morgan Stanley Dean Witter Advisory, Inc. (the ''Sub-Adviser'') acts as investment sub-adviser to the Cash Reserves Portfolio. The Adviser and the Sub-Adviser are subsidiaries of Morgan Stanley Dean Witter & Co. and are registered under the Investment Advisers Act of 1940. The Fund has entered into an investment advisory agreement with the Adviser under which the Adviser oversees each Portfolio's investments and manages its business affairs, subject to the oversight of the Board of Trustees of the Fund (the ''Board''). The Adviser and, with respect to the Cash Reserves Portfolio only, the Sub-Adviser, exercises discretionary authority to purchase and sell securities for the Portfolios.

3. Some Portfolios may lend money to banks or other entities by entering into repurchase agreements, either directly or through a joint account, or purchasing other short-term instruments. Applicants have obtained an order permitting them to deposit uninvested cash balances that remain at the end of a trading day in one or more joint trading accounts (''Joint Accounts'') to be used to enter into

repurchase agreements.[1] Other Portfolios may need to borrow money from a bank to satisfy redemption requests, cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Fund has been delayed, or for other temporary purposes. Currently, if a Portfolio has a temporary cash need it would incur an overdraft with the custodian bank.

4. If the Portfolios were to borrow money from a bank under their current arrangements or under other credit arrangements, they would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other (non-borrowing) Portfolios on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the portfolios to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Portfolio.

5. Applicants request an order that would permit the Portfolios to enter into lending agreements (''Interfund Lending Agreements'') under which the Portfolios would lend and borrow money for temporary purposes directly to and from each other (''Interfund Loans'') through a credit facility (''Credit Facility''). Applicants believe that the proposed Credit Facility would substantially reduce the Portfolios' potential borrowing costs and enhance their ability to earn higher rates of interests on short-term loans. Although the proposed Credit Facility would substantially reduce the Portfolios' needs to borrow from banks, the Portfolios would still be free to establish committed lines of credit or other borrowing arrangements with banks.

6. Applicants anticipate that the Credit Facility would provide a borrowing Portfolio with savings when the cash position of the Portfolio is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Portfolios have insufficient cash on hand to satisfy such redemptions. When the Portfolios liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the Credit Facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Portfolio's custodian or improper delivery instructions by the broker affecting the transaction. Sales fails may present a cash shortfall if the Portfolio has undertaken to purchase a security with the proceeds from securities sold. When the Portfolio experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Portfolio incurs overdraft charges. Alternatively the Portfolio could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Portfolio, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the Credit Facility under these circumstances would enable the portfolio to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed Credit Facility a borrowing Portfolio would pay lower interest rates than those offered by banks on short-term loans. In addition, Portfolios making short-term cash loans directly to other Portfolios would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed Credit Facility would benefit both borrowing and lending Portfolios.

9. The interest rate charged to the Portfolios on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Portfolios from investments in overnight repurchase agreements through a Joint Account. The Bank Loan Rate for any day would be calculated by the Adviser on each day an Interfund loan is made according to a formula established by the Board. The formula would be designed to approximate the lowest interest rate at which bank short-term loans would be available to the Portfolios, and would be based upon a publicly available rate (*e.g.,* the Federal Funds rate) plus a certain premium reflecting the spread over the publicly available rate typically paid by the Portfolios (*e.g.,* 25 basis points). In accordance with this formula, the Interfund Loan Rate would vary with the publicly available rate so as to reflect changing bank loan rates. The Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Portfolios. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board.

10. The Credit Facility would be administered by employees of the Adviser (the ''Cash Management Team''). Under the proposed Credit Facility, the portfolio managers for each participating Portfolio could provide standing instructions to participate daily as a borrower or lender. The Cash Management Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Portfolios from the Portfolios' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Portfolios without any further communication from portfolio managers. After the Cash Management Team has allocated cash for Interfund Loans, the Adviser will invest any remaining cash in accordance with the standing instructions of portfolio managers. The money market Portfolios typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team will allocate borrowing demand and cash available for lending among the Portfolios on what the Cash Management Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Portfolios, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transactions. The method of allocation and related administrative procedures would be approved by the Board, including a majority of Trustees who are not ''interested persons'' of the Fund, as

[1] MAS Pooled Trust Fund, Investment Company Act Release Nos. 18081 (Apr. 8, 1991) (notice) and 18135 (May 6, 1991) (order); MAS Pooled Trust Fund, Investment Company Act Release Nos. 19377 (Apr. 1, 1993) (notice) and 19437 (Apr. 27, 1993) (amended order).

defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Portfolios participate on an equitable basis.

12. The Adviser would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Portfolio to ensure that they comply with the Portfolio's investment policies and limitations, (iii) ensure equitable treatment of each Portfolio, and (iv) make quarterly reports to the Board concerning any transactions by the Portfolios under the Credit Facility and the interest rates charged.

13. The Adviser would administer the Credit Facility as part of its duties under its existing advisory contract with each Portfolio and would receive no additional fee as compensation for its services. The Adviser may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the Credit Facility. Fees would be no higher than those applicable for comparable bank loan transactions.

14. Each Portfolio's participation in the proposed Credit facility will be consistent with its organizational documents and its investment policies and limitations. The statement of additional information of each Portfolio participating in the interfund lending arrangements will disclose the existence of such arrangements.

15. In connection with the Credit Facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because the Adviser may be deemed to control the Portfolios, the Portfolios might be deemed to be under common control and thus affiliated persons of each other.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed Credit Facility transactions do not raise these concerns because (i) the Adviser would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Portfolios otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Joint Accounts; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Portfolios would receive interest at a rate higher than they could obtain through other similar investments; and (v) the borrowing Portfolios would pay interest at a rate lower than otherwise available to them under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Portfolio obtaining an undue advantage over any other Portfolio.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Portfolio to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c). 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed Credit Facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Portfolios or shareholders, and that the Adviser would receive no additional compensation for its services in administering the Credit Facility. Applicants also note that the purpose of the proposed Credit facility is to provide economic benefits for all the participating Portfolios.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Credit Facility (because the lending Portfolios are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Portfolios would remain subject to the requirement of section 18(f)(1) that all borrowings of the Portfolio, including combined Credit Facility and bank borrowings, have at least 300% asset coverage. Based on the

conditions and safeguard described in the application, applicants also submit that to allow the Portfolios to borrow from other Portfolios pursuant to the proposed Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, Policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the Credit Facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Portfolios and their shareholders. Applicants note that each Portfolio would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Portfolio's participation in the Credit Facility will be on terms which are no different from or less advantageous than that of other participating Portfolios.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Portfolios under the Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Adviser will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Portfolio than the Repo Rate, and (b) more favorable to the borrowing Portfolio than the Bank Loan Rate.

3. If a Portfolio has outstanding borrowings, any Interfund Loans to the Portfolio (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over (7) days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Portfolio, that event of default will automatically (without need for action or notice by the lending Portfolio) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Portfolio to call the Interfund Loan (and exercise all rights with respect to collateral, if any) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Portfolio.

4. A Portfolio may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Portfolio has a secured loan outstanding from any other lender, including but not limited to another Portfolio, the Portfolio's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Portfolio's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Portfolio may borrow through the Credit Facility on a secured basis only. A Portfolio may not borrow through the Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Portfolio that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Portfolio must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Portfolio with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Portfolio will within one (1) business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Portfolio's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Portfolio's total outstanding borrowings exceed 10% is repaid, or the Portfolio's total outstanding borrowings cease to exceed 10% of its total assets, the Portfolio will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, fixed income or money market Portfolio may lend to another Portfolio through the Credit Facility if the loan would cause its aggregate outstanding loans through the Credit Facility to exceed 5%, 7.5%, or 10%, respectively, of its net assets at the time of the loan.

7. A Portfolio's Interfund Loans to any one Portfolio shall not exceed 5% of the lending Portfolio's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven (7) days. Loan affected within seven (7) days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Portfolio's borrowings through the Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Portfolio's total net cash redemptions and 102% of failed trades for the preceding seven (7) calendar days.

10. Each Interfund Loan may be called on one (1) business day's notice by a lending Portfolio and may be repaid on any day by a borrowing Portfolio.

11. A portfolio's participation in the Credit Facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Portfolio borrowing and lending demand through the Credit Facility, and allocate loans on an equitable basis among the Portfolios without the intervention of any Portfolio manager. The Cash Management Team will not solicit cash for the Credit Facility from any Portfolio or prospectively publish or disseminate loan demand data to Portfolio managers. The Adviser will invest any amounts

remaining after satisfaction of borrowing demand in accordance with the standing instructions from Portfolio managers.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Portfolios in the Credit Facility and the terms and other conditions of any extensions of credit thereunder.

14. The Board, including a majority of the Independent Trustees:

(a) Will review no less frequently than quarterly each Portfolio's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions;

(b) Will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and

(c) Will review no less frequently than annually the continuing appropriateness of each Portfolio's participation in the Credit Facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two (2) business days from its maturity or from the time the lending Portfolio makes a demand of payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer the loan for arbitration to an independent arbitrator selected by the Board who will serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Portfolios. The arbitrator will submit at least annually a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Portfolios to resolve the dispute.

16. The Fund will maintain and preserve for a period of not less than six (6) years from the end of the fiscal year in which any transaction under the Credit Facility occurred, the first two (2) years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. The Adviser will prepare and submit to the Board for review, an initial report describing the operations of the Credit Facility and the procedures to be implemented to ensure that all Portfolios are treated fairly. After the commencement of operations of the Credit Facility, the Adviser will report on the operations of the Credit Facility at the Board's quarterly meetings.

In addition, for two (2) years following the commencement of the Credit Facility, the independent public accountant for the Fund shall prepare an annual report that evaluates the Adviser's assertions that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives:

(a) that the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and

(e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Portfolio at the time of the Interfund Loan.

After the final report is filed, the Fund's auditors, in connection with their Fund audit examinations, will continue to review the operation of the Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Portfolio will participate in the Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31161 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24174; 812–11700]

Scudder California Tax Free Trust, et al.; Notice of Application

November 23, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of Application: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

Applicants: Scudder California Tax Free Trust, Scudder Cash Investment Trust, Schudder Fund, Inc., Scudder Funds Trust, Scudder GNMA Fund, Scudder International Fund, Inc., Scudder Municipal Trust, Scudder Mutual Funds, Inc., Scudder Pathway Series, Scudder Portfolio Trust, Scudder Securities Trust, Scudder State Tax Free Trust, Scudder Tax Free Money Fund, Scudder Tax Free Trust, Scudder U.S. Treasury Money Fund, Scudder Variable Life Investment Fund, Farmers Investment Trust, Global/International Fund, Inc., Investment Trust, Value Equity Trust, The Japan Fund, Inc. (collectively, the ''Scudder Funds''), AARP Cash Investment Funds, AARP Growth Trust, AARP Income Trust, AARP Managed Investment Portfolios Trust, AARP Tax Free Income Trust (collectively, the ''AARP Funds''), Cash Account Trust, Cash Equivalent Fund, Investors Cash Trust, Investors Municipal Cash Fund, Kemper Aggressive Growth Fund, Kemper Asian Growth Fund, Kemper Blue Chip Fund, Kemper Equity Trust, Kemper Europe Fund, Kemper Floating Rate Fund, Kemper Funds Trust, Kemper Global Income Fund, Kemper Global/ International Series, Inc., Kemper Growth Fund, Kemper High Yield Series, Kemper Horizon Fund, Kemper Income and Capital Preservation Fund, Kemper Income Trust, Kemper International Fund, Kemper National Tax-Free Income Series, Kemper Portfolios, Kemper Securities Trust, Kemper Short-Term US Government

Fund, Kemper Small Capitalization Equity Fund, Kemper State Tax-Free Income Series, Kemper Strategic Income Fund, Kemper Target Equity Fund, Kemper Technology Fund, Kemper Total Return Fund, Kemper U.S. Government Securities Fund, Kemper Value Plus Growth Fund, Kemper Value Series, Inc., Kemper Variable Series, Tax-Exempt California Money Market Fund, Zurich Money Funds, Zurich Yieldwise Money Fund (collectively, the ''Kemper Funds'' and, together with the Scudder Funds and the AARP Funds, the ''Investment Companies''), Scudder Kemper Investments, Inc. (''Scudder Kemper''), and all other open-end registered investment companies and their series that are advised by Scudder Kemper or a person controlling, controlled by, or under common control with Scudder Kemper (together with the Investment Companies, the ''Funds'').[1]

Filing Dates: The application was filed on July 16, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609.

Applicants: AARP Funds, Two International Place, Boston, Massachusetts 02110; Scudder Funds, Two International Place, Boston, Massachusetts 02110 or 345 Park Avenue, New York, New York 10154; Kemper Funds, 222 South Riverside Plaza, Chicago, Illinois 60606; Scudder Kemper, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Investment Company is registered under the Act as an open-end management investment company and is organized either as a Maryland corporation or a Massachusetts business trust. Scudder Kemper is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Some Funds may lend money to banks to other entities by entering into repurchase agreements, either directly or through a joint account. Under an existing order, each Fund can deposit its uninvested daily cash balances into a joint account administered by Scudder Kemper (''Joint Account'').[2] The funds in the Joint Account are used to enter into repurchase agreements. Scudder Kemper determines the amount of cash balances to be invested in the Joint Account each day, and receives no additional compensation for managing the Joint Account. In addition, the Funds and Scudder Kemper have filed and application for an order to permit certain non-money market Funds to use their uninvested cash to purchase shares of certain affiliated funds for cash management purposes (collectively, the ''Central Funds'').

3. Other Funds may borrow money from the same or other banks for temporary purposes, such as to satisfy redemption requests. Currently, most Funds have a committed line of credit with certain banks through which each Fund may borrow money for temporary or emergency purposes, including funding shareholder redemptions and the payment of dividends (''Committed Credit Facility''). The rate of interest paid by the Funds when they borrow under the Committed Credit Facility is significantly higher than the rate of interest earned on repurchase agreements entered into by the Funds. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and lender.

4. Applicants request an order that would permit the Funds to enter into lending agreements under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Proposed Credit Facility''). Applicants believe that the Proposed Credit Facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the Proposed Credit Facility would substantially reduce the Funds' need to borrow from banks, bank loans will continue to be available to the Funds.

5. Applicants anticipate that the Proposed Credit Facility would provide the Funds with significant savings when the cash position of any Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The Proposed Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions, under the Proposed Credit Facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or the Central Funds. Thus, applicants believe that the Proposed Credit Facility would benefit both borrowing and lending Funds.

7. The interest rate charged to the Funds on any loan under the Proposed Credit Facility (the ''Interfund Loan Rate'') would be the average of the current overnight repurchase agreement rate available through the Joint Account (the ''Joint Account Repo Rate'') and a single benchmark rate set for all Funds. The benchmark rate would be calculated by Scudder Kemper each day that a Fund borrows or lends, according to a formula established by each Fund's board of directors or trustees (collectively, ''Boards'') to approximate the lowest interest rate at which bank loans would be available to the Funds (''Bank Loan Rate''). The formula would

[1] All existing Funds that currently intend to rely on the requested order are named as applicants, and any Fund that relies on the order in the future will comply with the terms and conditions of the application.

[2] Scudder Global Fund, Inc., Investment Company Act Release Nos. 23482 (Oct. 7, 1998) (notice) and 23525 (Nov. 5, 1998) (order).

be based upon a publicly available rate and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current Bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

8. The Proposed Credit Facility would be administered by the officers and employees of Scudder Kemper responsible for overseeing short-term trading for the Joint Account (including a money market Fund portfolio manager) (''Cash Management Group''). A Fund would not participate in the Proposed Credit Facility as a lender unless it also elected to participate in the Joint Account or, in the case of money market Funds, unless the fund would invest on any given day in the Joint Account. Under the proposed Credit Facility, the portfolio managers for each participating Fund, other than the money market Funds, may provide standing instructions to participate daily as a borrower or lender. As in the case of the Joint Account, the Cash Management Group on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds, other than the money market Funds, from the Funds' custodians. The portfolio managers for the money market Funds would inform the Cash Management Group directly each day of the amount of cash, if any, they wished to make available under the Proposed Credit Facility as a lender. The money market Funds typically would not participate as a borrower because they rarely need to borrow cash to meet redemptions. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Group would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After allocating cash for interfund loans, the Cash Management Group will inform the money market Fund managers of the amount of loans, if any, made for each money market Fund so that the Fund managers may invest any remaining cash in the Joint Account or other available instruments. With respect to other participating Funds, the Cash Management Group will follow standing instructions from the portfolio managers to invest the remaining amounts daily through the Joint Account.

9. The Cash Management Group would allocate borrowing demand and cash available for lending among the Funds on what it believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

10. Scudder Kemper would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Boards of the Funds concerning any transactions by the Funds under the Proposed Credit Facility and the interest rates charged. Scudder Kemper would administer the Proposed Credit Facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services.

11. Each Fund's participation in the Proposed Credit Facility will be consistent with its organizational documents and its investment policies and limitations. The current investment limitations of certain Funds provide that they may borrow money as a temporary measure for extraordinary or emergency purposes in amounts up to 33⅓% of total assets in order to meet redemption requests. To the extent the fundamental investment limitations of a Fund are inconsistent with participation in the Proposed Credit Facility, the fund would seek shareholder approval, where necessary, to participate in the Proposed Credit Facility. No Fund would be permitted to participate in the Proposed Credit Facility unless the Fund had fully disclosed all material information concerning the Proposed Credit Facility in its prospectus and/or statement of additional information (''SAI'').

12. In connection with the Proposed Credit Facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)() and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Scudder Kemper as their common investment adviser and, in some instances, the same Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its

shareholders. Applicants assert that the Proposed Credit Facility transactions do not raise these concerns because (i) Scudder Kemper will administer the program as a disinterested fiduciary; (ii) all interfund loans will consist only of uninvested cash balances that the Fund otherwise would invest in short-term repurchased agreements or other short-term instruments either directly or through the Joint Account; (iii) the interfund loans will not involve a greater risk than other similar investments; (iv) the lending Fund will receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund will pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed line of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under section 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the Proposed Credit Facility does not involve these abuses. Applicants note that there would be no duplicate costs or fees to the Funds or shareholders, and that Scudder Kemper would receive no additional compensation for its services in administering the Proposed Credit Facility. Applicants also note that the purpose of the Proposed Credit Facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of a least 300 per cent for all borrowing of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Proposed Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have a least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Proposed Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by an unfair advantage to investment company insiders. Applicants believe that the Proposed Credit Facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the Proposed Credit Facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rate to be charged to the Funds under the Proposed Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Cash Management Group will compare the Bank Loan Rate with the Repo Rate and will make cash available for interfund loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and, if applicable, the yield on the Central Funds and (b) more favorable to the borrowing Fund than the Bank Loan Rate and, if applicable, the Committed Loan Rate.

3. If a Fund has outstanding borrowings, any interfund loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan than requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the interfund loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A fund may make an unsecured borrowing through the Proposed Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing

would be greater than 10% of its total assets, the Fund may borrow through the Proposed Credit Facility only on a secured basis. A Fund may not borrow through the Proposed Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the Proposed Credit Facility if the loan would cause its aggregate outstanding loans through the Proposed Credit Facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each interfund loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

10. A Fund's participation in the Proposed Credit Facility must be consistent with its investment policies and limitations and organizational documents. A Fund may not borrow through the Proposed Credit Facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes (and not for leveraging), except that certain Funds may engage in reverse repurchase agreements for any purpose.

11. The Cash Management Group will calculate total Fund borrowing and lending demand through the Proposed Credit Facility, and allocate interfund loans on an equitable basis among the Funds without the intervention of any portfolio manager of any Fund (except the money market Fund portfolio manager acting in his capacity as a member of the Cash Management Group). The Cash Management Group will not solicit cash for the Proposed Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the text that the money market Fund portfolio manager has access to loan demand data). The Cash Management Group will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the money market Funds.

12. Scudder Kemper will monitor the interest rates charged and the other terms and conditions of the interfund loans and will make a quarterly report to the Boards concerning the participation of the Funds in the Proposed Credit Facility and the terms and other conditions of any extensions of credit thereunder.

13. Each Fund's Board, including a majority of the Independent Directors: (a) will review no less frequently than quarterly the Fund's participation in the Proposed Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on interfund loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Proposed Credit Facility.

14. In the event an interfund loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, Scudder Kemper will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning interfund loan. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the Proposed Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on the Central Funds, if applicable, and such other information presented to the Fund's Board in connection with the review required by conditions 12 and 13.

16. Scudder Kemper will prepare and submit to the Funds' Boards for review an initial report describing the operations of the Proposed Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the Proposed Credit Facility, Scudder Kemper will report on the operations of the Proposed Credit Facility at the Boards' quarterly meetings.

In addition, for two years following the commencement of the Proposed Credit Facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates Scudder Kemper's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be

higher than the Joint Repo Rate and, if applicable, the yield on the Central Funds, but lower than the Bank Loan Rate and, if applicable, the Committed Loan Rate; (b) compliance with the collateral requirement as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any interfund loan does not exceed the interest rate on any third party borrowing of a borrowing Fund at the time of the interfund loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Proposed Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

17. No Fund will participate in the Proposed Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31162 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42175; File No. SR–ISCC–99–01]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to ISCC's Decision To Withdraw From the Clearance and Settlement Business

November 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 23, 1999, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, ISCC will withdraw from the clearing agency business and transfer its core services to the National Securities Clearing Corporation (''NSCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 12, 1989, the Commission granted, pursuant to Sections 17A and 19(a) of the Act[3] and Rule 17Ab2–1,[4] the application of ISCC for registration as a clearing agency on a temporary basis for a period of eighteen months.[5] Since that time, the Commission has extended ISCC's temporary registration through February 29, 2000.[6]

ISCC was created to provide safe and efficient clearance and settlement of securities transactions between United States broker-dealers and foreign financial institutions.[7] ISCC serves this function through its core services, the Global Clearance Network (''GCN'') and International Link services.[8]

ISCC, a wholly owned subsidiary of NSCC, proposes to deregister as a clearing agency and transfer its core services to NSCC because it is no longer cost-effective to provide such services through a separate company.[9] The transfer of services of NSCC will be transparent to ISCC users. They will be required to perform any system modifications, and they will be charged the same fees for the services at NSCC as they are currently paying ISCC.

ISCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder applicable to ISCC, because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed arrangements would impose no burden on competition. After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost clearing and custody service.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by ISCC.

[3] 15 U.S.C. 78q–1 and 78s(a),

[4] 17 CFR 240.17AB2–2–(c).

[5] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[6] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; 33233 (November 22, 1993), 58 FR 63195; 36529 (November 29, 1995), 60 FR 62511; 37986 (November 25, 1996), 61 FR 64184; 38703 (May 30, 1997), 62 FR 31183; 39700 (February 26, 1998), 63 FR 10669; and 41103 (February 24, 1999), 64 FR 10521.

[7] Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960, and 32564 (June 30, 1993), 58 FR 36722.

[8] ISCC has offered the International Link service since its inception in 1989.

[9] In connection with this rule filing, NSCC has submitted a proposed rule change (File No. SR–NSCC–99–12) to amend its rules to allow it to provide the GCN and the International Link Services.

[10] 15 U.S.C. 78q–1.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of ISCC. All submissions should refer to File No. SR–ISCC–99–01 and should be submitted by December 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31164 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42173; File No. SR–MBSCC–99–06]

Self-Regulatory Organization; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Market Margin Differential Deposits

November 23, 1999.

On July 14, 1999, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, File No. SR–MBSCC–99–06, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to amend the formula MBSCC uses to calculate market margin differential deposits. Notice of the proposal was published in the **Federal Register** on October 22, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The rule change amends the formula MBSCC uses to calculate market margin differential deposits to the participants fund.[3] Specifically, the rule change adds net position and net-out position components to the market margin differential deposit formula.

Article IV, Rule 2, Section 4 of MBSCC's rules sets forth the formula used to calculate a participant's daily market margin differential deposit to the participants fund. This formula currently requires a participant to make a daily market margin differential deposit to the participants fund equal to the sum of: (a) 130% (or such other percentage as MBSCC from time to time may determine) of adjusted net losses plus (b) 100% (or such other percentage as MBSCC from time to time may determine) of certain projected cash settlement obligations owed to MBSCC minus (c) the amount of any market margin differential deposits previously made by the participant to and remaining in the participants fund.

The rule change replaces the 130% of adjusted net losses component as contained in subsection (a) of the formula with 130% (or such other percentage as MBSCC from time to time may determine) of the greater of: (i) adjusted net losses or (ii) 25 basis points (or such other number of basis points as MBSCC from time to time may determine) of net position and 25 basis points (or such other number of basis points as MBSCC from time to time may determine) of the largest outstanding net-out position minus excess profits from forward transactions.[4]

II. Discussion

Section 17(A)(b)(3)(F)[5] of the Act requires that the rules of the clearing agency be designed to promote the prompt and accurate safeguarding of securities transactions. The Commission believes that the rule change is consistent with MBSCC's obligations under the Act because the revised market margin differential deposit formula encompasses more circumstances where an MBSCC participant could pose risk to MBSCC.

The revised formula establishes a margin requirement for net position risk and for net-out position risk. For example, under the previous formula a participant was not subject to a margin call on a day it did not have adjusted net losses. Under the revised formula, the net position component should address the circumstances where a participant does not have adjusted net losses but has a large net position, and there is market volatility between margin calls. (The 130% multiplier, which is designated to address market volatility, was not effective if the participant did not have adjusted net losses.)

A second situation where the revised formula addresses risk not covered by the previous formula relates to the fact that losses of non-original contra-sides in excess of an insolvent participant's participant fund are prorated to and assessments are made against this insolvent participant's original contra-sides. MBSCC's netting system pairs-off and nets-out buy and sell trades with original and non-original contra-sides. Netting substantially reduces the number of trades requiring clearance. Although netting eliminates the need to clear net-out trades, it does not eliminate the potential liability for pro-rata assessments against original contra-sides. Under the previous formula, the participants fund did not include a margin component for potential pro-rata assessments against original contra-sides. Under the revised formula, the net-out component should address the circumstances where an original contra-side nets-out of transactions and otherwise does not have sufficient deposits to the participants fund to satisfy potential pro-rata assessments.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–99–06) be and hereby is approved.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42005 (October 13, 1999), 64 FR 57170.

[3] MBSCC requires participants to maintain collateral in the form of depositions to the participants fund. Each participant's fund is comprised of a basic deposit, a minimum market margin differential deposit, and a market margin differential deposit. The basic deposit is equal to a minimum of $1,000 and a maximum of $10,000 with the actual amount determined based on the average six months billing for the participant. The minimum market margin differential deposit is equal to $250,000. The market margin differential deposit is based on the formula set forth in Article IV, Rule 2, Section 4 of MBSCC's rules.

[4] The rule change also modifies Article I, Rule 1 of MBSCC's rules to add definitions of the terms ''excess profits from forward transactions'' and ''net position.''

[5] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31166 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42176; File No. SR–NSCC–99–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Transfer of the Global Network and the International Link Service to NSCC

November 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 23, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to offer the Global Clearance Network Service (''GCN'') and the International Link Service (''ILS'') previously offered by the International Securities Clearing Corporation (''ISCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit NSCC to offer the GCN and the ILS previously offered by ISCC. ISCC, a wholly owned subsidiary of NSCC, is proposing to stop providing clearance and settlement services and transfer its core services to NSCC. According to NSCC, it is no longer cost-effective to provide international clearance and settlement services through a separate company.[3]

GCN was originally approved by the Commission in 1991.[4] It facilitates and centralizes the processing of international transactions at a beneficial cost to ISCC members. Under ISCC's Rule 50, GCN allows ISCC members, utilizing standardized input and output formats, to transmit data to ISCC several times throughout the day using a standardized trade format. Upon receipt, ISCC validates the data and, if accepted, translates the data into the format of specified agent banks. Accepted data is transmitted to the agent banks where processing occurs under the agent banks' normal terms, conditions, and operating framework.

ISCC has provided ILS since its inception in 1989 as a clearing corporation. In accordance with ISCC's Rule 40, which permits ISCC to establish links with foreign financial institutions (''FFIs''), ISCC sponsors accounts at The Depository Trust Company (''DTC'') for the purpose of providing FFIs with custody services for their U.S. securities. Deliveries and receives of securities on deposit at DTC, based on instructions from the FFI, occur through DTC free of payment.

According to NSCC, the current users of ISCC's GCN and ILS will receive from NSCC similar services under the same terms and conditions. No new programming or system format changes will be required to utilize GCN and ILS as offered by NSCC. The transfer of services will be transparent to current ISCC participants. NSCC will set the fees for these transferred services at prevailing rates.

All current GCN and ILS participants will be able to continue to utilize such services when they are offered by NSCC. Currently there are thirty users of GCN and three ILS participants. In order to provide these services, NSCC is incorporating rules substantially similar to the applicable ISCC rules and procedures: NSCC Rule 62 is based on ISCC Rule 50; NSCC Addendum U is based on ISCC Addendum E; and NSCC Rule 61 is based on ISCC Rule 40.[5]

ISCC currently provides facilities management services to the Emerging Markets Clearing Corporation (''EMCC''). In connection with ISCC's deregistration as a clearing agency, these services will be provided by NSCC.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to NSCC because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed arrangements would impose no burden on competition. After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost clearing and custody service.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Concurrently with this rule filing, ISCC has submitted a proposed rule change (File No. SR–ISCC–99–01) to withdraw from the clearance and settlement business.

[4] Securities Exchange Act Release No. 29841 (October 18, 1991), 56 FR 55960. ISCC subsequently modified its processing procedures for the GCN Service through the addition of Addendum E to ISCC's Rules and Procedures. *See* Securities Exchange Act Release No. 35392 (February 16, 1995), 60 FR 10415.

[5] Because ISCC's members are also NSCC members, there is no need for NSCC to adopt ISCC's other rules governing risk management and corporate governance. Also, NSCC will not assume ISCC services that are currently dormant (*e.g.,* Foreign Netting and Comparison Service and ISCC's link with Euroclear).

[6] 15 U.S.C. 78q–1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–12 and should be submitted by December 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31165 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42174; File No. SR–NYSE–99–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Amending List of Exchange Rule Violations and Fines Applicable Thereto

November 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to revise the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A (''List'') for imposition of fines for minor violations of rules and/or policies by adding to the List; (1) Failure to comply with the provisions of Rule 97(a) relating to purchases by a member of additional shares of stock on a ''plus'' or ''zero-plus'' tick when it holds a long position in the stock as a result of an earlier block trade with a customer; and (2) failure to comply with Expiration Day Auxiliary Opening Procedures. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rule and procedure subject to the possible imposition of a fine under Rule 476A procedures. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the Rule 476A procedure is to provide for a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than a cautionary letter would convey. Rule 476A preserves due process rights, identifies those rule violations which may be the subject of summary fines, and includes a schedule of fines. In SR–NYSE–84–27,[3] which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.

The Exchange is seeking approval to add to the List of Rules subject to imposition of fines under Rule 476A procedures the failure by members or member organizations to comply with the provisions of: (1) Rule 97(a) which prohibits a member organization that holds a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing, for an account in which the member organization has a direct or indirect interest, additional shares of such stock on a ''plus'' or ''zero plus'' tick under certain conditions for the remainder of the trading day[4] and (2) Expiration Day Auxiliary Opening Procedures which provide that the Exchange, as soon as practicable, after 9:00 a.m. on expiration days, will publish market order imbalances of 50,000 shares or more in all stocks, may publish imbalances of less than 50,000 shares at that time with Floor Official approval, and will not publish a ''no imbalance'' status for any stock.[5]

The purpose of the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rules. The Exchange believes failure to comply with the requirements of the rule and procedures should be addressed with an appropriate sanction and is adding violations of these requirements to the List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (*i.e.*, the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (approving SR–NYSE–84–27).

[4] *See* Securities Exchange Act Release No. 41500 (June 9, 1999), 64 FR 32596 (June 17, 1999).

[5] *See* NYSE Information Memoranda No. 96–34 (November 8, 1996) and No. 99–37 (July 19, 1999) for a discussion of Expiration Day Auxiliary Opening Procedures.

compliance with the above-named rules. While the Exchange, upon investigation, may determine that a violation of any of these rules is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response, such as suspension, expulsion, limitation of activities, etc. This includes the full disciplinary procedures available under Rule 476.

2. Statutory Basis

The NYSE believes that this proposal will advance the objectives of Section 6(b) of the Act [6] in general and further the objectives of Section 6(b)(6) [7] in particular in that it will provide a procedure whereby member organizations can be ''appropriately disciplined'' when a rule violations is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) [8] and 6(d)(1) [9] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission change.

This proposed rule change is filed pursuant to Section 19(b)(3)(A)(i) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] The proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest provided that the Exchange has given the Commission notice of its in tent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, which the NYSE did in this instance.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–99–45 and should be submitted by December 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31209 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 USC 78f(b).

[7] 15 USC 78f(b)(6).

[8] 15 USC 78f(b)(7).

[9] 15 USC 78(d)(1).

[10] 15 USC 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(6).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 USC 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42177; File No. SR–PCX–99–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Increase in the Market Maker Ticket Data Entry Fee

November 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to change its Schedule of Fees and Charges to increase its Market Maker Ticket Data Entry Fee from $0.25 per trade of $0.50 per trade.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, PCX Market Makers pay a Ticket Data Entry Fee of $0.25 per trade. The Ticket Data Entry Fee is charged to a Market Maker for every manual ticket transaction that is entered by the Order Book Official into PCX's Pacific Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange Trading System (''POETS'') [3] for the Market Maker. Under the proposed rule change, the fee would be increased to $0.50 per trade for each manual ticket transaction entered into POETS for the Market Maker.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [4] of the Act, in general, and furthers the objectives of Section 6(b)(4),[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–47 and should be submitted by December 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–31163 Filed 11–30–99; 8:45 am]

BILLING CODE 8010–01–M

[3] POETS is PCX's automated options trading system comprised of an options order routing system, an automatic and semi-automatic execution system, an on-line limit order book system, and an automatic market update system. *See generally* Exchange Act Release No. 27633 (Jan. 18, 1990), 55 FR 2466 (Jan. 24, 1990) (order approving SR–PSE–89–26).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2). In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–6091]

Information Collection by Agency Under Review by the Office of Management and Budget (OMB)

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information that we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before January 3, 2000.

ADDRESSES: Please send comments to both (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG–1999–6091 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G-SII–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published ((64 FR 45993 (August 23, 1999)) the 60-day notice required by OMB. That request elicited one comment.

The comment concerned ICR 2115–0549—Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels. It cited as a ''problem'' two sentences in the ICR, which it quoted as follows: (1) ''One section of [our regulations] *requires the posting of two placards* which contain operating instructions and safety precautions for the gas cooking appliance and gas system.'' (2) ''The information provided by the placards is to be used by any person operating cooking appliances to ensure [that they are] operated in a safe manner.'' It conceded that ''these are certainly reasonable requirements,'' but it maintained that the ''*regulations are defective* in that'' they incorporate the requirements by reference to standards of the American Boat and Yacht Council or the National Fire Protection Association rather than state them in their text. [Emphases in original] It further conceded that the markings should be required, as they are, but it further maintained that the regulations should set forth the substance of the markings or at least make explicit the

fact of their being required, as they do not.

While the comment was a good one, it pertained to the underlying regulation instead of the ICR itself. On October 25, 1999, we replied to the comment-explaining among other things that we had incorporated the requirements by reference, rather than set them forth in full, for the sake of economy-and we sent copies of comment and response to OMB.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 1999–6091. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

Title: Application for Tonnage Measurement of Vessels. *OMB Control Number:* 2115–0086.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners.

Form(s): CG–5397.

Abstract: The information collected determines a vessel's tonnage. Tonnage in turn determines licensing, inspection, safety requirements, and operating fees.

Annual Estimated Burden Hours: The estimated burden is 27,600 hours annually.

Title: Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 2115–0549.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of passenger vessels.

Forms: N/A.

Abstract: The collection of information takes the form of a requirement that passenger vessels have posted two placards, which contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Annual Estimated Burden Hours: The estimated burden is 2,362 hours annually.

Title: Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB Control Number: 2115–0143.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of vessels and units engaged in activities on the OCS.

Form(s): N/A.

Abstract: Vessels and units engaged in activities on the OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens (43 U.S.C. 1356). The collection of information imposed by 33 CFR 141.35 takes the form of a requirement that employers maintain records demonstrating compliance.

Annual Estimated Burden Hours: The estimated burden is 449 hours annually.

Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 2115–0096.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of facilities handling and vessels carrying bulk oil and hazardous materials.

Form(s): CG–4602B.

Abstract: The information collected will minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It will also help to evaluate proposed alternatives and requests for exemptions.

Annual Estimated Burden Hours: The estimated burden is 1,840 hours annually.

Title: Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 2115–0089.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of chemical tank vessels.

Form(s): N/A

Abstract: The information collected ensures compliance with our rules governing ships carrying bulk hazardous liquids.

Annual Estimated Burden Hours: The estimated burden is 471 hours annually.

Title: Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 2115–0541.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of tank barges.

Form(s) N/A.

Abstract: The information collected ensures the safe shipment of bulk hazardous liquids in barges. It ensures that barges meet safety standards and that crewmembers have the information necessary to operate barges safely.

Annual Estimated Burden Hours: The estimated burden is 11,724 hours annually.

Title: Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent.

OMB Control Number: 2115–0077.

Affected Public: Facility operators.

Forms: N/A

Abstract: Each waterfront facility that intends to transfer oil or hazardous materials in bulk to or from vessels must notify the Coast Guard Captain of the Port by submitting information in the form of a letter of intent to operate. This letter identifies the owner and operator of the facility for purposes of enforcement and contact.

Annual Estimated Burden Hours: The estimated burden is 460 hours annually.

Title: Oil and Hazardous Materials Transfer Procedures and Waste Management Plans.

OMB Control Number: 2115–0120.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators, of vessels and facilities.

Form(s): N/A.

Abstract: This rule requires each vessel with a capacity of 250 barrels or more of oil or hazardous materials to develop and maintain procedures that specify measures for safely operating transfer systems. It also requires each oceangoing ship of 40 feet or more in length, engaged in commerce or equipped with a galley or berth, to develop and maintain a waste-management plan for the handling and disposal of ship-generated garbage.

Annual Estimated Burden Hours: The estimated burden is 14,302 hours annually.

Title: Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 2115–0142.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and builders of commercial vessels.

Form(s): N/A.

Abstract: The information collected takes the form of owners' and builders' of commercial vessels submitting to the Coast Guard, for review and approval, plans for marine-engineering systems to ensure that the vessels will meet regulatory standards.

Title: National Response Resource Inventory.

OMB Control Number: 2115–0606.

Affected Public: Oil-spill-removal organizations.

Form(s): N/A.

Abstract: The information collected should improve the effectiveness of deploying response equipment in the event of an oil spill. It may also serve in the development of contingency plans.

Annual Estimated Burden Hours: The estimated burden is 1,446 hours annually.

Title: Identification Markings on Lifesaving, Fire Protection, and Emergency Equipment.

OMB Control Number: 2115–0577.

Type of Request: Extension of currently approved collection.

Affected Public: Safety-equipment manufacturers, owners and operators of vessels.

Form(s): N/A.

Abstract: Lifesaving, fire-protection, and emergency equipment must be identified by its manufacturer, model number, capacity, approval number, and other information concerning its performance. Markings help the owners and operators of vessels and the Coast Guard to determine compliance with regulations.

Annual Estimated Burden Hours: The estimated burden is 4,012 hours annually.

Title: Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of certain tank vessels.

Form(s): N/A.

Abstract: The Oil Pollution Act of 1990 requires the issuance of regulations for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. The information collected helps to verify the structural integrity of older tank vessels.

Annual Estimated Burden Hours: The estimated burden is 11,724 hours annually.

Dated: November 23, 1999.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–31129 Filed 11–30–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 23, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 3, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1425.

Regulation Project Number: PS–55–93 TEMP and NPRM.

Type of Review: Extension.

Title: Certain Elections for Intangible Property.

Description: The information is required by the IRS to aid it in administering the law and preventing manipulation. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes. The likely respondents are businesses or other for-profit institutions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once, 1993 tax return).

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96 Final.

Type of Review: Extension.

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

Description: The regulations revise the requirements for requesting a schedule of ruling amounts based on a formula or method.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Estimated Total Recordkeeping Burden: 100 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 99–31167 Filed 11–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, 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, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that has been extended, revised, or implemented unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comments concerning an extension, without change, of an information collection titled Recordkeeping Requirements for Securities Transactions—12 CFR 12. The OCC also gives notice that it has sent the information collection to OMB for review.

DATES: You should submit your written comments to both OCC and the OMB Reviewer by January 3, 2000.

ADDRESSES: You should send your written comments to the Communications Division, Attention: 1557–0142, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you can send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You may request additional information, a copy of the collection, or a copy of the supporting documentation submitted to

OMB by contacting Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0200), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR 12.

OMB Number: 1557–0142.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information collection is required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure bank compliance with banking and securities law and regulations. The OCC uses the required information in its examinations to, among other things, evaluate the bank's compliance with the antifraud provisions of the Federal securities laws.

The requirements in 12 CFR part 12 are located as follows:

Recordkeeping requirements: 12 CFR 12.3(a).

Notification of transaction to customer: 12 CFR 12.4.

Notification by agreement: 12 CFR 12.5(a), (b), (c), and (e).

Securities trading policies: 12 CFR 12.7(a).

Report by bank officers and employees: 12 CFR 12.7(a) and (b).

Waiver request: 12 CFR 12.8.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 745.

Total Annual Responses: 745.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,913.

OCC Contact: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, OMB No. 1557–0142, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0142, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Comments

Your comment will become a matter of public record. You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) Whether the OCC's burden estimate is accurate;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Whether the OCC's estimates of the capital or startup costs and costs of operation, maintenance, and purchase of services to provide information are accurate.

Dated: November 24, 1999.

Mark Tenhundfeld,

Assistant Director,

Legislative & Regulatory Activities Division.

[FR Doc. 99–31207 Filed 11–30–99; 8:45 am]

BILLING CODE 4810–33–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Record of Decision on the Diamond Fork System, Central Utah Project

AGENCY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of availability of the Record of Decision (ROD)

SUMMARY: On November 19, 1999, Don A. Christiansen, Chairman of the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) signed the Record of Decision (ROD) which documents the selection of the Proposed Action as presented in the 1999 Final Supplement to the 1984 Diamond Fork Power System Final Environmental Statement (1999 FS–FEIS; FEIS 99–25) filed with the U.S. Environmental Protection Agency on July 1, 1999. The Mitigation Commission, Central Utah Water Conservancy District and the Department of the Interior served as joint lead agencies in the preparation of the 1999 FS–FEIS. The Proposed Action and a No Action alternative are described and evaluated in the FS–FEIS upon which the ROD is based. Implementation of the Proposed Action responds to the Mitigation Commission's and the Department of the Interior's need to mitigate for impacts of the Bonneville Unit of the Central Utah Project and other federal reclamation projects. The Proposed Action also responds to the need to transport, on average, 147,600 acre-feet of water annually from the Colorado River drainage to the Utah Lake drainage including 86,100 acre-feet of CUP water to facilitate exchanges of water from Utah Lake to Jordanelle Reservoir for municipal and industrial supplies. Under the Proposed Action, the water will be conveyed through the Diamond Fork System and Strawberry Tunnel (an existing feature). The Assistant Secretary for Water and Science, Department of the Interior, has issued a separate ROD for the Diamond Fork System. The Assistant Secretary's separate decision is necessitated by the responsibility and authority of the Department of the Interior for other aspects of the project beyond the scope of the Mitigation Commission to mitigate for reclamation projects.

The Proposed Action will accomplish these measures by construction and operation of a series of pipelines, tunnels, and other facilities which will convey the transmountain diversions of the Central Utah Project (CUP) and Strawberry Valley Project (SVP). These facilities will remove environmentally damaging high flows from natural stream courses that have been released since the early part of the 20th century. Additionally, minimum instream flows will be provided. Removal of high flows and provision of minimum flows will allow for the restoration of a more natural ecosystem, improvement of fish and wildlife habitats and populations, and increases in recreational uses.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below:

Mr. Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84601, Telephone: (801) 524–3146.

Dated: November 22, 1999

Michael C. Weland,

Executive Director.

[FR Doc. 99–31136 Filed 11–30–99; 8:45 am]

BILLING CODE 4310–05–P

federal register

Wednesday
December 1, 1999

Part II

Federal Communications Commission

47 CFR Parts 36, 54 and 69

Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs; Final Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, and 69

[CC Docket Nos. 96–45 and 97–160; FCC 99–304]

Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Boar on Universal Service and Forward-Looking Mechanism for High Cost Support for Non-Rural LECs completes the selection of a model to estimate forward-looking cost by selecting input values for the synthesis model the Commission previously adopted.

DATES: Effective December 1, 1999.

FOR FURTHER INFROMATION CONTACT: Richard Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tenth Report and Order in CC Docket Nos. 96–45 and 97–160 released on November 2, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554. The full text of this document is also available on the Internet: www.fcc.gov/ccb/universal service.

I. Introduction

1. In the Telecommunications Act of 1996 (1996 Act), Congress directed this Commission and the states to take the steps necessary to establish explicit support mechanisms to ensure the delivery of affordable telecommunications service to all Americans. In response to this directive, the Commission has taken action to put in place a universal service support system that will be sustainable in an increasingly competitive marketplace. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission adopted a plan for universal service support for rural, insular, and high-cost areas to replace longstanding federal support to incumbent local telephone companies with explicit, competitively neutral federal universal service support mechanisms. The Commission adopted the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that an eligible carrier's level of universal service support should be based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the services supported by the federal universal service support mechanisms.

2. In this Report and Order, we complete the selection of a model to estimate forward-looking cost by selecting input values for the synthesis model we previously adopted. These input values include such things as the cost of switches, cables, and other network components necessary to provide supported services, in addition to various capital cost parameters. The forward-looking cost of providing supported services estimated by the model will be used as part of the Commission's methodology to determine high-cost support for non-rural carriers beginning January 1, 2000. This methodology is established in a companion order in the final rule document published elsewhere in this issue of the **Federal Register.**

II. Determining Customer Locations

A. Customer Location Data

1. Geocode Data

3. While we affirm our conclusion in the *Platform Order,* 63 FR 63993 (November 18, 1998), that geocode data should be used to locate customers in the federal mechanism, we conclude that no source of actual geocode data has yet been made adequately accessible for public review. We conclude that we will use an algorithm based on the location of roads to create surrogate geocode data on customer locations for the federal mechanism until a source of actual geocode data is identified and selected by the Commission. We reiterate our expectation that a source of accurate and verifiable actual geocode data will be identified in the future for use in the federal mechanism.

4. In the *Platform Order,* we concluded that a model is most likely to select the least-cost, most-efficient outside plant design if it uses the most accurate data for locating customers within wire centers, and that the most accurate data for locating customers within wire centers are precise latitude and longitude coordinates for those customers' locations. We noted that commenters generally support the use of accurate geocode data in the federal mechanism where available. We further noted that the only actual geocode data in the record were those prepared for HAI by PNR, but also noted that ''our conclusion that the model should use geocode data to the extent that they are available is not a determination of the accuracy or reliability of any particular source of the data.'' Although commenters supported the use of accurate geocode data, several commenters questioned whether the PNR geocode data were adequately available for review by interested parties.

5. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission required that the ''model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment.'' In an effort to comply with this requirement, the Commission has made significant efforts to encourage parties to submit geocode data on the record in this proceeding. PNR took initial steps to comply with this requirement in December 1998 by making available the ''BIN'' files derived from the geocoded points to interested parties pursuant to the *Protective Order,* 63 FR 42753 (August 11, 1998). PNR also has continued to provide access to the underlying geocode data at its facility in Pennsylvania. Several commenters argue, however, that the availability of the BIN data alone is not sufficient to comply with the requirements of criterion eight, particularly in light of the expense and conditions imposed by PNR in obtaining access to the geocode point data. In addition, PNR acknowledges that its geocode database relies on third-party data that PNR is not permitted to disclose.

6. Consistent with our tentative conclusion in the *Inputs Further Notice,* 64 FR 31780 (June 14, 1999), we conclude that interested parties have not had an adequate opportunity to review and comment on the accuracy of the PNR actual geocode data set. The majority of commenters addressing this issue support this conclusion. We note that a nationwide customer location database will, by necessity, be voluminous, relying on a variety of underlying data sources. In light of the concerns expressed by several commenters relating to the conditions and expense in obtaining geocode data from PNR, we find that no source of actual geocode data has been made sufficiently available for review. While PNR has made some effort to satisfy the requirements of criterion eight, we prefer to adopt a data set that is more readily available for meaningful review. In particular, we note that the geocode points are available only on-site at PNR's facilities, making it difficult for parties to verify the accuracy of those points. We recognize, however, that more comprehensive actual geocode

data are likely to be available in the future, and we encourage parties to continue development of an actual geocode data source that complies with the criteria outlined in the *Universal Service Order* for use in the federal mechanism.

2. Road Surrogate Customer Locations

7. We conclude that PNR's road surrogating algorithm should be used to develop geocode customer locations for use in the federal universal service mechanism to determine high-cost support for non-rural carriers beginning January 1, 2000. In the *Platform Order,* we concluded that, in the absence of actual geocode customer location data, associating road networks and customer locations provides the most reasonable approach for determining customer locations.

8. As we noted in the *Platform Order,* ''associating customers with the distribution of roads is more likely to correlate to actual customer locations than uniformly distributing customers throughout the Census Block, as HCPM proposes, or uniformly distributing customers along the Census Block boundary, as HAI proposes.'' We therefore concluded in the *Platform Order* that the selection of a precise algorithm for placing road surrogates should be conducted in the inputs stage of this proceeding. In the *Inputs Further Notice,* we tentatively adopted the PNR road surrogate algorithm to determine customer locations.

9. Currently, there are two road surrogating algorithms on the record in this proceeding—those proposed by PNR and Stopwatch Maps. On March 2, 1998, AT&T provided a description of the road surrogate methodology developed by PNR for locating customers. On January 27, 1999, PNR made available for review by the Commission and interested parties, pursuant to the terms of the *Protective Order,* the road surrogate point data for all states except Alaska, Iowa, Virginia, Puerto Rico and eighty-four wire centers in various other states. On February 22, 1999, PNR filed a more detailed description of its road surrogate algorithm. Consistent with the conditions set forth in the *Inputs Further Notice,* PNR has now made available road surrogate data for all fifty states and Puerto Rico.

10. In general, the PNR road surrogate algorithm utilizes the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) files, which contain all the road segments in the United States. For each Census Block, PNR determines how many customers and which roads are located within the Census Block. For each Census Block, PNR also develops a list of road segments. The total distance of the road segments within the Census Block is then computed. Roads that are located entirely within the interior of the Census Block are given twice the weight as roads on the boundary. This is because customers are assumed to live on both sides of a road within the interior of the Census Block. In addition, the PNR algorithm excludes certain road segments along which customers are not likely to reside. For example, PNR excludes highway access ramps, alleys, and ferry crossings. The total number of surrogate points is then divided by the computed road distance to determine the spacing between surrogate points. Based on that distance, the surrogate customer locations are uniformly distributed along the road segments. In order to ensure that its road surrogate data set includes all currently served customers, PNR has made minor adjustments to its methodology in some instances. For example, Census Blocks that are not assigned to any current wire center have been assigned to the nearest known wire center, based on the ''underpinned of the census block in relation to the wire center's central office location.''

11. Stopwatch Maps has compiled road surrogate customer location files for six states suitable for use in the federal mechanism. We conclude, however, that until a more comprehensive data set is made available, the Stopwatch data set will not comply with the *Universal Service Order's* criterion that the underlying data are available for review by the public. Only GTE endorses the use of the Stopwatch data set. In addition, we note that the availability of customer locations for only six states is of limited utility in a nationwide model designed to be implemented on January 1, 2000.

12. AT&T and MCI contend that the exclusive use of a road surrogate algorithm to locate customers produces a 2.7 percent upward bias in loop cost on average on a study area basis when compared to a data set consisting of PNR actual geocode data, where available, and surrogate locations where actual data are unavailable. AT&T and MCI argue that this occurs because the road surrogate methodology uniformly disperses customers along roads, failing to take into consideration actual, uneven customer distributions that tend to cluster customer locations more closely. AT&T and MCI therefore suggest a downward adjustment to produce more accurate outside plant cost estimates. GTE disagrees and contends that, because the PNR actual geocode data create serving areas that are too dense, it is not surprising that AT&T and MCI have found that the use of road surrogate data produces costs that are slightly higher. GTE argues that there is no evidence to conclude, therefore, that a uniform dispersion of customers is likely to overstate outside plant costs. Sprint contends that the decision to optimize distribution plant in the model mitigates any concern that the road surrogate algorithm overstates the amount of outside plant.

13. We agree with GTE and Sprint that there should be no downward adjustment in cost to reflect the exclusive use of a road surrogate algorithm. In doing so, we note that, although the Commission has gone to great lengths to identify a source of actual, nationwide customer locations, no satisfactory data source has been identified. In fact, only one source of such data, the PNR geocode data, has been placed on the record. As noted, however, we have rejected the PNR geocode data set at this time because it has not been made adequately available for review. In the absence of a reliable source of actual customer locations by which to compare the surrogate locations, it is impossible to substantiate AT&T and MCI's contention that the road surrogate algorithm overstates the dispersion of customer locations in comparison to actual locations. Although LECG has made comparisons between Ameritech geocode locations and the PNR road surrogate locations, the validity of that comparison is dependent on the accuracy of the geocode data used in that comparison. As Ameritech has not filed that data on the record, we have no way of verifying the accuracy of its geocoded locations. In addition, we note that Ameritech agrees that the PNR road surrogate ''is a reasonable method for locating customers in the absence of actual geocode data.'' Having no reliable evidence that the PNR road surrogate algorithm systematically overstates customer dispersion, we conclude that no downward adjustment to the outside plant cost estimate is required.

14. We also disagree with Bell Atlantic's contention that road surrogate data is inherently random and likely to misidentify high-cost areas. As noted in the *Platform Order*, we believe that it is reasonable to assume that customers generally reside along roads and, therefore, associating customers with the distribution of roadways is a reasonable method to estimate customer locations. We note that PNR's methodology of excluding certain road segments is consistent with the Commission's conclusion in the

Platform Order that certain types of roads and road segments should be excluded because they are unlikely to be associated with customer locations. In addition, we note that PNR's reliance on the Census Bureau's TIGER files ensures a degree of reliability and availability for review of much of the data underlying PNR's road surrogate algorithm, in compliance with criterion eight of the *Universal Service Order.* The PNR road surrogate algorithm is also generally supported by commenters addressing this issue. While AT&T and MCI advocate the use of actual geocode data points, AT&T and MCI endorse the PNR road surrogate algorithm to identify surrogate locations in the absence of actual geocode data. We therefore affirm our tentative conclusion in the *Inputs Further Notice* and adopt the PNR road surrogate algorithm and data set to determine customer locations for use in the model beginning on January 1, 2000.

3. Methodology for Estimating the Number of Customer Locations

15. In addition to selecting a source of customer data, we also must select a methodology for estimating the number of customer locations within the geographic region that will be used in developing the customer location data. In addition, we must determine how demand for service at each customer location should be estimated and how customer locations should be allocated to each wire center. In the *Inputs Further Notice,* we tentatively concluded that PNR's methodology for estimating the number of customer locations based on households should be used for developing the customer location data. In addition, we also tentatively concluded that we should use PNR's methodology for estimating the demand for service at each location, and for allocating customer locations to wire centers. We now affirm these tentative conclusions.

16. In the *Universal Service Order,* the Commission concluded that a ''model must estimate the cost of providing service for all businesses and households within a geographic region.'' The Commission has sought comment on the appropriate method for defining ''households,'' or residential locations, for the purpose of calculating the forward-looking cost of providing supported services. Interested parties have proposed alternative methods to comply with this requirement.

17. AT&T, MCI, and Ameritech support the methodology devised by PNR, which is based upon the number of households in each Census Block, while BellSouth, GTE, SBC, USTA, and US West propose that we use a methodology based upon the number of housing units in each Census Block. A household is an occupied residence, while housing units include all residences, whether occupied or not.

18. In the *Inputs Further Notice,* we tentatively adopted the use of the PNR National Access Line Model, as proposed by AT&T and MCI, to estimate the number of customer locations within Census Blocks and wire centers. The PNR National Access Line Model uses a variety of information sources, including: survey information; the LERG; Business Location Research (BLR) wire center boundaries; Dun & Bradstreet's business database; Metromail's residential database; Claritas's demographic database; and U.S. Census Bureau estimates. PNR's model uses these sources in a series of steps to estimate the number of residential and business locations, and the number of access lines demanded at each location. The model makes these estimates for each Census Block, and for each wire center in the United States. In addition, each customer location is associated with a particular wire center. We conclude that PNR's process for estimating the number of customer locations should be used for developing the customer location data. We also conclude that we should use PNR's methodology for estimating the demand for service at each location, and for allocating customer locations to wire centers. We believe that the PNR methodology is a reasonable method for determining the number of customer locations to be served in calculating the cost of providing supported services.

19. PNR's process for estimating the number of customer locations results in an estimate of residential locations that is greater than or equal to the Census Bureau's estimate of households, by Census Block Group, and its estimate is disaggregated to the Census Block level. PNR's estimate of demand for both residential and business lines in each study area will also be greater than or equal to the number of access lines in the Automated Reporting and Management Information System (ARMIS) for that study area.

20. The BCPM model relied on many of the same data sources as those used in PNR's National Access Line Model. For example, BCPM 3.1 used wire center data obtained from BLR and business line data obtained from PNR. In estimating the number of residential locations, however, the BCPM model used Census Bureau data that include household and housing unit counts from the 1990 Census, updated based upon 1995 Census Bureau statistics regarding household growth by county. In addition, rather than attempting to estimate demand by location at the Block level, the BCPM model builds two lines to every residential location and at least six lines to every business.

21. A number of commenters contend that the total cost estimated by the model should include the cost of providing service to all possible customer locations, even if some locations currently do not receive service. Some commenters further contend that, if total cost is based on a smaller number of locations, support will not be sufficient to enable carriers to meet their carrier-of-last-resort obligations. These commenters argue that basing the estimate of residential locations on households instead of housing units will underestimate the cost of building a network that can provide universal service. They therefore assert that residential locations should be based on the number of housing units—whether occupied or unoccupied. These commenters contend that only this approach reflects the obligation to provide service to any residence that may request it in the future.

22. Some commenters also contend that the PNR National Access Line Model has not been made adequately available for review. As noted, the National Access Line Model is a multi-step process used to develop customer location counts and demand and associate those customer locations with Census Blocks and wire centers. As a result, PNR contends that the National Access Line Model cannot be provided in a single, uniform format. The HAI sponsors have provided a description of the National Access Line Model process in the HAI model documentation. PNR has made the National Access Line Model process available for review through on-site examination and has provided more detailed explanation of the National Access Line Model upon request from interested parties. PNR notes that several parties have taken advantage of this opportunity. PNR also notes that the National Access Line Model computer code is available for review on-site. PNR also has filed with the Commission the complete output of the National Access Line Model process. In addition, Bell Atlantic and Sprint argue that the National Access Line Model produces line counts that vary significantly from actual line counts.

23. In adopting the PNR approach for developing customer location counts, we note that the synthesis model currently calculates the average cost per line by dividing the total cost of serving customer locations by the current number of lines. Because the current

number of lines is used in this average cost calculation, we agree with AT&T and MCI that the total cost should be determined by using the current number of customer locations. As AT&T and MCI note, ''the key issue is the consistency of the numerator and denominator'' in the average cost calculation. According to AT&T and MCI, other proposed approaches result in inconsistency because they use the highest possible cost in the numerator and divide by the lowest possible number of lines in the denominator, and therefore result in larger than necessary support levels. AT&T and MCI also assert that, in order to be consistent, housing units must be used in the determination of total lines if they are used in the determination of total costs. MCI points out that ''[i]f used consistently in this manner, building to housing units as GTE proposes is unlikely to make any difference in cost per line.'' Although SBC advocates the use of housing units, it agrees that the number of lines resulting from this approach should also be used in the denominator of any cost per line calculation to prevent the distortion noted by AT&T and MCI. We agree with AT&T and MCI that, as long as there is consistency in the development of total lines and total cost, it makes little difference whether households or housing units are used in determining cost per line. For the reasons discussed, we believe that PNR's methodology based on households is less complex and more consistent with a forward-looking methodology than housing units.

24. To the extent that the PNR methodology includes the cost of providing service to all currently served households, we conclude that this is consistent with a forward-looking cost model, which is designed to estimate the cost of serving current demand. As noted by AT&T and MCI, adopting housing units as the standard would inflate the cost per line by using the highest possible numerator (all occupied and unoccupied housing units) and dividing by the lowest possible denominator (the number of customers with telephones).

25. If we were to calculate the cost of a network that would serve all potential customers, it would not be consistent to calculate the cost per line by using current demand. In other words, it would not be consistent to estimate the cost per line by dividing the total cost of serving all potential customers by the number of lines currently served. The level and source of future demand, however, is uncertain. Future demand might include not only demand from currently unoccupied housing units, but also demand from new housing units, or potential increases in demand from currently subscribing households. We also recognize that population or demographic changes may cause future demand levels in some areas to decline. Given the uncertainty of future demand, we noted in the *Inputs Further Notice* that we are concerned that including such a highly speculative cost of future demand may not reflect forward-looking cost and may perpetuate a system of implicit support. Ameritech and AT&T and MCI also note that adopting the proposed conservative fill factors will ensure sufficient plant to deal with any customer churn created as a result of temporarily vacant households.

26. In addition, we do not believe that including the cost of providing service to all housing units would necessarily promote universal service to unserved customers. We note that there is no guarantee that carriers would use any support derived from the cost of serving all housing units to provide service to these customers. Many states permit carriers to charge substantial line extension or construction fees for connecting customers in remote areas to their network. If that fee is unaffordable to a particular customer, raising the carrier's support level by including the costs of serving that customer in the model's calculations would have no effect on whether the customer actually receives service. In fact, as long as the customer remains unserved, the carrier would receive a windfall. We recognize that providing service to currently unserved customers in such circumstances is an important universal service goal and the Commission is addressing this issue more directly in another proceeding.

27. We also find that interested parties have been given a reasonable opportunity to review and understand the National Access Line Model process for developing customer counts. The HAI sponsors have documented the process by which the National Access Line Model derives customer location counts and PNR has made itself available to respond to inquiries from interested parties. The National Access Line Model is a commercially licensed product developed by PNR, and we do not find it unreasonable for PNR to place some restriction on its distribution to the public. In addition, we agree that the National Access Line Model is more correctly characterized as a process consisting of several steps, and therefore we find no practical alternative to on-site review. Even if it were possible for PNR to turn the National Access Line Model over to the public in a single format, we believe that this would be of limited utility without a detailed explanation of the entire process. We therefore conclude that PNR has made reasonable efforts to ensure that interested parties understand the underlying process by which the National Access Line Model develops customer counts and has made that process reasonably available to interested parties. In addition, unlike the case with PNR's geocode data points, PNR's road surrogate customer location points are available for review and comparison by interested parties.

28. In response to Bell Atlantic and Sprint's concern regarding the line counts generated by the National Access Line Model, we note that the line count data proposed in the *Inputs Further Notice* had been trued up by PNR to 1996 ARMIS line counts. We subsequently have modified those data to reflect the most currently available ARMIS data. Accordingly, the input values that we adopt in this Order will true up the line counts generated by the National Access Line Model to 1998 ARMIS line counts. While the Commission has requested line count data from the non-rural LECs, no party has suggested, and we have not been able to discern, any feasible way of associating such data with wire centers used in the model. The Commission intends to continue to review this issue in addressing future refinements to the forward-looking cost model.

29. In the *Inputs Further Notice,* we also noted that the accuracy of wire center boundaries is important in estimating the number of customer locations. PNR currently uses BLR wire center information to estimate wire center boundaries. As noted, the BCPM model also uses BLR wire center boundaries, as does Stopwatch Maps in its road surrogate customer location files. A few commenters support the use of BLR wire center boundaries, noting widespread use by the model proponents. Others advocate the use of actual wire center boundaries. These commenters acknowledge, however, that this information is generally considered confidential and may not be released publicly by the incumbent LEC. We conclude that the BLR wire center boundaries are the best available data that are open to inspection and that they provide a reasonably reliable estimation of wire center boundaries. We note that both the BCPM and HAI proponents have utilized the BLR wire center data in their respective models. While use of actual wire center boundaries may be preferable, we agree that such information is currently unavailable or proprietary. We therefore approve the

use of the BLR wire center boundaries in the current customer location data set.

III. Outside Plant Input Values

A. Introduction

30. In this section, we consider inputs to the model related to outside plant. The *Universal Service Order's* first criterion specifies that ''[t]he technology assumed in the cost study or model must be the least-cost, most efficient, and reasonable technology for providing the supported services that is currently being deployed.'' Thus, while the model uses existing incumbent LEC wire center locations in designing outside plant, it does not necessarily reflect existing incumbent LEC loop plant. Indeed, as the Commission stated in the *Platform Order,* ''[e]xisting incumbent LEC plant is not likely to reflect forward-looking technology or design choices.'' The *Universal Service Order's* third criterion specifies that ''[o]nly long-run forward-looking costs may be included.'' We select input values consistent with these criteria.

31. As the Commission noted in the *Platform Order,* outside plant, or loop plant, constitutes the largest portion of total network investment, particularly in rural areas. Outside plant investment includes the copper cables in the distribution plant and the copper and optical fiber cables in the feeder plant that connect the customers' premises to the central office. Cable costs include the material costs of the cable, as well as the costs of installing the cable.

32. Outside plant consists of a mix of aerial, underground, and buried cable. Aerial cable is strung between poles above ground. Underground cable is placed underground within conduits for added support and protection. Buried cable is placed underground but without any conduit. A significant portion of outside plant investment consists of the poles, trenches, conduits, and other structure that support or house the copper and fiber cables. In some cases, electric utilities, cable companies, and other telecommunications providers share structure with the LEC and, therefore, only a portion of the costs associated with that structure are borne by the LEC. Outside plant investment also includes the cost of the SAIs and DLCs that connect the feeder and distribution plant.

B. Engineering Assumptions and Optimizing Routines

33. As noted in the *Inputs Further Notice,* the model determines outside plant investment based on certain cost minimization and engineering considerations that have associated input values. In the *Inputs Further Notice,* we recognized that it was necessary to examine certain input values related to the engineering assumptions and optimization routines in the model that affect outside plant costs. Specifically, we tentatively concluded that: (1) The optimization routine in the model should be fully activated; (2) the model should not use T–1 feeder technology; and (3) the model should use rectilinear distances and a ''road factor'' of one.

1. Optimization

34. When running the model, the user has the option of optimizing distribution plant routing via a minimum spanning tree algorithm discussed in the model documentation. The algorithm functions by first calculating distribution routing using an engineering rule of thumb and then comparing the cost with the spanning tree result, choosing the routing that minimizes annualized cost. The user has the option of not using the distribution optimization feature, thereby saving a significant amount of computation time, but reporting network costs that may be significantly higher than with the optimization. The user also has the option of using the optimization feature only in the lowest density zones.

35. In reaching our tentative conclusion that the model should be run with the optimization routine fully activated in all density zones, we recognized that using full optimization can substantially increase the model's run time. We noted that a preliminary analysis of comparison runs with full optimization versus runs with no optimization indicated that, for clusters with line density greater than 500, the rule of thumb algorithm results in the same or lower cost for nearly all clusters. Accordingly, we sought comment on whether an acceptable compromise to full optimization would be to set the optimization factor at ''−p500,'' as described in the model documentation.

36. We adopt our tentative conclusion that the model should be run with the optimization routine fully activated in all density zones when the model is used to calculate the forward-looking cost of providing the services supported by the federal mechanism. The first of the ten criteria pronounced by the Commission to ensure consistency in calculations of federal universal support specifies that ''[t]he technology assumed in the cost study or model must be the least-cost, most efficient, and reasonable technology for providing the supported services that is currently being deployed.'' As we explained in the *Inputs Further Notice,* running the model with the optimization routine fully activated complies with this requirement. In contrast, running the model with the optimization routine disabled may result in costs that are significantly higher than with full optimization. The majority of commenters that address the optimization issue support the use of full optimization. GTE opposes any implementation of optimization.

37. We agree with AT&T and MCI and GTE that it is inappropriate to deviate from full optimization merely to minimize computer run time. While the rule of thumb algorithm generally results in costs that are approximately the same as the spanning tree algorithm for dense clusters, for some dense clusters the spanning tree algorithm will result in lower costs. For this reason, we believe that any choice in maximum density clusters in which the minimum spanning tree algorithm is not applied may result in an arbitrary overestimate of costs for some clusters. Accordingly, running the model with full optimization is consistent with ensuring that the model uses the least-cost, most efficient, and reasonable distribution plant routings for providing the supported services.

38. As explained, the model seeks to minimize costs by selecting the lower of the cost estimates from the spanning tree algorithm and the rule of thumb algorithm. Both GTE and US West challenge the selection of the routing that minimizes annualized cost on the basis of a comparison between an engineering rule of thumb and the spanning tree result. US West claims that use of the rule of thumb approach is inappropriate because combining it with the spanning tree analytical approach to determine the amount of needed plant biases the results downward and will produce inappropriately low results.

39. We find that US West's concerns are misplaced. Contrary to US West's characterization, the rule of thumb used in the model is not an averaging methodology. Instead, it is a methodology that determines a sufficient amount of investment to serve each customer in every cluster using a standardized approach to network design. This approach connects every populated microgrid cell to the SAI using routes which are placed along the vertical and horizontal boundaries of the microgrid cells constructed in the distribution algorithm. The rule-of-thumb algorithm is somewhat similar in

its functioning to the so-called ''pinetree'' methodology proposed by both the early HAI and BCPM models for building feeder plant. Thus, the rule of thumb provides an independent calculation of sufficient outside plant for each cluster. The minimum spanning tree algorithm connects drop terminal points to the SAI using a more sophisticated algorithm in which routes are not restricted to following the vertical and horizontal boundaries of microgrid cells. The algorithm ''chooses'' a path independently of the set route structure defined by the rule-of-thumb, but still connects all drop terminals to the SAI. Since both the rule of thumb algorithm and the spanning tree algorithm use currently available technologies and generate investments that are sufficient to provide supported services, an approach which selects the minimum cost based on an evaluation of both of the algorithms is fully consistent with cost minimization principles.

40. We also disagree with GTE's assertion that the optimization routine should be disabled because it disproportionately affects lower density areas where universal service is needed most. The task of the model is to estimate the cost of the least-cost, most-efficient network that is sufficient to provide the supported services. Moreover, we note that the model does not determine the level of high-cost support amounts. We have taken steps in our companion order to ensure that sufficient support is provided for rural and high-cost areas.

41. We also reject GTE's claim that the optimization routine does not work as intended. GTE bases this contention on the observation that in some instances when the optimization factor is increased from −p100 to −p200 (*i.e.* going from density zones less than or equal to 100 lines per square mile to density zones less than or equal to 200 lines per square mile), both loop investment and universal service requirements increase. This, according to GTE, would not happen if the optimization worked properly.

42. We disagree. Optimizing the distribution plant is not synonymous with optimizing the entire network. Because the model's optimization routine optimizes distribution and feeder sequentially, and the starting point for the optimization of feeder plant is the distribution plant routing chosen, there are occasions when the optimal feeder plant will be more costly than it would be if distribution plant and feeder plant had been optimized simultaneously. In some cases, the lower distribution investment produced by the optimization routine may be offset by higher feeder investment, resulting in higher total outside plant costs than produced by the rule of thumb algorithm. Contrary to GTE's assertion, this phenomenon does not demonstrate that the optimization works improperly. To the contrary, it demonstrates that optimization occurs properly within the constraints of the model's design.

43. Moreover, we conclude that such rare occurrences do not outweigh the benefits of the optimization routine. The magnitude of the difference between the network cost produced by the optimization routine in these instances and the rule of thumb algorithm is *de minimis.* Furthermore, altering the model to optimize distribution investment and feeder investment simultaneously would greatly add to the complexity of the model.

2. T–1 Technology

44. A user of the model also has the option of using T–1 on copper technology as an alternative to analog copper feeder or fiber feeder in certain circumstances. T–1 is a technology that allows digital signals to be transmitted on two pairs of copper wires at 1.544 Megabits per second (Mbps). If the T–1 option is enabled, the optimizing routines in the model will choose the least cost feeder technology among three options: analog copper; T–1 on copper; and fiber. For serving clusters with loop distances below the maximum copper loop length, the model could choose among all three options; between 18,000 feet and the fiber crossover point, which earlier versions of the model set at 24,000 feet, the model could choose between fiber and T–1, and above the fiber crossover point, the model would always use fiber. In the HAI model, T–1 technology is used to serve very small outlier clusters in locations where the copper distribution cable would exceed 18,000 feet.

45. In the *Inputs Further Notice,* we tentatively concluded that the T–1 option in the model should not be used at this time. We noted that the only input values for T–1 costs on the record were the HAI default values and tentatively found that, because the model and HAI model use T–1 differently, it would be inappropriate to use the T–1 technology in the model based on these input values. We also noted that the BCPM sponsors and other LECs maintained that T–1 was not a forward-looking technology and therefore should not be used in the model. Other sources indicated that advanced technologies, such as HDSL, could be used to transmit information at T–1 or higher rates. We sought comment on this issue. We also sought comment on the extent to which HDSL technology presently is being used to provide T–1 service.

46. We conclude that the T–1 option should not be employed in the current version of the model. We agree with those commenters addressing this issue that traditional T–1 using repeaters at 6000 foot intervals is not a forward-looking technology. While HDSL and other DSL variants are forward-looking technologies, we do not at this time have sufficient information to determine appropriate input values for these technologies for use in the model. We conclude, therefore, that use of T–1 in the optimization routine as an alternative to analog copper or digital fiber feeder for certain loops under 24,000 feet is not appropriate at this time. Accordingly, the model will be run for universal service purposes with the T–1 option disabled.

3. Distance Calculations and Road Factor

47. In the distribution and feeder computations within the model, costs for cable and structure are computed by multiplying the route distances by the cost per foot of the cable or the structure facility, which depends on capacity and terrain factors. Distances between any two points in the network are computed using either of two distance functions. The model allows a separate road factor for each distance function, and every distance measurement made in the model is multiplied by the designated factor. Road factors could be computed by comparing average distances between geographic points along actual roads with distances computed using either of the two distance functions. Given sufficient data, these factors could be computed at highly disaggregated levels, such as the state, county, or individual wire center.

48. In the *Inputs Further Notice,* we tentatively concluded that the model should use rectilinear distance in calculating outside plant distances, rather than airline distance, because rectilinear distance more accurately reflects the routing of telephone plant along roads and other rights of way. We also tentatively concluded that the road factor in the model, which reflects the ratio between route distance and road distance, should be set equal to one. In addition, we asked whether we should use airline miles with wire center specific road factors as an alternative to rectilinear distance.

49. We reaffirm our tentative conclusion that the model should use rectilinear distance rather than airline distance in calculating outside plant

distances. As we noted in the *Inputs Further Notice,* research suggests that, on average, rectilinear distance closely approximates road distances. We agree with SBC that the calculation of outside plant distances should reflect the closest approximation to actual route conditions and road distance. We also conclude that it would be inappropriate to use airline distance in the model without simultaneously developing a process for determining accurate road factors (which would be uniformly greater than or equal to 1 in this case). While the use of geographically disaggregated road factors may merit further investigation, we note that the absence of such a data set on the record at this time precludes our ability to adopt that approach. We therefore conclude that the model should use a rectilinear distance metric with a road factor of one.

C. Cable and Structure Costs

1. Nationwide Values

50. As discussed in this section, we adopt nationwide average values for estimating cable and structure costs in the model rather than company-specific values. In reaching this conclusion, we reject the explicit or implicit assumption of most LEC commenters that company-specific values, which reflect the costs of their embedded plant, are the best predictor of the forward-looking cost of constructing the network investment predicted by the model. We find that, consistent with the *Universal Services Order's* third criterion, the forward-looking cost of constructing a plant should reflect costs that an efficient carrier would incur, not the embedded cost of the facilities, functions, or elements of a carrier. We recognize that variability in historic costs among companies is due to a variety of factors and does not simply reflect how efficient or inefficient a firm is in providing the supported services. We reject arguments of the LECs, however, that we should capture this variability by using company-specific data rather than nationwide average values in the model. We find that using company-specific data for federal universal service support purposes would be administratively unmanageable and inappropriate. Moreover, we find that averages, rather than company-specific data, are better predictors of the forward-looking costs that should be supported by the federal high-cost mechanism. Furthermore, we note that we are not attempting to identify any particular company's cost of providing the supported services. We are estimating the costs that an efficient provider would incur in providing the supported services.

51. AT&T and MCI agree that nationwide input values generally should be used for the input values in the model. AT&T and MCI concur with our tentative conclusion that the use of nationwide values is more consistent with the forward-looking nature of the high-cost model because it mitigates the rewards to less efficient companies. Additionally, AT&T and MCI maintain that developing separate inputs values on a state-specific, study-area specific, or holding company-specific basis is not practicable. As AT&T and MCI contend, doing so would be costly and administratively burdensome.

52. While reliance on company-specific data may be appropriate in other contexts, we find that for federal universal service support purposes it would be administratively unmanageable and inappropriate. The incumbent LECs argue that virtually all model inputs should be company-specific and reflect their individual costs, typically by state or by study area. For example, GTE claims that the costs that an efficient carrier incurs to provide basic service vary among states and even among geographic areas within a state. GTE asserts that the only way for the model to generate accurate estimates, *i.e.,* estimates that reflect these differences, is to use company-specific inputs rather than nationwide input values. As parties in this proceeding have noted, however, selecting inputs for use in the high-cost model is a complex process. Selecting different values for each input for each of the fifty states, the District of Columbia, and Puerto Rico, or for each of the 94 non-rural study areas, would increase the Commission's administrative burden significantly. Unless we simply accept the data the companies provide us at face value, we would have to engage in a lengthy process of verifying the reasonableness of each company's data. For example, in a typical tariff investigation or state rate case, regulators examine company data for one time high or low costs, pro forma adjustments, and other exceptions and direct carriers to adjust their rates accordingly. Scrutinizing company-specific data to identify such anomalies and to make the appropriate adjustments to the company-proposed input values to ensure that they are reasonable would be exceedingly time consuming and complicated given the number of inputs to the model.

53. Where possible, we have tried to account for variations in costs by objective means. As explained, the model reflects differences in structure costs by using different values for the type of plant, the density zone, and geological conditions. As discussed, we sought comment in the *Inputs Further Notice* on alternatives to nationwide plant mix values, but the algorithms on the record produce biased results. We continue to believe that varying plant mix by state, study area, or region of the country may more accurately reflect variations in forward-looking costs and intend to seek further comment on this issue in the future of the model proceeding.

2. Preliminary Cable Cost Issues

54. *Use of 24-gauge and 26-gauge Copper.* In the *Inputs Further Notice,* we tentatively concluded that the model should use both 24-gauge and 26-gauge copper in all available pair-sizes. We based our tentative conclusion on a preliminary analysis of the results of the structure and cable cost survey, in which it appeared that a significant amount of 24-gauge copper cable in larger pair sizes currently is being deployed. We also noted that, while HAI default values assume that all copper cable below 400 pairs in size is 24-gauge and all copper cable of 400 pairs and larger is 26-gauge, the BCPM default values include separate costs for 24-and 26-gauge copper of all sizes.

55. We conclude that the model should use both 24-gauge and 26-gauge copper in all available pair sizes. No commenter refuted our observation that a significant amount of 24-gauge copper cable in larger pair sizes currently is being deployed. Those commenters addressing this issue concur with our tentative conclusion. SBC confirms our analysis of the survey data and notes that it deploys 24-gauge cable in sizes from 25 to 2400 pairs. GTE explains, and we agree, that the model should use both 24-gauge and 26-gauge copper in all available pair sizes in order to stay within transmission guidelines when modeling 18 kilofoot loops.

56. *Distinguishing Feeder and Distribution Cable Costs.* In the *Inputs Further Notice,* we reaffirmed the Commission's tentative conclusion in the *1997 Further Notice* that the same input values should be used for copper cable whether it is used in feeder or in distribution plant. We adopt this tentative conclusion. Those commenters addressing this issue agree with our tentative conclusion. GTE contends that it is both unnecessary and inappropriate to have different costs for feeder and distribution cable material. GTE explains that, although quantities of material and labor related to cable size may differ between feeder and distribution, the unit costs for each

remain the same. Similarly, Sprint agrees that the material cost of cable is the same whether it is used for distribution or feeder. In sum, we find that the record demonstrates that it is appropriate to use the same input values for copper cable whether it is used in feeder or in distribution plant.

57. *Distinguishing Underground, Buried, and Aerial Installation Costs.* In the *Inputs Further Notice,* we also tentatively concluded that we should adopt separate input values for the cost of aerial, underground, and buried cable. We reached this tentative conclusion on the basis of our analysis of cable cost data supplied to us in response to data requests and through *ex parte* presentations. We found considerable differences in the per foot cost of cable, depending upon whether the cable was strung on poles, pulled through conduit, or buried.

58. We conclude that separate input values for the cost of aerial, underground, and buried cable should be adopted. Those commenters addressing this issue confirm our analysis of the data, *i.e.,* that there are differences, some significant, in placement costs for aerial, underground, and buried cable. GTE explains that, from a material perspective, the cable may have different protective sheathing, depending on construction applications. GTE adds that labor costs also differ depending on the type of placement. Both SBC and Sprint identify the cost of labor as varying significantly depending upon the type of placement. Based upon a review of the record in this proceeding, we conclude that separate input values for the cost of aerial, underground, and buried cable are, therefore, warranted.

59. *Deployment of Digital Lines.* We also conclude that two inputs, ''pct DS1'' and ''pct 1sa'', should be modified to provide more accurate deployment of digital lines in the distribution plant. The model can deploy a portion of distribution plant on digital DS1 circuits by specifying these two user adjustable inputs. The input ''pct DS1'' determines the percentage of switched business traffic carried on DS1 circuits, and the input ''pct 1sa'' determines the percentage of special access lines carried on DS1 circuits. Previously, we used default values for the inputs ''pct DS1'' and ''pct 1sa.'' We now adopt more accurate values for these inputs using 1998 line count data, following the methodology described.

60. Initially the model determines the number of special access lines from a ''LineCount'' table in the database ''hcpm.mdb,'' which provides for each wire center the number of residential lines, business lines, special access lines, public lines, and single business lines. The Commission required incumbent LECs to provide line counts for business switched and non-switched access lines on a voice equivalent basis and on a facilities basis. Upon receipt of those filings, we determined industry totals for each of the line count items requested. By applying the model's engineering conventions to the totals, the model determines the percentage of switched and non-switched lines provided as DS1-type service. Thus, using the channel and facility counts submitted in response to the *1999 Data Request,* it is possible to determine the ''pct DS1'' input value using the following formula: (1-
pct DS1)*channels +
pct DS1*channels/12 = facilities. A similar calculation is performed to solve for the ''pct 1sa'' input value. For both switched business and special access lines, the number of digital lines is then determined by multiplying the respective line count by the input value ''pct DS1'' or ''pct 1sa.'' Since 24 communications channels can be carried by two pairs of copper wires, the number of copper cables required to carry digital traffic is computed by dividing the number of digital channels by 12. These percentages are used to adjust the wire center cable requirements by reducing the facilities needed to serve multi-line business and special access customers.

3. Cost Per Foot of Cable

61. We affirm our tentative conclusion that we should use, with certain modifications, the estimates in the NRRI Study for the per-foot cost of aerial, underground, and buried 24-gauge copper cable and for the per-foot cost of aerial, underground, and buried fiber cable. We conclude that, on balance, these estimates, as modified in the *Inputs Further Notice,* and further adjusted herein, are the most reasonable estimates of the per-foot cost of aerial, underground, and buried 24-gauge copper cable and fiber cable on the record before us. In reaching this conclusion, we reject, for the reasons enumerated, the arguments of those commenters who contend that we should use company-specific data to develop the inputs for the per-foot cost of cable to be used in the model.

62. *Company-specific data.* As we discussed, we have determined to use nationwide average input values for estimating outside plant costs. In reaching this conclusion, we determined that the use of company-specific inputs was inappropriate because of the difficulty in verifying the reasonableness of each company's data, among other reasons. We have examined cable cost and structure cost data received from a number of non-rural LECs, as well as AT&T, in response to the structure and cable cost survey and through a series of *ex parte* filings. In addition, we have examined additional company-specific data submitted by certain parties with their comments. We conclude that these data are not sufficiently reliable to use to estimate the nationwide input values for cable costs or structure costs to be used in the model.

63. We conclude that the cable cost and structure cost data received in response to the structure and cable cost survey, in the *ex parte* filings, and in the comments are not verifiable. We find that with regard to the survey data, notwithstanding our request, most respondents did not trace the costs submitted in response to the survey from dollar amounts set forth in contracts by providing copies of these contracts and all of the interim calculations for a single project or a randomly selected central office. With regard to the *ex parte* data and data submitted with the comments, we find that, because most respondents did not document in sufficient detail the methodology, calculations, assumptions, and other data used to develop the costs they submitted, nor did they submit contracts or invoices setting forth in detail the cable and structure costs they incurred, these data cannot be substantiated. Moreover, we note that the structure and cable costs reported in the survey by some parties differ significantly from those reported by the same parties in the *ex parte* filings. These differences are not explained, and render those sets of data unreliable.

64. We find this lack of back-up information particularly unsettling given the magnitude of certain of the costs reported. We agree with AT&T and MCI that the cable installation costs submitted by the incumbent LECs appear to be high. We also agree with AT&T and MCI that this is because the loading factors employed in calculating these costs appear to be overstated. Because of the lack of back-up information to explain these loading costs, however, there is no evidence on the record to controvert our initial assessment. Accordingly, the level of these costs remains suspect.

65. Moreover, we find additional deficiencies beyond the critical lack of substantiating data, impugning the reliability of the LEC survey data and the *ex parte* data we have received. As discussed, the task of the model is to

calculate forward-looking costs of constructing a wireline local telephone network. To that end, the survey directed respondents to submit cable and structure costs for growth projects for which expenditures were at least $50,000. We believed that such projects would best reflect the costs that a LEC would incur today to install cable if it were to construct a local telephone network using current technology. In contrast, absent from the data would be costs associated with maintenance or projects of smaller scale which do not represent the costs of installing cable during such construction using current technology. Thus, the data would capture the economies of scale enjoyed on large projects which, should result in lower cable costs on a per-foot basis. Notwithstanding the survey directions, several of the respondents submitted data representing projects that were not growth projects or projects for which expenditures were less than the $50,000 minimum we established.

66. Conversely, some respondents included costs that should have been excluded under the definitions employed in the survey. For example, some respondents included costs for terminating structures, such as cross-connect boxes, in the cable costs they reported. Similarly, some respondents reported underground structure costs on a ''per duct foot'' basis contrary to the instructions set forth in the survey directing that such costs be reported on a ''per foot'' basis. We find that these inconsistencies render the use of the survey data inappropriate.

67. In sum, we find that certain of the concerns we identified with regard to using company-specific data, rather than nationwide average inputs for model inputs, have been borne out in our review of the cable cost and structure cost data we have reviewed. Specifically, we find that we are unable to verify the reasonableness of such data. Accordingly, we find that we are unable to use the company-specific data we have received for the estimation of cable cost and structure cost inputs for the model.

68. In reaching this conclusion, we reject the contention that the inability to link the costs submitted in response to the cable and structure cost survey to contracts is irrelevant because the survey request was not intended to create such a trail. This claim ignores the fact that the reasonableness of the survey data was placed into question by the presence of data received on the record that was inconsistent with the survey data. For this reason, as GTE attests, we attempted to create such a trail by requesting contracts and other supporting data in an effort to verify the reasonableness of the company-specific data received in response to the survey as well as in *ex parte* filings.

69. *Methodology.* As we explained in the *Inputs Further Notice,* our tentative decision to rely on the NRRI Study was predicated on our inability to substantiate the default input values for cable costs and structure costs provided by the HAI and BCPM sponsors. For that reason, we tentatively concluded, in the absence of more reliable evidence of cable and structure costs for non-rural LECs, to use estimates in Gabel and Kennedy's analysis of RUS data, subject to certain modifications, to estimate cable and structure costs for non-rural LECs. As we explained, Gabel and Kennedy first developed a data base of raw data from contracts for construction related to the extension of service into new areas, and reconstruction of existing exchanges, by rural-LECs financed by the RUS. Gabel and Kennedy then performed regression analyses, using data from the HAI model on line counts and rock, soil, and water conditions for the geographic region in which each company in the database operates to estimate cable and structure costs. Regression analysis is a standard method used to study the dependence of one variable, the dependent variable, on one or more other variables, the explanatory variables. It is used to predict or forecast the mean value of the dependent variable on the basis of known or expected values of the explanatory variables.

70. Those commenters advocating the use of company-specific data provide a litany of alleged weaknesses and flaws in the NRRI Study, and the modifications we proposed, to discredit its use to estimate the input values for cable costs and structure costs. In sum, they argue that the overall approach we proposed is unsuitable for estimating the cable and structure costs of non-rural LECs and generally leads to estimates which understate actual forward-looking costs. We find the contentions in support of this claim unpersuasive. Significantly, we note that these commenters provide no evidence that substantiates the reasonableness of the company-specific cable costs and structure costs submitted on the record to permit their use as an alternative in the estimation of cable and structure cost inputs to be used in the model.

71. For similar reasons, we reject AT&T and MCI's recommendation that we rely on the RUS data to develop cost estimates for the material cost of cable and then adopt ''reasonable'' values for the costs of cable placing, splicing, and engineering based on the expert opinions submitted by AT&T and MCI in this proceeding. We find that the expert opinions on which AT&T and MCI's proposed methodology relies lack additional support that would permit us to substantiate those opinions. Moreover, we reject AT&T and MCI's contentions, often analogous to those raised by the non-rural LECs, that the approach we proposed to estimate cable and structure costs is flawed in certain respects.

72. We reject the contentions of the commenters, either express or implied, that it is inappropriate to employ the NRRI Study because the RUS data set on which it relies is not a sufficiently reliable data source for structure and cable costs. We find that the RUS data set is a reasonably reliable source of absolute cable costs and structure costs, and more reliable and verifiable than the company-specific data we have reviewed. As explained in the NRRI Study, and noted, the RUS data reflect contract costs for construction related to the extension into new areas, and reconstruction of existing exchanges, by rural LECs financed by the RUS. Thus, the RUS data reflect actual costs derived from contracts between LECs and vendors. These costs are not estimates, but actual costs. Nor do they reflect only the opinions of outside plant engineers. In sum, we conclude that these are verifiable data.

73. We also note that the RUS data reflect the costs from 171 contracts covering 57 companies operating in 27 states adjusted to 1997 dollars. These companies operate in areas that have different terrain, weather, and density characteristics. This fact makes the RUS data sample suitable for econometric analysis. Moreover, we find that, because the costs are for construction that must abide by the engineering standards established by the RUS, these data are consistent. We note also that the imposition of consistent engineering requirements mitigate the impact of any inefficiencies or inferior technologies that may otherwise be reflected in the data.

74. Finally, as noted, the RUS data reflect costs for additions to existing plant or new construction. The use of such costs is consistent with the objective of the model to identify the cost today of building an entire network using current technology.

75. In reaching our conclusion to use the NRRI Study and thus the underlying RUS data, we have considered and rejected the contentions of the commenters that the RUS data set is flawed thereby rendering use of the NRRI Study inappropriate. GTE claims

that because certain high-cost observations were removed from the RUS data, the NRRI Study's results are unrepresentative of rural companies' costs, and are even less representative of non-rural companies' costs. We disagree. Gabel and Kennedy omitted data reflecting certain contracts from the RUS data they used to develop cost estimates because estimates produced using the data were inconsistent with the values of such estimates suggested by *a priori* reasoning or evidence. For example, they excluded certain observations from the buried copper and structure regression analysis because buried copper cable and structure estimates obtained from this analysis would otherwise be higher in low density areas than in higher density areas. Such a result is contrary to the information contained in the more than 1000 observations reflected in the data from which Gabel and Kennedy developed their buried copper cable and structure regression equation. Thus, removing the observations does not render the remaining data set less representative of rural companies' costs or, as adjusted, the estimates of the costs of non-rural companies. Moreover, we note that the evidence supplied on the record in this proceeding demonstrates that structure costs increase as population density increases. Thus, we find that the RUS data set is not flawed as GTE contends. We conclude that the removal of certain high cost observations was reasonable.

76. We also disagree with GTE's and Bell Atlantic's assertion that the NRRI Study is flawed because the RUS company contracts do not reflect actual unit costs for work performed, but rather the total cost for a project. Both commenters claim that this alleged failure results in unexplained variations in the RUS data which undermine the validity of the estimates produced. Contrary to GTE's and Bell Atlantic's contention, the contracts from which Gabel and Kennedy developed their data base for developing structure and cable costs do set forth per unit costs for materials and per unit costs for specific labor tasks.

77. We also disagree with AT&T and MCI's claim that the RUS data are defective because they consist of primarily small cables. AT&T and MCI claim that 74 percent of the RUS data are for cables of 50 pairs or less, and 95 percent are for cable sizes of 200 pairs or less. As a result, AT&T and MCI contend that the RUS data are inaccurate, especially for cable sizes above 200 pairs. We disagree with AT&T and MCI's analysis. We note that, for the buried copper cable and structure regression equations we proposed and adopt, approximately 39 percent of the observations are for cable sizes of 50 pairs or less, and approximately 76 percent are for 200 pairs or less. For the underground copper cable regression equation we proposed and adopt, approximately 10 percent of the observations are for cable sizes of 50 pairs or less, and approximately 33 percent are for 200 pairs or less. For the aerial copper cable regression equation we proposed and adopt, approximately 40 percent of the observations are for cable sizes of 50 pairs or less, and approximately 76 percent are for 200 pairs or less. Thus, the proportion of the observations reflected in the copper cable cost estimates we adopt are significantly greater for relatively large cables than what AT&T and MCI contend.

78. Finally, we reject the contention that it is inappropriate to use the NRRI Study because the RUS data base is not designed for the purpose of developing input values for the model. In the NRRI Study, Gabel and Kennedy explain that they began developing the data base as an outgrowth of the Commission's January 1997 workshop on cost proxy models when it became apparent that costs used as inputs in such models should be able to be validated by regulatory commissions. For this reason, they prepared data that is in the public domain to provide independent estimates of structure and cable costs.

79. We also find unpersuasive the contention that there are econometric flaws in the NRRI Study which render it unsuitable for developing input values. We disagree with the contentions of several commenters that the structure cost and cable cost regression equations that we develop from the RUS data are flawed because they are based on a relatively small number of observations. As a general rule of thumb, in order to obtain reliable estimates for the intercept and the slope coefficients in a regression equation, the number of observations on which the regression is based should be at least 10 times the number of independent variables in the regression equation. Ameritech claims that the sample size used to estimate the costs of buried placement is too small because it contains only 26 observations in density zone one. Ameritech's criticism ignores the fact that we use a single regression equation to estimate buried copper cable and structure costs for density zones one and two based on 1,131 observations (1,105 in zone two and 26 in zone one). There are four independent variables in the buried copper cable and structure regression equation, i.e., the variables that indicate the size of the cable, presence of a high water table, combined rock and soil type, and density zone. This suggests that approximately 40 observations are needed to obtain reliable estimates for the parameters in this regression equation. The total number of observations used to estimate this regression equation, 1,131, readily exceeds the number suggested for estimating reliably this regression equation. The number of observations for density zone one alone, 26, provides 65 percent of the suggested number of observations. Similarly, AT&T and MCI claim that the sample size for underground cable is too small because it contains only 80 observations. There is one independent variable in the adopted underground copper cable equation, i.e., the variable that indicates the size of the cable. Based on the rule of thumb noted, 10 observations are needed to reliably estimate this regression equation. The number of observations used to estimate the adopted underground copper cable regression equation, 81, is more than eight times this suggested number. Moreover, we note that Ameritech does not provide any evidence that suggest that a sample that has 26 observations in density zone 1 produces biased estimates of buried structure and cable costs for density zone one. Similarly AT&T and MCI do not provide any evidence to support their allegation that a sample size of 80 observations produces biased estimates of underground copper cable costs. Finally, we note that GTE contends that the regression results for aerial structure are undermined because the sample size for poles is based only on 19 observations. While a sample of this size fails to satisfy the general rule of thumb we noted, we find that the estimates produced are reasonable. As we pointed out in the *Inputs Further Notice,* the average material price reported in the NRRI Study for a 40-foot, class four pole is $213.94. This is close to our calculations of the unweighted average material cost for a 40-foot, class four pole, $213.97, and the weighted average material cost, by line count, $228.22, based on data submitted in response to the *1997 Data Request.* Moreover, we note that GTE does not provide any evidence that suggests that a sample size of 19 poles for developing aerial structure costs produces biased estimates as GTE seems to allege.

80. We also disagree with GTE's contention that the NRRI Study contains three methodological errors that make its results unreliable. First, GTE asserts

that the most serious of these flaws is that the NRRI Study improperly averages ordinal or categorical data, i.e., qualitative values, for the costs of placing structure in different types of soil. Contrary to GTE's claim, the independent variables that indicate soil type, rock hardness, and the presence of a high water table used in the regression equations for aerial and underground structure and buried structure and cable costs in the NRRI Study and proposed in the *Inputs Further Notice* do not reflect an incorrect averaging of ordinal data. The variables for soil, rock, and water indicate the average soil, rock, and water conditions in the service areas of RUS companies. They are based on averages of data obtained from the HAI database for the Census Block Groups in which the RUS companies operate. In general, the magnitude of the t-statistics for the coefficients of the independent variables for soil, rock, and water in the structure regression equations indicate that these variables have a statistically significant impact on structure costs. The magnitude of the F-statistic indicates that the independent variables in the structure regression equations, including those that indicate water, rock, and soil type, jointly provide a statistically significant explanation of the variation in structure costs. These statistical findings justify use of these variables in the structure regression equations. We also note that HAI uses as cardinal values, i.e., quantitative, not ordinal values, the soil and rock data from which the averages reflected in the rock and soil variables in the NRRI Study are calculated. For example, HAI uses a multiplier of between 1 and 4 to calculate the increase in placement cost attributable to the soil condition. Moreover, and more importantly, we note that no commenter has demonstrated the degree of, or even the direction of, any bias in the cost estimates derived in the NRRI Study or in the regression equations proposed in the *Inputs Further Notice* as a result of the use of soil, water, and rock variables based on averages of HAI data.

81. GTE also claims that the NRRI Study is flawed because it relies on the HAI model's values relating to soil type which GTE claims were ''made up.'' GTE contends that this renders the variable relating to soil type judgmental and biased. We find GTE's concern misplaced. As explained, the econometric analyses of the data demonstrate a statistically significant relationship between the geological variables developed from the HAI data and the structure costs. Finally, we disagree with GTE's claim that the NRRI Study is flawed because of a mismatch in the geographic coverage of the RUS data and the HAI model variables. GTE does not provide any evidence showing that the alleged mismatch introduces an upward or downward bias on the cost estimates obtained from the regression equations. Moreover, and more importantly, the t-statistics for the coefficients of the variables that measure rock and soil type generally indicate that these geological variables provide a statistically significant explanation of variations in RUS companies' structure costs.

82. We also reject the claims that the derivation of the equations for 24-gauge buried copper cable, buried structure, and buried fiber cable from the NRRI Study regression equations for 24-gauge buried copper cable and structure and buried fiber cable and structure, respectively, is inappropriate. As we explained in the *Inputs Further Notice,* we modified the regression equations in the NRRI Study for 24-gauge buried copper cable and structure and buried fiber cable and structure, as modified by the Huber methodology described, to estimate the cost of 24-gauge buried copper cable, buried structure and buried fiber cable because the regression equations for buried copper cable and structure and buried fiber cable and structure provide estimates for labor and material costs for both buried cable and structure combined. In layman's terms, we split the modified 24-gauge buried copper cable and structure regression equation into two separate equations, one for 24-gauge buried copper cable and one for buried structure costs. We also split the modified buried fiber cable and structure regression equation to obtain an equation for buried fiber cable. We did this because the model requires a separate input for labor and material costs for cable and a separate input for labor and material costs for structure. In contrast, the RUS data and buried cable and structure regression equations developed from these data, reflect labor and material costs for buried cable and structure combined.

83. Significantly, the criticisms of our development of the 24-gauge buried copper cable equation, buried structure equation and buried fiber cable equation in this manner ignore the fact that reliable, alternative data for buried cable costs and buried structure costs is not available on the record. Given that the model requires a separate input reflecting labor and material costs for both copper and fiber cable and a separate input reflecting labor and material costs for structure, and that the only reliable data on the record does not separate such costs between cable and structure, we find it necessary to split the regression equation.

84. Contrary to the assertions of the commenters, either express or implied, the steps we took to derive these equations were not arbitrary. We used a single buried structure equation to estimate the cost for buried structure without distinguishing between the equation for buried copper structure and the equation for buried fiber structure because the model does not distinguish between buried copper structure costs and buried fiber structure costs. We find that this is reasonable because the intercept and the coefficients for the variables that primarily explain the variation in structure costs, i.e., the variables that indicate density zone, the combined soil and rock type, and the presence of a high water table, in the combined regression equation for buried fiber cable and structure are not statistically different from the intercept and the coefficients for these variables in the combined regression equation for 24-gauge buried copper cable and structure. We also find that it is reasonable to develop a separate structure equation from the regression equation for the combined cost of 24-gauge buried copper cable and structure rather than from the regression equation for the combined cost of buried fiber cable and structure because the water and soil and rock type indicator variables in the regression equation for the combined cost of 24-gauge buried copper cable and structure are statistically significant. In contrast, these variables are not statistically significant in the buried fiber cable and structure regression equation. In addition, we note that the number of observations used to estimate the 24-gauge buried copper cable and structure regression equation, 1,131, exceeds the number of observations used to estimate the buried fiber cable and structure regression equation, 707 observations.

85. We note that we included in the separate buried cable equations the variable for cable size and its coefficient reflected in the combined cable and structure regression equations. We find that this is reasonable because the cable size variable and its coefficient explain the variation in cable costs. We also note that we excluded from the separate buried cable equations the independent variables in the combined cable and structure regression equations that indicate density zone, the presence of a high water table, and the soil and rock type. We find that this is reasonable because these variables and their coefficients explain primarily the variation in buried structure costs.

Conversely, we excluded from the separate buried structure equation the variable for cable size and its coefficient reflected in the combined 24-gauge buried copper cable and structure regression equation because this variable and its coefficient explain the variation in cable costs.

86. We also included in the separate structure equation the variables and the coefficients for the variables that indicate density zone, the combined soil and rock type, and the presence of a high water table in the combined regression equation for 24-gauge buried copper cable and structure. Again, we find this is reasonable because these independent variables and coefficients primarily explain the variation in structure costs.

87. Finally, because the estimated intercepts in the regression equations for the cost of buried cable and structure reflect the fixed cost for both buried cable and structure in density zone one, we included in the separate equations for buried cable an intercept reflecting the fixed cost of cable. Similarly, we included in the equation for buried structure an intercept reflecting the fixed cost of structure in density zone one. Specifically, we allocated an estimate of the portion of the combined fixed cable and structure costs that represents the fixed copper cable costs reflected in the intercept in the 24-gauge buried copper cable and structure cost regression equation to the intercept in the equation for 24-gauge buried copper cable. Correspondingly, we allocated an estimate of the portion of fixed cable and structure cost that represents the fixed costs of buried structure reflected in the intercept in the buried 24-gauge copper cable and structure cost regression equation to the intercept in the equation for structure costs. We also allocated to the intercept in the separate buried fiber cable equation the remaining portion of the fixed costs reflected in the intercept in the combined buried fiber cable and structure regression equation after subtracting from the value of this intercept the estimate for fixed structure costs in density zone 1 in the separate buried structure equation. The sum of the particular values that we adopt for the fixed cable cost in the separate 24-gauge copper cable equation, $.46, and the fixed structure cost in density zone 1 in the separate structure equation, $.70, equals the 24 gauge buried copper cable and structure fixed costs reflected in the intercept in the combined copper cable and structure regression equation of $1.16. The sum of the particular values that we adopt for the fixed cable cost in density zone 1 in the separate fiber cable equation, $.47, and the fixed structure cost in the separate structure equation of $.70 equals the buried fiber cable and structure fixed costs reflected in the intercept in the combined fiber cable and structure regression equation, $1.17. We find that these values are reasonable. We note that $.46 lies between AT&T and MCI's estimate of the fixed cost for a 24-gauge buried copper cable of $.12 and the HAI default value for the installed cost of a 6-pair 24-gauge buried copper cable of $.63. Moreover, we note that we could have used relatively higher or lower values for the fixed structure and cable costs in the separate structure and cable equations. However, we note that the sum of the fixed costs reflected in the buried structure cost estimates (excluding LEC engineering costs) developed from the separate buried structure equation and the fixed costs reflected in the buried cable cost estimates (excluding LEC engineering and splicing costs) developed from the separate buried copper or fiber cable equation is not affected by the relative values that we use for the fixed cost in these separate equations.

88. Finally, we note that GTE contends that the proposed equations for buried cable and buried structure are questionable because the buried structure costs would not vary with the presence of water. We have modified the regression equation for buried copper cable and structure by adding the variable that indicates the presence of a high water table. We obtain structure cost estimates used as input values by setting the coefficient for the water indicator variable equal to zero. These structure cost estimates, therefore, assume that a high water table is not present. The model adjusts these estimates to reflect the impact on these costs of a high water table. GTE also claims that the proposed equations are questionable because the costs for buried structure derived from the buried structure equation would not vary with cable size. We reject this contention. GTE has not provided any evidence that demonstrates that buried structure costs vary with cable size. To the contrary, GTE states that it cannot produce such evidence because it is not able to separate actual costs of buried structure from total costs of buried plant.

89. In sum, we find that the regression equations we proposed and tentatively adopted in the *Inputs Further Notice* are an appropriate starting point for estimating cable costs and structure costs for non-rural LECs for purposes of developing inputs for the model, particularly given the absence of more reliable cable and structure cost data from any other source. We find, however, that certain commenters' criticisms of the regression equations we proposed have merit. We make the following adjustments to improve the regression equations consistent with those criticisms.

90. First, we remove the independent variable that indicates whether two or more cables are placed at the same location from the regression equations for 24-gauge aerial copper cable, 24-gauge buried copper cable and structure, aerial fiber cable, and buried fiber cable and structure. As a result, the regression equations we adopt do not have this variable as an independent variable. We do not include this independent variable in any of the cable and structure equations because the model does not use a different cable cost if the outside plant portion of the network it builds requires more than one cable.

91. We also remove from the regression equation for 24-gauge underground copper cable the variable that is the mathematical square of the number of copper cable pairs. We remove this variable because its use results in negative values for the largest cable sizes, as some parties point out. We note that none of the other proposed cable and structure regression equations had this variable as an independent variable.

92. We add the variable that indicates the presence of a high water table to the regression equations for buried copper cable and structure and underground structure costs. With this change, all of the regression equations for structure costs adopted in this Order have this variable as an independent variable. We include this variable in the structure equations because the model applies a cost multiplier to all structure costs when the water table depth is less than the critical water depth. To develop structure cost inputs, we set the value of the water indicator variable equal to zero in the structure regression equations, thereby developing structure costs that assume that there is no water in the geographic area where the structure is installed. The multiplier in the model then adjusts these costs to reflect the impact on these costs of a high water table when it determines that the water table depth is less than the critical water depth.

93. We reduce the value of the intercept to $.46 from $.80 in the equation proposed in the *Inputs Further Notice* for calculating the labor and material costs for buried copper cable (excluding structure, LEC engineering, and splicing costs). We now estimate the buried 24-gauge copper cable and structure regression equation after

removing the multi-cable variable and adding the water indicator variable. The value of the intercept in this regression equation of $1.16 is less than the intercept in the proposed regression equation of $1.51. As we did in the *Inputs Further Notice,* we derive the buried copper cable equation from the regression equation for 24-gauge buried copper cable and structure costs. The value of the intercept in the buried copper cable and structure regression equation represents the fixed cost for both buried copper cable and buried copper cable structure in density zone 1. We assume, as we did in the *Inputs Further Notice,* that $.70 is the fixed cost for buried copper cable structure in density zone 1. Accordingly, the fixed labor and material cost for buried copper cable is $1.16 minus $.70, or $.46.

94. We also reduce the value of the intercept to $.47 from $.60 in the equation proposed in the *Inputs Further Notice* for calculating the labor and material costs for buried fiber cable (excluding structure, LEC engineering, and splicing costs). We now estimate the buried fiber cable and structure regression equation after removing the multi-cable variable. The value of the intercept in this regression equation, $1.17, is greater than the value of the intercept in the proposed regression equation, $1.14. As we did in the *Inputs Further Notice,* we derive the buried fiber cable equation from the regression equation for buried fiber cable and structure costs. The value of the intercept in the buried fiber cable and structure regression equation represents the fixed cost for both buried fiber cable and buried fiber cable structure in density zone 1. We assume that $.70 is the fixed cost for buried fiber cable structure in density zone 1. Accordingly, the fixed labor and material cost for buried fiber cable in density zone 1 is $1.17 minus $.70 or $.47

95. *Huber Adjustment.* In the *Inputs Further Notice,* we tentatively concluded that one substantive change should be made to Gabel and Kennedy's analysis. As we explained, we tentatively concluded that the regression equations in the NRRI Study should be modified using the Huber regression technique to mitigate the influence of outliers in the RUS data. Statistical outliers are values that are much higher or lower than other data in the data set. The Huber algorithm uses a standard statistical criterion to determine the most extreme outliers and exclude those outliers. Thereafter, the Huber algorithm iteratively performs a regression, then for each observation calculates an observation weight based on the absolute value of the observation residual. Finally, the algorithm performs a weighted least squares regression using the calculated weights. This process is repeated until the values of the weights effectively stop changing.

96. We affirm our tentative conclusion to modify the regression equations in the NRRI Study using the Huber methodology to develop input values for cable and structure costs. The cable and structure cost inputs used in the model should reflect values that are typical for cable and structure for a number of different density and terrain conditions. If they do not reflect values that are typical, the model may substantially overestimate or underestimate the cost of building a local telephone network. As discussed, application of the Huber methodology minimizes this risk, thereby producing estimates that are consistent with the goal of developing cable and structure cost inputs that reflect values that are typical for cable and structure for different density and terrain conditions.

97. The commenters attest to the fact that there are significant variances in the RUS structure and cable cost data. We find that the presence of these outliers warrants the use of the Huber methodology. By relying on the Huber methodology to identify and to exclude or give less than full weight to these data outliers in the regressions, we decrease the likelihood that the cost estimates produced reflect measurement error or data anomalies that may represent unusual circumstances that do not reflect the typical case. We note that we are not readily able to ascertain the specific circumstances that may explain why some data points are outliers relative to more clustered data points because of the multivariate nature of the database. Such occurrences are expected when dealing with such a database. Not only are there many observations, but these observations reflect the circumstances surrounding the construction work of many different contractors done for a large number of companies on different projects over a number of years. We also note that the task of identifying structure cost outliers without using a statistical approach such as Huber is especially difficult because these costs are a function of different geological conditions and population densities. Given that it is not feasible, as a practical matter, to determine why particular data points are outliers and our objective is to develop typical cable and structure costs, we conclude that use of the Huber methodology is appropriate.

98. We find the comments opposing application of the Huber methodology unpersuasive. In the first instance, we reject the assertions of the commenters, either express or implied, that the application of robust regression analysis is not the preferred method of dealing with outliers in a regression. There is no preferred method. The use of robust regression techniques is a matter of judgement for the estimator. As we explained, the goal of our analysis is to estimate values that are typical for cable and structure costs for different density and terrain conditions. We determined that we should mitigate the effects of outliers occurring in the data to ensure that the estimates we produce reflect typical costs. Noting that such outliers have an undue influence on ordinary least squares regression estimates because the residual associated with each outlier is squared in calculating the regression, we determined, in our expert opinion, to employ the Huber methodology to diminish the destabilizing effects of these outliers. Thus, while it can be argued that we could have produced a different estimate, the commenters have not established that application of the Huber methodology produces an unreasonable estimate.

99. Bell Atlantic and GTE assert that the probability distribution of the error term must be symmetric about its mean and have fatter tails than in the normal distribution in order to use the Huber methodology. We disagree. The Huber methodology in effect fits a line or a plane to a set of data. The algebraic expression of this line or plane explains or predicts the effects on a dependent variable, *e.g.,* 24-gauge aerial copper cable cost, of changes in independent variables, *e.g.,* aerial copper cable size. It does this by assigning zero or less than full weight to observations that have extremely high or extremely low values. The assignment of weights to observations depends on the values of the observations. It does not depend on the probability of observing these values. The error term to which Bell Atlantic and GTE refer is the difference between the predicted or estimated values of the dependent variable and the observed values of the dependent variable. Given that the error term is the difference between the predicted and observed values of the dependent variable, and that the assignment of weights by the Huber methodology does not depend on the probability of observing particular values of this variable, this assignment of weights does not depend on the probability of observing particular values of the error

term. It, therefore, does not depend on whether the probability distribution of the error term is symmetric about its mean and has fatter tails than in the normal distribution.

100. Bell Atlantic also argues that the Huber methodology should not be used unless there is evidence that outliers in the RUS data are erroneous. We disagree. We believe that use of the Huber methodology with RUS data ensures that cost estimates reflect typical costs regardless of whether there is evidence that outliers in the RUS data are erroneous. The RUS data, as Bell Atlantic and other parties point out, have a number of high values and low values. These outliers may reflect unusual circumstances that are unlikely to occur in the future. The Huber methodology dampens the effects of anomalistically high or low values that may reflect unusual circumstances. Notwithstanding the dispersion in the RUS data, we believe that there are relatively few errors in these data. As we explained, the RUS data are derived from contracts. Gabel and Kennedy determined that the values reflected in the RUS data are within one percent of the values set forth on the contracts. There are likely to be few errors in the contracts themselves because these are binding agreements that involve substantial sums of money between RUS companies and contractors. These parties have an obvious interest in ensuring that these values are correctly reflected in these contracts. While we believe that errors in these contracts are likely to be infrequent, outlier observations in the RUS data may reflect large errors. The Huber methodology dampens the effects of outlier observations that may reflect large errors.

101. We find that the estimates produced by applying the Huber methodology are reasonable. The estimates resulting from application of the Huber methodology reflect most of the information represented in nearly all of the cable and structure cost observations in the RUS data. Approximately 80 percent of the cable and structure observations are assigned a weight of at least 80 percent in each structure and regression equation that we adopt. This large majority comprises closely clustered observations that clearly represent typical costs. Conversely, approximately 20 percent of the cable and structure observations are assigned a weight of less than .8 in each of these regression equations. This small minority comprises observations that have extremely high and extremely low values that do not represent typical costs. We also note that because the Huber methodology treats symmetrically observations that have high or low values, it excludes or assigns less than full weight to data outliers without regard to whether these are high or low cost observations.

102. *Buying Power Adjustment.* In the *Inputs Further Notice*, we tentatively concluded that we should make three adjustments to the regression equations in the NRRI Study, as modified by the Huber methodology described, to estimate the cost of 24-gauge aerial copper cable, 24-gauge underground copper cable, and 24-gauge buried copper cable. We further tentatively concluded that these adjustments should be made in the estimation of the cost of aerial fiber cable, buried fiber cable, and underground fiber cable. The first of these adjustments was to adjust the equation to reflect the superior buying power that non-rural LECs may have in comparison to the LECs represented in the RUS data. We noted that Gabel and Kennedy determined that Bell Atlantic's material costs for aerial copper cable are approximately 15.2 percent less than these costs for the RUS companies based on data entered into the record in a proceeding before the Maine Public Utilities Commission (the ''Maine Commission). Similarly, Gabel and Kennedy determined that Bell Atlantic's material costs for aerial fiber cable are approximately 33.8 percent less than these costs for the RUS companies. We also noted that Gabel and Kennedy determined that Bell Atlantic's material costs for underground copper cable are approximately 16.3 percent less than these costs for the RUS companies and 27.8 percent less for underground fiber cable. We tentatively concluded that these figures represent reasonable estimates of the difference in the material costs that non-rural LECs pay in comparison to those that the RUS companies pay for cable. Accordingly, to reflect this degree of buying power in the copper cable cost estimates that we derived for non-rural LECs, we proposed to reduce the regression coefficient for the number of copper pairs by 15.2 percent for aerial copper cable, and 16.3 percent for 24-gauge underground copper cable.

103. We also proposed to reduce the regression coefficient for the number of fiber strands by 33.8 percent for aerial fiber cable and 27.8 percent for underground fiber cable. As we explained, this coefficient measures the incremental or additional cost associated with one additional copper pair or fiber strand, as applicable, and therefore, largely reflects the material cost of the cable. Because the NRRI Study did not include a recommendation for such an adjustment for buried copper cable or buried fiber, we tentatively concluded we should reduce the coefficient by 15.2 percent for buried copper cable and 27.8 percent for buried fiber cable. We explained that the level of these adjustments reflect the lower of the reductions used for aerial and underground copper cable and aerial and underground fiber cable, respectively.

104. We adopt the tentative conclusion in the *Inputs Further Notice* and select buying power adjustments of 15.2 percent, 16.3 percent and 15.2 percent for 24-gauge aerial copper cable, 24-gauge underground copper cable, and 24-gauge buried copper cable, respectively. Correspondingly, we adopt buying power adjustments of 33.8 percent, 27.8 percent, and 27.8 percent for aerial fiber cable, underground fiber cable, and buried fiber cable, respectively. We find that, based on the record before us, the buying power adjustment is appropriate and the levels of the adjustments we proposed for the categories of copper and fiber cable we identified are reasonable.

105. As we explained in the *Inputs Further Notice*, the buying power adjustment is intended to reflect the difference in the materials prices that non-rural LECs pay in comparison to those that the RUS companies pay. Because non-rural LECs pay less for cable, a downward adjustment to the estimates developed from data reflecting the costs of rural-LECs is necessary to derive estimates representative of cable costs for non-rural LECs. The commenters generally concede that such differences exist. There is, however, disagreement among the commenters that an adjustment is necessary in this instance to reflect this difference.

106. Those commenters advocating the use of company-specific data oppose the buying power adjustment as unnecessary. GTE and Sprint contend that the use of a more representative data set, i.e., company-specific data, would account for any differences in buying power. As we explained, however, the RUS data are the most reliable data on the record before us for estimating cable and structure costs. Because there is a difference in the material costs that non-rural LECs pay in comparison to those that the RUS companies pay, a downward adjustment to the RUS cable estimates is necessary to obtain representative cable cost estimates for non-rural LECs.

107. We note that AT&T and MCI support the proposed adjustment for aerial and underground copper and fiber cable. AT&T and MCI oppose, however,

the use of the lower of the reductions adopted for aerial and underground cable categories, for the buried cable category. Although AT&T and MCI agree that an adjustment is appropriate for buried cable, they contend that the buying power adjustment should be set at the higher figures of 16.3 percent for buried copper cable and 33.8 percent for buried fiber cable, or at the very least, at the average of the higher and lower values for aerial and underground cable. We disagree. We find that AT&T and MCI offer no support to demonstrate why the higher values should be used. As explained, the levels of the adjustments we proposed and adopt are the most conservative based on the available record evidence.

108. Apart from opposing the buying power adjustment on the ground that as a general matter the adjustment is unnecessary, those opposing the adjustment take issue with the adjustment on methodological grounds. GTE contends that the adjustment cannot properly convert RUS data into costs for non-rural carriers because the RUS data do not reflect the cost structure of rural carriers. As we explained, the assertion that the RUS data does not reflect the cost structure of rural carriers is without merit. GTE also contends that the application of the adjustment factors to the coefficients in the regression equations is contrary to the fundamentals of sound economic analysis. The solution GTE recommends is that additional observations for non-rural companies be added to the data set. This solution echoes GTE's assertion that company-specific data should be used. Reliable observations for non-rural LECs are not available, however, as explained.

109. GTE also identifies what it considers flaws in the development of the buying power adjustment. GTE argues that because the adjustment to the RUS data was developed using only one larger company's data (Bell Atlantic's) reflecting costs for a single year, the adjustment is not proper. We disagree for several reasons. First, we note that although we specifically requested comment on this adjustment and its derivation in the *Inputs Further Notice,* GTE and other parties challenging the use of Bell Atlantic's data have not provided any alternative data for measuring the level of market power, despite their general agreement that such market power exists. These parties failed to submit comparable verifiable data to show that the buying power adjustment we proposed was inaccurate. Under these circumstances, we cannot give credence to the unsupported claims that the Bell Atlantic data is not representative.

110. Equally important, we have reason to conclude that the adjustment we adopt is a conservative one. The buying power adjustment we proposed and adopt is based upon a submission by Bell Atlantic to the Maine Commission in a proceeding to establish permanent unbundled network element (UNE) rates. In that context, it was in Bell Atlantic's interests to submit the highest possible cost data in order to ensure that the UNE rates would give it ample compensation. But in the context of the adjustment we consider here for buying power, a relatively higher cost translates into a *reduced* adjustment because the greater the LEC costs, the less the differential between LEC and rural carrier costs. Therefore, given the source of this data, we conclude that it is likely to produce a conservative buying power adjustment, not an excessive one. Nevertheless, in the proceeding on the future of the model, we intend to seek further comment on the development of an appropriate buying power adjustment to reflect the forward-looking costs of the competitive efficient firm. In sum, we find that GTE's criticisms are not persuasive, and that the adjustment is a reasonable one, supported by the record.

111. GTE also asserts a litany of other concerns that, according to GTE, render the buying power adjustment invalid. We find these concerns unpersuasive. GTE claims that the adjustment is suspect because some RUS observations used in the determination of material costs are not used in the regression. We disagree. As discussed, we apply the Huber methodology to RUS cable costs that reflect both labor and material costs. The observations in the RUS database to which the Huber methodology assigns zero or less than full weight are those with the highest and the lowest values. As described, a statistical analysis demonstrates that this assignment of weights to these observations has little impact on the level of material costs reflected in the cable cost estimates derived by using this methodology. Therefore, material cost averages based on all of the RUS data are not likely to vary significantly from material cost averages based on a subset of these data.

112. Specifically, with one exception, the value of the regression coefficient for the variable representing the size of the cable in the cable cost regression equations derived by using the Huber methodology lies inside the 95 percent confidence interval surrounding the value of this coefficient in these regression equations in the NRRI Study obtained by using ordinary least squares. The coefficient for the variable that represents cable size represents the additional cost for an additional pair of cable and therefore represents cable material costs. The values of the coefficient for the cable size variable obtained by using Huber and ordinary least squares are based on a sample of RUS companies' cable costs drawn from a larger population of such costs. The values of the coefficient obtained from this sample by using the Huber methodology and ordinary least squares are estimates of the true values of this coefficient theoretically obtained from the population of cable costs by using these techniques. Generally speaking, a 95 percent confidence interval associated with a coefficient estimate contains, with a probability of 95 percent, the true value of the coefficient. The fact that the value of the cable size coefficient obtained by using the Huber methodology lies within an interval that contains with 95 percent certainty the true value of the ordinary least squares cable size coefficient supports the conclusion that the Huber methodology does not by its weighting methodology have a statistically significant impact on the level of the material costs reflected in the cable cost estimates derived by using this methodology.

113. GTE also claims that some RUS observations appear to be from rescinded contracts or contracts excluded from the NRRI Study per-foot cable cost calculation. However, GTE offers no evidence that this is the case. Finally, GTE claims that some RUS observations are for technologies that may not be appropriate for a forward-looking cost model. On the contrary, loading coils were excluded from the RUS data base. Thus, we find that the RUS data do not reflect any non-forward-looking technologies.

114. GTE and Sprint each attempt to impugn the validity of the buying power adjustment, claiming that there may be an incongruity between the data submitted to the Maine Commission by Bell Atlantic and the RUS data. We find this claim unpersuasive. Both GTE and Sprint assert that it is unknown whether the underlying data include such items as sales tax or shipping costs and, if so, whether the level of these items is comparable between Maine and the states included in the RUS data. Significantly, neither claim that such an incongruity exists in fact, nor do they provide viable alternatives for the calculation of the adjustment. We note that the RUS data reflect the same categories of costs as those reflected in the Bell Atlantic data. More importantly, this data reflects the best

available evidence on the record on which to base the buying power adjustment.

115. BellSouth claims that the buying power adjustment is flawed because it does not take into account the exclusion of RUS data resulting from the Huber adjustment. Bell Atlantic makes a similar claim. Both parties argue that because the Huber methodology excludes high cost data from the regression analysis, it is inappropriate to apply a discount which essentially has the same effect. In sum, these commenters claim that we are adjusting for high material costs twice. We disagree. This contention ignores the fact that the application of the Huber methodology and the buying power adjustment are fundamentally different adjustments. The Huber adjustment gives reduced weight to observations that are out of line with other data provided by the RUS companies. The Huber adjustment provides coefficient estimates that can be used to estimate the cost incurred by a typical RUS company. The adjustment is designed to dampen the effect of outlying observations that otherwise would exhibit a strong influence on the analysis. The large buying power adjustment, on the other hand, adjusts for the greater buying power of the non-rural companies. None of the RUS companies have the buying power of, for example, Bell Atlantic or GTE, and therefore have to pay more for material. The buying power adjustment could only duplicate the Huber adjustment if some of the RUS companies have the buying power of a company as large as Bell Atlantic. Because none of the firms in the RUS data base are close to the size of Bell Atlantic, the commenters are incorrect when they assert that, since the Huber methodology excludes high cost data from the regression analysis, it is inappropriate to apply the buying power adjustment.

116. We also reject BellSouth's argument that, to determine the size of the buying power adjustment, we should use a weighted average of the cable price differentials between Bell Atlantic and the RUS companies that is based on the miles of cable installed, not the number of observations, for each cable size. In the NRRI Study, this weighted average price differential is determined by: (1) calculating the price differential between Bell Atlantic's average cable price and the RUS companies' average cable price for each cable size; (2) weighting the price differential for each cable size by the number of observations used to calculate the RUS companies' average cable price; and (3) summing these weighted price differentials. The average measures the central tendency of the data. In general, the average more reliably measures this central tendency the larger the number of observations from which this average is calculated. In the NRRI Study, the average cable prices calculated for the RUS companies that reflect a relatively large number of observations are more reliable than those that reflect relatively few observations. Accordingly, weighting the price differentials for each cable size by the number of observations reflected in the average cable price calculated for the RUS companies provides a weighted average that reliably measures the central tendency of the price. In contrast, use of the miles of cable installed as weights to determine the average cable price differentials could result in a less reliable measure of central tendency because price differentials based on a small number of observations but reflecting a high percentage of cable miles purchased would have a greater impact on the weighted average than price differentials based on a large number of observations of cable purchase prices. Moreover, use of the number of miles of cable installed as the weights would result in a weighted average price differential that reflects RUS companies' relative use of different size cables. The RUS companies' relative use of different size cables is irrelevant for use in a model used to calculate non-rural LECs' cost of constructing a network.

117. We also reject Bell Atlantic's contention that the buying power adjustment is flawed because it should have been applied to the material costs rather than the regression coefficient of copper cable pairs or the number of fiber strands. Bell Atlantic has provided no evidence that demonstrates that applying the discount to the coefficient is incorrect. It is an elementary proposition of statistics that the result of applying the discount to the regression coefficient is equal to applying the discount to the material costs. Significantly, Bell Atlantic has not demonstrated that applying the discount to the regression coefficient does not produce the same result as applying the discount to the material costs.

118. Finally, we disagree with Sprint that, because buying power equates to company size, it is inappropriate to apply this adjustment uniformly to all carriers. We are estimating the costs that an efficient provider would incur to provide the supported services. We are not attempting to identify any particular company's cost of providing the supported services. We find, therefore, that applying the buying power adjustment as we propose is appropriate for the purpose of calculating universal service support.

119. In sum, we find unpersuasive the criticisms of the buying power adjustment we proposed. We conclude that, based on the record before us, a downward adjustment to the estimates developed from data reflecting the cable costs of rural LECs is necessary to derive estimates representative of cable costs for non-rural LECs and that the levels we have proposed for this adjustment are reasonable.

120. *LEC Engineering.* The second adjustment we proposed to the regression equations used to estimate cable costs was to account for LEC engineering costs, which were not included in the RUS data. As we noted, the BCM2 default values include a loading of five percent for engineering. In contrast, the HAI sponsors claimed that engineering constitutes approximately 15 percent of the cost of installing outside plant cables. This percentage includes both contractor engineering and LEC engineering. The cost of contractor engineering already is reflected in the RUS cable cost data. In the *Inputs Further Notice,* we tentatively concluded that we should add a loading of 10 percent to the material and labor costs of cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering.

121. We affirm our tentative conclusion to add a loading of 10 percent to the material and labor for the cost of cable (net of LEC engineering and splicing costs) to approximate the cost of LEC engineering. We find that, based on the record before us, the proposed LEC engineering adjustment, as modified, is appropriate. We also find that the level of the adjustment we proposed is reasonable. We note that there is a general consensus among the commenters that the proposed adjustment is necessary. We reject, however, the contentions of those commenters that advocate that the level of the LEC adjustment be based on company-specific data. As we explained, we find such data to be unreliable. For similar reasons, we reject the LEC engineering adjustment proposed by AT&T and MCI. As we explained, AT&T and MCI's proposal is based on expert opinions which we find to be unsupported and, therefore, unreliable. Accordingly, the level of the adjustment that we proposed, which, as we explained in the *Inputs Further Notice* represents the mid-point between the HAI default loading and the BCPM default loading, is the most reasonable value on the record before us.

122. Sprint contends that we should calculate the loadings for LEC engineering on a flat dollar basis rather than on a fixed percentage of the labor and material costs of cable. We find persuasive Sprint's contention that LEC engineering costs do not vary with the size of the cable and therefore do not vary with the cost of the cable. Accordingly, we find it reasonable to apply the loading for LEC engineering in the manner that Sprint recommends.

123. We also find that the commenters are correct that the loading for LEC engineering should not reflect any adjustment for buying power because the buying power differential between non-rural and rural LECs only relates to materials. We adjust our calculation accordingly. Similarly, we also find it appropriate to include in the loading for LEC engineering an allowance for LEC engineering associated with splicing. We find that this is appropriate because the loading for LEC engineering is based on BCPM and HAI default values for this loading that are expressed as a percentage of cable costs inclusive of engineering.

124. *Splicing Adjustment.* The third adjustment to the regression equations that we proposed in the *Inputs Further Notice* was to account for splicing costs, which also were not included in the RUS data. As we explained, Gabel and Kennedy determined that the ratio of splicing costs to copper cable costs (excluding splicing and LEC engineering costs) is 9.4 percent for RUS companies in the NRRI Study. Similarly, Gabel and Kennedy determined that the ratio of splicing costs to fiber cable costs (excluding splicing and LEC engineering costs) is 4.7 percent. Thus, we tentatively concluded that we should adopt a loading of 9.4 percent for splicing costs for 24-gauge aerial copper cable, 24-gauge underground copper cable, and 24-gauge buried copper cable. Correspondingly, we tentatively concluded that we should adopt a loading of 4.7 percent for splicing costs for aerial fiber cable, underground fiber cable, and buried fiber cable.

125. We affirm these tentative conclusions. We find that, based on the record before us, the splicing cost adjustment is appropriate and the levels of the adjustments proposed are reasonable. In reaching this conclusion, we reject the claims of those commenters that advocate the use of company-specific data to develop the splicing loadings. For the reasons enumerated, we find such data unreliable.

126. We disagree with GTE's claim that, because the splicing factor is based on the RUS data, it is flawed. This contention echoes GTE's assertion that we should use company-specific data. As we explained, however, we conclude that such data are not reliable. We also disagree with GTE's contention that an analysis of the source contract data shows that some splicing costs are invalid. GTE is mistaken. The RUS cost data from which the regression equations in the NRRI Study and in this Order are derived exclude splicing costs. Cable cost estimates obtained by using this methodology and these data are net of LEC engineering and splicing costs. We add to these cable cost estimates a loading factor for splicing that Gabel and Kennedy developed separately using the RUS data in the NRRI Study without using the regression analysis. In the NRRI Study, Gabel and Kennedy determined the ratio of splicing to cable costs by comparing the cost for splicing and the cost for cable (exclusive of splicing and LEC engineering costs) reflected in the contracts included in the RUS data base. Some of the splicing costs reflected in this database are relatively high and some are relatively low. None of these high or low values is likely to influence significantly this ratio because it reflects a large number of observations. Accordingly, we find it reasonable to apply the splicing ratios developed in the NRRI Study to the cable cost estimates developed separately in this Order by using the Huber methodology with the RUS data.

127. We also disagree with AT&T and MCI's contention that, rather than adopting the proposed splicing loadings or the incumbent LEC's loading factors, we should adopt ''reasonable values for the costs of cable placing, splicing, and engineering based on the expert opinions submitted in this proceeding.'' As discussed, we find that these expert opinions are unsupported, and therefore unreliable.

128. For the same reason, we also find unpersuasive AT&T and MCI's claim that the loading of 9.4 percent for splicing copper cable is excessive. AT&T and MCI estimates that splicing costs vary between 3.4 and 6.9 percent of cable investment in contrast to the proposed rate of 9.4 percent. We find that these estimates, which rely on assumptions concerning the per-hour cost of labor, the number of hours required to set up and close the splice, the number of splices per hour, and the distance between splices, are unreliable. AT&T and MCI have provided no evidence other than the unsupported opinions of their experts to substantiate these data. In contrast, Bell Atlantic supports the use of the 9.4 percent loading indicating, that this level is consistent with its own data.

129. While Sprint agrees that a splicing loading is required in the NRRI regression, Sprint recommends that a flat dollar ''per pair per foot'' cost additive should be employed rather than the adjustment we proposed. We disagree. We find that Sprint's flat dollar ''per pair per foot'' cost additive ignores the differences in set-up costs among different cable sizes. In contrast, the percent loading for splicing costs we adopt herein implicitly recognizes such differences because these loadings are applied to cable costs estimates (exclusive of splicing and LEC engineering costs) derived from regression equations that have an intercept term that provides a measure of the fixed cost of cable. Accordingly, we conclude that the percent loading approach is more reasonable.

130. Sprint also asserts that underground splicing costs are higher due to the need to work in manholes. We agree. The dollar amounts associated with the fixed percentage loadings adopted in this Order for underground copper and fiber cable are generally larger than for aerial and buried copper cable and fiber cable. The dollar amounts that we adopt for splicing are generally larger for underground cable because the costs that we develop from RUS data for underground cable net of splicing and engineering costs are generally larger than the costs that we develop for aerial and buried cable net of splicing and engineering costs. As a result, when the fixed percentage is applied to these cable costs, the dollar amount for splicing is generally larger for underground cable than for aerial and buried cable.

131. We disagree with those commenters who argue that the splicing costs do not vary with the cost of cable (net of splicing costs). We find that cable costs increase as the size of the cable increases. Splicing costs increase as the size of the cable increases because larger cables require more splicing than small cables. Therefore, splicing costs increase as the cost of the cable increases.

132. Finally, we disagree with SBC's claim that the 14 percent splicing factor for fiber cable is more appropriate than the 4.7 percent we proposed. We find that the 14 percent factor SBC proposes is unsupported. SBC asserts that this factor is based on an average cost ratio from an analysis using various lengths of underground fiber placement, including placing labor and comparing it to associated splicing costs from

current cost dockets. However, SBC has not provided this analysis on the record.

133. *26-Gauge Copper Cable.* In the *Inputs Further Notice*, we explained that, because the NRRI Study did not provide estimates for 26-gauge copper cable, we must either use another data source or find a method to derive these estimates from those for 24-gauge copper cable. To that end, we tentatively concluded that we should derive cost estimates for 26-gauge cable by adjusting our estimates for 24-gauge cable. We proposed to estimate these ratios using data on 26-gauge and 24-gauge cable costs submitted by Aliant and Sprint and the BCPM default values for these costs. We noted, that while we would prefer to develop these ratios based on data from more than these three sources, we tentatively concluded that these were the best data available on the record for this purpose.

134. We affirm our tentative conclusion to derive cost estimates for 26-gauge cable by adjusting our estimates for 24-gauge cable. As we explained in the *Inputs Further Notice*, we agree with the BCPM sponsors that the cost of copper cable should not be estimated based solely on the relative weight of the cable. Instead, we proposed to use the ordinary least squares regression technique to estimate the ratio of the cost of 26-gauge to 24-gauge cable for each plant type (*i.e.,* aerial, underground, buried). We conclude that, based on the record before us, this approach is reasonable.

135. Consistent with their position on estimating the costs of 24-gauge cable, many commenters advocate that we use company-specific data to estimate the costs of 26-gauge cable. As we explained, we have determined that such data are not sufficiently reliable to employ in the model. Accordingly, we reject the use of company-specific data to estimate the costs of 26-gauge cable. We note that AT&T and MCI endorse the derivation of cost estimates for 26-gauge cable from estimates for 24-gauge cable. Notwithstanding their support of the general approach we proposed, AT&T and MCI oppose estimating the ratio of costs of 26-gauge cable to 24-gauge cable using the cable costs submitted by Aliant and Sprint and the BCPM default values. Instead, AT&T and MCI advocate the use of the relative weight of copper to adjust the cost of the 24-gauge copper. AT&T and MCI claim that this approach is the most logical because 26-gauge copper costs are directly proportional to the weight of the metallic copper in the cable. We reject AT&T and MCI's recommended approach. We find that, because AT&T and MCI have provided no evidence that the weight differential is approximately equal to the price differential, there is insufficient evidence on the record demonstrating the reasonableness of this approach.

136. Many of those commenters advocating the use of company-specific data contend that there are flaws in the methodology adopted herein to derive cost estimates for 26-gauge cable by adjusting our estimates for 24-gauge cable. Bell Atlantic and GTE contend that our methodology results in biased estimates due to statistical error. We agree and modify our proposed methodology as explained.

137. As we explained in the *Inputs Further Notice*, in order to derive the 26-gauge copper cable costs, we first estimated the cost for 24-gauge copper cable for each cable size from the RUS data using the Huber methodology. More specifically, we obtained an estimate of the expected or mean value of the cost for 24-gauge copper cable (for given values of the independent variables in the regression equation). We then obtained values for the ratio of 24-gauge copper cable to 26-gauge copper cable for each cable size using *ex parte* data obtained from Aliant and Sprint and BCPM default values for the costs and employing ordinary least squares regression analysis. As a result, we obtained an estimate of the expected value of the ratio of 24-gauge copper cable to 26-gauge copper cable (for given values of the independent variables in the regression equation). Finally, we multiplied the reciprocal of this ratio by the cost of 24-gauge copper cable obtained by using the Huber methodology with RUS data to obtain the proposed 26-gauge copper cable cost for each copper cable size. Bell Atlantic and GTE contend, and we agree, that this is a biased estimate of the expected value of the cost for 26-gauge copper cable because the expected value of the ratio of two random variables, *e.g.,* 26-gauge copper cable cost and 24-gauge copper cable, does not equal the ratio of the expected value of the first random variable to the expected value of the second random variable. We note that the magnitude of the bias is larger as the difference grows between the expected value of the ratio of 26-gauge copper cable cost to 24-gauge copper cable cost and the ratio of the expected value of 26-gauge copper cable cost to the expected value of 24-gauge copper cable cost.

138. Accordingly, we modify the methodology tentatively adopted in the *Inputs Further Notice* to derive estimates of 26-gauge copper cable costs from 24-gauge copper cable costs that are not biased. In addition to estimating the expected value of the cost for 24-gauge copper cable for each cable size using the RUS data, we also estimate the expected value of the costs of 24-gauge and 26-gauge copper cable for each cable size using the data submitted by Aliant and Sprint and the BCPM default values, as well as data submitted by BellSouth, hereinafter identified in the aggregate as ''the non-rural LEC data.'' We divide the estimate of the expected value for 24-gauge copper cable cost derived from the non-rural LEC data into the estimate of the expected value for 26-gauge copper cable cost derived from these data for each cable size. The result is a ratio of an estimate of the expected value for 26-gauge copper cable cost to an estimate of the expected value for 24-gauge cable cost for each cable size. Finally, we multiply this ratio by the estimate of the expected value of the cost for 24-gauge copper cable derived from the RUS data to obtain an estimate of the expected value of the cost for 26-gauge copper cable for each cable size. We find that this adjustment eliminates the bias identified by the commenters. We conclude, therefore, that these estimates are reasonable and adopt them as inputs for 26-gauge copper cable costs.

139. We note that, in adopting these modifications, we find that it is reasonable to rely on the non-rural LEC data for calculating the ratio of the cost for 24-gauge copper cable to that for 26-gauge copper cable, but not for calculating the absolute cost for 24-gauge copper cable and 26-gauge copper cable. As discussed, we find that the non-rural LEC data are not a reliable measure of absolute costs. Notwithstanding this finding, we conclude that it is reasonable to use the non-rural LEC data to determine the relative value of the cost for 24-gauge copper cable to that for 26-gauge copper cable. We find that it is reasonable to conclude that each LEC used the same methodology to develop both 24-gauge and 26-gauge copper cable costs. Accordingly, any bias in the costs for 24-gauge and 26-gauge copper cable that results from using a given methodology is likely to be in the same direction and of a similar magnitude. As a consequence, the estimate of the expected value of the cost for 26-gauge copper cable for each cable size and the estimate of the expected value of the cost for 24-gauge copper cable obtained from non-rural LEC data are likely to be biased by approximately the same factor. The ratios of the estimates of these expected values are not likely to be affected significantly because the bias in one estimate approximately cancels

the bias in the other estimate when the ratio is calculated.

140. GTE also contends that the proposed methodology systematically reduces the amount of labor associated with placing cable. We conclude that the adjustments made in response to GTE and Bell Atlantic's criticisms discussed render this criticism irrelevant. We find that no systematic bias will result because the ratio of the 24-gauge cost of copper cable to the cost of 26-gauge copper cable represents the installed cost of 26-gauge copper cable including all labor and materials divided by the installed cost of 24-gauge copper cable including all labor and materials. Moreover, this ratio is applied to the installed cost of 24-gauge copper cable which includes all labor and material costs.

141. BellSouth claims that neither the data used to develop the ordinary least squares regression equation we employ in the *Inputs Further Notice* to estimate the cost of 26-gauge copper cable or the computations used to derive that equation have been provided. BellSouth contends that, as a result, it is not possible to confirm or contradict the discount value. We disagree. Contrary to BellSouth's assertion, the data are available. As we explained, the regression equation uses *ex parte* data submitted by Aliant and Sprint. These data are available subject to the Commission's rules regarding the treatment of confidential material. We also note that the BellSouth data we employ in the adjusted methodology we adopt herein are publicly available. Moreover, the BCPM data are publicly available.

4. Cable Fill Factors

142. We affirm our tentative conclusion that fill factors for copper cable should be lower in the lowest density zones. Significantly, those commenters addressing this issue agree that lower density zones should utilize lower copper cable fill factor inputs. We also reject, at the outset, certain assertions made by GTE and others, challenging the overall approach we proposed and adopt herein for determining the appropriate cable fill factors to use in the federal mechanism and reject GTE's assertions that the model is flawed.

143. We disagree with GTE's assertion that the use of generalized fill factors are not proper inputs for a cost model that seeks to estimate the forward-looking costs of building a network. GTE claims that the use of generalized fill factors disregards how actual distribution plant is designed and that different levels of utilization are observed in different parts of the local network. However, we find that GTE's concerns are misplaced. Contrary to GTE's implication, generalized fill factors are an administrative input and are not the sole determinate of the effective fill factor. As we explained in the *Inputs Further Notice*, the effective fill factor will vary with the number of customer locations and the available discrete size of cable. Thus, the effective fill factor will reflect how distribution plant is designed and different levels of utilization that are observed in different parts of the local network.

144. Similarly, we disagree with GTE's assertion that company-specific information should be used to determine appropriate fill factor inputs. We note that the final effective fill factors are the result of the input of the administrative fill factors and company-specific customer location data. We also disagree with the contention that administrative fill factors must be company-specific. The administrative fill factors are determined per engineering standards and density zone conditions. These factors are independent of an individual company's experience and measured effective fill factors. The administrative fill factors would be the same for every efficient competitive firm.

145. We reject GTE's contention that the model should be modified to accept the number of pairs per location to determine the required amount of distribution plant rather than using fill factors. GTE claims that this is necessary because using fill factor inputs produces anomalous results. GTE contends that the use of fill factors causes the number of implicit lines per location to decrease as density increases, in contrast to what occurs in reality. There are, according to GTE, always more business customers in higher density zones; therefore, the number of lines that must be provisioned per location should increase as density increases.

146. We find that there is no need to modify the model to accept pairs per location rather than fill factors, as GTE contends. The number of implicit lines per location does not decrease in the model as GTE claims. On the contrary, the number of implicit lines per location increases as a function of the number of business lines. The model will build to the level of business demand. With business demand increasing as a function of density, the model generates a higher number of lines per location as density increases. In sum, the anomaly that GTE identifies does not exist. GTE's claim reflects a misunderstanding of the model's operation.

147. Finally, we disagree with GTE's assertion that there is an error in the way the model calculates density zones that prevents correct application of zone-specific inputs. As GTE explains, after the model has assigned customer locations to clusters, it constructs a ''convex hull'' around all locations in the cluster. The model then calculates density as the lines in the cluster divided by the area within the convex hull. GTE claims that the calculated densities will be higher than those observed in the real world because the denominator excludes all land not contained in the convex hull. While we agree with GTE's description of how the model determines cluster density, we find GTE's claim that this methodology is erroneous to be misplaced. In sum, GTE argues that the model employs a restricted definition of area which causes the model to use excessively high utilization factors. In other words, the issue is whether the model should recognize all of the area around a cluster. We conclude that it should not. If the land outside the convex hull were included in the denominator, as GTE implies it should, the denominator would recognize unoccupied areas where no customers reside. As a result, the model would select density zone fill factors that are lower than needed to service the customers in that cluster. There would be a downward bias in the model fill factors. Thus, there is not an error in the way the model calculates density zones, as GTE contends. The model generates density values that correspond to the way the population is dispersed. To do otherwise would introduce a bias and distort the forward-looking cost estimates generated by the model.

148. *Distribution Fill Factors.* We also affirm our tentative conclusion that the fill factors selected for use in the federal mechanism generally should reflect current demand and not reflect the industry practice of building distribution plant to meet ultimate demand. As we explained in the *Inputs Further Notice*, the fact that industry may build distribution plant sufficient to meet demand for ten or twenty years does not necessarily suggest that these costs should be supported today by the federal universal service support mechanism.

149. We find unpersuasive GTE's assertion that the input values for distribution fill factors should reflect ultimate demand. In concluding that the fill factors should reflect current demand, we recognized that correctly forecasting ultimate demand is a speculative exercise, especially because of rapid technological advances in

telecommunications. For example, we note that ultimate demand decreases substantially when computer modem users switch from dedicated lines serving analog modems to digital subscriber lines where one pair of copper wire provides the same function as a voice line and a separate dedicated line. Given this uncertainty, we find that basing the fill factors on current demand rather than ultimate demand is more reasonable because it is less likely to result in excess capacity, which would increase the model's cost estimates to levels higher than an efficient firm's costs and could potentially result in excessive universal service support payments.

150. Significantly, we note that, contrary to GTE's inference, current demand as we define it includes an amount of excess capacity to accommodate short-term growth. We find that GTE has not provided any evidence that demonstrates that the level of excess capacity to accommodate short-term growth is unreasonable. Rather, GTE claims that, if distribution is not built to reflect ultimate demand there will be delays in service and increased placement costs due to the need to reinforce distribution plant in established neighborhoods on a regular basis. GTE also contends that telephone companies do not design distribution plant with the expectation that it will require reinforcement because that is rarely the least-cost method of placing plant. GTE also claims that, in a competitive environment, facilities-based competitors would build plant to serve ultimate demand. We find, however, that these unsupported claims do not demonstrate that reflecting ultimate demand in the fill factors more closely represents the behavior of an efficient firm and will not result in the modeling of excess capacity. Finally, we find that we did not misinterpret the meaning of building distribution plant to serve ''ultimate demand,'' as GTE asserts. Rather, we refused to engage in the highly speculative activity of defining ''ultimate demand.'' Moreover, we believe that universal service support will be determined more accurately considering current demand, and not ultimate demand. Although firms may have installed excess capacity, it does not follow that the cost of this choice should be supported by the universal service support mechanism. As growth occurs, however, we anticipate that the requirement for new capacity will be reflected in updates to the model.

151. Concomitantly, we adopt the proposed values for distribution fill factors. As we explained in the *Inputs Further Notice*, the model designs outside plant to meet current demand in the same manner as the HAI model. Accordingly, it is appropriate to choose fill factors that are set at less than 100 percent. We conclude that, based on the record before us, the proposed values reflect the appropriate fill factors needed to meet current demand.

152. There is divergence among the commenters with regard to the adoption of the proposed values for the distribution fill factors. Sprint does not object to the use of the proposed values, stating that ''they appear to reasonably represent realistic, forward-looking practices.'' As noted, Ameritech contends that the copper distribution and feeder fill factors are reasonable estimates to use if company-specific or state-specific fill factors are not used. In contrast, SBC disagrees with the HAI proponents' claim that the level of spare capacity provided in the proposed values is sufficient to meet current demand plus some amount of growth. SBC, however, offers no controverting evidence demonstrating that the proposed values are insufficient to meet current demand plus short-term growth. We find that the lone fact that SBC disagrees is insufficient to controvert our conclusion that the proposed values reflect the appropriate fill needed to meet current demand. BellSouth contends that the proposed values will significantly understate distribution cable requirements. BellSouth submits instead projected fill factors for its distribution copper, feeder copper, and fiber cables determined by BellSouth network engineers. We find these estimates unsupported. Similarly, Bell Atlantic contends that the proposed fill factors for feeder and distribution are too high and recommends we adopt its proposed fill factors. We find these recommended fill factors unsupported. We, therefore, select the proposed values for distribution fill factors.

153. We also disagree with AT&T and MCI's contention that the proposed values for the distribution fill factors are too low. AT&T and MCI claim that distribution fill factors of 1.2 lines per household are more than adequate in a forward-looking cost study. We disagree. We find that 1.2 lines per household are inadequate because they simply reflect the existing provision of telephone service and are less than current demand as we define it herein. Moreover, AT&T and MCI's claim is belied by their own assertions. AT&T and MCI contend that the ''proposed conservative fill factors will ensure sufficient plant capacity to accommodate potentially unaccounted service needs in the PNR data.'' AT&T and MCI also state that ''[t]he fill levels used in HAI provides more than enough spare capacity for service work, churn, and unforeseen spikes in demand. In sum, AT&T and MCI attest to the reasonableness of not only use of the HAI default values for distribution plant, but also the use of the average of the HAI and BCPM default values for copper feeder.

154. We also disagree with AT&T and MCI's claim that higher factors are appropriate because the model's sizing algorithm produces effective fill factors that are lower than optimal values. As we explained in the *Inputs Further Notice*, because cable and fiber are available only in certain sizes, the effective fill factor may be lower than the administrative fill factor adopted as an input. We find that AT&T and MCI's claim ignores this fact.

155. Finally, we note that AT&T and MCI also claim that the factor should be higher because universal service support does not include residential second lines or multiple business lines. The Commission has never acted on the recommendation in the *First Recommended Decision*, 61 FR 63778 (December 2, 1996, that only primary residential lines should be supported. Moreover, we also note that AT&T and MCI's claim ignores the sixth criterion, which requires that:

> The Cost Study or model must estimate the cost of providing service for all businesses and households * * * Such inclusion of multi-line business services and multiple residential lines will permit the cost study or model to reflect the economies of scale associated with the provision of these services.

In sum, we find AT&T and MCI's claim in this regard unpersuasive.

156. *Feeder Fill Factors.* We also affirm our tentative conclusion to adopt copper feeder fill factors that are the average of the HAI and BCPM default values. The divergence among the commenters noted with regard to the use of the average of the HAI and BCPM default values for the distribution fill factors is reflected in the comments regarding the proposed feeder fill factors. Sprint finds that use of the average of the HAI and BCPM default values for feeder fill factors is reasonable. Ameritech's conditional support was noted. In contrast, BellSouth contends that the average of the HAI and BCPM default values will significantly understate copper feeder cable requirements. As noted, BellSouth advocates the use of projected fill factors for copper feeder determined by BellSouth network engineers. Similarly, Bell Atlantic contends that the feeder fill factors are too high. We reject the

use of these fill projections for copper feeder for the reasons enumerated. We also reject, for the reasons enumerated, AT&T and MCI's contention that feeder fill factors based on the average of the HAI and BCPM default values are too low.

157. *Fiber Fill Factors.* Finally, we affirm our tentative conclusion that the input value for fiber fill in the federal mechanism should be 100 percent. The majority of commenters addressing this specific issue agree with our tentative conclusion. AT&T and MCI contend that fiber feeder fill factors of 100 percent are appropriate because the allocation of four fibers per integrated DLC site equates to an actual fill of 50 percent, since a redundant transmit and a redundant receive fiber are included in the four fibers per site. AT&T and MCI explain that, because fiber capacity can easily be upgraded, 100 percent fill factors applied to four fibers per site are sufficient to meet unexpected increases in demand, to accommodate customer churn, and, to handle maintenance issues. Similarly, SBC asserts that fiber fill factors of 100 percent can be obtained because they are not currently subject to daily service order volatility and are more easily administered. In contrast, BellSouth advocates that we employ projected fills estimated by BellSouth engineers. As noted, these estimates are unsupported and we reject them accordingly. In sum, we find that the record demonstrates that it is appropriate to use 100 percent as the input value for fiber fill in the federal mechanism.

5. Structure Costs

158. We affirm our tentative conclusions to use the regression equation for aerial structure in the NRRI Study as a starting point for the cost estimate for aerial structure; to use the regression equation for underground structure in the *Inputs Further Notice* as a starting point for the cost estimate for underground structure for density zones 1 and 2; and to use the regression equation for the cost of 24-gauge buried copper cable and structure, as modified, to estimate the cost of buried structure for density zones 1 and 2. Concomitantly, we affirm our tentative conclusion to add to the estimates for aerial structure the costs of anchors, guys, and other materials that support the poles. As we explained in the *Inputs Further Notice*, the RUS data from which this regression equation was derived do not include these costs. We also adopt the following values we proposed in the *Inputs Further Notice* for the distance between poles: 250 feet for density zones 1 and 2; 200 feet for zones 3 and 4; 175 feet for zones 5 and 6; and 150 feet for zones 7, 8, and 9.

159. As noted, several commenters advocate that the input values we adopt for structure costs reflect company-specific data. For the reasons enumerated, we reject the use of the company-specific data we have received to estimate the nationwide average input values for structure costs to be used in the model.

160. Notwithstanding this conclusion, we find that it is unnecessary to extrapolate cost estimates for underground and buried structure for density zones 3 through 9 as we proposed. At the time of the *Inputs Further Notice*, we believed the extrapolated data were the best data available to us at the time for density zones 3 through 9 although we noted our preference to use data specific to those density zones. Upon further examination, we find that cost data, which include values for density zones 3 through 9, submitted by various state commissions for use in this proceeding are more reliable than the extrapolated data. Specifically, we reviewed structure cost data from North Carolina, South Carolina, Indiana, Nebraska, New Mexico, Montana, Minnesota, and Kentucky. These data reflect structure costs designed for use in the HAI and BCPM models.

161. The structure costs submitted by the state commissions have values for normal rock, soft rock, and hard rock for density zones 3 through 9. We adopt as the buried and underground structure cost input values for these density zones weighted average structure costs developed from these data based on the number of access lines for the companies to which the state decisions regarding the submitted structure costs apply. We find that these weighted averages represent reasonable estimates for buried and underground structure costs in normal, soft, and hard rock conditions for density zones 3 through 9.

162. Apart from the criticism of the extrapolation of structure costs for density zones 3 through 9 from the estimates for density zone 2, the comments we have received regarding the values we proposed for structure costs vary as to the type of structure the commenters address and vary as to the position they take on the reasonableness of the estimates. BellSouth states that the values we adopt for aerial structures are ''fairly representative of BellSouth's values'' but claims that, based on a comparison to its actual data, the values for underground and buried structure are too low. Cincinnati Bell states that the values we adopt for underground structure never vary from Cincinnati Bell's actual costs by more than 15 percent. Sprint claims that our proposed cost of poles are understated but the costs of anchor and guys appear to be reasonable. SBC claims that its actual weighted cost of a 40 foot pole is inconsistent with the loaded cost from the NRRI Study. SBC asserts, however, that the NRRI-specified cost is more closely aligned with SBC's anchor and guy costs. We find that, given this divergence of positions, the support in the record for some of our proposed values, and lack of back-up data to support the arguments opposing our proposals, on balance, the structure cost estimates we adopt for aerial, underground, and buried structure for density zones 1 and 2 are reasonable. Moreover, we find it is reasonable to use the values we adopt for density zones 3 through 9. As we discussed, these values reflect cost data for density zones 3 through 9 and have been submitted to us by state commissions for use in this proceeding. These values are more reliable than those derived through the extrapolation of data reflecting density zones 1 and 2, and for the reasons discussed, the company-specific data submitted on the record.

163. In reaching these conclusions, we note that AT&T and MCI advocate that we adjust the regressions used to estimate structure costs to reflect the buying power of large non-rural LECs. We find that, because AT&T and MCI did not provide any data to support such a determination, the record is insufficient to determine that such an adjustment is necessary. We also reject AT&T and MCI's claim that the costs of underground structure are excessive because they fail to exclude manhole costs from the costs of underground distribution. Contrary to AT&T and MCI's assertion, we find that manhole costs are necessary to allow for splicing when the length of the distribution cable exceeds minimum distance criteria adopted by the model.

164. Finally, we note, as described, that we have made adjustments to certain of the regression equations in the *Inputs Further Notice* from which we estimate structure costs in order to address certain of the criticisms reflected in the comments and improve the regression equations accordingly.

165. *LEC Loading Adjustment.* In the *Inputs Further Notice*, we tentatively concluded that we should add a loading of ten percent to the material and labor cost (net of LEC engineering) for aerial, underground, and buried structure because the cost of LEC engineering was not reflected in the data from which Gabel and Kennedy derived their

estimates. We find that, based on the record before us, the LEC engineering adjustment is appropriate and the proposed level of the adjustment is reasonable. In reaching this conclusion, we reject at the outset the position of those commenters advocating that the adjustment be based on company-specific data. As we explained, we find such data are not the most reliable data on the record.

166. As with the LEC adjustment proposed for cable costs discussed, there is a general consensus on the record among the commenters that an adjustment is necessary. We find, therefore, that an adjustment to reflect the cost of LEC engineering is appropriate. Beyond the general claim that we should adopt company-specific data, there is divergence among the commenters regarding the appropriate level of this adjustment. GTE claims that the adjustment should be greater than 10 percent based on a comparison to its data for buried plant. SBC agrees that 10 percent is appropriate for aerial and buried structure but too low for underground structure. SBC proposes a loading factor of 20 percent instead for underground structure. Based on our review of the information, it is our judgement that the 10 percent adjustment is the most reasonable value on the record before us to reflect the cost of LEC engineering.

6. Plant Mix

167. As explained, although we tentatively chose to adopt nationwide plant mix values, we presented and sought comment on an alternative algorithm based on sheath miles reported in ARMIS to develop plant mix values. Consistent with that alternative, GTE asserts that company-specific plant mix should be used instead of nationwide input values. Similarly, Sprint contends that company-specific or state-specific plant mix values should be used. US West asserts that the model should utilize study-area specific plant mix values that are available in ARMIS as a starting point for plant mix inputs in the model.

168. We find, however, as discussed, because companies do not report aerial and buried route miles in ARMIS, that it is not possible to develop plant mix factors directly from these data at this time. Moreover, we note that the record does not reflect company-specific plant mix values for all companies, nor has any commenter presented a methodology that recognizes the fact that plant mix varies across density zones and allocates it accordingly. In sum, we conclude that neither company-specific nor ARMIS-derived data represent reasonable alternatives to the use of nationwide inputs. We find, therefore, that the use of nationwide inputs is the most reasonable approach in developing plant mix values on the record before us.

169. US West claims that the plant mix algorithm we proposed places too much plant in aerial. US West traces this flaw to several alleged errors in the plant mix algorithm. US West claims that the algorithm erroneously double weights the model plant mix. This is not an error as US West claims. Because the model results used in US West's analysis are based on the low aerial distribution input, we find that the double weight should result in low levels of aerial construction rather than high levels of aerial construction. US West also identifies several formulaic errors. We find these errors attributable, however, to US West's lack of understanding of how the proposed algorithm works. We agree, however, with US West that the high aerial results do appear to be a function of incorrectly weighting aerial plant. We find that this problem is a function of treating the aerial plant mix factor as a residual rather than directly estimating an aerial factor. Given this flaw, we conclude that we should not adopt the plant mix algorithm on which we sought comment.

170. As noted, we sought comment on alternatives to nationwide plant mix input values. US West has proposed two algorithms. As explained, we find that each of these has its own biases and, therefore, that neither is a reasonable alternative to what we have proposed. In brief, US West's first algorithm takes the geometric mean of the national default and a structure ratio to determine the plant mix factor. It defines the structure ratio for underground plant as the ratio of ARMIS trench miles to model route miles; for buried and aerial plant the structure ratio is defined as the relative sheath miles of the structure type multiplied by the model route miles less the ARMIS trench miles. We find that the final result of this algorithm places too much underground structure because, for all but the lowest density zone, the underground plant mix factor is significantly higher than the ARMIS ratio. The second algorithm US West proposes starts with the relative share of ARMIS sheath miles for all three structure types. It then establishes two series of fractions that sum to one. In the first series, the fractions increase as the density zone increases. This series is applied to underground structure and thus places more underground structure in the higher density zones. In the second series, the fractions decrease as the density zones increase. This series is applied to aerial structure, with the result that the percentage of aerial cable declines as density increases. For buried structure, the ARMIS ratio is used for all density zones. We find that this algorithm is flawed because it does not recognize the difference between sheath and route miles. As a consequence, the algorithm produces a biased result. Specifically, it constructs too much underground cable. We find that, until this problem is resolved, relying directly on ARMIS information leads to unreasonable results.

171. *Distribution Plant.* We adopt the proposed input values for distribution plant mix which. We conclude that these values for the lowest to the highest density zones, which range from zero percent to 90 percent for underground plant; 60 to zero percent for buried plant; and 40 to ten percent for aerial plant, are the most reasonable estimates of distribution plant mix on the record before us.

172. There is divergence among the commenters with regard to the appropriateness of the input values for the distribution plant mix proposed in the *Inputs Further Notice.* SBC supports the proposed distribution plant mix, noting that it ''closely aligns with the embedded plant and future outside plant design.'' AT&T and MCI advocate the use of the HAI default values for plant mix because, according to AT&T and MCI, they more properly reflect the use of aerial and underground cable than the proposed distribution plant mix inputs. AT&T and MCI claim that the proposed inputs reflect too much underground and too little aerial cable. As we explained in the *Inputs Further Notice,* the model does not design outside plant that contains either riser cable or block cable. Accordingly, use of the HAI default values, which assume a high percentage of aerial plant in densely populated areas, would be inconsistent with the model platform. AT&T and MCI ignore this fact.

173. In the *Inputs Further Notice,* we stated that we disagreed with HAI's assumption that there is very little underground distribution plant and none in the six lowest density zones. In support of the HAI values for underground distribution plant, AT&T and MCI proffer the distribution plant mix values for BellSouth, notably the only company to provide such data, showing that its underground distribution plant mix value is very low. We find that, because we are not adopting a company-specific algorithm, it is not necessary to address this issue. As noted, we will not adopt an

alternative algorithm until the issue of underground structure distances has been resolved. We adhere to employing a national value because we find that, though it may not be exact for every company, it will be reasonable for all companies.

174. *Feeder Plant.* We also adopt the proposed input values for feeder plant mix. We conclude that these values for the lowest to the highest density zones, which range from five percent to 95 percent for underground plant; 50 to zero percent for buried plant; and 45 to five percent for aerial plant, are the most reasonable estimates of distribution plant mix on the record before us. GTE's and Sprint's comments specifically address the specific issue of feeder plant mix inputs. As noted, both carriers advocate the use of company-specific data for plant mix. We reject the use of such data for feeder plant mix for the reasons we enumerated.

175. Finally, we affirm our tentative conclusion that the plant mix ratios should not vary between copper feeder and fiber feeder. In reaching our tentative conclusion, we noted that, although the HAI sponsors proposed plant mix values that vary between copper feeder and fiber feeder, they have offered no convincing rationale for doing so. We find such support still lacking. GTE claims that a distinction is necessary because the existing plant mix indicates that the trend for more out-of-sight construction has already resulted in differing copper and fiber feeder plant mixes. In contrast, SBC contends that plant mix ratios should not vary between copper feeder and fiber feeder because existing structure is used whenever available for fiber and copper placement so the mix ratio would not differ. We find neither of these claims to be persuasive. Accordingly, we conclude that, given the absence of controverting evidence, it is reasonable to assume that plant mix ratios should not vary between copper feeder and fiber feeder in the model.

D. Structure Sharing

176. We adopt the following structure sharing percentages that represent what we find is a reasonable share of structure costs to be incurred by the telephone company. For aerial structure, we assign 50 percent of structure cost in density zones 1–6 and 35 percent of the costs in density zones 7–9 to the telephone company. For underground and buried structure, we assign 100 percent of the cost in density zones 1–2, 85 percent of the cost in density zone 3, 65 percent of the cost in density zones 4–6, and 55 percent of the cost in density zones 7–9 to the telephone company. In doing so, we adopt the sharing percentages we proposed in the *Inputs Further Notice,* except for buried and underground structure sharing in density zones 1 and 2, as explained.

177. Commenters continue to diverge sharply in their assessment of structure sharing. As noted by US West, ''[s]ince forward-looking sharing percentages for replacement of an entire network are not readily observable, there is room for reasonable analysts to differ on the precise values for those inputs.'' While commenters engage in lengthy discourse on topics such as whether the model should assume a ''scorched node'' approach in developing structure sharing values, little substantive evidence that can be verified has been added to the debate. AT&T and MCI contend that the structure sharing percentages proposed in the *Inputs Further Notice* assign too much of the cost to the incumbent LEC and fail to reflect the greater potential for sharing in a forward-looking cost model. In contrast, several commenters contend that the proposed values assign too little cost to the incumbent LEC and reflect unrealistic opportunities for sharing. In support of this contention, some LEC commenters propose alternative values that purport to reflect their existing structure sharing percentages, but fail to substantiate those values. SBC, however, claims that the structure sharing percentages we propose reflect its current practice and concurs with the structure sharing values that we adopt in this Order.

178. More than with other input values, our determination of structure sharing percentages requires a degree of predictive judgement. Even if we had accurate and verifiable data with respect to the incumbent LECs' existing structure sharing percentages, we would still need to decide whether or not those existing percentages were appropriate starting points for determining the input values for the forward-looking cost model. AT&T and MCI argue that past structure sharing percentages should be disregarded in predicting future structure sharing opportunities. Incumbent LEC commenters argue that sharing in the future will be no more, and may be less, than current practice.

179. In the *Inputs Further Notice,* we relied in part on the deliberations of a state commission faced with making similar predictive judgment relating to structure sharing. The Washington Utilities and Transportation Commission, conducted an examination of these issues and adopted sharing percentages similar to those we proposed.

180. In developing the structure sharing percentages adopted in this Order, we find the sharing percentages proposed by the incumbent LECs to be, in some instances, overly conservative. While we do not necessarily agree with AT&T and MCI as to the extent of available structure sharing, we do agree that a forward-looking mechanism must estimate the structure sharing opportunities available to a carrier operating in the most-efficient manner. As discussed in more detail in this Order, the forward-looking practice of a carrier does not necessarily equate to the historical practice of the carrier. Given the divergence of opinion on this issue, and of AT&T and MCI's contention that further sharing opportunities will exist in the future, we have made a reasonable predictive judgment, and also anticipate that this issue will be revisited as part of the Commission's process to update the model in a future proceeding.

181. In the *1997 Further Notice,* 62 FR 42457 (August 7, 1997), the Commission tentatively concluded that 100 percent of the cost of cable buried with a plow should be assigned to the telephone company. In the *Inputs Further Notice,* we sought comment on the possibility that some opportunities for sharing existed for buried and underground structure in the least dense areas and proposed assignment of 90 percent of the cost in density zones 1–2 to the telephone company. Several commenters contend that there are minimal opportunities for sharing of buried and underground structure, particularly in lower density areas. In addition, several commenters contend that, to the extent sharing is included in the RUS data, it is inappropriate to count that sharing again in the calculation of structure cost. While we agree that structure sharing should not be double counted, we note that the RUS data includes little or no sharing of underground or buried structure in density zones 1–2. This does, however, support the contention of commenters that there is, at most, minimal sharing of buried and underground structure in these density zones. We therefore modify our proposed input value in this instance and assign 100 percent of the cost of buried and underground structure to the telephone company in density zones 1–2.

182. We believe that the structure sharing percentages that we adopt reflect a reasonable percentage of the structure costs that should be assigned to the LEC. We note that our conclusion reflects the general consensus among commenters that structure sharing varies by structure type and density.

While disagreeing on the extent of sharing, the majority of commenters agree that sharing occurs most frequently with aerial structure and in higher density zones. The sharing values that we adopt reflect these assumptions. SBC also concurs with our proposed structure sharing values. In addition, as noted, the Washington Utilities and Transportation Commission has adopted structure sharing values that are similar to those that we adopt. We also note that the sharing values that we adopt fall within the range of default values originally proposed by the HAI and BCPM sponsors.

E. Serving Area Interfaces

183. We affirm our approach to derive the cost of an SAI on the basis of the cost of its components and adopt a total cost of $21,708 for the 7200 pair indoor SAI. We find that there remains an absence of contract data between the LECs and suppliers with regard to SAIs on the record before us. Accordingly, we affirm, as discussed in more detail, our tentative conclusions with respect to the following issues: (1) the cost per pair for protector material; (2) the appropriate splicing rate and corresponding labor rate; (3) the methodology employed in cross-connecting in a SAI; and (4) the appropriate feederblock and distribution installation rate.

184. Based on the record before us, we conclude that $4 per pair is a reasonable estimate of the cost for protected material. As we explained in the *Inputs Further Notice,* this estimate is based on an analysis of *ex parte* submissions, which is the only evidence we have available to evaluate the cost of SAI components. We also noted that Sprint has agreed that $4 is a reasonable estimate of the cost. SBC and AT&T and MCI concur with our tentative conclusion to adopt the $4 per pair cost. In sum, the record fully supports our conclusion that $4 per pair is a reasonable estimate of the cost for protector material.

185. We also conclude that the record demonstrates that a splicing rate of 250 pairs is reasonable, and adopt it accordingly. As we explained in the *Inputs Further Notice,* the HAI sponsors proposed a splicing rate of 300 pairs per hour, while Sprint argued for a splicing rate of 100 pairs per hour. We believed that HAI's proposed rate was a reasonable splicing rate under optimal conditions, and therefore, we tentatively concluded that Sprint's proposed rate was too low. We noted that the HAI sponsors submitted a letter from AMP Corporation, a leading manufacturer of wire connectors, in support of the HAI rate. We recognized, however, that splicing under average conditions does not always offer the same achievable level of productivity as suggested by the HAI sponsors. For example, splicing is not typically accomplished under controlled lighting or on a worktable. Having accounted for such variables, we proposed a splicing rate of 250 pairs per hour.

186. AT&T and MCI, the proponents of the 300 pairs per hour rate, support our tentative conclusion. Sprint takes issue with the splicing rate we proposed. Sprint impugns the evidence, appearing in the form of a letter from AMP Corporation on which we relied in part, to determine a reasonable splicing rate. In sum, Sprint contends the letter represents an ''unsupported claim of someone trying to sell equipment.'' While Sprint is correct that the proponent is an equipment manufacturer, neither Sprint nor any other commenter provided evidence from any other equipment manufacturer to refute AMP.

187. Sprint also questions the fact that we did not utilize the data available from the NRRI Study to determine the splicing rate. Sprint maintains that an analysis of that data results in a splicing rate of 58.8 pairs per hour, substantially less than the 300 pairs per hour we recognized as a ceiling in our analysis. We based our proposed splicing rate on an analysis of such rates as they relate specifically to the installation of a complete and functional SAI. In contrast, although the data to which Sprint refers is for modular splicing, it is not clear, nor does Sprint claim, that such data specifically relates to the installation of SAIs. In sum, the validity of this data as a measure in the derivation of splicing rates for SAI installation is not established on the record. Sprint's critique ignores this fact. Accordingly, we reject the use of the data available from the NRRI Study to determine the splicing rate.

188. We also conclude that the $60 per hour labor rate we proposed for splicing is reasonable and adopt it accordingly. Those commenters addressing this specific issue agree. As we explained in the *Inputs Further Notice,* this rate, which equates with the prevalent labor rate for mechanical apprentices, is well within the range of filings on the record.

189. We also conclude that the model should assume that a ''jumper'' method will be used half the time and a ''punch down'' method will be used the remainder of the time to cross-connect an SAI. A cross-connect is the physical wire in the SAI that connects the feeder and distribution cable.

190. In the *Inputs Further Notice,* we tentatively concluded that neither the jumper method nor the punch down method is used exclusively in SAIs. We reached this tentative conclusion based on the conflicting assertions of Sprint and the HAI sponsors. We noted that, Sprint asserted that the ''jumper'' method generally will be employed to cross-connect in a SAI. In contrast, the HAI sponsors claimed that the ''punch down'' method is generally used to cross-connect. We also noted that, in buildings with high churn rates, such as commercial buildings, carriers may be more likely to use the jumper method. On the other hand, in residential buildings, where changes in service are less likely, carriers may be more likely to use the less expensive punch down method. Thus, we tentatively concluded that it appeared that both methods are commonly used, and that neither is used substantially more than the other.

191. Based on the record before us, we affirm our tentative conclusion to assume that the ''jumper'' method and the ''punch down'' method will be used an equal portion of the time. SBC challenges this conclusion, pointing out that it uses the ''jumper'' method in applications involving hard lug or insulation displacement contact and that it is currently replacing existing ''punch down'' interfaces. We conclude that SBC's sole claim is not sufficient to demonstrate that the ''jumper'' method is used substantially more than the ''punch down'' method. We note also that Sprint contends that the cross-connect proposed by AT&T and MCI is not an SAI, but a building entrance terminal. We disagree. The design meets the SAI definition of providing an interface between distribution and feeder facilities. In sum, we find that the record demonstrates that it is reasonable for the model to assume that a ''jumper'' method will be used half the time and a ''punch down'' method will be used the remainder of the time to cross-connect an SAI.

192. We also adopt a feeder block and distribution installation rate of 200 pairs per hour. As we explained in the *Inputs Further Notice,* we derived this installation factor based on a comparison of Sprint's proposed installation rate of 60 pairs per hour with HAI's proposed 400 pair per hour rate. We concluded that, because neither feeder block installation nor distribution block installation is a complicated procedure, Sprint's rate of 60 pairs per hour is too low. We also recognized that installation conditions are not always ideal. As we explained, feeder block and distribution block installations are not typically accomplished under

controlled lighting or on a worktable. We proposed a rate of 200 pairs per hour to recognize these variables.

193. We note that our proposed feeder block and distribution block rates are unchallenged. Significantly, SBC attests that this installation rate aligns with time-in-motion studies performed in cross-connect building applications. We conclude, therefore, that our proposed rate is reasonable, and adopt input values based upon it accordingly.

194. We also adopt the cost estimates for other size indoor and outdoor SAIs tentatively adopted in the *Inputs Further Notice.* We conclude that, based on the record before us, the derivation of the costs of the other SAI sizes from the cost of the 7200 pair indoor SAI is reasonable.

195. GTE takes issue with the derivation of the costs of the other SAIs from the cost of the 7200 pair indoor SAI. First, GTE contends that there is no need to extrapolate the costs of other SAIs because the costs of individual SAI sizes and associated labor are readily available. We disagree. We concluded that it was necessary to extrapolate the costs of other SAI sizes from the cost of a 7200 pair SAI because of the lack of component-by-component data for other SAI sizes on the record. As noted, we find the record still lacks such data. We also disagree with GTE's contention that SAI costs are not subject to a linear relationship across all sizes as we determined. We find GTE's contention, which relies on GTE's SAI estimates, unpersuasive given the lack of substantiating data supporting these estimates. In sum, the record demonstrates that the derivation of the costs of the other SAIs from the cost of the 7200 pair indoor SAI is reasonable.

196. US West contends that the costs of a SAI should be determined by the actual cable sizes for the cables entering and leaving the SAI rather than the number of cable pairs entering and leaving the interface. We agree. The model has been revised to calculate the costs of an SAI on the basis of actual cable sizes for the cables entering and leaving the SAI.

197. US West raises an additional issue concerning the sizing of SAIs. US West notes that some clusters created by the clustering module exceed the default line limit of 1800 lines and gives as an example a specific cluster containing 7,900 lines. The largest SAI can accommodate only 7200 lines, counting both feeder side and distribution side lines. Therefore, US West contends that, in situations such as this, insufficient SAI plant is deployed by the model. We agree with this analysis. There is no way to guarantee that the line limit of 1800 lines will not be exceeded for some clusters, even though modifications have been made to the cluster algorithm to mitigate this possibility to the greatest possible extent. Therefore, in the current version of the model, we modify the input table for SAI costs so as to allow for serving areas (clusters) in which the capacity of feeder cable plus distribution cable meeting at the interface may exceed 7200. We do this by allowing for line increments of 1800 up to a total line capacity of 28,800. The values in the input table assume that, whenever more than 7200 lines are required in an SAI, two or more standard SAIs are built, one with full capacity of 7200 and the others with capacities equal to 1800, 3600, 5400 or 7200. The input values for each of the multiply-placed SAIs are then summed.

198. A related issue is raised by US West with respect to drop terminal capacity in the model. In previous versions of the model, drop terminals were sized for residential housing units and small business locations, with a maximum line capacity per drop location equal to 25 lines. For medium size and larger business locations with line demand greater than 25 lines, no specific provision for additional drop terminal capacity was provided, except in situations in which a single business accounted for all of the lines in a single cluster. Again, we agree with the US West analysis of this issue. Accordingly, we have modified the input table for drop terminal costs by adding additional line sizes equal to 50, 100, 200, 400, 600, 900, 1200, 1800, 2400, 3600, 5400, and 7200. At any location requiring a drop terminal with capacity exceeding 25 lines, the model will assume that the location will be served by an indoor SAI, and the cost of the corresponding interface is equal to the corresponding value from the table for SAI costs.

F. Digital Loop Carriers

199. We adopt an average of the contract data submitted on the record, adjusted for cost changes over time, as the cost estimates for DLCs. This decision is predicated on two conclusions. The first is our determination that the contract data submitted to the Commission in response to the *1997 Data Request,* and in *ex parte* submissions following the December 11, 1998, workshop, remains the most reliable data on the record. Significantly, no additional information has been proffered nor has any alternative method been proposed, on which to base our estimate of DLC costs. The second is that we conclude that it is reasonable to reduce both the fixed DLC cost and per-line DLC cost reflected in this data by a factor of 2.6 percent per year in order to capture changes in the cost of purchasing and installing DLCs over time.

200. As we explained in the *Inputs Further Notice,* the contract data submitted to the Commission in response to the *1997 Data Request,* and in *ex parte* submissions following the December 11, 1998, workshop, is the most reliable data because, not only is it the only data on the record, but it reflects the actual costs incurred in purchasing DLCs. Moreover, although we would have preferred a larger sample, the contract data is sufficiently representative of non-rural carriers because it reflects the costs incurred by several of the largest non-rural carriers, as well as two of the smallest non-rural carriers.

201. GTE, Bell Atlantic and Sprint support the use of the contract data in estimating the cost of DLCs. Only AT&T and MCI and SBC challenge the use of these data. SBC contends that the contract data is not the most reliable data on DLC costs because labor costs associated with testing, turn-up, and delivery of derived facilities are not factored into the input values. We disagree. The data we identify as ''contract data'' include these costs. As we explained in the *Inputs Further Notice* and noted, we sponsored a workshop on December 11, 1998, to further develop the record on DLC costs in this proceeding. During the workshop, we presented a template of the components of a typical DLC to the attendees. The template provided the respondents the opportunity to identify their contract costs with regard to each of the components. In addition, we requested that the respondents identify, and thereby include, other costs associated with DLC acquisition, including labor costs associated with testing, turn-up, and delivery of the DLC. Using this opportunity to submit DLC cost data, GTE and Aliant included such costs in their submissions. Sprint submitted similar data in a September 9, 1998 *ex parte* filing. These costs were identified and added to the analysis of US West's and BellSouth's contract data. We derived these costs from *ex parte* filings made by these carriers in this proceeding.

202. AT&T and MCI allege that the contract data overstates the actual costs of DLC equipment and therefore, should not be adopted. AT&T and MCI instead advocate use of the HAI default values. AT&T and MCI argue that the contract costs are not only unsupported by any verifiable evidence but, more

importantly, are refuted by the contract information from which they were derived. In support, AT&T and MCI submit an analysis of the DLC cost submissions of Bell Atlantic, BellSouth, and Sprint. In each instance, AT&T and MCI assert that these data demonstrate DLC costs that are far below those proposed by the incumbent LECs and the Commission and that are fully consistent with the HAI default values.

203. We disagree with AT&T and MCI's analysis. For example, AT&T and MCI claim that information provided by Bell Atlantic shows that total DLC common equipment costs for DLC systems capable of serving 672, 1344, and 2016 lines are similar to, and uniformly less than, the corresponding HAI values. In reaching this conclusion, however, AT&T and MCI omit the costs for line equipment. As Bell Atlantic points out, the cost of digital line carrier equipment should include these costs, and we agree.

204. Similarly, AT&T and MCI assert that certain of Sprint's costs are significantly inflated and, once adjusted, are similar to and uniformly less than the corresponding HAI values. We find, however, these adjustments to be unsupported. AT&T and MCI reduce the supply expenses associated with Sprint's DLC costs, more than 66 percent, based on the experience of AT&T and MCI's engineering team members. AT&T and MCI offer no evidence, however, other than the opinions of their experts to substantiate this proposed adjustment.

205. AT&T and MCI also contend that Sprint applies excessive mark-ups for sales tax. AT&T and MCI argue that, because Sprint operates its own logistics company, there is no reason to apply sales tax to both supply expense and materials. We find that AT&T and MCI offer no support to demonstrate that this results in an excessive mark-up for sales tax. We reach the same conclusion with regard to AT&T and MCI's proposed reduction to Sprint's labor costs. AT&T and MCI contend that Sprint's labor costs are inflated and propose reductions in such costs through a reduction in the number of labor hours associated with DLC installation. AT&T and MCI provide no support for such a reduction and, therefore, we decline to reduce Sprint's labor costs.

206. Significantly, AT&T and MCI offer no evidence to controvert our tentative conclusion that the HAI values they employ as a comparative benchmark, and advocate that we adopt, are not more reliable than the contract data. We rejected the use of the HAI and the BCPM default values because they are based on the opinions of experts without substantiating data. Similarly, we rejected data submitted by the HAI sponsors following the December 11, 1998, workshop. We found that data to be significantly lower than the contract data on the record, and concluded that it would be inappropriate to use because it also lacked support. AT&T and MCI have not provided any additional evidence to substantiate the HAI data.

207. We also affirm our tentative conclusion that it is reasonable to reduce both the fixed DLC costs and per-line DLC costs reflected in the contract data in order to capture changes in the cost of purchasing and installing DLCs. As we explained in the *Inputs Further Notice,* this reduction recognizes the fact that the cost of purchasing and installing a DLC diminishes over time because of improvements in the methods and components used to produce DLCs, changes in both capital and labor costs, and changes in the functionality requirements of DLCs. The premise that overall DLC costs move downward over time is not disputed on the record.

208. We also conclude that the 2.6 percent reduction we proposed in both the fixed DLC costs and per-line DLC costs is appropriate. As we explained in the *Inputs Further Notice,* this is a conservative estimate, based on the change in cost of remote switches, which is a reasonable proxy for changes in DLC cost. More importantly, a comparison of data submitted on the record by Sprint for the years 1997, 1998, and 1999 demonstrates that an overall reduction of 2.6 percent is considerably less than Sprint's actual experience. An analysis undertaken by staff produces an average reduction in DLC costs for Sprint of 9.2 percent per year. We note that this estimate reflects both material and labor costs.

209. Only SBC and GTE specifically address the 2.6 percent reduction. SBC supports the 2.6 percent reduction in fixed and per-line DLC costs as it applies to material costs only. In contrast, GTE opposes the adjustment. GTE suggests that, as the inputs are adjusted over time, the cost of current technology will be reflected in the revised data. GTE is correct that the current cost of technology would be reflected in revised data. The adjustment we proposed and adopt updates cost to current cost. Implicit in SBC's comment is the premise that labor costs will not decrease over time. Although this may be a reasonable assumption, the 2.6 percent reduction we adopt is applied to the overall cost of a DLC. As we explained, the 2.6 percent reduction is a conservative estimate compared to the actual reductions we have observed in the Sprint data. As a result, we conclude that increases in labor will be offset by reductions in other factors in the cost of DLCs.

210. Finally, as noted, we sought comment on the extent, if any, to which we should increase our proposed estimates for DLCs to reflect material handling and shipping costs because it was unclear whether the DLC data submitted by other parties include these costs. On further analysis, we note that material handling and shipping costs are reflected in the proposed DLC estimates we adopt herein. Moreover, we conclude that it is appropriate to include these costs in the cost estimates for DLCs. We note that no comments were filed opposing the inclusion of such costs.

IV. Switching and Interoffice Facilities

A. Switch Costs

211. *Switch Cost Estimates.* We adopt the fixed cost (in 1999 dollars) of a remote switch as $161,800 and the fixed cost (in 1999 dollars) of both host and stand-alone switches as $486,700. We adopt the additional cost per line (in 1999 dollars) for remote, host, and stand-alone switches as $87.

212. For the reasons set forth, we affirm our tentative conclusion to use the publicly available data from LEC depreciation filings, and to supplement the depreciation data with data from LEC reports to the RUS. We also affirm our tentative conclusion that we should not rely on the BCPM and HAI default values, because these values are largely based on non-public information or opinions of their experts, without data that enable us adequately to substantiate those opinions.

213. *Switch Cost Data.* The depreciation data contains for each switch reported: The model designation of the switch; the year the switch was first installed; and the lines of capacity and book-value cost of purchasing and installing each switch at the time the depreciation report was filed with the Commission. The RUS data contains, for each switch reported: The switch type (*i.e.,* host or remote); the number of equipped lines; cost at installation; and year of installation.

214. The sample that we use to estimate switch costs includes 1,085 observations. The sample contains 946 observations selected from the depreciation data, which provide information on the costs of purchasing and installing switches gathered from 20 states. All observations in the depreciation data set are for switches with 1,000 lines or more. In order to

better estimate the cost of small switches, we augmented the depreciation data set by adding data from RUS. The RUS sample contains 139 observations which provide information from across the nation on the costs of small switches purchased and installed by rural carriers. Over 80 percent of the observations of switch costs in the RUS data set measure the costs for switches with 1,000 lines of capacity or less. The combined sample represents purchases of both host and remote switches, with information on 490 host switches and 595 remote switches, and covers switches installed between 1989 and 1996. This set of data represents the most complete public information available to the Commission on the costs of purchasing and installing new switches.

215. The depreciation data set proposed in the *Inputs Further Notice* excluded 26 observations that had been deemed to be outliers by the Bureau of Economic Analysis. Bell Atlantic criticizes the Commission for excluding these outliers. The excluded observations were not available in electronic form prior to the release of the *Inputs Further Notice.* Subsequently, the Bureau obtained these outlying observations from the Bureau of Economic Analysis and reinserted them into the data set used to derive the input values we adopt herein. In addition, several commenters recommend that the depreciation data set also should include switches with fewer than 1,000 lines of capacity. This information, however, is not available in electronic format and, therefore, would be unduly burdensome to include.

216. In response to the *1997 Data Request,* the Commission received a second set of information pertaining to 1,486 switches. Upon analysis, however, we have identified one or more problems with most of the data submitted: missing switch costs; zero or negative installation costs; zero or blank line counts; unidentifiable switches; or missing or inconsistent Common Language Local Identification (CLLI) codes. After excluding these corrupted observations, 302 observations remained. The remaining observations represented switches purchased by only four companies. We affirm our tentative conclusion that the data set we use is superior to the data set obtained from the data request, both in terms of the number of usable observations and the number of companies represented in the data set.

217. Following the December 1, 1998, workshop, three companies voluntarily submitted further data regarding the cost of purchasing and installing switches: BellSouth provided data on switch investments for its entire operating region; Sprint provided similar data for its operations in Nevada, Missouri, and Kansas; and GTE provided switch investment information for California. When consolidated, this information forms a data set of approximately 300 observations representing the costs of new switches. As AT&T has noted, however, the information submitted contains some inconsistencies. Considering these inconsistencies, the limited number of companies represented, and the size of this voluntarily submitted data set, we conclude that the data set we use is preferable.

218. BellSouth suggests that we merge either the information received in response to the *1997 Data Request,* the information from the voluntary submissions, or both, with the data set we use. We reject this suggestion because there are significant inconsistencies between the different data sets. For example, in its voluntary submission, GTE provides the amount of total investment for each of its California switches at the time these switches were installed, but reports associated line counts only for October 1998. This information is not consistent with the data set used by the Commission, which contains aggregate investment and line counts measured at the same point in time. Second, our analysis of the information provided in both the voluntary submissions and the data request reveals, based on simple linear regression, inconsistencies between these two data sets and the data set employed by the Commission. Our analysis reveals that both alternative data sets contain information that is inconsistent with the comments in this proceeding.

219. *Adjustments to the Data.* As discussed, in the *Inputs Further* Notice, we proposed certain adjustments to the RUS data to account for the cost of MDF and power equipment, which were omitted from the RUS information. Specifically, we proposed increasing the cost of purchasing and installing switches by $12 per line for MDF and $12,000, $40,000, or $74,500, depending upon switch size, for power costs. Commenters who address this issue agree that the RUS data must be modified to account for the costs of MDF and power to make the RUS data consistent with the depreciation data, which include these costs. Some commenters who address these adjustments claim that we should use different values for MDF and power costs, but provide little or no information we can use to verify their suggested values. Sprint, for example, claims our power costs are too low and provides a breakdown of power costs, but does not supply any data to support their higher proposed values for power costs. AT&T and MCI claim our proposed power costs should be reduced because they are substantially higher than those proposed by their experts.

220. We find that we need not attempt to resolve disagreement over the reasonableness of our proposed values, in the absence of any additional information, because we adopt an alternative methodology for estimating MDF and power costs. We find that we should adjust the RUS data for MDF and power equipment costs in a way that is more consistent with the way in which these costs are estimated in the depreciation data set. In the depreciation data, MDF and power equipment costs are estimated as a percentage of the total cost of the switch, as are all other components of the switch. Based on the estimates of Technology Futures, Inc., we find that these costs were eight percent of total cost. Because we are adjusting the RUS data so that they are comparable with the depreciation data, we find it is appropriate to use a comparable method to estimate the portion of total costs attributable to MDF and power equipment. Accordingly, in order to account for the cost of MDF and power equipment omitted from the RUS information, we conclude that the cost of switches reported in the RUS data should be increased by eight percent.

221. In the *Inputs Further Notice,* we tentatively concluded, based on an estimate provided by Gabel and Kennedy, that $27,598 should be added to the cost of each remote switch reported in the RUS data. SBC recommends that remote termination costs should be added to remote switch costs on a per-line basis, but provides no estimates of the per-line cost of remote termination. Sprint provides remote termination estimates of $22,636 for termination of remote switches with less than 641 lines and $46,332 for termination of remote switches with between 641 and 6,391 lines. Using Sprint's methodology, the average cost of terminating a RUS remote switch on a RUS host switch is $29,840. Sprint's estimate is consistent in magnitude with Gabel and Kennedy's estimate. Therefore, because Sprint's tiered estimates captures differences between remote termination costs associated with remote switch size, we adopt Sprint's estimates.

222. Based upon Gabel and Kennedy recommendations, derived from data

analysis undertaken by RUS, we conclude that the cost of switches reported in the RUS data should be increased by eight percent in order to account for the cost of LEC engineering. We conclude, however, that this adjustment should not be added to the cost of power and MDF, because these estimates already include the costs of LEC engineering.

223. *Methodology.* Consistent with our tentative conclusions in the *Inputs Further Notice,* we employ regression analysis. In this Order, we also adopt our tentative conclusion to use a linear function based on examination of the data and statistical evidence.

224. Sprint recommends using a non-linear function, such as the log-log function, to take into account the declining marginal cost of a switch as the number of lines connected to it increases. We affirm our tentative conclusion that the linear function we adopt provides a better fit with the data than the log-log function. A discussion of the effect of time and type of switch on switch cost is presented.

225. Based upon an analysis of the data and the record, we conclude that the fixed cost (i.e., the base getting started cost of a switch, excluding costs associated with connecting lines to the switch) of host switches and remote switches differ, but that the per-line variable cost (i.e., the costs associated with connecting additional lines to the switch) of host and remote switches are approximately the same. This is consistent with statistical evidence and the comments of Sprint, BellSouth, and the HAI sponsors.

226. *Accounting for Changes in Cost Over Time.* We recognize that the cost of purchasing and installing switching equipment changes over time. Such changes result, for example, from improvements in the methods used to produce switching equipment, changes in both capital and labor costs, and changes in the functional requirements that switches must meet for basic dial tone service. In order to capture changes in the cost of purchasing and installing switching equipment over time, we affirm our tentative conclusion in the *Inputs Further Notice* to modify the data to adjust for the effects of inflation, and explicitly incorporate variables in the regression analysis that capture cost changes unique to the purchase and installation of digital switches.

227. To the extent that the general level of prices in the economy changes over time, the purchasing power of a dollar, in terms of the volume of goods and services it can purchase, will change. In order to account for such economy-wide inflationary effects, we multiply the cost of purchasing and installing each switch in the data set by the gross-domestic-product chain-type price index for 1997 and then divide by the gross-domestic-product chain-type price index for the year in which the switch was installed, thereby converting all costs to 1997 values.

228. In order to account for cost changes unique to switching equipment, we enter time terms directly into the regression equation. US West agrees that the costs of the equipment, such as switches and multiplexers, used to provide telecommunications services are declining, and that the per-unit cost of providing more services on average is declining. Bell Atlantic and GTE, however, contend that the cost of switches is not currently declining and therefore pricing declines should not be expected to continue into the future. As evidence, they cite their own fixed-cost contracts. As AT&T notes, however, ''[i]f Bell Atlantic in fact agreed to switching contracts that 'effectively froze prices on switching equipment,' those prices would reflect its idiosyncratic business judgement * * *'' GTE expresses concern that, under certain specifications of time, the regression equation produces investments for remote switch ''getting started'' costs that are negative and that such specifications overstate the decline in switch costs. As noted in the *Inputs Further Notice,* the HAI sponsors also caution that the large percentage price declines in switch prices seen in recent years may not continue. We affirm our tentative conclusion that the reciprocal form of time in the regression equation satisfies these concerns by yielding projections of switch purchase and installation costs that are positive yet declining over time.

229. Ameritech and GTE advocate the use of the Turner Price Index to convert the embedded cost information contained in the depreciation data to costs measured in current dollars. We note, however, that this index and the data underlying it are not on the public record. We prefer to rely on public data when available. Moreover, we affirm our tentative conclusion that it is not necessary to rely on this index to convert switch costs to current dollars. Rather, as described in the preceding paragraph, we will account for cost changes over time explicitly in the estimation process, rather than adopting a surrogate such as the Turner Price Index.

230. *Treatment of Switch Upgrades.* The book-value costs recorded in the depreciation data include both the cost of purchasing and installing new equipment and the cost associated with installing and purchasing subsequent upgrades to the equipment over time. Upgrades costs will be a larger fraction of reported book-value costs in instances where the book-value costs of purchasing and installing switching equipment are reported well after the initial installation date of the switch. We affirm our tentative conclusion that, in order to estimate the costs associated with the purchase and installation of new switches, and to exclude the costs associated with upgrading switches, we should remove from the data set those switches installed more than three years prior to the reporting of their associated book-value costs. We believe that this restriction will eliminate switches whose book values contain a significant amount of upgrade costs, and recognizes that, when ordering new switches, carriers typically order equipment designed to meet short-run demand.

231. Bell Atlantic criticizes the Commission for excluding a large percentage of the observations from the initial depreciation data set. As noted in the preceding paragraph, however, the observations that have been excluded do not accurately represent the price of a new switch.

232. We reject the suggestions of Ameritech, Bell Atlantic, BellSouth, GTE, and Sprint that the costs associated with purchasing and installing switching equipment upgrades should be included in our cost estimates. The model platform we adopted is intended to use the most cost-effective, forward-looking technology available at a particular period in time. The installation costs of switches estimated reflect the most cost-effective forward-looking technology for meeting industry performance requirements. Switches, augmented by upgrades, may provide carriers the ability to provide supported services, but do so at greater costs. Therefore, such augmented switches do not constitute cost-effective forward-looking technology. In addition, as industry performance requirements change over time, so will the costs of purchasing and installing new switches. The historical cost data employed in this analysis reflect such changes over time, as do the time-trended cost estimates.

233. *Additional Variables.* Several parties contend that additional independent variables should be included in our regression equation. Some of the recommended variables include minutes of use, calls, digital line connections, vertical features, and regional, state, and vendor-specific identifiers. For the purposes of this analysis, our model specification is limited to include information that is in

both the RUS and depreciation data sets. Neither data set includes information on minutes of use, calls, digital line connections, vertical features, or differences between host and stand-alone switches. State and regional identifiers are not included in the regression because we only have depreciation data on switches from 20 states. Thus, we could not accurately estimate region-wide or state-wide differences in the cost of switching. Our model specification also does not include vendor-specific variables, because the model platform does not distinguish between different vendors' switches.

234. *Switch Cost Estimates.* A number of commenters criticize the switch cost estimates contained in the *Inputs Further Notice* and suggest that they should be dismissed or substantially revised. For example, Sprint suggests that we dismiss the results because the data are collinear and the model is mis-specified. Bell Atlantic and BellSouth suggest that the Commission underestimates the cost of switches, while AT&T and MCI suggest that the Commission overestimates the cost of switches. The Commission's estimates, however, are based upon the most complete, publicly-available information on the costs of purchasing and installing new switches and therefore represent the Commission's best estimates of the cost of host and remote switches. We have addressed the specific objections that have been raised by parties with regard to the methodology, data set, or other aspects of the approach we adopt to derive switch cost estimates, and for the reasons given there, we reject those objections. We conclude that the remaining evidence provided as grounds for dismissing or substantially revising these estimates is largely anecdotal or unconfirmed and undocumented and does not lead us to believe that our estimates should be altered. We conclude, therefore, that the switch cost estimates we adopt are the best estimates of forward-looking cost.

B. Use of the Local Exchange Routing Guide (LERG)

235. In the *Inputs Further Notice,* we tentatively concluded that the Local Exchange Routing Guide (LERG) database should be used to determine host-remote switch relationships in the federal high-cost universal service support mechanism. We now affirm that conclusion. In the *1997 Further Notice,* the Commission requested ''engineering and cost data to demonstrate the most cost-effective deployment of switches in general and host-remote switching arrangements in particular.'' In the *Switching and Transport Public Notice,* the Bureau concluded that the model should permit individual switches to be identified as host, remote, or stand-alone switches. The Bureau noted that, although stand-alone switches are a standard component of networks in many areas, current deployment patterns suggest that host-remote arrangements are more cost-effective than stand-alone switches in certain cases. No party has placed on the record in this proceeding an algorithm that will determine whether a wire center should house a stand-alone, host, or remote switch. We therefore affirm our conclusion to use the LERG to determine host-remote switch relationships.

236. In the *Platform Order,* we concluded that the federal mechanism should incorporate, with certain modifications, the HAI 5.0a switching and interoffice facilities module. In its default mode, HAI assumes a blended configuration of switch technologies, incorporating both hosts and remotes, to develop switching cost curves. HAI also allows the user the option of designating, in an input table, specific wire center locations that house host, remote, and stand-alone switches. When the host-remote option is selected, switching curves that correspond to host, remote, and stand-alone switches are used to determine the appropriate switching investment. The LERG database could be used as a source to identify the host-remote switch relationships. In the *Platform Order,* we stated that ''[i]n the inputs stage of this proceeding we will weigh the benefits and costs of using the LERG database to determine switch type and will consider alternative approaches by which the selected model can incorporate the efficiencies gained through the deployment of host-remote configurations.''

237. The majority of commenters throughout this proceeding have supported the use of the LERG database as a means of determining the deployment of host and remote switches. These commenters contend that the use of the LERG to determine host-remote relationships will incorporate the accumulated knowledge and efficiencies of many LECs and engineering experts in deploying the existing switch configurations. Sprint contends that there are many intangible variables that can not be easily replicated in determining host-remote relationships. Commenters also contend that an algorithm that realistically predicts this deployment pattern is not feasible using publicly available data and would be unnecessarily ''massive and complex.'' AT&T and MCI argue, however, that use of the LERG to identify host-remote relationships may reflect the use of embedded technology, pricing, and engineering practices.

238. We conclude that the LERG database is the best source set forth in this proceeding to determine host-remote switch relationships in the federal high-cost universal service support mechanism. As noted, no algorithm has been placed on the record to determine whether a wire center should house a stand-alone, host, or remote switch. In addition, many commenters contend that development of such an algorithm independently would be difficult using publicly available data. While GTE suggests that the best source of host-remote relationships would be a file generated by each company, we note that no such information has been submitted in this proceeding. In addition, GTE's proposal would impose administrative burdens on carriers. We conclude that the use of the LERG to identify the host-remote switch relationships is superior to HAI's averaging methodology which may not, for example, accurately reflect the fact that remote switches are more likely to be located in rural rather than urban areas. We therefore conclude that use of the LERG is the most feasible alternative currently available to incorporate the efficiencies of host-remote relationships in the federal high-cost universal service support mechanism.

C. Other Switching and Interoffice Transport Inputs

239. *General.* In the *Inputs Further Notice,* we proposed several minor modifications to the switching inputs to reflect the fact that the studies on which the Commission relied to develop switch costs include all investments necessary to make a switch operational. These investments include telephone company engineering and installation, the main distribution frame (MDF), the protector frame (often included in the MDF), and power costs. To avoid double counting these investments, both as part of the switch and as separate input values, the commenters agree that the MDF/Protector investment per line and power input values should be set at zero. In addition, commenters agree that the Switch Installation Multiplier should be set at 1.0. We agree that including these investments both as part of the switch cost and as separate investments would lead to double counting of these costs. We therefore adopt these values.

240. *Analog Line Offset.* In the *Inputs Further Notice,* we tentatively

concluded that the ''Analog Line Circuit Offset for Digital Lines'' input should be set at zero. We now affirm that conclusion. AT&T and MCI contend that the switch investment in the model should be adjusted downward to reflect the cost savings associated with terminating digital, rather than analog, lines. AT&T and MCI assert that this cost savings is due primarily to the elimination of a MDF and protector frame termination. AT&T and MCI further contend that the model produces, on average, 40 percent digital lines, while the data used to determine switch costs reflect the use of only approximately 18 percent digital lines. In contrast, GTE contends that the model may calculate more analog lines than carriers have historically placed due to the use of an 18,000 feet maximum copper loop length.

241. AT&T and MCI suggest that the analog line offset input should reflect a $12 MDF and $18 switch port termination savings per line in switch investment for terminating digital lines in the model. Several commenters disagree and recommend setting the analog line offset to zero. Sprint contends that the analog line offset is inherent in the switching curve in the model, thus making this input unnecessary and, therefore, justified only if the switch cost curve is based on 100 percent of analog line cost. Sprint argues that an unknown mixture of analog and digital lines are taken into consideration in developing the switch curve.

242. The record contains no basis on which to quantify savings beyond those taken into consideration in developing the switch cost. We also note that the depreciation data used to determine the switch costs reflect the use of digital lines. The switch investment value will therefore reflect savings associated with digital lines. AT&T and MCI's proposed analog line offset per line is based on assumptions that are neither supported by the record nor easily verified. For example, it is not possible to determine from the depreciation data the percentage of lines that are served by digital connections. It is therefore not possible to verify AT&T and MCI's estimate of the digital line usage in the ''historical'' data. In the absence of more explicit support of AT&T and MCI's position, we conclude that the Analog Line Circuit Offset for Digital Lines should be set at zero.

243. *Switch Capacity Constraints.* In the *Inputs Further Notice,* we proposed to adopt the HAI default switch capacity constraint inputs as proposed in the HAI 5.0a model documentation. We now adopt that proposal. The forward-looking cost mechanism contains switch capacity constraints based on the maximum line and traffic capabilities of the switch. In their most recent filings on this issue, AT&T and MCI recommend increasing the switch line and traffic capacity constraints above the HAI input default values for those inputs. AT&T and MCI contend that the default input values no longer reflect the use of the most current technology. For example, AT&T and MCI recommend that the maximum equipped line size per switch should be increased from 80,000 to 100,000 lines.

244. We conclude that the original HAI switch capacity constraint default values are reasonable for use in the federal mechanism. We note that Sprint, the only commenter to respond to this issue, supports this conclusion. We also note that the HAI model documentation indicates that the 80,000 line assumption was based on a conservative estimate ''recognizing that planners will not typically assume the full capacity of the switch can be used.'' AT&T and MCI therefore originally supported the 80,000 line limitation as the maximum equipped line size value with the knowledge that the full capacity of the switch may be higher.

245. *Switch Port Administrative Fill.* In the *Inputs Further Notice,* we proposed a switch port administrative fill factor of 94 percent. We now adopt that proposed value. The HAI model documentation defines the switch port administrative fill as ''the percent of lines in a switch that are assigned to subscribers compared to the total equipped lines in a switch.'' HAI assigns a switch port administrative fill factor of 98 percent in its default input values. The BCPM default value for the switch percent line fill is 88 percent.

246. Bell Atlantic contends that switches have significant unassigned capacity due to the fact that equipment is installed at intervals to handle growth. Sprint recommends an average fill factor of 80 percent. US West contends that its actual average fill factor is 78 percent. AT&T and MCI contend that the switching module currently applies the fill factor input against the entire switch when it should be applied only to the line port portion of the switch. AT&T and MCI therefore contend that, either the formula should be modified, or the input needs to be adjusted upward so that the overall switching investment increase attributable to line fill will be the same as if the formula were corrected.

247. We note that the switch port administrative fill factor of 94 percent has been adopted in several state universal service proceedings and is supported by the Georgetown Consulting Group, a consultant of BellSouth. We also note that this value falls within the range established by the HAI and BCPM default input values. The BCPM model documentation established a switch line fill default value of 88 percent that included ''allowances for growth over an engineering time horizon of several years.'' Sprint has provided no substantiated evidence to support its revised value of 80 percent. US West's average fill factor of 78 percent is based on data that include switches with unreasonably low fill factors. Regarding AT&T and MCI's contention that the switching module currently applies the fill factor input against the entire switch rather than the line port portion of the switch, we note that this occurs only when the host-remote option is not utilized in the switch module. As noted, we are using the host-remote option and therefore no adjustment to the switch fill factor is required. We therefore adopt a switch port administrative fill factor of 94 percent.

248. *Trunking.* In the *Inputs Further Notice,* we tentatively concluded that the switch module should be modified to disable the computation that reduces the end office investment by the difference in the interoffice trunks and the 6:1 line to trunk ratio. In addition, we tentatively adopted the proposed input value of $100.00 for the trunk port investment. We now affirm these tentative conclusions and adopt this approach.

249. The HAI switching and interoffice module developed switching cost curves using the Northern Business Information (NBI) publication, ''U.S. Central Office Equipment Market: 1995 Database.'' These investment figures were then reduced per line to remove trunk port investment based on NBI's implicit line to trunk ratio of 6:1. The actual number of trunks per wire center is calculated in the transport calculation, and port investment for these trunks is then added back into the switching investments.

250. Sprint notes that, under the HAI trunk investment approach, raising the per-trunk investment leads to a decrease in the switch investment per line, ''despite a reasonable and expected increase'' in the investment per line. GTE also notes that the selection of the trunk port input value creates a dilemma in that it is used to reduce the end office investment, as noted, and to develop a tandem switch investment. GTE and Sprint recommend that the switch module be modified by disabling the computation that reduces the end office investment by the difference in

the computed interoffice trunks and the 6:1 line to trunk ratio. MCI agrees that the trunk port calculation should be deactivated in the switching module.

251. In the *Inputs Further Notice,* we agreed with commenters that the trunk port input creates inconsistencies in reducing the end office investment. Consistent with the suggestions made by GTE and MCI, we conclude that the switch module should be modified to disable the computation that reduces the end office investment by the difference in the computed interoffice trunks and the 6:1 line to trunk ratio. Sprint, the only commenter to address this issue in response to the *Inputs Further Notice,* agrees with our conclusion.

252. Because the trunk port input value is also used to determine the tandem switch investment, we must determine the trunk port investment. In the *Inputs Further Notice,* we proposed an input value for trunk port investment per end of $100.00. SBC and Sprint contend that this value should be higher—ranging from $150.00 to $200.00. BellSouth has filed information on the record that supports our proposed trunk port investment value. BellSouth notes that the four states that have issued orders addressing the cost of the trunk port for universal service have chosen estimates of the cost of the trunk port that range from $62.73 to $110.77. We conclude that the record supports the adoption of a trunk port investment per end of $100.00, as supported by the HAI default values. As noted, this value is consistent with the findings of several states and BellSouth. In addition, we note that SBC and Sprint provide no data to support their higher proposed trunk port investment value. We therefore adopt the HAI suggested input value of $100.00 for the trunk port investment, per end.

V. Expenses

A. Plant-Specific Operations Expenses

253. Consistent with our tentative conclusions, we adopt input values that reflect the average expenses that will be incurred by non-rural carriers, rather than a set of company-specific maintenance expense estimates. We adopt our proposed four-step methodology for estimating expense-to-investment ratios using revised current-to-book ratios and 1997 and 1998 ARMIS data. We clarify that the ARMIS investment and expense balances used to calculate the expense-to-investment ratios in steps three and four should be based on the accounts for all *non-rural* ARMIS-filing companies. Although some rural companies file ARMIS reports, the mechanism we adopt today will be used, beginning January 1, 2000, to determine high-cost support only for non-rural carriers. We find, therefore, that it is appropriate to include only data from the non-rural ARMIS-filing companies in calculating these expense-to-investment ratios.

254. *Current Data.* Parties commenting on whether we should update our methodology using more current ARMIS data agree that we should use the most currently available data. We obtained account-specific current-to-book ratios for the related plant investment accounts, for the years ending 1997 and 1998, from Ameritech, Bell Atlantic, BellSouth, GTE, and SBC. Accordingly, we adopt input values using these updated current-to-book ratios and 1997 and 1998 ARMIS data to calculate the expense-to-investment ratios that we use to obtain plant-specific operations expense estimates for use in the federal mechanism.

255. *Nationwide Estimates.* As discussed in this section, we adopt nationwide average values for estimating plant-specific operations expenses rather than company-specific values for several reasons. We reject the explicit or implicit assumption of most LEC commenters that the cost of maintaining incumbent LEC embedded plant is the best predictor of the forward-looking cost of maintaining the network investment predicted by the model. We find that, consistent with the *Universal Service Order's* criteria, forward-looking expenses should reflect the cost of maintaining the least-cost, most-efficient, and reasonable technology being deployed today, not the cost of maintaining the LECs' historic, embedded plant. We recognize that variability in historic expenses among companies is due to a variety of factors and does not simply reflect how efficient or inefficient a firm is in providing the supported services. We reject arguments of the LECs, however, that we should capture this variability by using company-specific data in the model. We find that using company-specific data for federal universal service support purposes would be administratively unmanageable and inappropriate. Moreover, we find that averages, rather than company-specific data, are better predictors of the forward-looking costs that should be supported by the federal high-cost mechanism. In addition, we find that using nationwide averages will reward efficient companies and provide the proper incentives to inefficient companies to become more efficient over time, and that this reward system will drive the national average toward the cost that the competitive firm could achieve. Accordingly, we affirm our tentative conclusion that we should adopt nationwide average input values for plant-specific operations expenses.

256. AT&T and MCI agree with our tentative conclusion that we should adopt input values that reflect the average expenses incurred by non-rural carriers, rather than company-specific expenses. They argue that the universal service support mechanism should be based on the costs that an efficient carrier *could* achieve, not on what any individual carriers *has* achieved. In contrast, incumbent LEC commenters argue that we should use company-specific values.

257. BellSouth, for example, contends that the approach suggested by AT&T and MCI conflicts with the third criterion for a cost proxy model, which states that ''[t]he study or model, however, must be based upon an examination of the current cost of purchasing facilities and equipment * * *.'' BellSouth argues that the ''only logical starting point for estimating forward-looking expenses is the current actual expenses of the ILECs.'' We agree that we should start with current actual expenses, as we do, in estimating forward-looking maintenance expenses. We do not agree with the inferences made by the incumbent LEC commenters, however, that our input values should more closely match their current maintenance expenses.

258. BellSouth's reliance on criterion three fails to quote the first part of that criterion, which states:

> Only long-run forward-looking economic cost may be included. The long-run period must be a period long enough that all costs may be treated as variable and avoidable. The costs must not be the embedded cost of facilities, functions, or elements.

Thus, the model's forward-looking expense estimates should not reflect the cost of maintaining the incumbent LEC's embedded plant. The *Universal Service Order's* first criterion specifies that ''[t]he technology assumed in the cost study or model must be the least-cost, most efficient, and reasonable technology for providing the supported services that is currently being deployed.'' As we explained in the *Inputs Further Notice,* while the synthesis model uses existing incumbent LEC wire center locations in designing outside plant, it does not necessarily reflect existing incumbent LEC loop plant. Indeed, as the Commission stated in the *Platform Order,* ''[e]xisting incumbent LEC plant is not likely to reflect forward-looking technology or design choices.'' Thus, for

example, the model may design outside plant with more fiber and DLCs and less copper cable than has been deployed historically in an incumbent LEC's network. We find that the forward-looking maintenance expenses also should reflect changes in technology.

259. GTE argues that expense-to-investment ratios should not be developed as national averages, because no national average can reflect the composition of each company's market demographics and plant. GTE argues further that costs vary by geographic area and that this variability reflects operating difficulties due to terrain, remoteness, cost of labor, and other relevant factors. GTE contends that ''[u]sing national average operating expenses will either understate or overstate the forward-looking costs of providing universal service for each carrier, depending on the variability of each company to the average.'' GTE claims that the use of the national average penalizes efficient companies that operate in high-cost areas.

260. Similarly, Sprint contends that the use of nationwide estimated data does not accurately depict the realities of operating in Sprint's service territories. Sprint claims that the national averages are far below Sprint's actual costs, because the Commission's methodology for estimating plant-specific expense inputs is heavily weighted toward the Bell companies' urban operating territories. According to Sprint, the Bell companies have a much higher access line density than Sprint, and the expense data from such companies with a higher density of customers will result in expense levels that are much lower than the expense levels experienced by smaller carriers. AT&T and MCI respond by showing that a particular small carrier, serving a lower density area than Sprint, has plant-specific expenses that, on a per-line basis, are less than half of Sprint's expenses. AT&T and MCI claim that ''the most significant driver of cost differences between carriers in the ARMIS study area data is *efficiency*.'' Like other LECs, SBC argues that the costs for LECs vary dramatically, based on various factors including size, operating territories, vendor contracts, relationships with other utility providers and the willingness to accept risk. SBC asserts that ''[t]hese differences are not in all instances attributable to inefficient operations.''

261. We agree with SBC that not all variations in costs among carriers are due to inefficiency. Although we believe that some cost differences are attributable to efficiency, we are not convinced by AT&T and MCI's example that Sprint is less efficient than the small carrier they identify. Sprint could have higher maintenance costs because it provides higher quality service. But we also are not convinced by Sprint's argument that maintenance expenses necessarily are inversely proportional to density. Sprint provides no evidence linking higher maintenance costs with lower density zones, and we can imagine situations where there are maintenance costs in densely populated urban areas that are not faced by carriers in low density areas. For example, busy streets may need to be closed and traffic re-routed, or work may need to be performed at night and workers compensated with overtime pay.

262. We cannot determine from the ARMIS data how much of the differences among companies are attributable to inefficiency and how much can be explained by regional differences or other factors. BellSouth's consultant concedes that there is nothing in the ARMIS expense account data that would enable the Commission to identify significant regional differences. GTE concedes that it may be difficult to analyze some data because companies have not been required to maintain a sufficient level of detail in their publicly available financial records. GTE's proposed solution for reflecting variations among states is simply to use company-specific data. Indeed, none of the LECs propose a specific alternative to using self-reported information from companies. For example, SBC argues we should use company-specific expenses provided pursuant to the *Protective Order* to develop company-specific costs, because these are the costs that will be incurred by the providers of universal service.

263. While reliance on company-specific data may be appropriate in other contexts, we find that, for federal universal service support purposes, it would be administratively unmanageable and inappropriate. The incumbent LECs argue that virtually all model inputs should be company-specific and reflect their individual costs, typically by state or by study area. As parties in this proceeding have noted, selecting inputs for use in the high-cost model is a complex process. Selecting different values for each input for each of the fifty states, the District of Columbia, and Puerto Rico, or for each of the 94 non-rural study areas, would increase the Commission's administrative burden significantly. Unless we simply accept the data the companies provide us at face value, we would have to engage in a lengthy process of verifying the reasonableness of each company's data. For example, in a typical tariff investigation or state rate case, regulators examine company data for one-time high or low costs, pro forma adjustments, and other exceptions and direct carriers to adjust their rates accordingly. Scrutinizing company-specific data to identify such anomalies and to make the appropriate adjustments to the company-proposed input values would be exceedingly time consuming and complicated given the number of inputs to the model. We recognize that such anomalies invariably exist in the ARMIS data, but we find that, by using averages, high and low values will cancel each other out.

264. Where possible, we have tried to account for variations in cost by objective means. As we stated in the *Inputs Further Notice*, we believe that expenses vary by the type of plant installed. The model takes this variance into account because, as investment in a particular type of plant varies, the associated expense cost also varies. The model reflects differences in structure costs by using different values for the type of plant, the density zone, and soil conditions.

265. As discussed, we cannot determine from the ARMIS data how much of the differences among companies are attributable to inefficiency and how much can be explained by regional differences or other factors. To the extent that some cost differences are attributable to inefficiency, using nationwide averages will reward efficient companies and provide the proper incentives to inefficient companies to become more efficient over time. We find that it is reasonable to use nationwide input values for maintenance expenses because they provide an objective measure of forward-looking expenses. In addition, we find that using nationwide averages in consistent with our forward-looking economic cost methodology, which is designed to send the correct signals for entry, investment, and innovation.

266. Bell Atlantic contends that using nationwide averages for plant specific expenses, rather than ARMIS data disaggregated to the study area level, defeats the purpose of a proxy model because it averages high-cost states with low-cost states. Bell Atlantic argues that we should use the most specific data inputs that are available, whether region-wide, company specific, or study-area specific. Conceding that data are not always available at fine levels of disaggregation, Bell Atlantic contends there is no reason to throw out data that more accurately identify the costs in

each area. Bell Atlantic argues that, even if the Commission does not have current-to-book ratios for all of the ARMIS study areas, it could use average current-to-book ratios and apply them to company-specific ARMIS data.

267. Contrary to Bell Atlantic's contention, we do not find that using nationwide average input values in the federal high-cost mechanism is inconsistent with the purpose of using a cost model. In addition to the administrative difficulties outlined, we find that nationwide values are generally more appropriate than company-specific input values for use in the federal high-cost model. In using the high-cost model to estimate costs, we are trying to establish a national benchmark for purposes of determining support amounts. The model assumes, for example, that all customers will receive a certain quality of service whether or not carriers actually are providing that quality of service. Because differences in service quality can cause different maintenance expense levels, by assuming a consistent nationwide quality of service, we control for variations in company-specific maintenance expenses due to variations in quality of service. Clearly, we are not attempting to identify any particular company's cost of providing the supported services. We are, as AT&T and MCI suggest, estimating the costs an efficient provider would incur in providing the supported services. We are not attempting to replicate past expenses, but to predict what support amounts will be sufficient in the future. Because high-cost support is portable, a competitive eligible telecommunications carrier, rather than the incumbent LEC, may be the recipient of the support. We find that using nationwide averages is a better predictor of the forward-looking costs that should be supported by the federal high-cost mechanism than any particular company's costs.

268. *Estimating regional wage differences.* We do not adjust our nationwide input values for plant-specific operations expenses to reflect regional wage differences. Most LEC commenters advocate the use of company-specific data to reflect variations in wage rates. GTE, for example, claims that regional wage rate differentials are reflected in the company-specific data available from ARMIS. GTE complains that our proposed input values suggest there is no difference in labor and benefits costs between a company operating in Los Angeles and one operating in Iowa. As discussed, the publicly available ARMIS expense account data for plant-specific maintenance expenses do not provide enough detail to permit us to verify significant regional differences among study areas or companies based solely on labor rate variations. For the reasons discussed, we find that we should not use company-specific ARMIS data to estimate these expenses, but instead use input values that reflect nationwide averages.

269. Although they would prefer that we use company-specific data, some LEC commenters suggest that the wage differential indexes used by the President's Pay Agent, on which we sought comment, would be an appropriate method of disaggregating wage-related ARMIS expense data. GTE, on the other hand, contends that these indexes are not relevant to the telecommunications industry, because they are designed for a specific labor sector, that is, federal employees. GTE claims that there are numerous publicly available sources of labor statistics and that, if we adopt an index factor, it should be specific to the telecommunications industry.

270. We agree with GTE that, if we were to use an index to adjust our input values for regional wage differences, it would be preferable to use an index specific to the telecommunications industry. We looked at other publicly available sources of labor statistics, however, and were unable to find a data source that could be adapted easily for making meaningful adjustments to the model input values for regional wage differences. Specifically, we looked at U.S. Department of Labor, Bureau of Labor Statistics (BLS) information on wage rate differentials for communications workers comparing different regions of the country. The Employment Cost Indexes calculated by BLS identify changes in compensation costs for communications workers as compared to other industry and occupational groups. In a number of the indexes, communications is not broken out separately, but is included with other service-producing industries: transportation, communication, and public utilities; wholesale and retail trade; insurance, and real estate; and service industries. In making regional comparisons, the Employment Cost Indexes divide the nation into four regions: northeast, south, midwest, and west. There also are separate indexes comparing metropolitan areas to other areas.

271. We find that the regions used in the BLS data are too large to make any significant improvement over our use of nationwide average numbers. For example, Wyoming is in the same region as California, but we have no reason to believe that wages in those two states are more comparable than wages rates in California and Iowa. That is, there is no simple way to use the BLS data to make the type of regional wage adjustments suggested by GTE. We note that no party has suggested a specific data source or methodology that would be useful in making such adjustments. Accordingly, we decline to adopt a method for adjusting our nationwide input values for plant-specific operations expenses to reflect regional wage differences.

272. *Methodology.* As discussed in this section, we adopt our proposed methodology for calculating expense-to-investment ratios to estimate plant-specific operations expenses. We reject arguments of some LEC commenters that this methodology inappropriately reduces these expense estimates.

273. Several LEC commenters generally support our methodology for calculating expense-to-investment ratios to estimate plant-specific operations expenses, although, as discussed, only if we use company-specific input values. For example, GTE agrees with our tentative conclusion that input values for each plant-specific operations expense account can be calculated as the ratio of booked expense to current investment, but only if this calculation is performed on a company-specific basis. BellSouth states that ''[t]he methodology proposed by the Commission for plant-specific expenses is very similar to the methodology employed by BellSouth.''

274. Other LEC commenters object to our use of current-to-book ratios to convert historic account values to current cost. Although their arguments differ somewhat, they essentially claim that the effect of our methodology is to reduce forward-looking maintenance expenses and that this is inappropriate because the input values are lower than their current maintenance expenses. AT&T and MCI counter that, if there is any problem with our maintenance expense ratios, it is that they reflect the servicing of too much embedded plant, which has higher maintenance costs, and too little forward-looking plant, which has lower maintenance costs.

275. US West asserts that, while in theory it is correct to adjust expense-to-investment ratios using current-to-book ratios, in practice there is a problem because the current-to-book ratio is based on reproduction costs and the model estimates replacement costs. US West defines reproduction cost as the cost of reproducing the existing plant using today's prices and replacement cost as the cost of replacing the existing plant with equipment that harnesses new technologies and is priced at

today's prices. US West claims that our methodology actually increases the mismatch between historic and forward-looking investment levels because the reproduction costs are not the same as the replacement costs. We agree that reproduction costs are not the same as replacement costs because the mix of equipment and technology will differ, but we disagree with US West's characterization of this as a mismatch.

276. US West estimates that applying current-to-to book ratios to existing investment would generate reproduction costs that are 141 percent higher than historic costs. US West claims that, in contrast, forward-looking models generally show that the cost of replacing those facilities would be slightly less than historic costs, if new technologies were deployed. US West's claim that our methodology results in a mismatch because of these cost differences, however, is wrong. Rather, the differences between reproduction costs and replacement costs merely show that the mix of technologies has changed. The hypothetical example US West uses to illustrate its argument fails to account for changes in technology. The following hypothetical example illustrates how changes in the mix of technology will change maintenance expenses. If historic investment on a company's books consists of 100 miles of copper plant, at a cost of $10 per mile, and 10 miles of fiber plant, at a cost of $1 per mile, then the historic cost is $1010. If current maintenance costs are $10 for the copper plant and $0.10 for the fiber plant, the total maintenance expense is $10.10. If the price of copper increases to $15 per mile and the price of fiber decreases to 80 cents per mile, then the reproduction costs would increase to $1508. If the forward-looking model designs a network with 60 miles of copper and 50 miles of fiber, the resulting replacement cost is $940. Using our methodology, we use the current-to-book ratios of 1.5 ($15/$10) and .8 (80 cents divided by $1) to revalue the copper and fiber investment, respectively, at current prices, and the resulting maintenance expense for the forward-looking plant would be $6.58 rather than $10.10. This does not result in a mismatch. In our hypothetical example, the maintenance costs for fiber were substantially less on a per-mile basis than they were for copper. Thus, we would expect the forward-looking plant with considerably more fiber and less copper to have lower maintenance costs than the current plant, which has more copper. Because the mix of plant changes, the Commission should not, as US West suggests, simply adjust book investment to current dollars to derive maintenance expenses for the forward-looking plant estimated by the model.

277. Sprint argues that we should simply divide the current year's actual expense for each account by the average plant balance associated with that expense. Sprint claims that, when this ratio is applied to the investment calculated by the model, forward-looking expense reductions occur in two ways: (1) the investment base is lower due to the assumed economies of scale in reconstructing the forward-looking network all at one time; and (2) greater use of fiber in the forward-looking network reduces maintenance costs because less maintenance is required of fiber than of the copper in embedded networks. Sprint claims that reducing maintenance for a current-to-book ratio as well as for technological factors constitutes a ''double-dip'' in maintenance expense reduction.

278. Sprint's claim that our methodology constitutes a ''double dip'' in reducing maintenance expenses is misleading because the effect of using current-to-book ratios depends upon whether current costs have risen or fallen relative to historic costs. Current-to-book ratios are used to restate a company's historic investment account balances, which reflect investment decisions made over many years, in present day replacement costs. Thus, if current costs are higher than historic costs for a particular investment account, the current-to-book ratio will be greater than one, and the expense-to-investment ratio for that account will decrease when the investment (the denominator in the ratio) is adjusted to current replacement costs. Sprint calls this double dipping because copper costs have risen and the model uses less copper plant than that which is reflected on Sprint's books. If current costs are lower than historic cost, however, the current-to-book ratio will be less than one and the adjusted expense-to-investment ratio for that account will increase when the investment (the denominator in the ratio) is adjusted to current replacement costs. Fiber cable and digital switching costs, for example, have fallen relative to historic costs. Sprint essentially is arguing that our methodology is wrong because it understates Sprint's historical costs. The input values we select are not intended to replicate a particular company's historic costs, for the reasons discussed.

279. SBC disputes our assumption that the model takes into account variations in the type of plant installed because, as investment in a particular type of plant varies, so do the associated expense costs. SBC argues that expenses do not vary simply because investment varies. Nonetheless, SBC believes that developing a ratio of expense to investment and applying it to forward-looking investments is a reasonable basis for identifying forward-looking plant specific expenses. SBC complains that our methodology is inconsistent, however, because it has defined two completely different sets of forward-looking investments: one based on historical ARMIS investments adjusted to current amounts; and another derived on a bottom-up basis employing the cost model. Until we reconcile these ''inconsistencies,'' SBC recommends that we use unadjusted historical investment amounts in developing plant specific expense factors, because they are closer to SBC's historical plant specific expenses.

280. Although they characterize the issue somewhat differently, US West, Sprint, and SBC essentially argue that our methodology is wrong because it understates their historical costs. AT&T and MCI counter that a forward-looking network often will result in lower costs than an embedded network and that the trend in the industry has been to develop equipment and practices to minimize maintenance expense. AT&T and MCI claim that, if there is any problem with our maintenance expense ratios, it is that they reflect the servicing of too much embedded plant, which has higher maintenance costs, and too little forward-looking plant, which has lower maintenance costs. AT&T and MCI further claim that, if our analysis had been based exclusively on financial information that reflected equipment consistent with the most-efficient forward-looking practices, the maintenance expenses would have been lower.

281. None of the commenters provide a compelling reason why we should not use current-to-book ratios to adjust historic investment to current costs. SBC in fact suggests that the Commission consider using the Telephone Plant Index (TPI) in future years to convert expense estimates to current values. SBC appears to be confusing the effect of measuring inputs in current dollars, which it recognizes is reasonable, and the end result of the calculation, which includes the impact of measuring all inputs in current dollars, changes in the mix of inputs, the impact of least-cost optimal design used by the model, and the model's engineering criteria. The relationship between maintenance costs and investment in the Commission's

methodology is related to all of these factors.

282. Sprint also claims that our methodology understates maintenance costs, because it assumes new plant and the average maintenance rate will be higher than the rate in an asset's first year. AT&T and MCI dispute Sprint's claim that maintenance costs per unit of plant increase over time. Sprint provides an example which purports to show that an asset with a ten year life, a ten percent maintenance fee in the first year, and annual costs increasing annually at three percent, would result in an average maintenance rate of 11.55 percent. Sprint's example, however, does not consistently apply our methodology. Sprint's example fails to apply the current-to-book ratio to the total and average plant in service estimates used in the example. When the current-to-book ratio is applied to the total and average plant in service estimates, the resulting maintenance rate is ten percent for all years.

283. BellSouth argues that the investment calculated by the model is unrealistically low because sharing assigned to the telephone company is unrealistically low and fill factors are unrealistically high. BellSouth argues that, because it has shared in cost of trenching, this does not mean the maintenance cost for buried cable would be less, and in fact, the costs may be higher. BellSouth apparently is confused about the Commission's methodology, because the sharing percentages apply only to the costs of structure, not the costs of the cable.

B. Common Support Services Expenses

284. Consistent with our tentative conclusions, we adopt input values that estimate the average common support services expenses that will be incurred by non-rural carriers on a per-line basis, rather than a set of company-specific common support services expenses. We affirm our tentative conclusion that input values for corporate operations, customer service, and plant non-specific expenses should be estimated on a nationwide basis, rather than a more disaggregated basis. As noted, we find that for universal service purposes nationwide averages are more appropriate than company-specific values. We conclude that we should use Specification 1 of our proposed regression methodology to estimate expenses for ARMIS accounts 6510 (Other Property, Plant, and Equipment); 6530 (Network Operations); 6620 (Service Expense/Customer Operations); and 6700 (Executive, Planning, General, and Administrative). As discussed, we use an alternative methodology to estimate expenses for ARMIS account 6610 (Marketing). We conclude that we should use 1998 ARMIS data in both methodologies, and an estimate of 1998 Dial Equipment Minutes of Use (DEMs) in the regression equation, to calculate these input values. We clarify that the ARMIS data we use to calculate these estimates are based on ARMIS accounts for all *non-rural* ARMIS-filing companies. We find that it is appropriate to include only data from the non-rural ARMIS-filing companies in calculating the expense per line for common support services expenses.

285. *Current Data and Use of Productivity Factor.* The input values we adopt in this Order contains a summary of the per-line, per-month input values for plant non-specific expenses, corporate operations expenses, and customer services expenses, including regression results, calculations, and certain adjustments made to the data based on the methodologies described. Because we used 1996 ARMIS data in our regression methodology to estimate our proposed input values for common support services expenses, we proposed a method of converting those estimates to 1999 values. Specifically, we proposed using a productivity factor of 6.0 percent for the years 1997 and 1998 to reduce the estimated input values. We further proposed adjusting the expense data for those years with an inflation factor based on the Gross Domestic Product Price Index (GDP–PI) in order to bring the input values up to current expenditure levels.

286. AT&T and MCI claim that the 6.0 productivity factor is too low, while most LEC commenters contend that it is too high. Sprint argues that expenses should not be adjusted for a productivity or an inflation factor and that we should use 1998 data. GTE argues that no productivity adjustments are necessary, if we use current, company-specific ARMIS data to develop input values. Although we generally decline to adopt company-specific input values for common support services expenses, we agree that using the most currently available ARMIS data (1998) obviates the need to adjust our estimates for either productivity gains or an inflation factor at this time. We believe, however, that there should be an incentive for increased productive efficiency among carriers receiving high-cost universal service support. Accordingly, we believe that a reasonable productivity measure or some other type of efficiency incentive to decrease costs associated with common support services expenses should be incorporated into the universal service high-cost support mechanism in the future. We intend to address this issue in the proceeding on the future of the model.

287. The input values we adopt in this Order are estimates of the portion of company-wide expenses that should be supported by the federal high-cost mechanism. We derive the estimates using standard economic analysis and forecasting methods. The analysis relies on publicly available 1998 ARMIS expense data and the most current minutes of use information from NECA. This data is organized by study area. The estimate of 1998 DEMs is based on a calculated growth rate of 1997 to 1996 DEMs reported by NECA. As a result of deleting rural ARMIS-filing companies and including company study area changes since 1996, pooling of the 1998 data sets provides expense, minutes of use, and line count data for 80 study areas. This is in comparison to the 91 study areas resulting from pooling the 1996 data described in the *Inputs Further Notice.*

288. Some parties object to our using data at the study area level, because they claim that ARMIS-filing companies report data in two distinct ways. Ameritech and US West argue that parent companies generally assign a significant portion of plant non-specific and customer operations expenses across their operating companies on the basis of an allocation mechanism. As a result, they claim that a simple regression on the study area observations will produce coefficients that reflect a blend of two relationships: the cost-based relationship and the allocation-based relationship, of which only the former is appropriate to measure. They argue further that it is necessary to model the allocation method explicitly, to net out the latter data, or to aggregate the data to the parent company level. Although we acknowledge that our accounting rules provide carriers with some flexibility, we expect that the allocation mechanism used by the parent company represents underlying cost differences among its study areas. We find that it is reasonable to assume that the companies use allocation mechanisms that are based on cost relationships to allocate costs among their study areas. Accordingly, we find that it is reasonable to use ARMIS data at the study area level in the regression methodology.

289. *Regression Methodology.* As described in the *Inputs Further Notice,* we adopt standard multi-variate regression analysis to determine the portion of corporate operations expenses, customer services expenses,

and plant non-specific expenses attributable to the services that should be supported by the federal high-cost mechanism. We adopt an equation (Specification 1) which estimates total expenses per line as a function of the percentage of switched lines, the percentage of special lines, and toll minutes per line. We use this regression methodology to estimate the expenses attributable to universal service for the following accounts:

Other Property, Plant, and Equipment (6510); Network Operations (6530); Service Expense/Customer Operations (6620); and Executive, Planning, General and Administrative (6700).

We adopt this specification, rather than an average of the two specification estimates suggested in the *Inputs Further Notice,* to separate the portion of expenses that could be estimated as attributable to special access lines and toll usage, which are not supported by the federal high-cost mechanism, from switched lines and local usage. As explained, we use an adjusted weighted average of study areas to estimate the support expense attributable to Account 6610, Marketing.

290. Several parties contend that our regression analysis is flawed. Sprint, for example, claims that we have exaggerated the significance of our statistical findings beyond a level justified by the regression result; and have made the often-committed error of interpreting our regression results in a way that implies causality. US West argues that, although there is a causal relationship between the level of expenses and the variables we use in the regression, the coefficient of determination or R^2 is fairly low, which implies that the causal relationship only explains a small portion of the total costs. GTE claims that our regression is mis-specified because it utilizes only the mix of output as explanatory variables, and excludes important variables related to differences in input prices and production functions. Because of this mis-specification and the omitted variables, GTE also claims that our equations have a low predictive ability, as measured by the R^2s.

291. We disagree with commenters who claim that there is little explanatory value in our regression analysis. In accounts 6620, 6700, 6530 the regressions explain a high degree of the variability in the expense variables. Only account 6510 (Other Property, Plant, and Equipment) has a low R^2, which is not surprising given the reported data in this account. Based on the 1998 ARMIS data, the resulting regression coefficient for this expense category is negative due to the numerous negative expenses reported by carriers in 1998. Because the ARMIS reports represent actual 1998 expenses incurred by the non-rural telecommunications companies within their various study areas, we find that it is appropriate to include this negative expense in our calculations. We note, however, that inclusion of this account in our calculations represents less than one percent of the total expense input for common support services expenses.

292. We believe that our regressions represent a cost-causative relationship, and that common support services expenses are a function of the number of total lines served, plus the volume of minutes. Because in the long run, all costs are variable, we disagree with commenters who suggest that our methodology is flawed because we do not include an intercept term in our regression equation to represent fixed or start-up costs. As discussed, the model is intended to estimate long-run forward-looking cost over a time period long enough so that all costs may be treated as variable and avoidable. Moreover, the federal high-cost mechanism calculates support on a per-line basis, which is distributed to eligible carriers based upon the number of lines they serve. We would not provide support to carriers with no lines. Nor would we vary support, which is portable, between an incumbent and a competitive eligible telecommunications carrier, based on differences in their fixed or start-up costs. We explicitly assume, therefore, that if a company has zero lines and zero minutes, it should have zero expenses. Thus, we have no constant or fixed cost in our regressions. We also believe that these expenses are driven by the number of channels, not the number of physical lines.

293. That is, our assumptions imply that expenses are a linear function of lines and minutes. We next need to separate out the common support services expenses related to special access lines and toll minutes, because these services are not supported by the federal high-cost mechanism. Therefore, we split the lines variable into switched and special access lines, and we split the minutes variable into local and toll minutes. In this modified equation, expenses are a function of switched lines, plus special access lines, plus local minutes, plus toll minutes. We believe that changes in local minutes, however, should not cause changes in common support services expenses that are not already reflected in the expenses associated with switched lines. We find that it is reasonable to assume that local calls do not increase these overheard costs in the same way that toll minutes do. For example, in most jurisdictions local calls are a flat-rated service and additional local calling requires no additional information on the customer's bill. With toll calling, however, even subscribers that have some kind of a calling plan receive detailed information about those calls. It is reasonable to assume that adding an additional line on a subscriber's bill for a toll call causes overhead costs that are not caused by local calls. Moreover, toll calling outside a carrier's serving area involves the costs associated with completing that call on another carrier's network. As discussed, we tested our assumption that local calls do not affect costs in the same way that toll calls do by running the regressions to include local minutes. Based on theory and our analysis, we decided to drop the local minutes variable, so that expenses are a function of switched lines, plus special access lines, plus toll minutes. Because we are calculating a per-line expense estimate, we divide all the variables by the total number of lines to derive our final equation: expenses divided by total lines equals the percentage of switched lines, plus the percentage of special lines, plus toll minutes divided by total lines.

294. US West claims that our regressions may not be based on appropriate cost-causative relationships, because we count special access lines by channels and not by physical pairs. The ARMIS data used in the regressions count special lines as channels. That is, special access lines are counted as DS0 equivalents: a DS1 has 24 channels, and a DS3 has 672 channels. US West contends that it is far from clear how this method of counting special access lines reflects how these services cause expenses, because it is clear that DS1s and DS3s are not priced as if they cause 24 and 672 times the amount of expenses as a narrowband line.

295. The fact that DS1s and DS3s are priced differently in the current marketplace does not imply that it is improper to count lines as channels. US West's suggested alternative, counting special lines as physical pairs, would assume that a residential customer with two lines causes the same amount of overhead expenses as a special access customer with one DS1 line. To the contrary, we find that it is reasonable to assume that more overhead expenses are devoted to winning and keeping the DS1 customer than the residential customer. Further, we expect that more overhead expenses are related to customers using higher capacity services than those using lower capacity

services. Accordingly, we find that it is reasonable to use channel counts in our regression equations.

296. Some commenters also criticized our regression analysis on the grounds that variables are highly correlated and that the predicted coefficients are not stable. In particular, US West claims that the confidence intervals and standard errors are large and that a dividing-the-sample experiment leads to drastically different results. While these commenters are correct that the correlation values are high for the raw variables, the values are not high once the variables under consideration are adjusted by dividing by total lines. We find that the correlation values are all very reasonable. We note, in particular, the -1 correlation between switched lines and special lines. The fact that switched lines plus special lines equals one is the reason the regression cannot be run with a separate constant. We note that our parameterization has switched lines, special lines, and toll minutes as explanatory variables. We have chosen not to include local minutes in our regressions for theoretical reasons. So, the key correlation values are the correlations of toll minutes with special lines and with switched lines. We find that those values are reasonable.

297. Several commenters suggested that we use local minutes as an explanatory variable. Despite our tentative conclusion that our regressions should not include local minutes as a variable, in response to these comments, we re-ran each of the regressions with local minutes per line as an additional variable. In three of the four regressions, the coefficient for local minutes was not significant at the five percent level, and for account 6700, its sign was the opposite of what was expected. The resulting difference in the estimated expenses attributable to supported services was very small in magnitude as well. If we used the local minutes variable in our parameterization, after summing across all expense accounts, our per-line, per-month estimate for a switched line would be approximately $0.01 more. Given our belief that local minutes should not influence these expenses, the lack of significance in the coefficients, and the overall lack of impact when the variable was consistently included in the regressions, we conclude that we should not include local DEMs per line in our specifications.

298. Except for the inclusion of local minutes as a variable, no commenters have suggested a better parameterization or methodology for using the ARMIS data to estimate expense inputs for these accounts. Further, no commenters have suggested an alternative publicly available data set to use for our estimation of expense input values. We acknowledge that there is substantial variation in the underlying expense data taken from the ARMIS reports. Common support services expenses often contain charges unrelated to the specified relationships in the regression equation. For example, there are many one-time expenses and non-recurring charges associated with these accounts. We have tried to limit the effect of this problem by making adjustments to the expense data, as discussed. Given the data limitations and the parameterization we have chosen, we find that the estimated coefficients are the best estimate of the applicable expenses, regardless of the resulting standard errors.

299. *Removal of One-Time Expenses.* In the *Inputs Further Notice,* we discussed our efforts to adjust estimates of common support services expenses to account for one-time and non-recurring expenses. We sought comment on the need for information about and estimates of various types of exogenous costs and common support service expenses that are recovered through non-recurring charges and tariffs. These expenses include specific one-time charges for the cost of mergers or acquisitions and process re-engineering, and network and interexchange carrier connection, disconnection, and re-connection (*i.e.,* churn) costs.

300. In the *Inputs Further Notice,* we tentatively concluded that we should not use an analysis submitted by AT&T and MCI to estimate one-time and non-recurring expenses for corporate and network operations expenses. This analysis averaged five years (1993–1997) of data from Security and Exchange Commission (SEC) 10–K and 10–Q filings for all tier one companies to identify and calculate a percentage estimate of corporate and network operations expenses classified as one-time and non-recurring charges associated with these types of activities. Our tentative conclusion not to rely on the AT&T and MCI analysis to make these adjustments was based on the fact that we were using 1996 ARMIS data to estimate the expense inputs. Because the SEC reports do not indicate whether the one-time expenses were actually made solely during a specific year indicated, we tentatively concluded that we could not use the analysis' five year average or the actual 1996 SEC figures to make adjustments to the 1996 ARMIS data. In the *Inputs Further Notice,* we noted however that the AT&T and MCI analysis indicates that one-time expenses for corporate and network operations can be significant. We sought comment on how to identify and estimate one-time and non-recurring expenses associated with these common support services.

301. AT&T and MCI disagree with our tentative decision to reject their one-time cost estimates and argue that it is better to estimate one-time costs through use of the SEC reports, although these reports may imperfectly establish the precise date of the occurrence, than to fail to exclude these costs at all. Although some LEC commenters may agree that we should adjust our estimates to exclude one-time and non-recurring expenses, they provide no data or methodology to accomplish this, other than suggesting that we should get this information from the companies. GTE claims that unless companies implement specific tracking mechanisms, these data are not generally or easily identified after the fact.

302. We now reconsider our tentative conclusion not to use the analysis submitted by AT&T and MCI to adjust our network and corporate operations expense estimates to account for one-time and non-recurring expenses. We do so for a number of reasons. First, we received no additional information on publicly available data sources or other reasonable methods to estimate these one-time and non-recurring costs at this time. Second, the problems associated with determining the actual costs of 1996 one-time expenses based on the SEC reports are obviated because we are using 1998 expense data to estimate the forward-looking input values. We find that using the estimated average of one-time costs over the five preceding years (1993–1997) to adjust 1998 data is a reasonable method to determine the impact of costs related to mergers and acquisitions and work force restructuring. Further, we believe any adjustments for one-time costs based on the AT&T and MCI analysis may be biased downward after comparing the number of companies involved in these types of activities in 1998 and 1999 to those in 1993–1997. Accordingly, we adjust downward estimated expenses in account 6530 (Network Operations) by 2.6 percent and in account 6700 (Executive, Planning, General, and Administrative) by 20 percent.

303. *Removal of Non-Supported Expenses.* In the *Inputs Further Notice,* we also discussed our efforts to adjust marketing and other customer service expenses to account for recurring expenses that are not related to services supported by the federal high-cost mechanism. The non-supported expenses we attempted to identify include vertical features expenses,

billing and collection expenses not related to supported services, operational support systems and other expenses associated with providing unbundled network elements and wholesale services to competitive local exchange carriers. We proposed adjustments to extract non-supported service costs related to marketing, coin operations, published directory, access billing, interexchange carrier office operation, and service order processing. Specifically, we made percentage reductions to the regression coefficient results for specific expense accounts based on a time trend analysis of average ARMIS 43–04 expense data for five years (1993–1997).

304. Some commenters argue that our proposed methodology removes non-supported services twice because these expenses were already taken out by the regression when expenses are subdivided among switched lines, special lines, and toll minutes. Although we agree, as discussed, that our methodology double counted the marketing expenses associated with special access lines, we do not agree with the theory that combining a percentage reduction with the regression methodology invariably removes expenses twice. For example, vertical features associated with switched lines such as call waiting are not supported, but the expenses associated with call waiting are not removed using the regression analysis. If we had the data to separately identify and remove vertical features expenses from switched lines, we believe that it would be appropriate to do so and to continue using the regression analysis to separate the remaining expenses. Nonetheless, upon further analysis, we find that we should not adopt our proposed method of removing these non-supported recurring expenses. We find that this method is not sufficient to adequately identify non-supported common support service expenses due to differences in account classifications from the ARMIS 43–03 and ARMIS 43–04 reports. Therefore, we do not utilize the time trend analysis or take reductions for these non-supported expenses in the input values at this time. We recognize that this causes an overstatement of in our estimate of the expenses attributable to supported services in account 6620 (Service Expense and Customer Operations). Unlike the case with marketing, however, we do not have an alternative source of information on which to base a methodology for removing the non-supported expenses in this account. We plan to seek comment on a verifiable and systematic method to identify and remove these costs in the proceeding on the future of the model.

305. *Marketing.* As explained in the *Inputs Further Notice,* we made an adjustment to the Account 6610 (Marketing) regression coefficient based on an analysis made by Economics and Technology, Inc. (ETI). The ETI analysis offered a method for disaggregating product management, sales, and advertising expenses for basic (residential) telephone service from total marketing costs. Based on information from the New England Telephone Cost Study, ETI attributed an average of 95.6 percent of company marketing costs to non-supported customers or activities, such as vertical and new services. Relying on this analysis, we reduced the input estimate to reflect 4.4 percent of marketing expenses determined by the regression. In the *Inputs Further Notice,* we tentatively concluded that this was the most accurate method on the record for apportioning marketing expenses between supported and non-supported services.

306. We agree with commenters that, in making this adjustment to the post-regression analysis input estimate, we incorrectly estimated marketing expenses because reductions were taken twice for special access lines. We agree with the commenters that any adjustments to exclude expenses based on the type of service should be made from total relevant marketing expenses rather than the regression results. Therefore, we do not use the regression methodology to estimate marketing expenses. Instead, using the 1998 ARMIS data, we adjust the total weighted average of relevant expenses for all study areas.

307. Commenters also point out that the adjustment figure of 4.4 percent based on the ETI Study as initially reported was determined under the assumption that only expenses attributable to residential local service would be supported. Further, the ETI estimate of costs associated with the marketing of supported services was calculated by taking a percentage of expenses only from Account 6611, Product Management. Specifically, the ETI estimate did not include any relevant expenses from Account 6613, Product Advertising. As noted in the *Inputs Further Notice,* funding support for marketing is to be based on those expenses associated with advertising. Section 214 of the Communications Act requires eligible telecommunications carriers to advertise the availability of residential local exchange and universal service supported services. Moreover, we note that under the current high cost loop support mechanism, carriers receive no support for marketing.

308. We received further documentation and an alternative analysis from ETI which included an estimate for advertising expenditures. The revised analysis included proportional allocations of advertising costs based on the percentage of lines estimated for primary line residential service and single-line business service. ETI also used line count source material from the Preliminary Statistics of Common Carriers 1998 rather than relying on 1996 data used in its original analysis.

309. Based on the new information provided and the lack of any reasonable alternative presented by the commenters, we calculate an input estimate of supported advertising expenses using the ETI study and 1998 ARMIS expenses. By adding a proportional allocation for multi-line business advertising expenses to the ETI alternative analysis (which only included an estimate representing primary line and single line business advertising costs), we conclude that 34.4 percent of Account 6613, Product Advertising, would be the most appropriate expense amount for the advertising of universal service. Because the additional data provided by ETI allowed for the calculation and estimate of supported and non-supported advertising expenditures, we did not allocate costs associated with product management or sales. As previously mentioned, these marketing activities are not specifically required for support under section 214 of the Communications Act and currently receive no high cost loop support. Taking 34.84 percent of total 1998 advertising expenses for the 80 non-rural high cost study areas and dividing by total lines per month, the average per line per month input value for advertising support is $0.09. This level of advertising expenses represents 5.82 percent of total 1998 marketing costs for non-rural carriers.

310. *Local Number Portability.* There is an additional input value that we estimate separately from our consideration of other expense input values. Specifically, the synthesis model has a user-adjustable input for the per-line costs associated with local number portability (LNP). In the *Inputs Further Notice,* we proposed a per-line monthly LNP cost of $0.39, based on a weighted average of the LNP rates filed by the LECs available at that time. AT&T and MCI point out that the Commission suspended and investigated some of those rates, and that the rates we approved are generally lower than the

rates we used to estimate our LNP input value. They argue that we should use the line-weighted nationwide average of approved LNP rates, which they estimate currently is $.032. GTE claims that there is no justification for using the nationwide average LNP rate, as suggested by AT&T and MCI, because the approved LNP rates provide the best representation of each company's LNP costs. We agree with GTE and in this instance depart from our general practice of using nationwide input values in the federal universal service support mechanism. Because the Commission has investigated and approved LNP rates for most LECs, we find that it is appropriate to use the company-specific input values listed. For those carriers that have not yet filed an LNP tariff, we will use the line-weighted nationwide average of approved LNP rates.

C. GSF Investment

311. We conclude that the model's preliminary estimates of GSF investment should be reduced in the third step of the algorithm, because we find that only a portion of GSF investment is related to the cost of providing the services supported by the federal mechanism. In response to certain comments, however, we modify our proposed allocation factor, as discussed. Although we reject commenters' arguments that the preliminary GSF investment should not be reduced at all, we agree that we should not exclude facility-related maintenance expenses in our proposed allocation factor. In addition, we modify our method of calculating the denominator of our allocation factor so that both the numerator and denominator are simple averages. Finally, we clarify that the ARMIS TPIS used in the first step of the algorithm excludes ARMIS GSF investment.

312. *Reduction of Preliminary GSF Estimate.* Several LEC commenters argue that the preliminary GSF investment should not be reduced by an allocator in the third step of the algorithm. SBC contends that the factor we use to reduce our preliminary GSF investment estimates substantially underestimates the GSF amounts related to the supported services. SBC claims that the ratios used to estimate the preliminary GSF investment already provides a reasonable basis for allocating GSF to supported services, because the GSF ratio (derived from the ARMIS accounts) is only applied to investment identified by the model as associated with supported services. BellSouth also claims that the TPIS calculated by the model is the investment necessary to provide the supported services and that no further reductions in the preliminary GSF investment estimate are appropriate. Sprint similarly claims that by applying a book GSF ratio to the forward-looking plant necessary to provide supported services, the modeled GSF plant also has been converted to a forward-looking level necessary to provide the supported services. Sprint contends that applying an additional allocator is not necessary and has the effect of reducing GSF plant twice.

313. We disagree with SBC's contention that only a portion of GSF is assigned to supported services in deriving our preliminary estimates of GSF investment. To the contrary, the GSF ratio is applied to all model investment, which includes the investment required to provide both supported and non-supported services. As discussed, the model estimates the cost of providing services for all businesses and households within a geographic region, including the provision of special access, private lines, and toll services. Because these services are not supported by the federal high-cost mechanism, the preliminary GSF investment estimate must be adjusted to reflect the portion of GSF investment attributable to the supported services. Thus, BellSouth's assertion that the TPIS calculated by the model is the investment necessary to provide the supported services is wrong. For the same reasons, we reject Sprint's argument that, by applying the book GSF ratio, the modeled GSF plant has somehow been converted to a forward-looking level necessary to provide the supported services. On the contrary, the conversion estimates the amount of GSF investment attributable to all services, supported and non-supported. The second reduction is required to estimate the amount of GSF investment that should be supported by the federal universal service support mechanism.

314. *Allocation Factor.* Assuming that we use an allocator to reduce preliminary GSF investment, several commenters criticize the particular allocator that we proposed in the *Inputs Further Notice.* For example, GTE questions why we used only expenses for customer operations, network operations, and corporate operations in the allocation calculation and excluded plant-specific expenses. GTE argues that plant-specific operations also use GSF investments and should be counted in the calculation. SBC also argues that GSF investment supports all aspects of a LEC's operations, and contends that it makes no sense to exclude facility-related maintenance expenses in our proposed allocation factor. We agree that expenses for plant-specific operations expenses should be included in our calculation of the nationwide allocation factor derived from the regression methodology. Accordingly, the allocation factor we adopt to estimate GSF investment includes plant-specific operations expenses.

315. GTE also contends that the forward-looking way to calculate a GSF investment ratio is to convert all ARMIS investments to current values using current-to-book ratios, before calculating an adjusted ARMIS GSF to TPIS investment ratio. Although we concede there is some logic to GTE's argument that we should convert ARMIS GSF investments to current values by using current-to-book ratios, we note that this would require a change in the model platform. As we explain, the model platform uses a three-step algorithm to estimate GSF investment. Although we can easily change the input value for the factor used in step three, we could not adjust the ARMIS data by applying a current-to-book factor without modifying the model platform. Proposals to change the model platform are properly addressed in response to pending petitions for reconsideration of the *Platform Order* or the proceeding on the future of the model.

316. Finally, GTE claims that our estimation of the universal service portion of the GSF investment is flawed because our regression methodology uses a wrong specification and incorrectly excludes expenses. GTE also claims that the calculation allocator itself is flawed because the numerator is a simple average of expenses derived from the regression results, but the denominator is a weighted average of the total expenses developed from ARMIS data. GTE argues that the type of average in the numerator and denominator should match. While we do not agree that our regression methodology is flawed, we find that GTE has pointed out an inconsistency in our GSF methodology. Specifically, we agree that we should use the same type of average in both the numerator and denominator of our allocation factor. As a result, we use the simple average of total expenses in the denominator of the allocation factor we adopt for estimating the portion of GSF attributable to supported services.

317. *Clarification.* BellSouth claims that the algorithm used to estimate GSF investment contains an error in consistency. BellSouth suggests that in step one we should determine the ratio of ARMIS-based GSF investment to the ARMIS-based TPIS less GSF investment. In step two, this ratio is multiplied by

the TPIS investment determined by the model, which excludes GSF. We clarify that the model calculates GSF investment as BellSouth suggests it should. That is, the model uses ARMIS-based TPIS less GSF investment. US West claims that in the second step of the algorithm the synthesis model includes only fifty percent of the building investment and no land investment. The synthesis model incorporates the HAI switching and expense modules and calculates the investment related to wire center buildings and land in the switching module. So, US West is mistaken that fifty percent of the building and land investment is eliminated, because this investment is added back in calculating switching costs.

318. For the reasons stated, we adopt input values for GSF investment that reflect the portion of GSF investment attributable to the cost of providing the services supported by the federal mechanism. Specifically, we calculate preliminary GSF investment on a study area specific basis, using 1998 ARMIS data, and then multiply these estimates by a nationwide allocation factor derived from the regression methodology that we used to estimate the portion of common support services expenses attributable to switched lines and local usage and the portion of plant-specific operations expenses attributable to the supported services. The allocation factor is the sum of plant specific operations expenses, customer operations expenses, network operations expenses, and corporate operations expenses attributable to the supported services, divided by the sum of those expenses calculated on a total regulated basis.

VI. Capital Costs

A. Depreciation

a. Method of Depreciation

319. For the reasons explained, we adopt a straight-line equal-life-group method of depreciation. Further, we select curve shapes to be used to distribute equal-life groups in each plant account.

320. Most commenters support our tentative conclusion to use the straight-line equal-life-group method of depreciation. Ameritech argues, however, that the Commission's adoption of a straight-line depreciation method in other contexts need not limit us to that method for use in this model, and that ''the method of depreciation for a specific study area needs to be consistent with any study that underlie [sic] the development of economic lives or net salvage.'' Although Ameritech may correctly assert that there is no requirement that we adopt a method of depreciation simply because it is the method previously adopted by the Commission in another context, we believe that the Commission's adoption, in other proceedings, of the straight-line equal-life-group method reflects the well-considered conclusion that this method of depreciation is best-suited to determining the economic costs of providing local service. The straight-line equal-life-group depreciation method is also consistent with our method of developing economic lives and net salvage for the same plant accounts. Because the Commission consistently uses a straight-line equal-life-group depreciation method in all other Commission-proposed depreciation, and in light of the general support received in favor of straight-line equal-life-group depreciation, we conclude that straight-line equal-life-group depreciation is appropriate for use in the high-cost support mechanism.

321. In using the straight-line equal-life-group method of depreciation in other contexts, the Commission has acknowledged that the method necessarily requires the selection of a curve shape for the distribution of the equal-life groups. The HAI model assumed a single curve shape for all plant accounts. Because the curve shapes are not easily averaged across all categories, however, we believe that use of the single HAI curve shape will unduly distort the model input values. We, therefore, determine that separate curve shapes should be adopted for each plant account category. Actuaries have developed generic, standardized curve shapes, called Gompertz-Makeham (GM) standard curves, that describe generalized mortality patterns. GM standard curve shapes are recognizable to many knowledgeable parties concerned with depreciation methods and are normally more immediately meaningful to them than nonstandard curve shapes, which are identified by the values for three variables. For convenience purposes, GM standard curves are often substituted for nonstandard curves. USTA has developed nonstandard curve shapes for most plant accounts based on mortality data provided by its members, using the same methodology approved in other Commission proceedings. For the remaining plant accounts, the Commission has developed composite curves, also nonstandard, utilizing data from available depreciation studies. Because the GM standard curves are recognizable and convenient to parties interpreting the data inputs in the high-cost model, and because the standardized curves will not vary significantly from the nonstandardized curves, we conclude that GM standard curves will be more useful in the high-cost inputs model than nonstandard curves. For each plant category, therefore, we adopt the GM standard curve shape nearest that developed by USTA or the Commission.

b. Depreciation Lives and Future Net Salvage Percentages

322. We adopt the tentative conclusion of the *Inputs Further Notice* that we should use HAI's input values with respect to depreciation lives and future net salvage percentages. As explained, we reject the objections by some commenters that the HAI input values are not appropriate for determining depreciation rates in a competitive environment.

323. In estimating depreciation expenses, the model uses the projected lives and future net salvage percentages for the asset accounts in part 32 of the Commission's rules. Traditionally, the projected lives and future net salvage values used in setting a carrier's rates have been determined in a triennial review process involving the state commission, the Commission, and the carrier. In order to simplify this process, the Commission has prescribed ranges of acceptable values for projected lives and future net salvage percentages. The Commission's prescribed ranges reflect the weighted average asset life for regulated telecommunications providers. These ranges are treated as safe harbors, such that carriers that incorporate values within the ranges into their depreciation filings will not be challenged by the Commission. Carriers that submit life and salvage values outside of the prescribed range must justify their submissions with additional documentation and support. Commission-authorized depreciation lives are not only estimates of the physical lives of assets, but also reflect the impact of technological obsolescence and forecasts of equipment replacement. We believe that this process of combining statistical analysis of historical information with forecasts of equipment replacement generates forward-looking projected lives that are reasonable estimates of economic lives and, therefore, are appropriate measures of depreciation.

324. We disagree with comments by incumbent LECs that the Commission's prescribed ranges are not appropriate for determining depreciation rates in a competitive environment. These parties argue that rapid changes in technology and competition in local

telecommunications markets will diminish asset lives significantly below the Commission's prescribed range by causing existing equipment to become obsolete more quickly. We agree with GSA, AT&T and MCI that there is no evidence to support the claim that increased competition or advances in technology require the use of shorter depreciation lives in the model than are currently prescribed by the Commission. The Commission's prescribed lives are not based solely on the engineered life of an asset, but also consider the impacts of technological change and obsolescence. We note that the depreciation values we adopt are generally at the lower end of the prescribed range. We also find compelling the data presented in GSA's comments showing that, although the average depreciation rate for an incumbent LEC's Total Plant in Service is approximately seven percent, incumbent LECs are retiring plant at a four percent rate. This difference has allowed depreciation reserves to increase so that the depreciation reserve-ratio is currently greater than 50 percent. We conclude that the existence of this difference implies that the prescribed lives are shorter than the engineered lives of these assets. In addition, this difference provides a buffer against technological change and competitive risk for the immediate future. We, therefore, conclude that the Commission's prescribed ranges are appropriate to determine depreciation rates for use in the federal high-cost mechanism.

325. We also decline to adopt the values for projected lives and net salvage percentages submitted by several incumbent LEC commenters. These commenters propose adoption of default values for projected lives and salvage based LEC industry date surveys or on similar values currently used by LECs for financial reporting purposes. The LEC industry data survey's projected lives generally fall outside of the Commission's prescribed ranges. This is significant because the values that fall outside of the prescribed ranges represent accounts that reflect the overwhelming majority of plant investment, thus potentially triggering a dramatic distortion of the estimated cost of providing the supported services. Moreover, these commenters assert that technological advances and competition will have the effect of displacing current technologies, but offer no specific evidence that this displacement will occur at greater rates than the forward-looking Commission-authorized depreciation lives take into account. The record is particularly silent regarding the displacement of technologies associated with the provision of services supported by the federal high-cost mechanism. We do not believe that the LEC industry data survey's projected lives have been adequately supported by the record in this proceeding to justify their adoption.

326. We also agree with GSA's comments that the projected-life values currently used by LECs for financial reporting purposes are inappropriate for use in the model. In addition, the commenters proposing these values have not explained why the values used for financial reporting purposes would also reflect economic depreciation. The depreciation values used in the LECs' financial reporting are intended to protect investors by preferring a conservative understatement of net assets, partially achieving this goal by erring on the side of over-depreciation. These preferences are not compatible with the accurate estimation of the cost of providing services that are supported by the federal high-cost mechanism. We, therefore, decline to adopt the projected life values used by LECs for financial reporting purposes.

327. In the *1997 Further Notice,* the Commission tentatively concluded that it should adopt depreciation expenses that reflect a weighted average of the rates authorized for carriers that are required to submit their rates to us. The values submitted by the HAI sponsors essentially reflect such a weighted average. The HAI values represent the weighted average depreciation lives and net salvage percentages from 76 study areas. According to the HAI sponsors, these depreciation lives and salvage values reflect the experience of the incumbent LEC in each of these study areas in retiring plant and its projected plans for future retirements.

328. In the *Inputs Further Notice,* we tentatively concluded that HAI's values represent the best forward-looking estimates of depreciation lives and net salvage percentages. Generally, these values fall within the ranges prescribed by the Commission for projected lives and net salvage percentages. Although the HAI values for four account categories fall outside of the Commission's prescribed ranges, these values still reflect the weighted average of projected lives and net salvage percentages that were approved by the Commission and, therefore, are consistent with the approach proposed in the *1997 Further Notice.* As noted, the fact that an approved value falls outside of the prescribed range simply means that the carrier proposing the value was required to provide additional justification to the Commission for this value. We are satisfied that HAI calculated its proposed rates using the proper underlying depreciation factors and that HAI's documentation supports the selection of these values. We, therefore, adopt HAI's values for estimating the depreciation lives and net salvage percentages.

B. Cost of Capital

329. We now adopt the conclusions that we tentatively reached in the *Inputs Further Notice* regarding the cost of capital. For the reasons discussed, we do not find that any commenter has provided a compelling argument for altering the current federal rate of return of 11.25 percent, absent the adoption of a different rate of return by the Commission in a rate prescription order.

330. The cost of capital represents the annual percentage rate of return that a company's debt-holders and equity holders require as compensation for providing the debt and equity capital that a company uses to finance its assets. In the *Universal Service Order,* the Commission concluded that the current federal rate of return of 11.25 percent is a reasonable rate of return by which to determine forward-looking costs.

331. GSA, AT&T and MCI comment that the cost of capital for incumbent LECs is well below 11.25 percent. Bell Atlantic advocates a cost of capital rate in the range of 12.75 to 13.15 percent. GTE and USTA dispute the lower cost of capital asserted by AT&T and MCI and GSA. All commenters addressing this issue agreed that, if a different rate of return is adopted in a rate prescription order, that value should be adopted in the model.

332. We find that the commenters proposing an adjustment to the cost of capital have failed to make an adequate showing to justify rates that differ from the current 11.25 percent federal rate of return. We conclude, therefore, that the current rate is reasonable for determining the cost of providing services supported by the federal high-cost mechanism. If the Commission, in a rate prescription order, adopts a different rate of return, we conclude the federal mechanism should use the more recently determined rate of return.

C. Annual Charge Factors

333. We also now adopt our tentative conclusion in the *Inputs Further Notice* to use HAI's annual charge factor methodology. As explained, we find this appropriate because the synthesis model uses a modified version of HAI's expense module.

334. Incumbent LECs develop cost factors, called ''annual charge factors,'' to determine the dollar amount of recurring costs associated with acquiring and using particular pieces of investment for a period of one year. Incumbent LECs develop these annual charge factors for each category of investment required. The annual charge factor is the sum of depreciation, cost of capital, adjustments to include taxes on equity, and maintenance costs.

335. To develop annual charge factors, the BCPM proponents proposed a model with user-adjustable inputs to calculate the depreciation and cost of capital rates for each account. The BCPM proponents stated that this account-by-account process was designed to recognize that all of the major accounts have, among other things, differing economic lives and salvage values that lead to distinct capital costs. HAI's model is also user adjustable and reflects the sum for the three inputs: depreciation, cost of capital, and maintenance costs. In the *Inputs Further Notice,* the Commission tentatively adopted HAI's annual charge factor methodology, and invited comment on this tentative decision. GTE argues that the annual charge factors should be company specific, in order to make the cost calculations in the optimization phase and the expense module comparable. We do not believe it would be appropriate to adopt GTE's proposal of using company-specific annual charges, because we are adopting nationwide averages for all other inputs, including those that make up the annual charge. Adopting company-specific annual charges would therefore result in likely inconsistencies between various related inputs and in the model as a whole. AT&T and MCI support the use of the HAI annual charge factor methodology.

336. Because the synthesis model uses HAI's expense module, with modifications, we adopt HAI's annual charge factor methodology, utilizing the capital cost and expense inputs adopted. We believe that HAI's annual charge factor methodology is consistent with other inputs used in the model adopted by the Commission, and is, therefore, easier to implement and yields more reasonable results.

VII. Proposed Modification to Procedures for Distinguishing Rural and Non-Rural Companies

337. Consistent with our tentative conclusion in the *Inputs Further Notice,* we eliminate the annual filing requirements for carriers serving fewer than 100,000 access lines that have self-certified as rural, unless changes occur in their status as rural carriers. In addition, we will require carriers serving study areas with more than 100,000 access lines to file rural self-certifications that are consistent with the statutory interpretation discussed. Thereafter, such carriers also will be required to file only in the event of a change in their status.

338. As discussed, we interpret ''local exchange operating company'' in section 153(37) of the Act to refer to the legal entity that provides local exchange service. In addition, we interpret ''communities of more than 50,000'' in that section to refer to legally incorporated localities, consolidated cities, and census-designated places with populations of more than 50,000 according to Census Bureau statistics.

339. With respect to our request for comment on whether we should reconsider our use of section 153(37) to distinguish rural telephone companies from non-rural companies, we conclude that we should not use an alternative definition of rural telephone company to determine which companies are subject to the rural or non-rural high-cost support mechanisms.

340. Because of settled expectations in this ongoing proceeding, the Commission will accept a carrier's current rural self-certification for purposes of calculating support based on that status for calendar year 2000. We will require carriers serving study areas with more than 100,000 access lines to certify their rural status by July 1, 2000, for purposes of receiving support beginning January 1, 2001.

1. Annual Filing Requirement

341. *Carriers serving study areas with fewer than 100,000 access lines.* We adopt the proposed change in the annual self-certification requirement for rural carriers and will require that carriers serving fewer than 100,000 access lines file a rural self-certification letter only if their status has changed since their last filing. All commenters addressing this issue urge the Commission to eliminate annual filing requirements. We believe that this is a better approach because the overwhelming majority of the companies that filed rural certification letters qualified as rural telephone companies under the 50,000- or 100,000-line thresholds identified in the statute. Access line counts can be verified easily with publicly available data. Further, this relaxation in filing requirements will lessen the burden on rural carriers. We estimate that this change will eliminate the filing requirement for approximately 1,380 of the carriers that filed in 1998, many of which are small businesses on which even limited regulatory requirements may be unduly burdensome. We, therefore, conclude that carriers serving study areas with fewer than 100,000 access lines that already have certified their rural status need not re-certify for purposes of receiving support beginning January 1, 2000, and need only file thereafter if their status changes. As explained, we must determine the status for carriers serving study areas with more than 100,000 access lines.

342. We believe, as GTE suggests, that carriers generally (although not uniformly) have filed for rural status in this proceeding on a study area basis. Indeed, the synthesis model that has been posted on the Commission's Web site—allowing carriers to determine how the Commission has been treating them throughout this proceeding—estimates cost on a study area basis. Not all carriers, however, have uniformly filed for rural status on a study area basis, as we noted in the *Inputs Further Notice,* resulting in inconsistencies that must be resolved in order to assure equitable treatment of all carriers. These inconsistencies will be addressed.

343. *Carriers serving study areas with more than 100,000 access lines.* For purposes of calculating high cost support using the model for the year 2000, we will continue to treat carriers as rural if they have previously self-certified as rural carriers. We will then require rural carriers serving study areas with more than 100,000 access lines to file certification letters by July 1, 2000, for their year 2001 status. Commenters that address the issue broadly support re-certification requirements that require these carriers to re-certify only if their status has changed, rather than require them to re-certify each year. Finding that the relaxed re-certification requirements will reduce administrative burdens for carriers subject to rural certification and for the Commission, we conclude that certified rural carriers with more than 100,000 access lines need only re-certify their status if it changes. Therefore, in 2001 and subsequent years, a carrier serving study areas with more than 100,000 access lines and claiming rural status will be required to file only if its status changes.

2. Statutory Terms

344. As noted in the *Inputs Further Notice*, carriers' line counts are readily available to the Commission, but information about service territories and communities served are not. As a result, the Commission can easily determine whether a carrier satisfies criteria (B) or (C) of the rural telephone company definition, because these criteria are

based on information that can be verified easily with publicly available data—the number of access lines served by a carrier. In contrast, criteria (A) and (D) require additional information and analysis to verify a carrier's self-certification as a rural company. Specifically, under criterion (A), a carrier is rural if its study area does not include ''any incorporated place of 10,000 inhabitants or more'' or ''any territory * * * in an urbanized area,'' based upon Census Bureau statistics and definitions. Under criterion (D), a carrier is rural if it had ''less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the [1996 Act].''

345. We conclude that criterion (A), by referencing Census Bureau sources, can be applied consistently without further interpretation by the Commission. We will require, however, that carriers self-certifying as rural telephone companies pursuant to criterion (A) include with their self-certification letter a description of the study areas in which they provide service and the basis for their assertion that they meet the requirements of criterion (A).

346. In the *Inputs Further Notice*, we sought comment on the meaning of the term ''local exchange operating entity.'' Commenters have offered three different interpretations of this term. Many commenters suggest that we should interpret the term as applying at the study area level. Although in most cases an operating entity will provide service to only one study area within a state, that is not always the case. As a result, the study area approach could mean classifying a carrier at an organizational level smaller than the actual legal entity responsible for the provision of the local exchange services (*e.g.,* a ''division'' of a company). In contrast, AT&T and MCI argue that the term should mean the holding company within a state whose affiliates provide the local exchange services. The third interpretation has been proposed by RTC and Citizens Utilities, who argue that the most natural understanding of ''local exchange operating entity'' is the legal entity responsible for the provision of local exchange services, regardless of whether that entity serves a single or multiple study areas. We conclude that this interpretation is the most reasonable one.

347. We believe that it is most logical to classify the carrier at the actual corporate level through which it offers its local exchange services. As RTC and Citizens Utilities point out, it is that entity that has legal responsibility for the provision of the local exchange services. The holding company interpretation proposed by MCI and AT&T seems to rest upon the concern that study area designations will be manipulated and, as a result, carriers will inappropriately be eligible for support as rural carriers, when they should not be. We do not believe that the potential for manipulation of the federal universal service support mechanism by rural carriers poses the threat that AT&T and MCI suggest; to the contrary, the study area waiver process provides the Commission with oversight over the creation, division, and combination of study areas.

348. On the other hand, if a carrier should be operating within multiple study areas, we see no basis for interpreting the term ''local exchange operating entity'' in a manner that would ignore the legal entity responsible for the provision of services by designating a subunit of the legal entity as the local exchange operating entity for a particular study area. Rather, it is more reasonable to have the term local exchange operating entity be synonymous with the corporate entity bearing legal responsibility for the services provided.

349. Although we adopt Citizen Utilities' interpretation of ''local exchange operating entity,'' we reject its proposed interpretation of criterion (C). Citizens Utilities proposes that a local exchange carrier operating entity be considered a rural carrier for each of its study areas, regardless of whether those study areas have fewer than 100,000 access lines, if any *single* study area in which it operates contains fewer than 100,000 access lines. Under this interpretation, which only Citizens Utilities supports, an incumbent LEC offering service to a significant portion of a state, including major urban areas, could be certified as a rural carrier for all study areas that it serves within the state if it merely has one outlying study area with less than 100,000 access lines. We find this interpretation to be inconsistent with the statutory language that an entity is an rural telephone company only ''to the extent'' that it serves a study area with fewer than 100,000 lines. Essentially, Citizens Utilities' interpretation would read that limiting language out of section 153(37). The effect of such a reading would be to permit some of the largest LECs in the nation to claim rural status for all of their study areas if they happen to serve a rural study area within in the state. Such an interpretation would undermine not only the Commission's universal service support mechanisms, but also the fundamental procompetitive policies underlying the 1996 Act. We do not believe that this could be what Congress intended when it specified that carriers would be deemed rural telephone companies ''to the extent'' that they satisfied the various criteria, including criterion (C) pertaining to serving study areas with less than 100,000 access lines. Accordingly, consistent with the language of the statutory provision, its purpose, and its context in the Act, we adopt the interpretation that a LEC may be properly considered a rural carrier with respect to those study areas to which its operating company provides service to fewer than 100,000 access lines. In contrast, a LEC will be deemed a non-rural carrier for study areas serving more than 100,000 access lines unless it satisfies one of the other criteria under section 153(37).

350. We also sought comment in the *Inputs Further Notice* regarding the proper interpretation of ''communities of more than 50,000.'' GTE offers an interpretation of this phrase based on the definition of ''rural area'' in § 54.5 of the Commission's rules. GTE calculates its percentages of rural and non-rural lines by determining whether each of its wire centers is associated with a metropolitan statistical area (MSA). The lines in each wire center associated with an MSA are considered to be urban, unless the wire center has rural pockets, as defined by the most recent Goldsmith Modification. The approach suggested by GTE in its comments has merit because it prevents rural treatment of a suburban area adjacent to a census-designated place. At this time, however, there is no information on the record to indicate that this circumstance presents a serious problem in our determination of a carrier's status as a rural or non-rural company. Other commenters addressing the issue support the definition of ''communities of more than 50,000'' by using Census Bureau statistics for legally incorporated localities, consolidated cities, and census-designated places, and some specifically reject the use of the Commission's definition in § 54.5 because of the added complication of its use.

351. Because GTE's approach is more complicated and difficult to administer and because the consequences of the approach would reach only a few, if any, rural carriers' study areas, we decline to adopt GTE's interpretation of ''communities of more than 50,000.'' Instead, we now adopt the use of Census Bureau statistics for legally incorporated localities, consolidated, cities, and census-designated places for identifying communities of more than 50,000, as Census Bureau statistics are widely

available and may be consistently applied by the Commission. We further require that, when a carrier files for rural certification under criterion (D), it must include in its certifying letter a list of all communities of more than 50,000 to which it provides service, the population of those communities, the number of access lines serving those communities, and the total number of access lines the carrier serves.

3. Identification of Rural Telephone Companies

352. States apply the definition of rural telephone company in determining whether a rural telephone company is entitled to an exemption under section 251(f)(1) of the Act and in determining, under section 214(e)(2) of the Act, whether to designate more than one carrier as an eligible telecommunications carrier in an area served by a rural telephone company. Although the Commission used the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support, there is no statutory requirement that it do so. The Commission adopted the Joint Board's recommendation to allow rural carriers to receive support based on embedded costs for at least three years, because, as compared to large LECs, rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit as much from economies of scale and scope. The Commission also noted that, for many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations.

353. In the *Inputs Further Notice,* we sought comment on whether to reconsider the means of distinguishing rural and non-rural carriers. Commenters generally oppose any reconsideration of our decision to use the definition of rural telephone company to distinguish between rural and non-rural carriers for the purpose of evaluating universal service support on the grounds that changing the definition at this time could disrupt the settled expectations that they have developed. We agree that we should not change our reliance on the statutory definition of rural telephone company to distinguish between rural and non-rural carriers for universal service purposes. Accordingly, we will leave in place the Commission's decision to use the definition of rural telephone company in section 153(37) of the Communications Act to distinguish rural telephone companies from non-rural ones.

VIII. Appendices

354. Appendix A contains the input values adopted in this Order for use in the synthesis model. Appendix B explains the methodology used for estimating the input values for outside plant structure and cable costs. Appendix C describes the methodology used for estimating the input values for switching costs. Appendix D describes the methodology used for estimating the input values for expenses, including: the development of expense to investment ratios; the regression equations used to estimate common support services expenses; the analysis used to estimate marketing expenses; local number portability rates for particular companies; and the formula used to calculate the general support facilities allocation factor.

IX. Procedural Matters and Ordering Clause

A. Final Regulatory Flexibility Analysis

355. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Inputs Further Notice*. The Commission sought written public comment on the proposals in the *Inputs Further Notice,* including comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended.

356. *Need for and Objectives of This Order*. In the *Universal Service Order*, the Commission adopted a plan for universal service support for rural, insular, and high-cost areas to replace longstanding federal subsidies to incumbent local telephone companies with explicit, competitively neutral federal universal service mechanisms. In doing so, the Commission adopted the recommendation of the Joint Board that an eligible carrier's support should be based upon the forward-looking economic cost of constructing and operating the networks facilities and functions used to provide the services supported by the federal universal service mechanism.

357. In the *Universal Service Order,* the Commission also determined that rural and non-rural carriers will receive federal universal service support determined by separate mechanisms until at least January 1, 2001. The Commission stated that it would define rural carriers as those carriers that meet the statutory definition of a rural telephone company in section 153(37) of the Communications Act. We have found that carriers self-certifying as rural have not always applied section 153(37) uniformly. We clarify our interpretation of section 153(37). We also address the possibility that our annual self-certification requirements may be modified or eliminated in order to reduce the reporting burden on filing entities.

358. Our plan to adopt a mechanism to estimate forward-looking costs for larger, non-rural carriers has proceeded in two stages. On October 28, 1998, the Commission completed the first stage of this proceeding: the selection of the model platform. The platform encompasses the aspects of the model that are essentially fixed, primarily assumptions about the design of the network and network engineering. In this Order, we complete the second stage of this proceeding, by selecting input values for the cost model, such as the cost of cables, switches and other network components, in addition to various capital cost parameters.

359. *Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA*. No comments were received specifically in response to the IRFA. We received several comments, however, addressing concerns that may affect small entities. These comments universally supported our proposal, adopted in this Order, to reduce the burden of carriers self-certifying as rural by eliminating the annual filing requirement.

360. *Description and Estimate of the Number of Small Entities to which the Order will Apply.* The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.

361. We have included small incumbent LECs in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone

communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

362. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers specifically directed toward LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange service as incumbents. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs that may be affected by this Order. We also note that, with the exception of our clarification of the definition of rural carrier under section 153(37) and the modification of reporting requirements, the rules adopted by this Order apply only to larger, non-rural LECs.

363. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This Order imposes no new reporting, recordkeeping, or other compliance requirements. As discussed, this Order immediately eliminates the requirement that carriers serving study areas with fewer than 100,000 access lines must annually file letters certifying themselves as rural carriers in order to remain in the rural carrier universal service support mechanism. Further, this Order eliminates, after the July 1, 2000, filing deadline, the requirement that rural carriers serving study areas with more than 100,000 access lines must file annual self-certification letters. All rural carriers must, however, notify the Commission in the event of a change in rural status.

364. The overall effect of this Order will be to reduce reporting, recordkeeping, and other compliance requirements for small entities. This benefit will apply to all carriers deemed rural under section 153(37), regardless of whether they are a small or large entity. Carriers serving study areas with fewer than 100,000 access lines—which are more likely to be small entities than those serving study areas with more than 100,000 access lines—will be most immediately benefited, as no further filings will be required of them unless and until their rural status changes. The largest carriers will generally be non-rural and not affected by this change in reporting. To the extent that large and small entities are treated differently, therefore, small entities will not carry a disproportionately high cost of compliance.

365. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As noted, with respect to reporting requirements affecting small entities, we eliminate the burden of an annual filing requirement for rural carriers. For carriers serving study areas with fewer than 100,000 access lines, this change is effective immediately. Rural carriers serving study areas with more than 100,000 access lines will be required to file a self-certification letter by July 1, 2000, but will not be required to refile additional annual certifications unless their status changes. These changes have at their heart consideration of the resources of small entities, and will reduce, if not eliminate, the costs of compliance for small entities. The alternative to this approach would have been to require additional unnecessary self-certification letters from the vast majority of filing carriers, even though the data supporting those self-certifications are easily verified by publicly available documentation. The other changes to Commission rules that we adopt in this Order affect only larger, non-rural LECs, and should have no direct affect on small entities.

366. *Report to Congress.* The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

367. The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104–13, and has been approved in accordance with the provisions of that Act. On August 4, 1999, the Office of Management and Budget approved the proposed requirements contained in the *Inputs Further Notice* under OMB control number 3060–0793.

C. Ordering Clauses

368. It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403 that this Report and Order is hereby adopted.

369. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carrier.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30877 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–306]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service adopts a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers. This document also addresses specific

methodological issues relating to the calculation of forward-looking support, including the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the targeting of the statewide support amount. It also modifies the rules governing our existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism.

DATES: Effective December 1, 1999 except for §§ 36.611(h), 36.612, 54.307(b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the Federal Register announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96–45 released on November 2, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act), Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services. Specifically, in section 254 of the Act, Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.

2. Based on recommendations from the Joint Board in the *Second Recommended Decision,* 63 FR 67837 (December 9, 1998), and building on the framework the Commission set forth in the *First Report and Order,* 62 FR 32862 (June 17, 1997) and *the Seventh Report and Order,* 64 FR 30917 (June 9, 1999), we establish in this Order a new federal high-cost support mechanism that will be sufficient to enable non-rural carriers' rates for services supported by universal service to remain affordable and reasonably comparable in all regions of the nation. The support determined by the mechanism described in this Order will replace the support that non-rural carriers currently receive from the existing high-cost fund, which provides support for intrastate rates and services. The new high-cost support mechanism described in this Order provides support based on the estimated forward-looking costs of providing supported services. The forward-looking costs and the cost model that we will use to estimate them are discussed at length in the companion *Inputs Order* adopted. With the adoption of this Order and the *Inputs Order,* the Commission's new forward-looking high-cost support mechanism for non-rural carriers will be ready to begin providing support effective January 1, 2000.

3. Our methodology for determining non-rural carriers' high-cost universal service support conforms to the 1996 Act's goals and balances the competing interests involved in this proceeding. As the 1996 Act requires, the Commission has developed policies for reforming high-cost support in consultation with the Joint Board, and this Order reflects deference to states' interests and needs. We also have attempted to balance the various and often countervailing concerns of many industry segments that have an interest in the outcome of this proceeding, including incumbent local exchange carriers (LECs), interexchange carriers (IXCs), competitive LECs, and wireless carriers.

4. Because of the disparate interests involved and the complexity of the issues, however, this has not been an easy process. For example, high-cost states, which are likely to be net recipients of high-cost support, have very different views on universal service than low-cost states, which are likely to be net payors of high-cost support. On the other hand, all states have expressed similar concerns about the Commission's jurisdiction. Similarly, incumbent LECs in high-cost states, which are likely to be major recipients of support, particularly in the near term, have very different views than other LECs, IXCs, and wireless carriers, which are major contributors to federal support mechanisms. In some cases, however, IXCs and wireless carriers are entering competitive local service markets, so that these carriers are both contributors and potential recipients.

5. The 1996 Act charged the Commission with resolving the difficult issues surrounding universal service, within prescribed guidelines, and so we must balance the competing interests of these divergent parties. In this proceeding, the Commission has done so in a way that is faithful to the statute's commitment to ensuring that support mechanisms serve ''*consumers* in all regions in the nation,'' and that consumers in high-cost areas continue to have access to reasonably comparable services at reasonably comparable rates.

II. Order

A. Introduction

6. In this Order, we adopt a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers. The methodology for this mechanism is based on the framework outlined in the *Seventh Report and Order,* with certain modifications. Specifically, the forward-looking mechanism compares the costs of providing supported services in a particular state, as determined by the cost model, to a national benchmark, and provides support for costs that exceed that benchmark. In constructing this mechanism, we begin by examining the appropriate federal and state roles in providing universal service support for intrastate rates. Next, we address specific methodological issues relating to the calculation of forward-looking support, including the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the targeting of the statewide support amount.

We then address the hold-harmless and portability provisions, and the methods to ensure that non-rural carriers use support in compliance with the 1996 Act. We next address the assessment and recovery bases for contributions to the high-cost support mechanism. We also describe our plan to address implicit support in access charges as part of our separate *Access Charge Reform* proceeding. In addition, we modify the rules governing our existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism. Finally, we lift the stay on our section 251 pricing rules, effective May 1, 2000. We emphasize that there may be several

ways in which we could design the various components of the federal support mechanism consistent with section 254, but we believe, in light of the facts before us and in consultation with the Joint Board, that the method we adopt here appropriately balances the varied and competing goals of section 254.

7. The new forward-looking support mechanism that we adopt will provide forward-looking support effective January 1, 2000. As discussed, however, the actual disbursement of forward-looking support (retroactive to January 1, 2000) will not occur until the second quarter of 2000. Moreover, no commenter has claimed that implementation of the new forward-looking mechanism presents any ''Y2K'' problems. Thus, we do not foresee any ''Y2K'' issues associated with the transition to the new forward-looking mechanism because there will be no actual change in support levels on or around January 1, 2000.

B. Federal and State Roles in Providing Universal Service Support for Intrastate Rates

8. To construct an appropriate methodology for providing federal high-cost support, we must first examine the respective roles of federal and state regulators in providing such support. Historically, federal programs have provided explicit intrastate high-cost support for local loop and switching costs that significantly exceeded the national average. Many state programs, on the other hand, have largely achieved the goals of intrastate universal service implicitly through rate structures and, to a lesser extent, through explicit state high-cost support mechanisms. As discussed, many state rate structures have included significant implicit support for universal service. The states' historical authority over intrastate ratemaking, and thus their primary responsibility for intrastate universal service, has been recognized by the Commission. The Commission, however, has had a longstanding goal of promoting universal service nationwide, and thus has provided support for intrastate-allocated costs that significantly exceed the national average.

9. *In Texas Office of Public Utility Counsel* v. *FCC,* the Fifth Circuit held that section 254 of the Act did not affect the proscription, set forth in section 2(b), against Commission regulation of intrastate rates. Thus, states alone have jurisdiction for setting rates for intrastate services. Consequently, states alone have the authority to set rates for intrastate services that are just, reasonable, affordable, and reasonably comparable. We conclude that Congress would not have imposed on the Commission obligations regarding intrastate rates that the Commission does not have the legal authority to effectuate. Indeed, the Fifth Circuit found that the Commission was permitted (but not required) to provide federal universal service support for intrastate services. The Fifth Circuit also found that the Commission may condition such support on assurances by states that such federal support will be used for its intended purposes.

10. In the *Second Recommended Decision,* the Joint Board recognized that section 254 does not alter the states' historical responsibility for intrastate universal service. The Joint Board interpreted section 254(b)(3)'s principle that rates be ''reasonably comparable'' to refer to ''a fair range of urban/rural rates both within a state's borders, and among states nationwide.'' The Joint Board found that the federal role in achieving reasonably comparable rates should be to provide ''those amounts necessary to establish a standard of reasonable comparability of rates across states.'' According to the Joint Board, the state role is to ''supplement, as desired, any amount of federal funds it may receive,'' and to ''address issues regarding implicit intrastate support in a manner that is appropriate to local conditions.'' Stated another way, the primary federal role is to enable reasonable comparability among states (*i.e.*, to provide states with sufficient support so that states can make local rates reasonably comparable among states), and the primary role of each state is to ensure reasonable comparability within its borders (*i.e.,* to apply state and federal support to make local rates reasonably comparable within the state). This Order adopts that approach as a policy goal. In addition, the approach is consistent with the Fifth Circuit's decision regarding the Commission's responsibility for supporting intrastate services. It also is consistent with Congress's goal of making universal service support explicit.

C. New Forward-Looking High-Cost Support Methodology

11. This Order sets out a methodology—in essence, a set of formulas—that will be used to determine non-rural carriers' support amounts for serving rural and high-cost areas. The methodology computes a specific support amount, and can be replicated by carriers or other members of the public. The methodology will change over time only in the ways we specifically describe herein or pursuant to modifications that we make in the future pursuant to public notice and comment in this proceeding. Thus, the methodology is specific and predictable. Moreover, for the reasons discussed, we find that this mechanism will result in sufficient support to enable affordable and reasonably comparable rates for customers in areas served by non-rural carriers.

12. In the *First Report and Order,* the Commission concluded that high-cost support should be based on forward-looking costs. Since that time, the Commission has continued to work to adopt a cost model that is reasonably accurate and verifiable. As an initial matter, we note that in the *Inputs Order* we have affirmed the Commission's decision to base support calculations on forward-looking costs. Moreover, the Commission and its staff have undertaken a thorough review of the model and its input values over the past six months. In so doing, the staff has coordinated extensively with, and received substantial input from, the Joint Board staff and interested outside parties. As a result of this examination of the model, we have concluded in the Inputs Order that the model generates reasonably accurate estimates of forward-looking costs and that the model is the best basis for determining non-rural carriers' high-cost support in a competitive environment. We have found that none of the criticisms of the model undermine our decision to use it for calculating non-rural carriers' high-cost support. As discussed in the *Inputs Order,* we believe that using the model is the best way to determine non-rural carriers' support amounts for the funding year beginning January 1, 2000. We also recognize, however, that the model must evolve as technology and other conditions change. We therefore have committed in the *Inputs Order* to initiating a proceeding to study how the model should be used in the future and how the model itself should change to reflect changing circumstances.

13. Finally, as discussed further in the *Inputs Order,* we reiterate that the federal cost model was developed for the purpose of determining federal universal service support, and that it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. The Commission has not considered the appropriateness of this model for any other purposes, and we have cautioned parties from making any claims in other proceedings based upon the input values adopted in the *Inputs Order.*

14. Consistent with the goals of federal universal service support

discussed, the new forward-looking support mechanism will compare the average costs of providing supported services in a given area to the national benchmark, provide support for costs exceeding the national benchmark, and then target that support based on wire-center costs, so that the amount of support available to a competitor depends on the cost level of the wire center. In this section, we examine the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the method for targeting statewide support amounts.

1. Area Over Which Costs Should Be Averaged

15. *Federal and State Roles.* After further consultation with the Joint Board, we believe that the federal mechanism should calculate support levels for non-rural carriers by comparing the forward-looking costs of providing supported services, averaged at the statewide level, to the national benchmark. Of all the potential approaches suggested, we believe that statewide averaging is the approach most consistent with the federal role of providing support for intrastate universal service to enable reasonable comparability of rates among states. Federal high-cost support is generated through contributions by all interstate telecommunications carriers for purposes of providing support to high-cost states. This has the effect of shifting money from relatively low-cost states to relatively high-cost states. By averaging costs at the statewide level, the federal mechanism compares the relative costs of providing supported services in different states. The federal mechanism will then provide support to carriers in those states with costs that exceed the national average by a certain amount, i.e., the national benchmark (135 percent of the national average). This approach ensures that no state with costs greater than the national benchmark will be forced to keep rates reasonably comparable without the benefit of federal support. By averaging costs at the statewide level, the federal mechanism is designed to achieve reasonable comparability of intrastate rates among states based solely on the interstate transfer of funds.

16. The states, in contrast, have the primary responsibility for ensuring reasonable comparability of rates within their borders. The federal mechanism leaves this state role intact, but provides support to carriers in states with average costs substantially in excess of the national average. With the elimination of the state share requirement, no state resources are relied upon by the federal mechanism in providing support for costs above the benchmark. This permits the states to use their substantial resources to achieve the goal of reasonably comparable rates within states. In many cases, states have brought their resources to bear through rate averaging and other forms of implicit support. Recently, some states have created explicit support mechanisms. We recognized the states' jurisdiction over intrastate support in the *Seventh Report and Order,* when we observed that ''the erosion of intrastate implicit support does not mean that federal support must be provided to replace [it]. Indeed, it would be unfair to expect the federal support mechanism, which by its very nature operates by transferring funds among jurisdictions, to bear the support burden that has historically been borne within a state by intrastate, implicit support mechanisms.'' Thus, we believe that statewide averaging, together with the rest of the methodology we adopt, is consistent with the division of federal and state responsibility for achieving reasonable comparability for non-rural carriers.

17. *Joint Board.* We also find that averaging costs at the statewide level is consistent with the Joint Board's vision for the scope and purpose of the federal high-cost support mechanism. The Joint Board noted that this Commission alone has the ability to implement a support mechanism that transfers support from one state to another, and stated that federal support should be provided to achieve reasonably comparable rates across states. The Joint Board envisioned that the states should have the primary responsibility for ensuring reasonable comparability within states. Although the Joint Board recommended averaging costs at the study area level instead of the statewide level, it did so based on its concern that there would be insufficient time before implementation of the new federal mechanism for some states to adopt the necessary mechanisms to transfer support among non-rural carriers in different study areas within a particular state. The carrier-by-carrier interim hold-harmless approach that we adopt, however, alleviates the Joint Board's concern. Under that approach, each non-rural carrier within a state will receive no less support under the new mechanism than it receives under the current mechanism. Because the carrier-by-carrier interim hold-harmless approach will be in effect for up to three years from implementation of the new forward-looking mechanism, states have no immediate need to transfer support among study areas within their borders. In addition, states should have ample time to implement whatever state mechanisms are necessary to achieve such transfers before the Commission reviews the need for a hold-harmless provision. Therefore, the only impediment to statewide averaging identified by the Joint Board—lack of sufficient time for state action—has been removed by the carrier-by-carrier interim hold-harmless provision.

18. *Alternative Approaches.* We have carefully reviewed the alternatives to statewide averaging, and in the context of non-rural carriers, in light of the overall methodology we adopt here and the specific circumstances before us, we conclude that statewide averaging is the best approach to further the goals of section 254, while respecting the historical federal and state roles for universal service. There are several benefits to statewide averaging. Statewide averaging considers costs averaged with regard to state boundaries, thereby taking into consideration each state's authority and ability to achieve reasonable comparability of rates within its borders. We recognize that averaging at the study area, UNE cost zone, or wire center levels would have the advantage of providing a more granular measure of support, and that granularity of support is a desirable goal in a competitive marketplace. Given the specific circumstances and purposes we address here, however, we believe that statewide averaging, coupled with our decision to target the distribution of support to wire centers with the highest costs in a state, better balances the goal of targeting support to high-cost areas against the recognition that states can and should satisfy their own rate comparability needs to the extent possible before drawing support from other states.

19. For example, assume that the Commission chose to average costs at the wire center level. Under this approach, the costs of providing supported services in individual wire centers would be averaged together to arrive at a national average cost per wire center. Wire centers with costs that exceed the national benchmark would receive support. Because the costs in high-cost wire centers in a given state would not be averaged first with lower-cost wire centers in the same state, wire center averaging would ignore the state's authority and ability to ensure reasonable comparability of rates within its borders. Stated another way, the federal mechanism would shift funds

from low-cost wire centers (and customers) in other states to fund high-cost wire centers in the state at issue, and would do so without giving the state the opportunity to support its high-cost wire centers with funds from its low-cost wire centers.

20. The same issue arises if costs are averaged at the UNE cost zone level. Pursuant to our UNE cost zone rules, state commissions must set different rates for elements in at least three defined geographical areas within the state to reflect geographic cost differences, and may employ existing density-related zone pricing plans or other cost-related zone plans established pursuant to state law. Under a UNE cost zone approach to averaging forward-looking costs, costs in individual UNE cost zones would be averaged together to arrive at a national average cost per UNE cost zone. UNE cost zones with costs greater than the benchmark would receive support. As in the wire center approach, the federal mechanism would provide support to high-cost UNE cost zones in a state, without regard to the state's authority or ability to ensure reasonable comparability of rates within its borders. In providing such support, the federal mechanism would shift funds from low-cost UNE zones in other states to high-cost UNE zones in the subject state, thus saddling ratepayers in other states with burdens more appropriately placed on ratepayers in the subject state. Additionally, although we expressed concern in the *Seventh Report and Order* that averaging costs over an area larger than the UNE cost zone could result in opportunities for arbitrage or other uneconomic activities, our concern was based on the assumption that all lines within that larger geographic area would be eligible for the same amount of support, even though UNE prices would differ among UNE zones. Because the new federal mechanism calculates the amount of support at the statewide level, but targets that support to high-cost wire centers within the state, all lines within a state are not eligible for the same amount of support. Thus, the potential for arbitrage or other uneconomic activity is reduced.

21. Study area cost averaging suffers from the same infirmities as wire center or UNE cost zone averaging. In many states, only one non-rural carrier provides service. In such states, the state boundary and the study area boundary are the same. Some states, however, possess more than one non-rural carrier, and thus more than one study area. Thus, under a study area averaging approach, costs in individual study areas would be averaged together to arrive at a national average cost per study area. Study areas with costs greater than the benchmark would receive support. The federal mechanism, therefore, would shift funds from low-cost study areas in one state to high-cost study areas in another state without regard to the recipient state's authority or ability to provide support for costs within its borders. In addition, such a federal mechanism could provide greater support to a state with more than one study area than it would to a state with a single study area, even though both states have the same average forward-looking costs on a statewide level, thus discriminating against a state that has only one non-rural study area. For example, assume that a state with a single study area has average costs below the benchmark and therefore does not receive forward-looking support. Assume that another state has the same average statewide costs below the benchmark, but has two study areas, one with costs above the benchmark and one with costs below the benchmark. Under a study area averaging approach, the federal mechanism would provide support for the high-cost study area even though the statewide average cost is below the benchmark. This result would burden the federal support mechanism (and thus all ratepayers) with providing support for a state that, through happenstance, has more than one non-rural carrier, and therefore more than one study area. Such support should instead be provided by the state in its role as the primary ratemaking authority and provider of support within its borders.

22. Several commenters have suggested nonetheless that a decision by the Commission to average costs over a large geographic area is merely an arbitrary way to restrain the size of the fund created by the new forward-looking support mechanism. We reject this assertion. Congress stated that the Commission shall establish specific, predictable, and *sufficient* mechanisms to preserve and advance universal service. Moreover, the Fifth Circuit approved the Commission's use of a methodology based on forward-looking cost models for this task ''[a]s long as [the Commission] can reasonably argue that the methodology will provide sufficient support for universal service * * *.'' Thus, despite our general agreement with the Joint Board's conclusion that the federal fund should not increase substantially at this time, our primary goal in this proceeding must be to provide sufficient universal service support to enable reasonable comparability of rates among states. We meet this policy goal, however, in a manner consistent with the federal role for providing universal service support, which, as discussed, we find to be transferring funds among states. Accordingly, we conclude that statewide averaging of forward-looking costs is the appropriate means for achieving the federal mechanism's primary goal of enabling reasonable comparability of rates among states.

2. National Benchmark

23. In establishing a national cost benchmark to enable reasonably comparable rates among states, we observe that the 1996 Act does not define the term ''reasonably comparable.'' We find that Congress' use of the term ''reasonably'' indicates its recognition that the task of setting federal support amounts is not an exact science. Accordingly, consistent with our interpretations of ''reasonableness'' provisions elsewhere in the statute, we conclude that the term ''reasonably comparable'' leaves us substantial discretion to determine what is reasonable, including the manner in which we make that determination. The Joint Board interpreted the reasonable comparability standard to refer to a ''fair range'' of urban and rural rates both within a state's borders, and among states nationwide. In the *Seventh Report and Order,* the Commission adopted the Joint Board's interpretation. The Commission recognized, however, that reasonably comparable does not mean that rate levels in all states, or in every area of every state, must be the same. Therefore, we believe that reasonably comparable must mean some reasonable level above the national average forward-looking cost per line, *i.e.,* greater than 100 percent of the national average. In interpreting ''reasonably comparable,'' we must consider the burden placed on below-benchmark states (and ratepayers) whose contributions fund the federal support mechanism. We also must ensure that the benchmark we select, when taken together with other aspects of the overall funding mechanism, allows for universal service support that is specific and predictable.

24. We conclude that the level of the national benchmark should be set at 135 percent of the national average forward-looking cost per line for non-rural carriers. The federal mechanism will provide support for costs that exceed this national benchmark. A national benchmark of 135 percent falls within the range recommended by the Joint Board, and ensures that no state will face costs greater than 35 percent above the national average cost per line.

Moreover, setting the benchmark at 135 percent of the national average forward-looking cost is consistent with the precedent of the existing support mechanism and the comments we have received. The current mechanism begins providing support for costs between 115 and 160 percent of the national average cost per line, based on carriers' books, and the vast majority of non-rural carriers receive all their current support for costs in this range. The new national benchmark of 135 percent is near the midpoint of this range. Commenters generally proposed benchmark levels between 80 and 200 percent of the nationwide average. Vermont and US West, for example, advocated benchmarks of 80 percent and 115 percent, respectively. California stated that it uses an affordability benchmark of 150 percent. CBT, Sprint, and Western Wireless also advocate a 150 percent benchmark, and AT&T urges us to use a 200 percent benchmark. Thus, the 135 percent benchmark is a reasonable compromise of commenters' proposals. By adopting this benchmark, we do not mean to suggest that we could not, in consultation with the Joint Board, determine that a different level of benchmark is appropriate in future proceedings. In the context of non-rural carriers, and in light of the overall methodology we adopt here and the specific circumstances before us, however, we believe that the benchmark we adopt appropriately balances various goals under the statute. These goals include, among others, sufficiency, specificity, and predictability, as well as the need to achieve rate comparability. In addition, we have also attempted to ensure that the fund is no larger than necessary, and to minimize burdens on carriers and consumers that contribute to universal service mechanisms.

25. We believe that this level of support will provide states with the ability to provide for a ''fair range'' of urban and rural rates within their borders, and will be sufficient to ''prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels.'' Because no state will face costs, net of federal support, that exceed 135 percent of the national average, the federal mechanism will prevent excessive upward pressure on rates caused by high costs. This will remain true even as competition develops and pushes prices toward economic cost. We therefore find that using a benchmark set at 135 percent of the national average forward-looking cost per line will, at this time, in light of the facts before us, provide sufficient support to enable reasonably comparable rates.

26. We recognize that, irrespective of our policies, the development of competition may place pressure on implicit support mechanisms at the state level. For example, states that use above-cost pricing in urban areas to subsidize below-cost service in rural areas may face pressure to deaverage rates as competitors begin to offer cost-based rates to urban customers. Although this development may compromise states' ability to facilitate universal service using implicit support, it should not compromise states' ability to facilitate universal service through explicit support mechanisms. In addition, we do not believe it would be equitable to expect the federal mechanism—and thus ratepayers nationwide—to provide support to replace implicit state support that has been eroded by competition if the state possesses the resources to replace that support through other means at the state level. This approach is consistent with our discussion, of the appropriate, respective roles of the state and federal jurisdictions in providing universal service support.

27. We also believe that a national benchmark of 135 percent strikes a fair balance between the federal mechanism's responsibility to enable reasonable comparability of rates among states and the burden placed on below-benchmark states (and ratepayers) whose contributions fund the federal support mechanism. We recognize that selecting the national benchmark is not an exact science. We conclude, however, that a national benchmark of 135 percent of the national average cost per line will allow the federal mechanism to provide sufficient support pursuant to the Act, while at the same time minimizing the burden on those who fund the federal support mechanism. Moreover, we believe that, given the specific circumstances here, the mechanism we adopt is consistent with the Joint Board's conclusion that the federal high-cost support fund should be only as large as necessary, consistent with other requirements of the law.

28. Some commenters have suggested that our choice of a benchmark will necessarily be arbitrary, and some have suggested that we will intentionally set the benchmark with an eye to minimizing the size of the federal support mechanism. We reject these claims. We remain committed to the objective that the fund not be any larger than is necessary to achieve the various goals of section 254. As noted, we have attempted to set a benchmark level that provides sufficient support to enable reasonably comparable rates, as the statute requires. To do so, we have relied on the Joint Board's recommendations, the existing mechanism, and commenters' proposals to arrive at a benchmark level that reasonably balances the roles of the states and the federal mechanism to meet the statutory goals.

3. Support for Costs Above the National Benchmark

29. All of the proposals to limit the size of the high-cost support mechanism assume that costs will be averaged at the wire center or UNE cost zone level. As discussed, however, we have concluded that averaging costs below the statewide level is not the most appropriate means for the federal support mechanism to achieve the goals of the Act. We recognize that our primary mission in this proceeding is to construct a federal mechanism that provides sufficient support, and we conclude that using one of the proposals described to limit the amount of support available to states from the federal mechanism would not provide sufficient support and would be contrary to Congress' goals and the Fifth Circuit's decision. Therefore, we reject all four of these proposals.

30. We observe, however, that providing support for all loop costs that exceed the federal benchmark would not properly take account of our separations rules. Pursuant to the separations process, incumbent carriers currently recover, through interstate access rates, a portion of their book costs for all components necessary to provide supported services, *e.g.*, loop costs, switching costs, etc. Our separations rules specify the percentage of costs that will be recovered through interstate rates. In producing cost estimates, the cost model estimates only the forward-looking *intrastate* (*i.e.*, separated) costs for all of the components necessary to provide supported services, with three important exceptions: loop costs, port costs, and local number portability (LNP) costs. The model's estimates for loop and port costs consist of both the *intrastate and interstate* (i.e., unseparated) costs of the loop and port. The model's estimates of LNP costs consist solely of interstate costs. In this Order, we are addressing support to enable the reasonable comparability of *intrastate* rates. It would therefore be inappropriate for us to address costs in this Order that are recovered through interstate rates, as these costs, or their recovery, will not directly affect intrastate rates. Our methodology must therefore account for the percentage of

costs that are recovered in the interstate jurisdiction in determining how much support should be provided to enable the reasonable comparability of intrastate rates.

31. Our current separations rules allow carriers to recover 25 percent of their book loop costs through interstate rates. Carriers also recover 15 percent of their book port costs, on average, through interstate rates, and 100 percent of their LNP costs through the federal LNP cost recovery mechanism. We therefore conclude that the forward-looking mechanism will calculate support based on 75 percent of forward-looking loop costs, 85 percent of forward-looking port costs, and 0 percent of forward-looking LNP costs, as well as 100 percent of all other forward-looking costs determined by the cost model. Based on the percentage of forward-looking costs that the intrastate portion of each of these items represents, we have determined that together they represent 76 percent of total forward-looking costs. Therefore, we conclude that the federal mechanism should provide 76 percent of the portion of the forward-looking cost of providing the supported services that exceeds the national benchmark. We emphasize that this will not undermine the federal mechanism's ability to provide sufficient support. Rather, it is merely a safeguard to ensure that our mechanism adequately takes account of our separations rules and the division of cost recovery responsibility set forth in those rules. If necessary, we will adjust this support amount in light of further developments in our ongoing separations and access charge reform proceedings.

4. Elimination of the State Share Requirement from the Forward-Looking Support Methodology

32. After further consultation with the Joint Board, we conclude that determining support amounts for non-rural carriers in each state based on statewide averaged costs will, under these specific circumstances, more accurately reflect each state's ability to support universal service with its own resources than would imputing a per-line amount to each state to support universal service internally. Therefore, we reconsider and eliminate the state share requirement from the methodology adopted in the *Seventh Report and Order.*

33. We find that this result is consistent with both section 254 and the Joint Board's overarching recommendation that federal support not be dependent on any particular state action and that ''no state can or should be required by the Commission to establish an intrastate universal service fund.'' We conclude that the Joint Board's general recommendation, namely that the Commission abstain from requiring any state action as a condition for receiving federal high-cost universal service support (other than state certifications), represents the best policy choice at this time. Furthermore, we conclude that, together with the statewide averaging approach discussed, the elimination of the state share requirement better fosters the Joint Board's goal of ensuring that the states' ability to provide for universal service needs within their borders is reflected in the federal mechanism. Thus, we reconsider and eliminate the state share requirement from the methodology for the forward-looking high-cost support mechanism for non-rural carriers.

5. Targeting Statewide Support Amounts

34. We conclude that, after the total amount of forward-looking support provided to carriers in a particular state has been determined in accordance with the methodology set forth, which is based on statewide average costs, the total support amount will then be targeted so that support is only available to carriers serving those wire centers with forward-looking costs in excess of the benchmark, and so that the amount available per line in a particular wire center depends on the relative cost of providing service in that wire center. This targeting approach has two main effects. First, once the forward-looking mechanism calculates the total amount of support available within a state, the targeting approach determines which carriers receive support, and how much support is provided to each carrier. Second, the targeting approach determines the amount of support that is available to a competitive carrier that captures lines from an incumbent carrier.

35. As discussed, the primary role of the federal mechanism is to transfer funds among states, while states are primarily responsible for transferring funds within their borders. Our targeting approach is consistent with this determination. The total amount of support available within the state is based, as discussed, on statewide costs—not wire center costs—relative to the federal benchmark. If we did not target support, then the same amount of federal support would be available for any line served by a competitor within the state. Thus, support would be available, for example, to competitors that serve only low-cost, urban lines, regardless of whether the cost of any of the lines served exceeds the benchmark. This result would create uneconomic incentives for competitive entry, and could result in support not being used for the purposes for which it was intended, in contravention of section 254(e).

36. In the *Seventh Report and Order,* the Commission described this targeting process as follows: ''if we were to determine total support amounts in each study area by running the model to estimate costs at the study area level, [we propose] to distribute support by running the model again at the wire center level in order to target support to high-cost wire centers within the study area.'' We clarify that this process does *not* involve running the model more than once. The cost model, by design, calculates costs at the wire center level. The wire center costs generated by the model can then be averaged together, as desired, at higher levels of aggregation, such as the UNE cost zone level (assuming UNE cost zones are composed of wire centers), the study area level, or the statewide level. Thus, the model only needs to be run once to determine forward-looking costs for whatever methodology is selected.

37. Under the methodology we adopt, the model's wire center costs are averaged at the statewide level and a total statewide support amount is determined. That total statewide support amount is then targeted, based on the individual high-cost wire center costs in the state, as previously determined by the cost model, that are above the benchmark. For example, assume that a state has three wire centers with ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1—$20, Wire Center 2—$30, Wire Center 3—$40. Thus, the statewide average cost per line is $30 (((\$20×10)+(\$30×10)+(\$40×10))/30 lines). Assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted, the total amount of support provided to the carriers in the state would be $114.00 ((\$30–\$25)×30 lines×76%), or $3.80 per line per month of untargeted support. Under the targeting approach, however, this support is distributed to carriers serving lines in the highest-cost wire centers, based on the difference between costs in that wire center and the benchmark, the number of lines served, and a pro rata factor. Any carrier serving customers in the low-cost wire center receives no support. Targeting support to high-cost wire centers requires three calculations. First, support is calculated separately

for each wire center (wc-scale support). Wire Center 1 is not entitled to any support because its cost is below the benchmark. Wire Center 2's wc-scale support would be $38.00 (($30 − $25)×10 lines×76%). Wire Center 3's wc-scale support would be $114.00 (($40 − $25)×10 lines×76%). Second, a pro-rating factor is calculated for the state. Total wc-scale support for both wire centers is $152 ($38.00+$114.00). Because only $114.00 of support is available in the state, each wire center will receive 75 percent ($114/$152) of its wc-scale support. Third, the pro-rating factor is applied to each wire center eligible for support. In Wire Center 2, support will be $2.85 per line ($38.00×75%/10). In Wire Center 3, support will be $8.55 per line ($114.00×75%/10). Total support in the state, distributed in this way, is $114.00 (($2.85×10)+($8.55×10)). The targeting mechanism, therefore, provides support to carriers serving the highest cost customers, but within the overall limit on the state's support amount from the federal mechanism.

38. By comparison, a uniform distribution in the hypothetical state described would result in all lines in the state receiving $3.80. Thus, even though a carrier serving lines in Wire Center 1 has costs ($20) below the benchmark ($25), it would receive a substantial amount of support ($3.80) for those lines, resulting in a windfall for the carrier and an artificial incentive for other carriers to compete in that wire center. At the same time, although the carrier serving lines in Wire Center 3 has costs ($40) above the benchmark ($25), it would receive a support amount ($3.80) substantially below its costs, thereby discouraging competitive entry in that wire center and placing increased pressure on the state to provide additional support.

39. By targeting the total amount of support to high-cost wire centers, the federal mechanism avoids the inefficiencies and potential market distortions that could be caused by distributing federal support on a uniform statewide basis. We believe that this distribution methodology ensures that federal high-cost support provided by state-to-state transfers will flow to carriers serving the high-cost areas within each state.

40. After further consultation with the Joint Board, we recognize that some states may wish to have federal support targeted to an area different than the wire center, e.g., the UNE cost zone, in order to achieve the individual state ratemaking goals unique to a particular state. We believe that such an approach is consistent with the states' primary role in ensuring reasonable comparability within their borders and would give the states a degree of flexibility in reaching that goal. Therefore, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target federal support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes federal support to be targeted, and an explanation of how that approach furthers the preservation and advancement of universal service within the state.

D. Interim Hold-Harmless Provision

41. We conclude that the new federal high-cost support mechanism will contain an interim hold-harmless provision that provides hold-harmless support on a carrier-by-carrier basis. That is, no carrier will receive less support, on a per-line basis, than it would have received if we had continued to provide support under the existing high-cost support mechanism. To accomplish this result, we shall calculate interim hold-harmless support pursuant to the existing high-cost support mechanism for non-rural carriers in part 36 of our rules for the duration of the interim hold-harmless provision. Interim hold-harmless support also shall include LTS under § 54.303 of our rules for those non-rural carriers that would otherwise be eligible for LTS if we had continued to provide support under our existing high-cost support mechanism. To the extent that a carrier qualifies for forward-looking support, in an amount greater than it would receive pursuant to the existing mechanism, the carrier shall receive support based solely on the forward-looking methodology. To the extent that a carrier does not qualify for forward-looking support, or qualifies for forward-looking support in an amount less than it would receive pursuant to the existing mechanism, the carrier shall receive interim hold-harmless support based solely on the existing support mechanism in part 36 of our rules, and, if applicable, LTS under § 54.303 of our rules. Thus, we will ensure that no non-rural carrier will receive less support on a per line basis than it receives under the current mechanism.

42. Existing federal high-cost support under part 36 and § 54.303 is calculated on a carrier-by-carrier basis and is reflected in the recipient carrier's rates. Our continuation of the high-cost support mechanism under part 36 and § 54.303, as an interim hold-harmless provision, therefore, effectively adopts a carrier-by-carrier hold-harmless approach. The majority of commenters supporting a hold-harmless provision are in favor of a carrier-by-carrier approach. We believe that a carrier-by-carrier hold-harmless provision is necessary to ensure that no sudden or undue disruption in consumer rates occurs during the transition to the new federal high-cost support mechanism based on forward-looking economic costs. Moreover, as discussed, an interim carrier-by-carrier hold-harmless provision ensures that states will not have to take immediate action to transfer funds among carriers within their borders as a result of our decision to average costs at the statewide level.

43. We emphasize, however, that we do not intend for the continuation of high-cost support under part 36 and § 54.303 as an interim hold-harmless provision, to insulate carriers from changes in their support amounts due to changed circumstances unrelated to the rules adopted in this Order. If a carrier becomes ineligible for high-cost universal service support after January 1, 2000, then the carrier shall not continue to receive hold-harmless support under part 36 or § 54.303 of our rules. In addition, our continuation of support under part 36 and § 54.303 as an interim hold-harmless provision ensures that, if the carrier's high-cost universal service support would have changed under the existing mechanism after December 31, 1999, then the carrier's hold-harmless support will be adjusted to reflect that change. We believe that computing hold-harmless support under part 36 and § 54.303 of our rules on an ongoing basis is a better policy choice than simply ''freezing'' support levels as of a certain date. Freezing hold-harmless support could provide windfalls, or create hardships, for carriers that should have experienced changes in their support amounts through the normal operation of part 36 and § 54.303. Therefore, we reject the frozen hold-harmless approach.

44. We recognize that an interim carrier-by-carrier hold-harmless provision may increase the size of the federal high-cost fund slightly when compared to a state-by-state hold-harmless provision. Nonetheless, we agree with commenters that this concern is outweighed by the potential for rate shock in high-cost areas during the transition to a forward-looking mechanism if carriers are not fully held harmless. Under the interim carrier-by-carrier hold-harmless provision that we adopt, the amount of federal high-cost support provided to each non-rural carrier will be the greater of the amount indicated by the new forward-looking

support mechanism, or the explicit amount of federal high-cost support that the carrier would receive, on a per-line basis, under the operation of the existing high-cost support mechanism at part 36 and § 54.303 of the Commission's rules. Specifically, all carriers will continue to report cost and loop count data pursuant to part 36. In the event that carriers in a particular state do not qualify for forward-looking support pursuant to part 54 of our rules because the statewide average forward-looking cost per line is below the national cost benchmark, or the amount determined pursuant to § 54.309 of our rules is less than the amount that would be determined under part 36 and § 54.303, then those carriers shall receive interim hold-harmless support pursuant to part 36 and, if applicable, § 54.303. This provision will ensure that no non-rural carrier receives less federal high-cost universal service support per line under the new mechanism than it receives under the current mechanism.

45. Rather than simply making available a uniform hold-harmless amount to each non-rural carrier, however, we conclude that hold-harmless support must be targeted for competitive purposes to the high-cost wire centers served by a non-rural carrier. We believe that targeting hold-harmless support to individual wire centers is necessary for many of the same reasons that we chose to target forward-looking support to individual wire centers. By targeting hold-harmless support to individual wire centers, we can encourage competitive entry in high-cost wire centers. Targeting also avoids the economic inefficiencies that could be caused by making hold-harmless support available to competitors on a uniform basis among all of the wire centers served by a carrier, such as arbitrage between deaveraged UNE rates and averaged support in low-cost wire centers.

46. Because the interim hold-harmless support provided pursuant to part 36 and § 54.303 of our rules, unlike forward-looking support, will be based on carriers' book costs rather than the forward-looking methodology, the amount of hold-harmless support provided is not related to the level of the national benchmark. Thus, during the limited period for which hold-harmless support is available, certain carriers may receive support for costs that are below the national benchmark for forward-looking support. To ensure that hold-harmless support is available in the highest cost wire centers, we adopt a method for targeting hold-harmless support that is slightly different than the method we adopted for targeting forward-looking support. Specifically, as discussed in the following paragraph, we adopt a cascading approach to target hold-harmless support, so that a carrier's highest-cost wire centers receive support before its lower-cost wire centers receive support. Thus, while the total amount of interim hold-harmless support available to a carrier is determined pursuant to part 36 and § 54.303, that amount is targeted to the carrier's individual wire centers based on the forward-looking costs of providing supported services in those wire centers as determined pursuant to § 54.309 of our rules. As we explained, carriers will receive lump sum support payments, and the states can direct carriers to spend the federal support in a manner consistent with section 254(e), though not necessarily in the wire center to which the support was targeted. By targeting hold-harmless support, however, the federal mechanism ensures that, in a wire center where the incumbent is receiving hold-harmless support, a competitor will receive an amount of support that is related to the costs in that wire center.

47. For example, assume a state has a single carrier with three wire centers in the state and ten lines in each wire center. Assume that the average forward-looking cost per line in each wire center is as follows: Wire Center 1—$15, Wire Center 2—$20, Wire Center 3—$25. Thus, the statewide average cost per line is $20 (($150+ $200+$250)/30 lines = $20/line). Assume further that the national benchmark equates to $22 per line, and therefore the carrier receives no forward-looking support under the forward-looking methodology in part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of $90 of interim hold-harmless support as determined pursuant to part 36 of our rules. Under our targeting approach, the hold-harmless support is distributed first to the wire center with the highest costs until that wire center's costs, net of support, equal the costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first $50 of hold-harmless support ($5 per line) would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has average costs of $20 per line. The remaining $40 of hold-harmless support would be divided equally on a per-line basis between Wire Center 2 and Wire Center 3. Thus, both wire centers would receive an additional $2 per line ($40/20 lines), so that the average forward-looking costs, net of hold-harmless support, in Wire Center 2 and Wire Center 3 would be $18 per line.

48. Moreover, because we have decided that a competitor that captures a customer from an incumbent is entitled to any per line hold-harmless support that the incumbent is receiving, the distribution described is necessary to prevent uneconomic incentives for competitive entry, potential for arbitrage with UNE rates, and to ensure that support reaches the areas where it is needed most. If hold-harmless support were not targeted to high-cost wire centers, then a uniform hold-harmless amount would be available for a competitor serving any line in the state, including low-cost lines. For example, in the hypothetical situation described, a uniform distribution would result in all lines being eligible for $3 ($90/30 lines) of hold-harmless support. Thus, even though the cost of providing service is relatively low in Wire Center 1 ($15), competitors serving lines in that wire center would receive a significant amount of support for those lines, creating an artificial incentive for other carriers to compete in that wire center. At the same time, the cost of providing service is relatively high in Wire Center 3 ($25), but this would not be reflected in the amount of support available to competitors, thereby discouraging competitive entry in that wire center. Accordingly, we conclude that targeting forward-looking support to high-cost wire centers is an appropriate means for achieving Congress's goal of promoting competition in the marketplace.

49. We decided to allow individual states to petition the Commission to have federal forward-looking support targeted for competitive purposes to an area different from the wire center. We concluded that such an approach is consistent with the states' primary role in achieving the goal of reasonable comparability within their borders and would allow states greater flexibility to reach that goal. We conclude that the same rationale applies with equal force in the context of targeting interim hold-harmless support. Accordingly, we conclude that a state may file a petition for waiver of our targeting rules, asking the Commission to target interim hold-harmless support to an area different than the wire center. Such a petition should include a description of the particular geographic level to which the state wishes interim hold-harmless support to be targeted, and an

explanation of how that approach furthers the preservation and advancement of universal service within the state.

50. As discussed, we are adopting several amendments to the current data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under part 36 will conform with loop count data submitted under our part 54 rules for forward-looking support. All carriers serving customers in areas served by non-rural incumbent LECs will be required to file data on a quarterly schedule, instead of the present annual schedule with voluntary quarterly updates. The filing of quarterly data for rural carriers, however, shall remain voluntary. By synchronizing the reporting requirements for non-rural high-cost support, we can ensure that all non-rural carriers receive support based on data from the same time periods. We conclude that this synchronization will result in a high-cost support mechanism that is easier to administer and is more equitable, non-discriminatory, and competitively neutral.

51. We stress that the interim carrier-by-carrier hold-harmless provision that we adopt is a *transitional* provision intended to protect consumers in high-cost areas during the shift to the new federal support mechanism that will provide support based on statewide-averaged forward-looking costs of providing the supported services. We agree with commenters that the hold-harmless provision should not be a perpetual entitlement, and should be phased out as carriers and states adapt to the new forward-looking mechanism. Accordingly, we request that, on or before July 1, 2000, the Joint Board provide the Commission with a recommendation on how the interim hold-harmless provision can be phased out or eliminated without causing undue disruption to consumer rates in high-cost areas. In addition, we reaffirm our original conclusion in the *Seventh Report and Order* that the Commission and the Joint Board shall, no later than January 1, 2003, comprehensively examine the operation of the revised high-cost universal service support mechanism.

E. Portability of Support

52. We reiterate that federal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and conclude that the same amount of support (i.e., either the forward-looking high-cost support amount or any interim hold-harmless amount) received by an incumbent LEC should be fully portable to competitive providers. A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any ''new'' lines that the competitive eligible telecommunications carrier serves in high-cost areas. To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line, including any interim hold-harmless amount. While hold-harmless amounts do not necessarily reflect the forward-looking cost of serving customers in a particular area, we believe this concern is outweighed by the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.

53. We reiterate our finding in the *First Report and Order* that, where a competitive eligible telecommunications carrier is providing service to a high-cost line exclusively through unbundled network elements (UNEs), that carrier will receive the universal service support for that high-cost line, not to exceed the cost of the unbundled network elements used to provide the supported services. The remainder of the support associated with that element, if any, will go to the incumbent LEC.

54. As discussed, we are modifying our reporting requirements to synchronize non-rural carrier submissions under part 36 and part 54 of our rules. Under our current part 36 rules, incumbent LECs are required to report cost and loop-count data on July 31st of each year. If they so choose, incumbent LECs may update the July 31st data on a quarterly basis. Part 54 of the Commission's rules, on the other hand, requires competitive eligible telecommunications carriers to report loop-count data on July 31st of each year. Unlike the rules applicable to incumbent LECs, however, part 54 of the Commission's rules does not currently allow competitive eligible telecommunications carriers to update their loop-count data on a quarterly basis. To ensure that forward-looking support provided under part 54 and interim hold-harmless support provided under part 36 and § 54.303 are based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers, we shall require mandatory quarterly reporting for non-rural carriers under both part 54 and part 36 of our rules. By allowing incumbent LECs and competitive eligible telecommunications carriers to obtain support for high-cost lines on a regular quarterly basis, our rules will facilitate portability of support among carriers. In addition, the quarterly filing requirement is consistent with the Universal Service Administrative Company's (USAC) quarterly submission of program demand projections, and should allow more accurate projections based on regular quarterly loop counts.

F. Use of Federal High-Cost Support by Carriers

55. We conclude that providing federal universal service high-cost support in the form of carrier revenue, to be accounted for by states in their ratemaking process, is an appropriate mechanism by which to ensure that non-rural carriers use high-cost support only for the ''provision, maintenance and upgrading of facilities and services for which the support is intended,'' in accordance with section 254(e) of the Act. We note, however, that we are not attempting to direct the manner in which states incorporate federal high-cost support into their ratemaking processes, nor are we setting forth elaborate rules for compliance with section 254(e). Rather, we anticipate that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254, and then certify to the Commission that federal high-cost support received by non-rural carriers in their states is being used appropriately. Because the support that will be provided by the methodology described in this Order is intended to enable the reasonable comparability of *intrastate* rates, and states have primary jurisdiction over intrastate rates, we find that it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).

56. For example, a state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas, that has been eroded through competition. A state could also require carriers to use the federal support to upgrade facilities in rural areas to ensure that services

provided in those areas are reasonably comparable to services provided in urban areas of the state. These examples are intended to be illustrative, not exhaustive. As long as the uses prescribed by the state are consistent with section 254(e), we believe that the states should have the flexibility to decide how carriers use support provided by the federal mechanism.

57. As a regulatory safeguard, however, we adopt rules in this Order requiring states that wish to receive federal universal service high-cost support for non-rural carriers within their territory to file a certification with the Commission stating that all federal high-cost funds flowing to non-rural carriers in that state will be used in a manner consistent with section 254(e). This certification requirement is applicable to non-rural incumbent LECs, and competitive eligible telecommunications carriers seeking high-cost support in the service area of a non-rural LEC. The certification shall be filed annually and shall be applicable to all non-rural carriers that the state certifies as eligible to receive federal universal service high-cost support during that annual period. A state may file a supplemental certification for carriers not subject to the state's annual certification. A certification may be filed in the form of a letter from the appropriate state regulatory authority, and shall be filed with (1) the Commission and (2) USAC. Each certification shall become part of the public record maintained by the Commission. We note that some state commissions, including Wisconsin, may lack direct regulatory oversight to ensure that federal support is reflected in intrastate rates. We believe, nonetheless, that states that lack direct authority over rates in their jurisdictions would still be able to certify to the Commission that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support had been used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Indeed, in states with limited jurisdiction over carriers, the state need not initiate the certification process itself. Instead, in such states, non-rural LECs, and competitive eligible telecommunications carriers serving lines in the service area of a non-rural LEC, may formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the Commission. Under our rules, a state shall also have the authority to revoke a certification in the event that it determines that a carrier has not complied with section 254(e). Because states are responsible for making section 254(e) certifications to the Commission, challenges to the propriety of the certifications, or revocation of the certifications, should be brought at the state level.

58. To ensure that non-rural carriers comply with section 254(e), we do not believe that a non-rural carrier in a particular state should receive federal forward-looking support until the Commission receives an appropriate certification from the state. Absent such a certification, the Commission has no reliable way of knowing whether the forward-looking support is being used properly, because of the Commission's limited authority over carriers' intrastate activities. Therefore, we conclude that, during the first year of operation of the new federal forward-looking support mechanism (January 1, 2000–December 31, 2000), a non-rural carrier in a particular state will not receive forward-looking support until the state files an appropriate certification with the Commission. The carrier will, however, receive interim hold-harmless support during the first year in the event that the state does not make the required certification. Given the short time before implementation of the new mechanism, we believe that providing interim hold-harmless support in the absence of a state certification is necessary to prevent possible rate shocks that might occur absent such support.

59. After further consultation with the Joint Board, we conclude that all federal high-cost support flowing to non-rural carriers in the second year of operation and thereafter, including both forward-looking support and interim hold-harmless support (to the extent that this measure is still in place), should be contingent upon the state's filing the section 254(e) certification described. Although we recognize that some states will need more time than others to produce a certification, we must have a reliable way of knowing that federal support is being used in a manner consistent with section 254(e). We believe that the certification requirement is not an overly burdensome means of effectuating Congress's goals, and we conclude that a year is a sufficient period of time for states to file the required certification with the Commission.

60. Under our existing rules, USAC submits estimated universal service support requirements, including high-cost support, to the Commission two months before the beginning of each quarter. Thus, for the first quarter of 2000, USAC will submit estimated universal service support requirements on or before November 1, 1999. The Commission uses those support requirements to establish a contribution factor for the upcoming quarter. USAC then uses the contribution factor to bill carriers and collect the appropriate amount of support to fund the universal service programs. In order for USAC to submit an accurate estimate of high-cost demand, it will need to know which carriers have been certified by states pursuant to the section 254(e) certification process before it files its estimate. To allow USAC sufficient time to process section 254(e) certifications and estimate demand, we conclude that states should file such certifications one month before USAC's filing is due. For a given program year of the new forward-looking high-cost support mechanism, this would mean that section 254(e) certifications would be due on October 1.

61. We recognize that the timing of the adoption of this Order will not give states sufficient time to file section 254(e) certifications for the first program year 2000 under this approach. Therefore, for the first and second quarters of 2000 only, non-rural carriers in a state shall be entitled to retroactive forward-looking high-cost support for those quarters. Specifically, if the state files its certification on or before January 1, 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the second quarter of 2000, and forward-looking support for the second quarter of 2000 in that quarter. If the state files its certification on or before April 1, 2000, and certifies carriers for the first and second quarters of 2000, then carriers subject to that certification shall receive forward-looking support for the first quarter of 2000 in the third quarter of 2000, together with forward-looking support for the third quarter of 2000. Such carriers shall receive forward-looking support for the second quarter of 2000 in the fourth quarter of 2000, together with forward-looking support for the fourth quarter of 2000.

62. Under this approach, some carriers may receive two quarters worth of support in a single quarter. To prevent fluctuations in the contribution factor and ensure a uniform collection of contributions, we direct USAC to collect contributions in the first quarter of 2000 as if all carriers potentially eligible for forward-looking support were certified to receive such support beginning in the first quarter of 2000, and as if support were actually provided beginning in the first quarter of 2000. In the event that not all potentially eligible

carriers are certified to receive support for the first and second quarters of 2000, USAC shall apply any surplus contributions to reduce future collection requirements.

63. In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for the second program year beginning on January 1, 2001, the state must file its section 254(e) certification no later than one month before USAC's filing is due (*i.e.,* October 1, 2000). In order for non-rural carriers in a state to receive any high-cost support, either forward-looking or hold-harmless support, for subsequent program years beginning on January 1, of each year, the state must file its section 254(e) certification no later than one month before USAC's filing is due (i.e., October 1 of the preceding year).

64. In the event that a state files an untimely certification, the carriers subject to that certification will not be eligible for support until the quarter for which USAC's subsequent filing is due. For example, if a state files a section 254(e) certification for the first program year, after April 1, 2000, but on or before July 1, 2000, then carriers subject to that certification will not receive forward-looking support until the fourth quarter of 2000. If a state files a section 254(e) certification for the first program year after July 1, 2000, then carriers subject to that certification will not receive forward-looking support in the first program year. If a state files a section 254(e) certification for the second program year, after October 1, 2000, but on or before January 1, 2001, then carriers subject to that certification will not receive any support, either forward-looking or hold-harmless support, until the second quarter of 2001.

65. Because support from the federal methodology described in this Order will be used to maintain reasonably comparable *intrastate* rates, we must decide how to apply the federal support in the intrastate jurisdiction. The current federal support mechanism operates through the jurisdictional separations rules, shifting additional carrier book costs into the interstate jurisdiction so that they can be recovered through the federal mechanism.

66. We conclude that support amounts provided to incumbent non-rural carriers as a result of the hold-harmless provision should continue to operate through the jurisdictional separations process to reduce book costs to be recovered in the intrastate jurisdiction. The hold-harmless amounts are based on the existing system, which is based on carriers' book costs. Moreover, these amounts have generally been accounted for in intrastate ratemaking, so treating them differently could result in a need for states to take further action to ensure the proper application of the support.

67. As noted, forward-looking support will be provided to non-rural carriers once states have certified that such support will be used in the intrastate jurisdiction in a manner consistent with section 254(e). In light of this provision, we conclude that we do not need to take further action to specify how such support will be applied in the intrastate jurisdiction. Before forward-looking support begins flowing to non-rural carriers, the state commission will have specified or reached agreement with that carrier on how the support will be used in the intrastate jurisdiction, in a manner consistent with section 254(e). Thus, there is no reason for further federal requirements for the application of the support.

68. We are not adopting any rules in this Order that, as a means to ensure compliance with section 254(e), would require that non-rural carriers receiving federal high-cost support offer an affordable basic local service package to their customers. GTE, for example, argues that each state should be required to determine the rate it considers ''affordable'' and then certify to the federal fund administrator that each carrier seeking high-cost funding for areas within that state provide at least one service package that meets the Commission's definition of the supported services, and is offered at a rate no greater than the state-determined affordable rate. We decline to condition support on such extensive state actions. We believe that the less onerous certification requirements described allow states an appropriate amount of flexibility to determine how to ensure that carriers comply with section 254(e). Furthermore, as we found in the *First Report and Order,* even assuming that section 214(e) allowed the Commission to impose such a ''basic service package'' requirement, it is not necessary to adopt such a requirement because, in areas where there is no competition, states are charged with setting rates for local services, and where competing carriers offer the supported services, consumers will be able to choose the carrier that offers the service package best suited to the consumer's needs.

69. We also decline to adopt rules in this Order that would require incumbent non-rural carriers to notify their customers that the incumbent has received federal support for their lines and that such support is portable to the carrier of the customer's choice. We agree with commenters that the issue of whether or not to require non-rural incumbent LECs to provide notification or display high-cost support credits on customer bills or inserts is best left to the individual state jurisdictions to decide.

70. Finally, we re-emphasize our conclusion in the *Seventh Report and Order* that, if we find that a carrier has not applied its universal service high-cost support in a manner consistent with section 254(e), we have the authority to take appropriate enforcement actions against that carrier. We remind parties that they may petition the Commission, under section 208 of the Act, if they believe a carrier has misapplied its high-cost support, and may also fully avail themselves of the Commission's formal complaint procedures to bring any alleged misapplication of federal high-cost support before the Commission. Moreover, although we have given states the flexibility to determine how carriers may use federal support in a manner consistent with section 254(e), we may revisit this issue if we find that a more prescriptive approach is necessary to ensure compliance with section 254(e).

G. Assessment and Recovery Bases for Contributions to the High-Cost Support Mechanism

71. Pursuant to the *First Report and Order,* the Commission currently assesses contributions to the high-cost universal service support mechanism on the basis of carriers' interstate and international end-user telecommunications revenues, and carriers recover their contributions through their rates for interstate services. In the *Second Recommended Decision,* the Joint Board stated that the Commission may wish to consider adding intrastate revenues to the assessment and recovery bases for the high-cost support mechanism. In the *Seventh Report and Order,* the Commission took the Joint Board's recommendation under advisement, pending resolution of challenges to the Commission's assessment and recovery rules in the Fifth Circuit.

72. As discussed, a three judge panel of the Fifth Circuit ruled that the Commission could not assess carriers' intrastate revenues to fund its universal service support mechanisms. The court also reversed and remanded for further consideration the Commission's decision to assess the international revenues of carriers with interstate revenues. In addition, the court reversed the Commission's ''decision to require

ILECs to recover universal service contributions from their interstate access charges.'' In response to the court's decision, the Commission removed intrastate revenues from the contribution base; exempted from the contribution base the international revenues of interstate carriers whose interstate revenues account for less than 8 percent of their combined interstate and international revenues; and revised its rules to allow incumbent LECs to recover their contributions through access charges or through end-user charges. In light of the court's decision, and the Commission's response to it, the assessment base for contributions to the high-cost support mechanism shall remain interstate and international end-user telecommunications revenues, and the recovery base shall remain rates for interstate services.

H. Adjusting Interstate Access Charges to Account for Explicit Support

73. In the *Seventh Report and Order,* the Commission agreed with the Joint Board that the Commission has the jurisdiction and responsibility to identify any universal service support that is implicit in interstate access charges. If such implicit support does exist, the Commission concluded that, to the extent possible, it should make that support explicit. Thus, in order to supplement the record in the ongoing companion access charge reform proceeding, the Commission sought comment in the *Seventh Report and Order* on how interstate access charges should be adjusted to account for implicit high-cost universal service support that may, in the future, be identified in access rates. Specifically, the Commission sought further comment on a number of proposals and tentative conclusions regarding the adjustment of interstate access charges to account for explicit support, including: (1) whether price cap LECs should reduce their interstate access rates to reflect any increase in explicit federal high-cost support they receive; (2) whether the Commission should require price cap LECs to make a downward exogenous adjustment to their common line basket price cap indexes (PCIs); (3) whether price cap carriers should reduce their base factor portion (BFP); (4) whether the Commission should reduce the subscriber line charge (SLC) on primary residential or single-line business lines; and (5) whether non-rural rate-of-return LECs should apply additional interstate explicit high-cost support revenues to the CCL element. The Commission received numerous comments addressing these issues. As we stated in the *Seventh Report and Order,* we intend to move ahead with access reform in tandem with the implementation of the revised federal high-cost support methodology. Accordingly, we anticipate that the Commission's final determinations regarding adjustments to interstate access charges to account for explicit universal service support will be issued in the separate *Access Charge Reform* proceeding. We re-emphasize that the support provided through the methodology described in this Order will be used to enable the reasonable comparability of *intrastate* rates, and thus will not be used to replace implicit support in interstate access rates.

I. High-Cost Loop Support For Rural Carriers

74. Initially, we emphasize that, under our current rules, removing the non-rural carriers from the existing system does not result in a decrease in support for rural carriers. Rather, rural carriers would receive a smaller annual increase in support when non-rural carriers are removed from the interim cap.

75. There are three general options available to address this issue. First, we could take no action and, pursuant to our existing rules, calculate rural support under the interim cap using only the total growth in rural carrier loops. Second, as proposed by Western Alliance, we could remove the interim cap in its entirety. Finally, as proposed by NECA, we could calculate support for rural carriers as if all carriers, rural and non-rural, continued to participate in the existing fund.

76. Consistent with our commitment not to consider significant changes in rural carriers' support until after the Rural Task Force and the Joint Board have made their recommendations, we conclude that we should amend our part 36 rules to calculate universal service funding for rural carriers as if all carriers continued to participate in the fund. This approach will avoid significant and immediate changes in support for rural carriers, and is similar to the interim hold-harmless provision that we adopted for non-rural carriers. We also believe that it would be inconsistent with the intent of section 254 if we allowed the growth rate of high-cost universal service support for rural carriers to be significantly and unintentionally reduced because of the overall slowdown in loop growth caused by the removal of non-rural carriers. Contrary to the suggestions of Western Alliance, however, we do not believe that removing the cap from the calculation is an appropriate remedy for this situation. The cap is designed to prevent excessive growth in the existing high-cost fund, and we believe it should remain in place pending any restructuring of the high-cost support mechanism for rural carriers. In addition, because we are requiring non-rural carriers to continue reporting cost and loop-count data under part 36 pursuant to the interim hold-harmless provision, continuing to calculate the expense adjustment for rural carriers using data from all carriers will be administratively easy to implement. We also wish to stress that, although we are modifying our rules to calculate the rural loop expense adjustment based on loop data for both rural and non-rural carriers, this remedy is an *interim* solution until we consider appropriate reforms for the rural high-cost support mechanism.

J. Lifting the Stay of the Commission's Section 251 Pricing Rules

77. In August 1996, the Commission promulgated certain rules in the *Local Competition Order,* 61 FR 45476 (August 29, 1996), to implement section 251 of the Communications Act of 1934, as amended. One such rule, § 51.507(f), requires each state commission to ''establish different rates for [interconnection and unbundled network elements (UNEs)] in at least three defined geographic areas within the state to reflect geographic cost differences.'' Numerous parties, including incumbent LECs and state commissions, appealed the *Local Competition Order,* and the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's section 251 pricing rules in September 1996 pending its consideration of the appeal. In July 1997, the Eighth Circuit vacated the deaveraging rule, among others, on the grounds that the Commission lacked jurisdiction. On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion.

78. Because the section 251 pricing rules had not been in force for more than two years, and not all states established at least three deaveraged rate zones, the Commission stayed the effectiveness of § 51.507(f) on May 7, 1999, to allow the states to bring their rules into compliance. The Commission stated that the stay would remain in effect until six months after the Commission released its order in CC Docket No. 96–45 finalizing and ordering implementation of high-cost

universal service support for non-rural LECs. The Commission did so to allow the states to coordinate their consideration of deaveraged rate zones with issues raised in that proceeding. Now that we have adopted an order in CC Docket No. 96–45 finalizing and ordering implementation of intrastate high-cost universal service support for non-rural LECs, state commissions can consider deaveraging in concert with the federal high-cost support that will be available in the intrastate jurisdiction. Consequently, the stay that has been in effect since May 7, 1999, shall be lifted on May 1, 2000. By that date, states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to § 51.507(f) of the Commission's rules.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

79. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

80. We conclude that a FRFA is not required here because the foregoing *Report and Order* adopts a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion *Further Notice of Proposed Rulemaking,* 64 FR 31780 (June 14, 1999), in this docket, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA. Furthermore, we are taking action in this *Report and Order* that will have a beneficial impact on smaller rural carriers. Specifically, we are amending our part 36 rules to calculate universal service funding for rural carriers as if all carriers, both rural and non-rural, continued to participate in the fund, pending the selection of an appropriate forward-looking high-cost support mechanism for rural carriers. This action will avoid significant changes in support for rural carriers, and prevent the growth rate of high-cost universal service support for rural carriers from being significantly reduced because of a slowdown in loop growth rates that would be caused by the removal of non-rural carriers from the fund calculations. Therefore, we certify, pursuant to section 605(b) of the RFA, that the final rule adopted in the *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operation Division, will send a copy of this certification, along with this *Report and Order,* to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification, and *Report and Order* (or summaries thereof) will be published in the **Federal Register**. The Commission will send a copy of this *Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

B. Effective Date of Final Rules

81. We conclude that the amendments to our rules adopted herein shall be effective upon publication in the **Federal Register,** except for sections 36.611(h), 36.612, 54.307 (b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. In this Order we conclude that the new forward-looking high-cost support mechanism should be implemented on January 1, 2000, and that states and territories that desire non-rural carriers within their jurisdiction to receive forward-looking high-cost support for calendar year 2000 must certify to the Commission and the Administrator that non-rural carriers receiving support within their jurisdiction will only use the support for the provision, maintenance and upgrading of the supported services. The first filing deadline for this certification will be January 1, 2000. Thus, the amendments must become effective before January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2000 implementation and filing date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

C. Paperwork Reduction Act

82. This *Report and Order* contains either new or modified information collections. The Commission has requested Office of Management and Budget (''OMB'') approval, under the emergency processing provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, of the information collections contained in this rulemaking.

IV. Ordering Clauses

83. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, the Ninth Report and Order and Eighteenth Order on Reconsideration is adopted. This Order is effective December 1, 1999 except for sections 36.611(h), 36.612, 54.307 (b), (c), 54.309(c), 54.311(c), and 54.313 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

84. Parts 36 and 54 of the Commission's Rules, 47 CFR parts 36 and 54, are amended as set forth, effective immediately upon publication in the **Federal Register**.

85. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the Report and Order, including the Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Parts 36 and 54 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (I) and (j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

2. Amend § 36.601 by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) The annual amount of the total nationwide expense adjustment shall consist of the amounts calculated pursuant to § 54.309 of this chapter and the amounts calculated pursuant to this subpart F. The annual amount of the total nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total loop cost expense adjustment for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops during the calendar year preceding the July 31st filing. The total loop cost expense adjustment shall consist of the loop cost expense adjustments, including amounts calculated pursuant to § 36.612(a) and § 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the calendar year preceding the July 31st filing and the number of total working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 36.611. Beginning January 1, 2000, non-rural incumbent local exchange carriers and, eligible telecommunications carriers serving lines in the service area of non-rural incumbent local exchange carriers, shall only receive support pursuant to this subpart F to the extent that they qualify pursuant to § 54.311 of this chapter for interim hold-harmless support.

3. Amend § 36.611 by revising the introductory text and paragraph (h) to read as follows:

§ 36.611 Submission of information to the National Exchange Carrier Association.

In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each of its study areas, with the exception of the information listed in paragraph (h), which must be provided for each study area and, if applicable, for each wire center, as that term is defined in part 54 of this chapter. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to § 36.612.

The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October.

An incumbent LEC is defined as a carrier that meets the definition of an ''incumbent local exchange carrier'' in § 51.5 of this chapter.

* * * * *

(h) For rural telephone companies, as that term is defined in § 51.5 of this chapter, the number of working loops for each study area. For non-rural telephone companies, the number of working loops for each study area and for each wire center. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

4. Amend § 36.612 by revising paragraph (a) to read as follows:

§ 36.612 Updating information submitted to the National Exchange Carrier Association.

(a) Any rural telephone company, as that term is defined in § 51.5 of this chapter, may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 36.611 (a) through (h) one or more times annually on a rolling year basis according to the schedule. Every non-rural telephone company must update the information submitted to NECA on July 31st pursuant to § 36.611 (a) through (h) according to the schedule.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

* * * * *

5. Amend § 36.622 by removing paragraph (d) and by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

(a) * * *

(1) The National Average Unseparated Loop Cost per Working Loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

* * * * *

(b) * * *

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in § 36.612(a), the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

* * * * *

6. Amend § 36.631 by revising paragraph (d) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d) (1)–(4). After January 1, 2000, the expense adjustment (additional interstate expense allocation) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

* * * * *

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

8. Amend § 54.5 by adding the following definition in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Wire center. A wire center is the location of a local switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

9. Amend § 54.307 by revising paragraph (a) introductory text, paragraphs (a)(1), (a)(2), and (a)(3), and (b), and by adding paragraph (c) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.

(1) A competitive eligible telecommunications carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line.

(2) A competitive eligible telecommunications carrier that uses switching purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for switching or the per-line DEM support of the incumbent LEC, if any. A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support and LTS, if any. The incumbent LEC providing nondiscriminatory access to unbundled network elements to such competitive eligible telecommunications carrier shall receive the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support that the incumbent LEC would have received.

(3) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to § 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support that the incumbent LEC would have received for that customer.

* * * * *

(b) In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator on July 31st of each year the number of working loops it serves in a service area as of December 31st of the preceding year, subject to the updates specified in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier may update the information submitted to the Administrator on July 31st pursuant to paragraph (b) of this section one or more times annually on a rolling year basis according to the schedule. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must update the information submitted to the Administrator on July 31st pursuant to paragraph (b) of this section according to the schedule.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

10. Add § 54.309 to subpart D to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) *Calculation of total support available per state.* Beginning January 1, 2000, non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, shall receive universal service support for the forward-looking economic costs of providing supported services in high-cost areas, provided that the State in which the lines served by the carrier are located has complied with the certification requirements in § 54.313. The total amount of forward-looking support available in each State shall be determined according to the following methodology:

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in the State, divided by the number of lines served by non-rural carriers in the State.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States divided by the total number of lines served by non-rural carriers in all States.

(3) The national cost benchmark shall equal 135 percent of the national average FLEC per line.

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds

the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines served by non-rural carriers in the State.

(5) In the event that a State's statewide average FLEC per line does not exceed the national cost benchmark, non-rural carriers in such State shall be eligible for support pursuant to § 54.311. In the event that a State's statewide average FLEC per line exceeds the national cost benchmark, but the amount of support otherwise provided to a non-rural carrier in that State pursuant to this section is less than the amount that would be provided pursuant to § 54.311, the carrier shall be eligible for support pursuant to § 54.311.

(b) *Distribution of total support available per state.* The total amount of support available per State calculated pursuant to paragraph (a) of this section shall be distributed to non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, in the following manner:

(1) The Commission's cost model shall determine the wire center average FLEC per line for each wire center in the service areas of non-rural carriers in the State. Non-rural incumbent local exchange carriers, and eligible telecommunications carriers serving lines in the service areas of non-rural incumbent local exchange carriers, that serve wire centers with an average FLEC per line above the national cost benchmark, as defined in paragraph (a)(3) of this section, shall receive forward-looking support;

(2) The wire center scale support amount for each wire center identified in paragraph (b)(1) of this section shall equal 76 percent of the amount of the wire center average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines in the wire center;

(3) The total amount of forward-looking support available in the State calculated pursuant to paragraph (a)(4) of this section shall be divided by the sum of the total wire center scale support amounts calculated for each wire center pursuant to paragraph (b)(2) of this section;

(4) The percentage calculated pursuant to paragraph (b)(3) of this section shall be multiplied by the total wire center scale support amount calculated for each wire center pursuant to paragraph (b)(2) of this section;

(5) The total amount of support calculated for each wire center pursuant to paragraph (b)(4) of this section shall be divided by the number of lines in the wire center to determine the per-line amount of forward-looking support for that wire center;

(6) The per-line amount of support for a wire center calculated pursuant to paragraph (b)(5) of the section shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, to determine the amount of forward-looking support to be provided to that carrier.

(c) *Petition for waiver.* Pursuant to section 1.3 of this chapter, any State may file a petition for waiver of paragraph (b) of this section, asking the Commission to distribute support calculated pursuant to paragraph (a) of this section to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires support to be distributed, and an explanation of how waiver of paragraph (b) of this section will further the preservation and advancement of universal service within the State.

11. Add § 54.311 to subpart D to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

(a) *Interim hold-harmless support.* The total amount of interim hold-harmless support provided to a non-rural incumbent local exchange carrier shall equal the amount of support calculated for that carrier pursuant to part 36 of this chapter. The total amount of interim hold-harmless support provided to a non-rural incumbent local exchange carrier shall also include Long Term Support provided pursuant to § 54.303, to the extent that the carrier would otherwise be eligible for such support. Beginning on January 1, 2000, in the event that a State's statewide average FLEC per line, calculated pursuant to § 54.309(a), does not exceed the national cost benchmark, non-rural incumbent local exchange carriers in such State shall receive interim hold-harmless support calculated pursuant to part 36, and, if applicable, § 54.303. In the event that a State's statewide average FLEC per line, calculated pursuant to § 54.309(a), exceeds the national cost benchmark, but the amount of support that would be provided to a non-rural incumbent local exchange carrier in such State pursuant to § 54.309(b) is less than the amount that would be provided pursuant to part 36 and, if applicable, § 54.303, the carrier shall be eligible for support pursuant to part 36 and, if applicable, § 54.303. To the extent that an eligible telecommunications carrier serves lines in the service area of a non-rural incumbent local exchange carrier receiving interim hold-harmless support, the eligible telecommunications carrier shall also be entitled to interim hold-harmless support in an amount per line equal to the amount per line provided to the non-rural incumbent local exchange carrier pursuant to paragraph (b) of this section.

(b) *Distribution of interim hold-harmless support amounts.* The total amount of interim hold-harmless support provided to each non-rural incumbent local exchange carrier within a particular State pursuant to paragraph (a) of this section shall be distributed first to the carrier's wire center with the highest wire center average FLEC per line until that wire center's average FLEC per line, net of support, equals the average FLEC per line in the second most high-cost wire center. Support shall then be distributed to the carrier's wire center with the highest and second highest wire center average FLEC per line until those wire center's average FLECs per line, net of support, equal the average FLEC per line in the third most high-cost wire center. This process shall continue in a cascading fashion until all of the interim hold-harmless support provided to the carrier has been exhausted.

(c) *Petition for waiver.* Pursuant to section 1.3 of this chapter, a State may file a petition for waiver of paragraph (b) of this section, asking the Commission to distribute interim hold-harmless support to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires interim hold-harmless support to be distributed, and an explanation of how waiver of paragraph (b) of this section will further the preservation and advancement of universal service within the State.

12. Add § 54.313 to subpart D to read as follows:

§ 54.313 State certification.

(a) *Certification.* States that desire non-rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a non-rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.309 and/or 54.311 must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the

provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§ 54.309 and/or 54.311 shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Certification format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96–45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (c) of this section. The annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certifications filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(c) *Filing deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (b) of this section, with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First program year (January 1, 2000–December 31, 2000).* During the first program year (January 1, 2000–December 31, 2000), a carrier in a particular State shall receive support pursuant to § 54.311. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before January 1, 2000.* Carriers subject to certifications filed on or before January 1, 2000 shall receive support pursuant to § 54.309 for the first and second quarters of 2000 in the second quarter of 2000, and on a quarterly basis thereafter. Support provided in the second quarter of 2000 shall be net of any support provided pursuant to § 54.311 for the first quarter of 2000.

(ii) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to § 54.309 for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to § 54.311 for the first or second quarters of 2000.

(iii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to § 54.309 for the fourth quarter of 2000 in the fourth quarter of 2000.

(iv) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to § 54.309 in 2000.

(2) *Second program year (January 1, 2001–December 31, 2001).* During the second program year (January 1, 2001–December 31, 2001), a carrier in a particular State shall not receive support pursuant to §§ 54.309 or 54.311 until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1, 2000.* Carriers subject to certifications filed on or before October 1, 2000 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first, second, third, and fourth quarters of 2001.

(ii) *Certifications filed on or before January 1, 2001.* Carriers subject to certifications filed on or before January 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the second, third, and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first quarter of 2001.

(iii) *Certifications filed on or before April 1, 2001.* Carriers subject to certifications filed on or before April 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the third and fourth quarters of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first or second quarters of 2001.

(iv) *Certifications filed on or before July 1, 2001.* Carriers subject to certifications filed on or before July 1, 2001 shall receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the fourth quarter of 2001. Such carriers shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in the first, second, or third quarters of 2001.

(v) *Certifications filed after July 1, 2001.* Carriers subject to certifications filed after July 1, 2001 shall not receive support pursuant to §§ 54.309 or 54.311, whichever is applicable, in 2001.

(3) *Subsequent program years (January 1–December 31).* During the program years subsequent to the second program year (January 1, 2001–December 31, 2001), a carrier in a particular State shall not receive support pursuant to § 54.309 or § 54.311 until such time as the State files the certification described in this section. Upon the filing of the certification described in this section, support shall be provided pursuant to the following schedule:

(i) *Certifications filed on or before October 1.* Carriers subject to certifications filed on or before October 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first, second, third, and fourth quarters of the succeeding year.

(ii) *Certifications filed on or before January 1.* Carriers subject to certifications filed on or before January 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the second, third, and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first quarter of that year.

(iii) *Certifications filed on or before April 1.* Carriers subject to certifications filed on or before April 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the third and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first or second quarters of that year.

(iv) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, beginning in the fourth quarter of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first, second, or third quarters of that year.

(v) *Certifications filed after July 1.* Carriers subject to certifications filed after July 1 shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in that year.

[FR Doc. 99–30876 Filed 11–30–99; 8:45 am]

BILLING CODE 6712–01–P

federal register

Wednesday
December 1, 1999

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2520

Proposed Small Pension Plan Security Amendments; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA73

Proposed Small Pension Plan Security Amendments

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed amendments to the regulations governing the circumstances under which small pension plans are exempt from the requirements to engage an independent qualified public accountant and to include a report of the accountant as part of the annual report under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Regulation 29 CFR 2520.104–46 provides a waiver of the annual examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants at the beginning of the plan year. The proposed amendments are designed to increase the security of assets in small pension plans by conditioning the waiver of the requirements concerning the engagement of an accountant on enhanced disclosure of information to participants and beneficiaries and, in certain instances, improved bonding requirements. This regulatory action is being proposed as a way of enhancing the security and accountability of small pension plans because of recent cases involving embezzlement or other misappropriations of pension assets that have focused national attention on the potential vulnerability of small pension plans to fraud and abuse. The proposed amendments do not affect the exemption for small welfare plans (such as group health plans) under § 2520.104–46. Conforming amendments are made to the simplified annual reporting requirements specified in 29 CFR 2520.104–41. If adopted, the proposal would affect participants and beneficiaries covered by small pension plans, sponsors and administrators of small pension plans, and service providers holding assets of small pension plans.

DATES: Written comments concerning the proposed regulations must be received by January 31, 2000.

ADDRESSES: Written comments (preferably three copies) should be sent to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: Small Pension Plan Security Proposal. All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Keene, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8521. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

In general, the administrator of an employee benefit plan required to file an annual report under Title I of ERISA must include as part of that report the opinion of an independent qualified public accountant (IQPA). These annual reporting requirements can be satisfied by filing the Form 5500 ''Annual Return/Report of Employee Benefit Plan.'' [1] The requirements governing the content of the opinion and report of the IQPA are set forth in ERISA section 103(a)(3)(A) and 29 CFR 2520.103–1(b). Section 104(a)(2)(A) permits the Department of Labor (Department) to prescribe, by regulation, simplified annual reports for pension plans with fewer than 100 participants. Section 104(a)(3) permits the Department to prescribe exemptions from the reporting and disclosure requirements or simplified reporting and disclosure for welfare plans. In accordance with the Department's authority under sections 104(a)(2)(A) and 104(a)(3), the Department adopted, at 29 CFR 2520.104–41, simplified annual reporting requirements for pension and welfare benefit plans with fewer than 100 participants. In addition, the Department, at 29 CFR 2520.104–46, prescribed for small plans a waiver from the requirement of section 103(a)(3)(A) to engage an IQPA and to include the opinion of the accountant as part of the plan's annual report.

Since the adoption of § 2520.104–46 in 1976, the amount of assets held in small pension plans has increased dramatically and small pension plans have become important retirement savings vehicles for an increasing number of American workers. Recently, media coverage of a case involving misappropriation of pension assets over several years focused national attention on the potential vulnerability of small pension plans to fraud and abuse. There have been other cases where service providers, administrators or other fiduciaries have misused retirement savings held in small pension plans and have concealed their acts by falsifying financial and other information to plan sponsors, trustees, and participants. Although such cases are rare and legal remedies often can be pursued in an effort to recover lost assets, the Department believes that, given the increasing extent to which workers are depending on their employment-based pension plans as a primary source of retirement income, it is appropriate to take steps to improve the security of pension assets in small pension plans.

One approach to improving the security of assets in small pension plans is to require all such plans to comply with the audit requirements of section 103(a)(3)(A). As noted above, the assets of plans with fewer than 100 participants, unlike larger plans, are not required to be examined by an IQPA. While subjecting the assets of small pension plans to an audit would, in the view of the Department, provide a high degree of certainty that the assets reported on a plan's annual report are actually available to pay benefits, the Department recognizes that the costs attendant to such a requirement may be significant for many plans and plan sponsors. Consistent with the Department's goal of encouraging pension plan establishment and maintenance, particularly in the small business community, the Department concluded that engaging an accountant should not be the only means by which the security of small plan pension assets can be improved.

In assessing alternatives to a mandatory audit requirement, the Department concluded that a three-pronged approach—focusing on (1) Who holds the plan'' assets, (2) Enhanced disclosure to participants and beneficiaries and (3) In limited situations, an improved bonding requirement—could enhance the level of security and accountability for small pension plan assets, while keeping administrative burdens and costs to a minimum by building on current recordkeeping, disclosure and bonding requirements and practices. Based on our experience in dealing with thousands of inquiries every year from participants regarding their plans, we have determined that well informed participants and beneficiaries are often in the best position to be watchdogs over their own pension plans and can catch problems early. We also have determined that, based on industry estimates, the costs of enhancing fidelity bond coverage will be nominal for most

[1] See sections 101(b)(4) and 103 of ERISA, and 29 CFR 2520.103–1.

plans and less than the cost of an annual audit by an IQPA.

The alternative referenced above is set forth as proposed new conditions for obtaining a waiver from the requirements concerning the engagement of an IQPA under § 2520.104–46. A description of the proposal follows.

B. Proposed Amendment to § 2520.104–46

Currently, the conditions to obtaining a waiver from the requirement to engage an accountant under § 2520.104–46 are that a pension plan have fewer than 100 participants at the beginning of the plan year and the plan administrator properly file the ''Form 5500–C/R Return/Report of Employee Benefit Plan (With fewer than 100 participants).'' As discussed below, the proposal would, upon adoption, amend the regulation to further condition eligibility for the waiver on additional disclosures to plan participants and beneficiaries concerning the assets held by their plans and, in certain instances, an increase in the amount of a plan's fidelity bond.[2]

In general, the Department believes that statements of plan assets prepared by certain regulated financial institutions (such as banks, insurance companies, mutual funds, and securities broker-dealers), if made available to participants and beneficiaries, provide a means by which participants and beneficiaries can independently confirm that the assets reported by the plan to be available to pay benefits as of the end of the plan year were, in fact, available according to the books and records of the institution holding the assets. Such disclosure, in the Department's view, reduces the likelihood of losses over long periods due to acts of fraud or dishonesty. The Department also believes that supplemental bonding requirements also will serve to reduce the risk of loss due to acts of fraud or dishonestly where a substantial percentage of a plan's assets are held by entities that may not be subject to state or federal regulatory oversight.

1. Qualifying plan assets and bond requirement

The first part of the proposal, therefore, focuses on the extent to which a plan's assets are held by regulated financial institutions. *See:* Proposed § 2520.104–46(b)(1)(i)(A). The proposal uses the term ''qualifying plan assets'' in applying the conditions of the waiver. ''Qualifying plan assets'' are defined in the proposal to include any assets held by: a bank or similar financial institution, as defined in § 2550.408b–4(c); an insurance company qualified to do business under the laws of a state; an organization registered as a broker-dealer under the Securities and Exchange Act of 1934; or any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code. The term ''qualifying plan assets'' also includes assets that the Department believes present little risk of loss to participants and beneficiaries as a result of acts of fraud or dishonesty '' participant loans meeting the requirements of ERISA section 408(b)(1) and qualifying employer securities, as defined in ERISA section 407(d)(1). *See* Proposed § 2520.104–46(b)(1)(ii).

The proposal provides that, with respect to each plan year for which the waiver is claimed, at least 95% of the assets of the plan constitute ''qualifying plan assets'' or any person who handles plan funds or other property that do not constitute ''qualifying plan assets'' is covered by a bond meeting the requirements of ERISA section 412, except that the amount of the bond is not less than the value of such assets.[3] The 95% test is provided in recognition of the fact that some small plans may have assets (such as limited partnership or real estate interests) held by parties that are not regulated financial institutions. It is not the intent of the Department in proposing these amendments to directly or indirectly influence how the assets of small plans are invested through application of the audit requirements. Accordingly, only where more than 5% of a plan's assets do not constitute ''qualifying plan assets'' will the bonding component of the proposal apply. As noted above, the bonding component of the proposal would require a bond meeting the requirements of ERISA section 412 in an amount equal to 100% of the assets that do not constitute ''qualifying plan assets.'' Based on industry estimates as detailed below, it does not appear that the costs attendant to compliance with the proposed bonding requirement will be significant enough to affect plan investments in assets that are not ''qualifying plan assets.''

Under the proposal, the percentage of a plan's assets that constitute ''qualifying plan assets'' and, as appropriate, the amount of supplemental bond coverage necessary to comply with the regulation are to be determined for each plan year for which the waiver is claimed. Accordingly, the administrator of a plan electing the waiver must make the required determinations as of the beginning of the plan year. For purposes of this requirement, the required determinations are to be made in a manner consistent with the requirements of section 412. Inasmuch as a determination that more than 5% of a plan's assets do not constitute ''qualifying plan assets'' may necessitate an increase in the amount of the plan's section 412 bond, assuming the administrator does not elect to engage an accountant, the Department concluded that the determination of ''qualifying plan assets'' should be made on the same basis as the required bond. In this regard, 29 CFR 2580.412–14 requires that the amount of the section 412 bond be determined by reference to the preceding reporting year. In the case of new plans, with respect to which there is no preceding report year, § 2580.412–15 provides procedures for making estimates for the current year.

For example, Plan A, which reports on a calendar year basis, has total assets of $600,000 as of the end of the 1999 plan year. Plan A's assets, as of the end of year, include: investments in various bank, insurance company and mutual fund products of $520,000; investments in qualifying employer securities of $40,000; participants loans, meeting the requirements of ERISA section 408(b)(1) totaling $20,000; and a $20,000 investment in a real estate limited partnership. Because the only asset of the plan that does not constitute a ''qualifying plan asset'' is the $20,000 real estate investment and that investment represents less than 5% of the plan's total assets, no bond would be required under the proposal as a

[2] On September 3, 1997, the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation published (62 FR 46556) proposed revisions to the annual return/report forms filed for employee benefit plans. The Agencies proposal replaced the Form 5500, Form 5500–C and Form 5500–R with one Form 5500 to be used by both large and small plan filers beginning with 1999 plan year filings. On June 24, 1998 the Agencies published a notice of the submission of the revised Form 5500 for OMB review (63 FR 34493). PWBA received conditional approval for the revised Form 5500 under OMB control number 1210–0110. The Department also published on December 10, 1998 (63 FR 68370) a notice of proposed rulemaking to conform its regulations relating to the annual reporting and disclosure requirements of Part 1 of Title I of ERISA to the revised forms. The proposed amendments to the small pension plan IQPA waiver contained in this notice would modify the proposed amendments to § 2520.104–41 and § 2520.104–46 published in the December 10 notice. The Form 5500 series may need to be adjusted following adoption of a final rule in connection with this proposal to reflect changes to the small pension plan IQPA waiver.

[3] Section 412 of ERISA and the regulations issued thereunder, 29 C.F.R. § 2580.412–1 *et seq.*, set forth the bonding requirements generally applicable to ERISA-covered pension and welfare benefit plans.

condition for the waiver for the 2000 plan year. By contrast, Plan B also has total assets of $600,000 as of the end of the 1999 plan year, of which $558,000 constitutes ''qualifying plan assets'' and $42,000 constitutes non-qualifying plan assets. Because 7%—more than 5%—of Plan B's assets do not constitute ''qualifying plan assets,'' Plan B, as a condition to electing the waiver for the 2000 plan year, must ensure that it has a fidelity bond in an amount equal to at least $42,000 covering persons handling non-qualifying plan assets. Inasmuch as compliance with section 412 generally requires the amount of bonds to be not less than 10% of the amount of all the plan's funds or other property handled, the bond acquired for section 412 purposes may be adequate to cover the non-qualifying plan assets without an increase (i.e., if the amount of the bond determined to be needed for the relevant persons for section 412 purposes is at least $42,000). As demonstrated by the foregoing example, where a plan has more than 5% of its assets in non-qualifying plan assets, the bond required by the proposal is for the total amount of the non-qualifying plan assets, not just the amount in excess of 5%.

2. Disclosure

In addition to the bonding requirement, discussed above, the proposal further conditions the waiver of the requirement to engage an accountant on the disclosure of certain information to participants and beneficiaries. Specifically, § 2520.104–46(b)(1)(i)(B) of the proposal requires that the summary annual report (SAR) of a plan electing the waiver include, in addition to the other information required by 29 C.F.R. § 2520.104b–10: (1) The name of each institution holding ''qualifying plan assets'' and the amount of such assets held by each institution as of the end of the plan year; (2) The name of the surety company issuing the bond, if the plan has more than 5% of its assets in non-qualifying plan assets; (3) A notice indicating that participants and beneficiaries may, upon request and without charge, examine, or receive copies, of evidence of the required bond and statements received from each institution holding qualifying assets which describe the assets held by the institution as of the end of the plan year; and (4) A notice stating that participants and beneficiaries should contact the Regional Office of the U.S. Department of Labor's Pension and Welfare Benefits Administration if they are unable to examine or obtain copies of statements received from each institution holding qualifying assets or evidence of the required bond, if applicable. Proposed § 2520.104–46(b)(1)(i)(C) is intended to make clear that plan administrators must, without charge, make the required documents available for examination and, upon request, provide copies of those documents to participants and beneficiaries.

As indicated earlier, these requirements, in an effort to minimize costs to plans, are intended to build on existing recordkeeping and disclosure requirements. In this regard, the Department believes that all plans will receive year-end statements from institutions holding ''qualifying plan assets.'' The proposal does not require the year-end statements to be in any particular form, but the statements, at a minimum, must identify the institution holding the assets and the amount of assets held as of the end of the year. Such information is typically furnished in the normal course of business and would, nonetheless, be necessary for administrators to properly discharge their annual reporting obligations under ERISA. Moreover, because annual reports generally are not required to be filed earlier than the end of the 7th month after the end of plan year and summary annual reports are not required to be distributed until 9 months after the close of the plan year or, if there is an approved extension of time to file, 2 months after the close of the extension period,[4] administrators are afforded ample time to ensure the availability of the information necessary to satisfy the disclosure obligation on which the waiver is conditioned.

3. Limitations

The proposal would also make clear that this section does not affect the obligation of a plan electing a waiver of the audit requirement to file a Form 5500 ''Annual Return/Report of Employee Benefit Plan,'' including any schedules or statements required by the instructions to the form. In addition, the proposal would clarify that a plan electing to file a Form 5500 as a small plan pursuant to the ''80 to 120 rule'' in 29 CFR 2520.103–1(d) may also claim the waiver afforded in this section in the same manner as a plan with fewer than 100 participants. Under the ''80 to 120 rule,'' if the number of participants covered under the plan as of the beginning of the plan year is between 80 and 120, and an annual report was filed as a small plan filer for the prior year, the plan administrator may elect to continue to file as a small plan filer and claim the waiver afforded by this section even though the plan covered more than 100 participants as of the beginning of the plan year. On the other hand, a plan with fewer than 100 participants as of the beginning of the plan year that elects to continue to file a Form 5500 as a large plan pursuant to the ''80 to 120 rule'' is not eligible to claim the waiver afforded to small plan filers.

[4] See 29 C.F.R. 2520.104a–5 (regulation on date of filing for annual reports), 29 C.F.R. 2520.104a–6 (regulation on date of filing for annual reports for plans which are part of a group insurance arrangement) and 29 C.F.R. 2520.104b–10(c) (regulation on when to furnish summary annual reports)

C. Conforming Changes to the Simplified Annual Reporting Regulation

Conforming amendments to the simplified annual reporting provisions in § 2520.104–41 would clarify that, although other simplified reporting options would continue to be available, if an employee benefit plan with fewer than 100 participants does not meet the criteria set forth in § 2520.104–46, it would be required to engage an IQPA to conduct an examination of the financial statements of the plan, include with the plan's annual report the financial statements, notes and schedules prescribed in ERISA section 103(b) and 29 CFR 2520.103–1, and include within the plan's annual report a report of an IQPA as prescribed in ERISA section 103(a)(3)(A) and 29 CFR 2520.103–1(b)(5).

D. Effective Date

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register**. If adopted, the proposed amendments would be applicable to the first plan year beginning after the effective date of the final regulations.

E. Request for Public Comments on Alternatives

During the development of this proposal, small business groups expressed concern about the Department taking actions in this area that would increase administrative costs for small business owners thinking about continuing existing pension plans or offering new ones. The Department shares these concerns. Data indicate that more than one half of the private sector workforce does not participate in a pension plan, and this problem is particularly serious in the small business sector. In developing this proposal we attempted to balance the interest in providing secure retirement savings for participants and beneficiaries with the interest in minimizing costs and burdens on small

pension plans and the sponsors of those plans.

To aid in this effort as we develop a final regulation, the Department is interested in obtaining views and comments from the benefit plan community on whether there are alternative approaches that would provide significant enhancements in the security of small pension plan assets and the accountability of persons handling those assets which would be more effective or involve less cost and burden than this proposal. In that regard, the Department specifically invites comments on requiring as conditions of being eligible for the audit waiver that small pension plans (1) Obtain a fidelity bond covering persons who handle plan funds in an amount equal to at least 80% of the value of the plan's assets and (2) Make available to participants and beneficiaries a schedule of the plan's assets held for investment purposes as of the end of the plan year similar to the schedule currently required as part of the Form 5500 annual report filed by pension plans with 100 or more participants. Additionally, the Department requests comments on the investment of small pension plans assets; specifically, the proportion of assets that are ''qualifying plan assets'' as defined in this proposal.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) Materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' and subject to OMB review under Section 3(f)(4) of the Executive Order. Consistent with the Executive Order, the Department has undertaken to assess the costs and benefits of this regulatory action. The Department's assessment, and the analysis underlying that assessment, is detailed below.

Overview

In the Department's view, the benefits of the proposed additional requirements for the IQPA waiver outweigh the costs. The enhanced accountability and security of small pension plans resulting from additional IQPA waiver conditions will benefit plan participants who are counting on these pensions for retirement security. Given the more than $300 billion in small pension plan assets, any increase in security and accountability is valuable. The additional conditions will also strengthen confidence in the pension system as a whole, and this added confidence may encourage more employers to offer pension plans, as well as additional workers to participate in pension plans that are offered. The costs to small pension plans will not be large '' it is estimated to be less than 1% of total annual administrative costs for all small pension plans. Estimates from Form 5500 data indicate that most small pension plans (as quantified below) would meet the requirement that at least 95% of their assets be ''qualifying plan assets.'' For the few plans not meeting this requirement, the cost of obtaining fidelity bonds to enable them to meet the conditions required for the waiver are low. The statements required from qualifying financial institutions will impose no additional costs on plans because these records are kept as part of usual and customary business practices as the information is necessary for administrators to properly discharge their annual reporting obligations under ERISA. Finally, the cost of meeting disclosure requirements is small because after an initial start up cost to modify the SAR, no additional preparation costs are associated with SAR disclosure beyond the SAR statutory requirements. Additionally, no preparation is associated with distributing the statements and evidence of fidelity bonds that participants may request under the proposal.

The total costs imposed by the additional conditions this proposal would place on the small plan audit waiver are expected to be a one time cost of $5.9 million, plus $9.0 million annually.[5] This is composed of a $5.9 million start up cost to include summary language on the financial statements and bonds in the SAR, an $8.0 million cost for the estimated 37,000 plans not meeting the 95% test to obtain a bond, and a $995,000 cost to plans for providing copies of the statements and bonds upon request.

COSTS IMPOSED BY PROPOSED SMALL PENSION PLAN SECURITY AMENDMENTS

Proposed regulatory provision	SAR summary language	Obtain a bond	Provide requested copies of statements and bonds
Number of plans impacted	605,000	37,000	605,000
Total Cost	$5.9 million	$8.0 million	$995,000
Cost per plan	$10	$220	$1.64

Statement of Need for Proposed Action

As noted earlier, recent cases involving embezzlement or other misappropriations of pension assets have focused national attention on the potential vulnerability of small pension plans to fraud and abuse. As a result, the Department has determined that modifications to the small plan audit waiver would enhance pension plan security. Imposing the additional conditions on the audit waiver would

[5] The cost estimates are derived from 1995 data on pension plans (the latest available) and 1997 BLS data on occupational wages.

help reduce the risk of loss due to acts of fraud or dishonesty with small plan assets. It would also provide participants with more information about their pension plans, thus better enabling them to help provide the checks and balances needed to ensure the integrity of the pension plan.

Examination of Alternative Approaches

To improve the security of pension plan assets, and to better provide participants and other parties to the plan the ability to verify and monitor the existence of small pension plan assets, various alternatives to the proposal were considered. The voluntary nature of the private pension system requires the Department to be particularly sensitive to costs imposed by regulations and to avoid, when possible, any action that would negatively impact small pension plan formation or maintenance. The Department therefore consulted industry groups and associations regarding alternatives available to enhance pension plan security and the burdens imposed by these various alternatives. The proposed regulation was crafted using these suggestions, and is intended to accomplish these goals without imposing significant costs on pension plans.

Among the alternatives considered were on-site inspection, periodic reporting, additional compliance penalties, additional bonding requirements, and eliminating the existing small plan audit waiver of examination and report of an accountant. However, all of these options were either extremely expensive (ranging in cost from $200 million to $4 billion paid by plans or plan sponsors) and thus conflicted with the Department's priority of creating a regulatory environment that encourages pension plan formation, not feasible to implement, or would not have sufficiently enhanced small pension plan security.

Cost Analysis

The requirements contained in this proposal were developed to best conform to the actual investment patterns of small plans, rather than to alter these patterns. To understand the investment patterns of plans and the typical percentage of plan assets that would meet the ''qualifying plan assets'' requirement, we used Form 5500 data to examine how pension plans report their allocation of assets among various investment categories. Plan asset allocation information on the Form 5500 C/R filed by small plans is currently limited to very general categories. Because of this lack of detailed financial information, the Form 5500 filings of plans with more than 100 participants but less than $2 million in assets (within two standard deviations of the mean asset value of small plans) were used as a proxy. Data show that within this proxy group, the proportion of investments in ''qualifying plan assets'' to total investments does not vary with plan size except among the largest plans (those with 2,500 or more participants), which represent less than 1 percent of the proxy group. We obtained a distribution of these plans based upon the proportion of each plan's assets that are ''qualifying plan assets.'' We then applied this distribution to the actual 1995 count of small plans to estimate a distribution of small plans based on the proportion of assets that are ''qualifying plan assets.'' We assumed that assets reported as cash, CD's, U.S. Government Securities, corporate debt and equity, loans, employer securities and the value of interest in direct filing entities, registered investment companies, and insurance company general accounts constitute ''qualified plan assets'' as defined in this proposal.

The chart below shows the results of the analysis of 1995 data (the most recent year of available data) using these assumptions, and how many plans out of the 605,000 would not meet the ''qualifying plan assets'' test if the threshold were set at the various percentages outlined in the table. This shows that the vast majority of the assets of small plans are ''qualifying plan assets.'' Specifically, for all but 6% of small pension plans, at least 95% of plan assets constitute ''qualifying plan assets.'' Similarly, for all but 3% of plans, at least 90% of plan assets constitute ''qualifying plan assets.'' As the threshold moves below 90%, very few additional plans are added to the list of those having the required percentage of ''qualifying plan assets.'' The analysis of the data indicates that the 95% threshold represents the point at which most small plans maintain their assets in investments which represent minimal risks to their security. Consequently, the 95% threshold requirement is the means by which most plans will meet the requirement for the audit waiver. The plans that will not meet the 95% threshold are atypical of the industry standard, impose a greater risk on plan asset security, and are sufficiently few in number such that additional conditions for an audit waiver to protect participants and plan assets are warranted and are also cost effective.

ESTIMATES OF THE NUMBER AND PERCENTAGE OF SMALL PENSION PLANS (1–99 PARTICIPANTS) NOT MEETING THE ''QUALIFYING PLAN ASSETS'' TEST AT VARIOUS THRESHOLD LEVELS

	Alternative Threshold Levels for Qualifying Plan Assets						
	100%	95%	90%	85%	80%	75%	<75%
Number of plans	347,148	36,595	18,590	16,218	15,036	13,924	50
Percent of plans	57%	6%	3%	3%	2%	2%	.01%

Imposing an audit on small pension plans that do not meet the 95% requirement was initially considered. However, the audit cost for these 6% of small pension plans—$230 million annually—was determined to be comparatively too great in relation to other alternatives. We considered the alternative of adjusting bonding requirements and calculated the cost of requiring those plans that do not meet the 95% test to obtain fidelity bonds for the funds that are not ''qualifying plan assets.'' Our analysis shows that bonding is a substantially less costly alternative, lowering aggregate costs by a factor of more than 20 while similarly accomplishing the goal of enhancing small pension plan security.

This alternative was feasible because for the 6% of plans that do not meet the 95% test, nearly all meet the condition that at least 75% of assets are ''qualifying plan assets.'' This means that nearly all of the affected plans would be able, at a relatively low cost, to purchase a fidelity bond in the amount equal to, at most, those 25% of plan assets that are not ''qualifying plan assets.'' For the average plan with $600,000 in assets, this leaves an upper bound of $150,000 in assets that would need to be covered by a bond. Applying

an annual premium of $200[6] to the 6% of plans with these $150,000 in assets needing bonding coverage yields a cost of $7.3 million. In addition to the average bond premium of $200 per plan, obtaining the bond is estimated to involve one-half hour of an analyst's time at $39 per hour per small plan, for a cost of $0.7 million. Summing these costs yields $8.0 million to comply with the additional bonding requirement.

To address the need to enhance the ability of participants to monitor the financial status of plans that do not receive financial audits, the proposed regulation would require that the SAR be modified to include summary information describing the statements and fidelity bonds and a notice that copies are available upon request. This requirement merely involves an initial start up cost to plans to modify their automated SAR forms to include the language required by the regulation. Similar to the assumptions made for the Form 5500 and SAR regulatory analyses, 90% of plans are assumed to use service providers for the required SAR modifications, with the remaining plans performing the modifications in-house. The one-time cost of modifying the SAR form is estimated to be $5.9 million—15 minutes of a professional's time at $39 per hour for all small plans. Any preparation burden associated with completing the SAR form is not attributable to this proposal, but rather, to SAR requirements in general. Another burden associated with disclosure requirements is providing copies of the statements and bonding information to those participants and beneficiaries who request them. The Department assumes that 5% of participants and beneficiaries will request this information. Since the documents already have been provided by bonding companies and financial institutions, the cost of compliance merely involves assembling the appropriate documents and photocopying, by a clerical worker at $15 per hour, and mailing costs at $.37 per distribution—for an aggregate cost of about $995,000 to plans.

Benefits Analysis

The proposed regulation is intended to accomplish two purposes: to limit pension plan fraud and to provide all parties of small pension plans with information to monitor their plan assets and plan fiduciaries. The benefits of reducing fraud and improving information disclosure are numerous. In addition to the benefits listed below, this proposal strengthens the self-regulating aspects of ERISA. With minimum government intervention, participants and other parties to the plan will have an improved ability to verify and monitor plan assets. The following bullets highlight the other potential benefits of the proposed regulation in a qualitative, and when possible, quantitative, way:

- Confidence in the private pension system may be strengthened and may result in increased participation among the nearly 600,000 private wage and salary workers who currently elect not to participate in a small plan that is offered;
- In 1998, more than $6 million in pension plans assets were recovered as a result of criminal investigations. If new conditions are imposed on the small plan audit exemption, fewer assets may be missing from plans in the future because of the checks and balances put in place by improved information disclosure;
- The investigations and litigation associated with recovering assets of small pension plans can be very costly to private parties and to the Government. In 1998, nearly 6,000 civil investigations were initiated by the Department. If new conditions are imposed on the small plan audit exemption, losses will likely decline and fewer investigations of small pension plans may be needed. This will have the dual effect of lowering investigation-related costs for small plans and permitting Federal authorities to enhance the security of other participants by directing their efforts elsewhere; and
- When workers discover that their pension plan assets are missing or are jeopardized, worker productivity declines. Time at work may be spent investigating what happened to plan assets, whether they will be restored, and whether retirement will be possible without these pension assets. If fewer instances of embezzlement occur as a result of additional conditions being imposed on the small plan audit exemption, this productivity loss will likely be reduced or eliminated.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 C.F.R. §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, PWBA has prepared the following regulatory flexibility analysis.

[6] The bonding premium was estimated based on information supplied by industry representatives.

The amount of assets in small pension plans has grown nearly tenfold since 1975, making small pension plans an increasingly important retirement savings vehicle for Americans. In light of recent cases involving embezzlement or other misappropriations of pension assets that have focused national attention on the potential vulnerability of small pension plans to fraud and abuse, this regulatory action is being considered to enhance the security and accountability of small pension plans.

The objective of the proposed rule is to verify the existence of small pension plan assets and to provide information to all parties to the plan in order to enhance pension plan security. The requirements governing the proposed regulation are set forth in ERISA section 104(a)(2), in which Congress evidenced specific intent to provide small plans with relief from burdensome and expensive reporting requirements, and in the regulations §§ 2520.104–41 and 2520.104–46.

The proposed regulation amends the Department's existing waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants under ERISA. In 1995, there were about 605,000 employee pension plans with fewer than 100 participants that met the requirements for the audit waiver. Under the proposed regulation, an estimated 94% of these plans will meet the additional audit waiver requirement that at least 95% of plan assets be ''qualifying plan assets.'' This means that only about 37,000 small plans will be subject to the requirement that the plan either purchase fidelity bonds for those assets that are not ''qualifying plan assets'' or obtain an audit. All 605,000 small pension plans will be subject to the disclosure requirement that the SAR contain summary information on the financial institution statements and bonds, and that the information be provided free of charge upon request.

This proposed rule impacts all classes of small pension plans with fewer than 100 participants subject to Title I of ERISA. The proposal described here is the one that accomplishes the objective of enhancing pension plan security without imposing significant costs via additional reporting, recordkeeping, and other compliance requirements. The 6% of plans that do not meet the proposed criteria for an audit waiver must either purchase a fidelity bond to cover the funds that are not ''qualifying plan assets'' or obtain an audit. We assume plans will choose the less costly alternative—bonding. In addition to the average bond premium of $200 per plan, obtaining the bond is estimated to involve one-half hour of an analyst's time at $39 per hour per small plan, for an aggregate cost of $8 million. Second, the plan administrator would have to receive from each qualifying financial institution a statement identifying each plan asset held. No cost is associated with this requirement because the statements required from qualifying financial institutions are records that these institution dispense as part of usual and customary business practices and that plan administrators must obtain to properly discharge their annual reporting obligations under ERISA. Third, the plan's SAR would have to include summary information describing the statements and fidelity bonds and a notice that copies of the statements and bonds are available at no charge. This requirement involves an initial start up cost of $5.9 million—15 minutes of a professional's time at $39 for all 605,000 small plans to modify their SAR forms to include the language required by the regulation. Additionally, plans would be required to provide participants and beneficiaries copies of the statements and bonding information upon request. The Department assumes that 5% of participants and beneficiaries will request this information at a cost of $995,000 to plans—assembling and photocopying by a clerical worker at $15 per hour for 7 minutes per distribution, and mailing costs of $.37 per mailing. The aggregate annual disclosure cost of $995,000 translates to only $1.64 per plan and is the only annual cost imposed by this regulation on the estimated 568,000 plans meeting the 95% test. For the 37,000 plans not meeting the 95% test, they also face an annual cost of $8 million for bonding requirements, or an additional $220 per plan. Additionally, all 605,000 plans face the one time start up cost of $10 per plan.

When considering any regulatory action, it is important to consider the impact on businesses of various sizes. Given that well over half of all small pension plans (57%) have between 1 and 10 participants, it is important to focus on these small plans in particular.

ESTIMATES OF THE NUMBER AND PERCENTAGE OF VERY SMALL PENSION PLANS (1–9 PARTICIPANTS) NOT MEETING THE ''QUALIFYING PLAN ASSETS'' TEST AT VARIOUS THRESHOLD LEVELS

	Alternative Threshold Levels for Qualifying Plan Assets						
	100%	95%	90%	85%	80%	75%	<75%
Number of plans	186,142	20,377	10,771	9,402	8,737	8,100	49
Percent of plans	54%	6%	3%	3%	3%	2%	.01%

As the above table shows,[7] the percent of plans with 1–9 participants that would meet the requirement that 95% of assets be ''qualifying plan assets'' is the same as that for all small plans with fewer than 100 participants. Therefore, the 95% threshold is reasonable for all classes of plans within the category of those with fewer than 100 participants.

[7] The data in the table was estimated in the same way as that for pension plans with more than 100 participants (see Executive Order 12866 Statement).

A discussion of alternatives to the proposed rule that the Department considered appears above in the ''Examination of Alternative Approaches'' section of the Executive Order 12866 Statement.

No relevant federal rules are anticipated to duplicate, overlap, or conflict with this proposed rule.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. § 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed revision of the information collection request (ICR) included in this Notice of Proposed Small Pension Plan Security Amendments. A copy of the ICR may be obtained by contacting the office listed in the addressee section of this notice.

The Department of Labor (Department) has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. § 3507(d) of PRA 95 for review of its information collections. The Department and OMB are particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through January 31, 2000, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

ADDRESSEE (PRA 95): Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782 (this is not a toll-free number); Fax: (202) 219–4745.

The proposed modifications to the small plan audit waiver will increase the security and accountability of small pension plans. The paperwork burden imposed on plans will be minimal. No paperwork burden is associated with two of the three provisions in the regulation—the requirement that 95% of plan assets be—qualifying plan assets'' and the improved bonding requirement for those plans not meeting the 95% test. Paperwork does arise from the third provision—modifying the SAR to include summary information describing the statements and bonds and noting that copies are available upon request. This requirement involves a one-time start up cost to plans to modify their SAR forms to include the language required by the regulation. Since 90% of plans are assumed to use service providers to comply with ERISA Form 5500 and SAR reporting requirements, it is assumed that the modifications to the SAR form will be done by service providers for 90% of plans, and in-house for the remaining plans. The start up cost (averaged over a three year period) is estimated to be $1.8 million for the 90% small plans using service providers and 15,000 hours for the remaining plans—15 minutes per plan, at $39 per hour (professional's rate) for those plans using service providers. Another cost associated with the SAR disclosure requirements is providing copies of the statements and bonding information to participants and beneficiaries who request them. The Department assumes that 5% of participants and beneficiaries will request this information. Since the documents already have been provided by bonding companies and financial institutions, the cost of compliance per distribution merely involves 5 minutes to ready the appropriate documents for mailing and 2 minutes of photocopying by a clerical worker, at a $15 hourly rate for plans using service providers, and mailing costs of $.37 per mailing. The aggregate burden is $912,000 and 5,500 hours.

Type of Review: Revision of an existing information collection.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: ERISA Summary Annual Report Requirement.

OMB Number: 1210–0040.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: Annually.

Total Respondents: 817,000.

Total Responses: 235,000,000.

Estimated Burden Hours: 1,390,172 total (1,369,577 for existing information collection request, and 20,595 for proposed amendments).

Estimated Annual Cost (Capital/Startup): $1,770,000 total.

Estimated Annual Costs (Operating and Maintenance): $112,287,000 total ($111,375,000 for the existing information collection request, and $912,000 for proposed amendments).

Total Annualized Costs: $114,057,000 total ($111,375,000 for the existing information collection request, and $2,682,000 for proposed amendments).

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Small Business Regulatory Enforcement Fairness Act

The rule proposed in this action is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*) (SBREFA) and is a major rule under SBREFA. The rule, if finalized, will be transmitted to Congress and the Comptroller General for review.

Statutory Authority

These regulations are proposed pursuant to authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and section 104(a) of ERISA, as amended, (Pub. L. 104–191, 110 Stat. 1936, 1951, 29 U.S.C. 1024), and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

PART 2520—[AMENDED]

1. The authority for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c) and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of

Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955, and sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.104–41 is amended by revising paragraph (c) as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner prescribed in § 2520.104a–5, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan,'' including any required schedules or statements prescribed by the instructions to the form, and, unless waived by § 2520.104–46, a report of an independent qualified public accountant meeting the requirements of § 2520.103–1(b).

* * * * *

3. Section 2520.104–46 is amended by revising paragraphs (b)(1) and (d) to read as follows:

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

* * * * *

(b) *Application.* (1)(i) The administrator of an employee pension benefit plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2)(A) of the Act and § 2520.104–41 is not required to comply with the annual reporting requirements described in paragraph (c) of this section, provided that with respect to each plan year for which the waiver is claimed—

(A) (*1*) At least 95 percent of the assets of the plan constitute qualifying plan assets within the meaning of paragraph (b)(1)(ii) of this section, or

(*2*) Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of section 412 of the Act and the regulations issued thereunder, except that the amount of the bond shall not be less than the value of such assets;

(B) The summary annual report, described in § 2520.104b–10, includes, in addition to any other required information:

(*1*) The name of each institution holding qualifying plan assets and the amount of such assets held by each institution as of the end of the plan year;

(*2*) The name of the surety company issuing a bond for purposes of paragraph (b)(1)(i)(A)(*2*);

(*3*) A notice indicating that participants and beneficiaries may, upon request and without charge, examine or receive copies of evidence of any bond required by paragraph (b)(1)(i)(A)(*2*) and copies of statements received from each institution holding qualifying assets which describe the assets held by the institution as of the end of the plan year; and

(*4*) A notice stating that participants and beneficiaries should contact the Regional Office of the U.S. Department of Labor's Pension and Welfare Benefits Administration if they are unable to examine or obtain copies of the statements received from each institution holding qualifying assets or evidence of the bond, if applicable; and

(C) In response to a request from any participant or beneficiary, the administrator, without charge to the participant or beneficiary, makes available for examination, or upon request furnishes copies of, evidence of any bond required by paragraph (b)(1)(i)(A)(*2*) and the statement of assets from each financial institution holding qualifying assets as of the end of the plan year.

(ii) For purposes of paragraph (b)(1), the term ''qualifying plan assets'' means:

(A) Qualifying employer securities, as defined in section 407(d)(1) of the Act and the regulations issued thereunder;

(B) Any loan meeting the requirements of section 408(b)(1) of the Act and the regulations issued thereunder; and

(C) Any assets held by the following institutions:

(*1*) A bank or similar financial institution as defined in § 2550.408b–4(c);

(*2*) An insurance company qualified to do business under the laws of a state;

(*3*) An organization registered as a broker-dealer under the Securities and Exchange Act of 1934; or

(*4*) Any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code.

(iii) For purposes of paragraph (b)(1), the determination of the percentage of all plan assets consisting of qualifying plan assets with respect to a given plan year shall be made in the same manner as the amount of the bond is determined pursuant to §§ 2580.412–11, 2580.412–14, and 2580.412–15.

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500 ''Annual Return/Report of Employee Benefit Plan,'' including any required schedules or statements prescribed by the instructions to the form. See § 2520.104–41.

(2) For purposes of this section, an employee pension benefit plan for which simplified annual reporting has been prescribed includes an employee pension benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103–1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104–41.

(3) For purposes of this section, an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year includes an employee welfare benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103–1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104–41.

(4) A plan that elects to file a Form 5500 as a large plan pursuant to § 2520.103–1(d) may not claim a waiver under this section.

Signed at Washington, D.C., this 24th day of November, 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–31110 Filed 11–30–99; 8:45 am]

BILLING CODE 4510–29–P

federal register

Wednesday
December 1, 1999

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 25 and 52

Federal Acquisition Regulation; Restrictions on Acquisitions From Yugoslavia and Afghanistan; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAR Case 1999–008]

RIN 9000–AI54

Federal Acquisition Regulation; Restrictions on Acquisitions From Yugoslavia and Afghanistan

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Orders 13121 and 13129. These Executive orders prohibit the importation into the United States of any goods or services from Yugoslavia (Serbia and Montenegro) or the territory of Afghanistan controlled by the Taliban.

DATES: Interested parties should submit comments in writing on or before January 31, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999–008@gsa.gov.

Please submit comments only and cite FAR case 1999–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1999–008.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend FAR 25.70(a) and the clauses at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.225–11, Restrictions on Certain Foreign Purchases, to implement Executive Order 13121 of April 30, 1999, and Executive Order 13129 of July 4, 1999. These Executive orders prohibit the importation into the United States of any goods or services from Yugoslavia (Serbia and Montenegro) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States.

This rule was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it only applies to acquisition of items from Yugoslavia or Afghanistan. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Subparts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–008), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: November 24, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 25 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Revise paragraph 25.701(a) to read as follows:

25.701 Restrictions.

(a) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

(1) Cuba (31 CFR part 515);

(2) Iran (31 CFR part 560);

(3) Iraq (31 CFR part 575);

(4) Libya (31 CFR part 550);

(5) North Korea (31 CFR part 500);

(6) Sudan (31 CFR part 538);

(7) Territory of Afghanistan controlled by the Taliban (Executive order 13129); or

(8) Yugoslavia (Serbia and Montenegro) (Executive Order 13121).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.212–5, revise the date of the clause; redesignate paragraph (a)(2) as (a)(3); add new paragraph (a)(2); and amend newly designated paragraph (a)(3) by removing ''U.S.C'' and adding ''U.S.C.'' in its place. The revised text read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

(a) * * *

(2) 52.225–11, Restrictions on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, 13067, 13121, and 13129); and

* * * * *

4. In section 52.225–11, revise the date of the clause and paragraph (a); in paragraph (b) remove ''Government'' and insert ''government'' in its place; and revise paragraph (c) to read as follows:

52.225–11 Restrictions on Certain Foreign Purchases.

* * * * *

Restrictions on Certain Foreign Purchases (Date)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United

States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Yugoslavia (Serbia and Montenegro).

* * * * *

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

[FR Doc. 99–31125 Filed 11–30–99; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Wednesday
December 1, 1999

Part V

Environmental Protection Agency

40 CFR Parts 141 and 143

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Chemical and Microbiological Contaminants and Revisions to Laboratory Certification Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 143

[WH–FRL–6481–7]

RIN 2040–AD04

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Chemical and Microbiological Contaminants and Revisions to Laboratory Certification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule contains revisions to drinking water regulations that were proposed for public comment in separate documents dated July 31, 1998, September 3, 1998, and January 14, 1999. In this rule, EPA is approving the use of updated versions of 25 American Society for Testing and Materials (ASTM), 54 Standard Methods for Examination of Water and Wastewater (Standard Methods or SM) and 13 Environmental Protection Agency (EPA) analytical methods for compliance determinations of chemical contaminants in drinking water. At the same time, the Agency is withdrawing approval of the previous versions of the 13 EPA Methods. Previous versions of the SM and ASTM methods will continue to be approved. EPA is also approving use of a new medium and two new methods for simultaneous determination of total coliforms and *E. coli.*, a new method for determination of lead, six new methods for determination of magnesium, and two new methods for determination of acid herbicides. The Agency is also making several technical corrections or clarifications to the regulations, amending the regulation to provide for changes in the composition of Performance Evaluation (PE) samples, requiring a successful PE sample analysis each year for chemical analyses, and requiring method specific laboratory certification criteria for reporting compliance data. This rule also adds two ASTM and two SM methods to those recommended for secondary monitoring of sulfate and chloride.

DATES: This final rule becomes effective on January 3, 2000. The incorporation by reference of the publications listed in today's rule is approved by the Director of the Federal Register as of January 3, 2000. For Judicial Review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on December 15, 1999, as provided in 40 CFR 23.7.

ADDRESSES: The record for this rulemaking has been established under three separate docket numbers: W–97–04 for the September 3, 1998 (63 FR 47115) rule; W–97–05 for the July 31, 1998 (63 FR 41134) rule; and W–98–27 for the January 14, 1999 (64 FR 2538) rule. Supporting documents including references and methods cited in this document, public comments received on the proposal and EPA's responses, are available for review at the US Environmental Protection Agency, Water Docket, East Tower Basement, 401 M Street, SW, Washington, D.C. 20460. For access to the docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: The EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

For technical information on microbiology methods contact Paul S. Berger, Ph.D., (202–260–3039). For technical information regarding chemistry methods, contact Jeanne Campbell (202–260–7770). Both individuals are in the Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), US Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. For a list of Regional Contacts see **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

Public water systems are the regulated entities required to conduct analyses to measure for contaminants in water samples. However, EPA Regions, as well as States, local, and tribal governments with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples. If EPA has established a maximum contaminant level (''MCL'') for a given drinking water contaminant, the Agency also ''approves'' standardized testing procedures (i.e., promulgated through rulemaking) for analysis of the contaminant. Once EPA standardizes such test procedures, analysis using those procedures (or approved alternate test procedures) is required. Public water systems required to test water samples must use one of the approved standardized test procedures. Categories and entities that may ultimately be regulated include:

Category	Examples of potentially regulated entities	SIC
State, Local, and Tribal Governments.	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local, and tribal governments that themselves operate public water systems required to conduct analytic monitoring.	9511
Industry	Industrial operators of public water systems.	4941
Municipalities	Municipal operators of public water systems.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Regional Contacts

EPA Regional Offices

I JFK Federal Bldg., One Congress Street, 11th Floor, Boston, MA 02203, Phone: 617–918–1611, Tony DePalma

II 290 Broadway, 24th Floor, New York, NY 10007, Phone: 212–647–3880, Walter Andrews

III 841 Chestnut Building, Philadelphia, PA 19107, Phone: 215–814–5757, Victoria Binetti

IV 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: 404–562–9329, Stalling Howell

V 77 West Jackson Boulevard, Chicago, IL 60604, Phone: 312–886–6206, Charlene Denys

VI 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone: 214–665–7150, Larry Wright

VII 726 Minnesota Avenue, Kansas City, KS 66101, Phone: 913–551–7682, Robert Morby

VIII One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202, Phone: 303–312–6812, Jack Rychecky

IX 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415–744–1858, Corine Li

X 1200 Sixth Avenue, Seattle, WA 98101, Phone: 206–553–1893, Larry Worley

Information on Internet Access

This **Federal Register** document has been placed on the Internet at the following location: *http://www.epa.gov/fedrgstr.* Information about analytical methods approved for compliance monitoring can be found at the following location: *http://www.epa.gov/OGWDW/methods/methods.html.*

Availability and Sources for Methods

Copies of final EPA Methods are available for a nominal cost through the National Technical Information Service (NTIS), US Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. NTIS also may be reached at 800–553–6847. Copies of EPA Methods 515.3 and 549.2 may be obtained from USEPA, National Exposure Research Laboratory (NERL)-Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268. Written requests for copies of EPA Methods 515.3 and 549.2 may be faxed to NERL-Cincinnati at 513–569–7757 or sent via E-mail to: *Dwmethods.help@epa.gov.* All other methods must be obtained from the publisher. Publishers (with addresses) for all approved methods are cited at 40 CFR Part 141 and in the References section of today's rule.

Table of Contents

I. Statutory Authority

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures. * * *'' (42 U.S.C. 300f(1)(D)). In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA (42 U.S.C. 300j–4). EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)).

II. Regulatory Background and History

EPA has promulgated analytical methods for all currently regulated drinking water contaminants for which MCLs or monitoring requirements have been promulgated. In most cases, the Agency has promulgated regulations specifying (i.e., approving) the use of more than one standardized analytical method for a particular contaminant. Systems may use any one of them for determining compliance with an MCL or monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods or modifications to existing approved methods, or withdraw approved methods that become obsolete.

On July 31, 1998, and January 14, 1999, EPA proposed to amend the regulations to approve the use of several new methods and modifications to existing methods that EPA believes are as good as or better than the current methods and procedures. The January 14 notice also proposed six analytical methods for magnesium, which would compensate for an omission in the Stage 1 Disinfectants and Disinfection Byproducts (DBP) Rule (63 FR 69390, December 16, 1998). The DBP Rule allows certain surface water systems that are unable to achieve the specified level of total organic carbon removal instead to meet one of several alternative performance criteria, including the removal of 10 mg/L magnesium hardness from source water. The DBP Rule, however, does not include any analytical methods for magnesium.

In addition to these two proposed rules, EPA proposed a rule on September 3, 1998, which was a companion to a direct final rule published on the same day (63 FR 47098). In the September 3, 1998 rule, EPA proposed approving the use of updated versions of previously approved analytical methods, the withdrawal of older versions of certain EPA methods, minor technical corrections or clarifications, and amendments to the regulations. The direct final rule, in the absence of adverse public comment, would have been final on January 4, 1999. Because adverse comments were received, EPA withdrew the entire September 1998 rule on December 31, 1998 (63 FR 72200) and deferred final action in order to respond to those comments.

III. Summary of Final Rule

A. This Rule Amends the Regulations at 40 CFR Part 141 To

1. Allow use of newer versions of 25 methods published by the American Society for Testing and Materials (ASTM). The new versions are published in the 1996 *Annual Book of ASTM Standards,* Vols. 11.01 and 11.02.

2. Allow use of newer versions of 54 methods published by the Standard Methods Committee. The new versions are published in *Standard Methods for the Examination of Water and Wastewater,* 19th edition, 1995.

3. Allow use of 13 of the 14 compliance monitoring methods published by EPA in the document, *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,* EPA/600/R–95/131, August 1995. These 13 methods replace the previous versions of these methods. The compliance method published in Supplement III that is not approved in today's rule is EPA Method 515.1, Rev. 4.1; the previous version, Rev. 4.0, continues to be the approved version.

4. Approve a new method for the determination of lead under the Lead and Copper Rule, Palintest Method 1001.

5. Approve six new methods for the determination of magnesium, EPA Method 200.7, ASTM D–511–93 versions A and B, and SM 3500–Mg versions B, C and E under the DBP Rule.

6. Approve two additional methods for the determination acid herbicides, EPA Method 515.3 and ASTM D5317–93.

7. Replace EPA Method 549.1 for determination of Diquat with EPA Method 549.2.

8. Approve use of a new membrane filter medium, MI (4–Methylumbelliferyl-Beta-D-galactopyranoside—Indoxyl-Beta-D-glucuronide) Agar, for the simultaneous determination of total coliforms and *E. coli.* in drinking water under the Total Coliform Rule (TCR) and source water under the Surface Water Treatment Rule (SWTR).

9. Approve two new methods for determination of total coliforms, E*Colite® Test and m-ColiBlue24® Test in source water under the SWTR.

10. Require that microbiological samples collected for the determination of coliforms or fecal coliforms in source water under the SWTR or for determination of heterotrophic bacteria

in distribution system samples be shipped and held below 10°C.

11. Reduce the minimum incubation time for reading the Colisure Test, for determination of total coliforms, from 28 hours to 24 hours in drinking water under the TCR.

12. Require that a PE sample for chemical contaminants be successfully analyzed at least once each year using each method used to report compliance monitoring results. Additional methods used for confirmation testing, however, would not require PE proficiency testing.

13. Clarify that the acceptance limits for successfully measuring chemical analytes in a PE sample apply only if that analyte has been added to the PE sample.

14. Increase the maximum holding time from 48 hours to 14 days for chlorinated, unacidified drinking water samples collected for determination of nitrate.

15. Promote safe handling of acids by clarifying that acidification of samples for determinations of metals can be conducted in the laboratory rather than in the field and allowing use of dilute (1:1) solutions of acid to preserve samples collected for the determination of metals or nitrate (including total nitrate).

16. Provide an option for field/laboratory determinations of alkalinity, calcium, conductivity, orthophosphate and silica in drinking water samples by any person acceptable to the State to conduct these determinations. Previously a laboratory had to be certified to conduct these determinations.

B. This Rule Amends the Regulations at 40 CFR Part 143 To

1. Add methods for the determination of chloride to the table of methods recommended for the optional monitoring of secondary drinking water contaminants. The new recommended methods for chloride are ASTM D 512–89B and SM 4500–Cl^- B.

2. Add methods for the determination of sulfate to the table of methods recommended for the optional monitoring of secondary drinking water contaminants. The new recommended methods for sulfate are ASTM D 516–90 and SM 4500–SO_4^{2-} E.

IV. Response to Comments

EPA received 15 comments on the July 31, 1998 (63 FR 41134) proposal, 13 comments on the September 3, 1998 (63 FR 47115) rule, and 21 comments on the January 14, 1999 proposal (64 FR 2538). Commenters represented analytical laboratories, water utilities, instrument manufacturers, State and local governments, trade associations, scientists, and private citizens. A summary of major public comments on the proposed rules and the Agency's response is presented in this section. The Agency's complete response to all comments on these rules is available in the public docket for this rule.

Except as noted in Part V of this preamble, the provisions in today's rule are the same as those proposed in the July 31, 1998, the September 3, 1998 and the January 14, 1999, **Federal Register** notices.

A. Response to Significant Comments Received on the July 31, 1998 (63 FR 41134) Notice

1. Using the Same Method To Analyze Compliance Monitoring Samples and Performance Evaluation Samples

Several commenters objected to the July 1998 proposal that would require laboratories to use the same method to report the results of analyses of compliance monitoring samples and the annual PE sample that is required to maintain certification for drinking water. No commenter stated that it was unsound scientifically to require testing laboratory proficiency with a PE sample using the same method used for routine compliance monitoring. Commenters criticized the requirement, because it was too expensive or did not conform with the National Environmental Laboratory Accreditation Conference (NELAC) standard for PE sample analysis.

The commenters did not quantify what would be too expensive nor provide any cost estimates of the degree or extent that costs would increase for drinking water compliance monitoring under the proposed requirement. All States currently require the proposed practice. In addition, Chapter Three of the EPA *Manual for the Certification of Laboratories Analyzing Drinking Water* Fourth Edition (EPA 1997) recommends that, ''If a laboratory wishes to be certified for a contaminant by more than one method, it should analyze the PE samples by each method for which it wishes to be certified.'' In this context ''to be certified'' means to be permitted to report compliance monitoring data. Two factors mitigate the cost of analyzing PE samples-by-method. First, a PE sample analysis is required only for each method used to report compliance data. Second, if a laboratory analyzes samples for an analyte and confirms the result by analysis with a second method, the laboratory is required to pass a PE only with the method used to report the compliance data. For labs that elect to report compliance results using more than one method per analyte, the incremental cost of an extra PE sample analysis is small, manageable and reasonable, and justified by the need to ensure that a laboratory is qualified to report data with each method.

The Agency has worked with NELAC to maximize compatibility between NELAC standards and the EPA laboratory certification requirements. The NELAC standards state that a State or federal regulation would supersede a NELAC standard when a conflict exists. EPA has the ultimate responsibility to ensure the quality and integrity of compliance monitoring data reported under the SDWA and other statutes. NELAC standards can be an alternative means to implement regulatory requirements for drinking water laboratory certification, but they are not a substitute for drinking water regulations. EPA strongly encourages States to adopt NELAC standards, but adoption is voluntary.

Three commenters supported the proposed requirement, but were concerned that the proposed change may be misinterpreted and require one to pass the PE sample for all analytes even if one were only measuring a subset of the analytes in a compliance sample (e.g., using EPA 552.1 to determine dalapon, but not the haloacetic acids). EPA does not believe the requirement will be subject to misinterpretation. If one uses EPA 552.1 to report only dalapon data, the PE sample results need only include dalapon. EPA intends to provide further guidance on this requirement in the laboratory certification manual when it is revised, and provide other assistance as specific questions arise.

2. Withdrawal of EPA Method 549.1 for Diquat

Four commenters stated they have not had any regular precipitation problems using EPA Method 549.1. Some of these commenters believe that withdrawal of EPA Method 549.1 is unnecessary and a hardship because it would require use of the new EPA Method 549.2. One of the commenters noted to the contrary that elimination of the pH adjustment simplifies the method and should not have a negative effect.

EPA agrees that not all matrices exhibit the precipitation problem at the pH adjustment step, which may be why commenters did not report significant precipitation problems with EPA Method 549.1. However, the Agency has received complaints that precipitation occurs in hard water matrices. EPA has verified this problem in simulated hard water matrices containing high

concentrations of magnesium. After carefully reviewing all of the procedural steps of EPA Method 549.1, EPA experimentally retested the pH adjustment step. The test demonstrated that the pH adjustment to pH 10.5 did not improve extraction efficiency as had been reported in literature. Increasing pH to 10.5 actually had a negative effect on recovery because of the degradation of Diquat at strongly alkaline pH. Therefore, the pH adjustment step was removed and the method was reissued and proposed as EPA Method 549.2. The pH retest step and other data are in the administrative record of the July 31, 1998 (63 FR 41134) rule.

Use of EPA Method 549.2 does not require re-certification or learning the use of a new method. EPA Method 549.2 is EPA Method 549.1 without the pH adjustment step. Requiring a step (pH adjustment) to be omitted from the current method does not impose a hardship on analytical laboratories or the regulated community. As no positive effect is associated with the pH adjustment to 10.5, and there is the possibility of a negative effect, the Agency is withdrawing EPA Method 549.1.

3. MI-Agar Medium for Coliform Determinations

In the July 31, 1998 rule, EPA proposed to approve the use of MI Agar for use with the Total Coliform Rule and Surface Water Treatment Rule. The Agency had proposed that the results from MI Agar can be read following incubation of media for 16–24 hours. Two commenters suggested that the MI Agar procedure should be approved as a 24 hour procedure since results in the comparison study were read at 24 hours. EPA data demonstrates that blue E. coli and fluorescent total coliform colonies appear in as few as 9 hours, which would be detected by the laboratory in 16–24 hours, depending upon the time of day the sample was filtered. However, because the appearance time for the blue E. coli colonies exceeded the standard 8-hour working day and because EPA planned to compare the MI Agar procedure with one using M-Endo medium, a 24-hour method, EPA used the 24-hour incubation time for the studies. Thus, the Agency is approving the method as a 24-hour test (although the test may be recorded as positive if this result shows up earlier than 24 hours). The test is approved for detecting total coliforms and E. coli under the Total Coliform Rule and for enumerating total coliforms under the Surface Water Treatment Rule.

B. Responses to Significant Comments Received on the September 3, 1998 (63 FR 47115) Notice

1. Quality Control Improvements for EPA Methods

Four commenters on the September 1998 rule noted that, although many Supplement III methods contain tightened analyte recovery control limits of ±30%, the data presented in some of these methods do not support the change. Commenters provided data or other information to support their argument for the following analytes: 2,4-DB, Aciflurofen, DCPA, Dinoseb, pentachlorophenol and Picloram in EPA Method 515.1, Rev. 4.1; hexachlorocyclopentadiene (HCP) in EPA Method 508.1, Rev. 2.0; and DDT in EPA Method 508, Rev.3.1. The commenters recommended either (1) retaining the current limits of ± 3 standard deviations or method limits, whichever are narrower for these three methods or (2) setting the recovery control limits on an analyte-by-analyte basis.

EPA revised the quality control requirements to set a limit on the range of acceptable recoveries of analytes. Previously the allowed variability had no limit because it was based on relative standard deviation (RSD) of previous recoveries and could increase to unacceptable limits if the RSD continued to increase during routine use of the method. The proposed revised criteria would allow the recoveries to vary by as much as three times the RSD provided this value does not exceed a fixed numerical limit. The fixed (usually ±30%) limit is specified in the initial demonstration of capability section of each EPA method. After reviewing public comment, EPA agrees that the fixed criteria may be too restrictive for some analytes. Specifically, because the recovery limits of ±30% for some of the regulated acid herbicides in EPA Method 515.1, Rev. 4.1 are not fully supported by the available data, the Agency will not approve this revision of EPA Method 515.1. The current revision, 4.0, will remain approved with the current recovery control limits of ± 3 standard deviations. EPA may evaluate the available data to determine if a better recovery control strategy can be developed for a future proposal. Because of this change, EPA will not impose the ±30% criterion on the ASTM version of EPA Method 515.1, D5137–93, that is approved in today's rule.

The Agency is keeping the ±30% recovery criterion for other Supplement III methods, including EPA Methods 508 and 508.1, because the data published in these methods supports the tighter control limits. The control limits of DDT from reagent water listed in Table 2 of EPA Method 508 range from 82% to 142%, i.e. 112% ±30%. The mean recoveries observed for the two synthetic waters (Table 2) and another reagent water (Table 3) are 98%, 84% and 87%, all of which fall within the allowed 82–142% recovery control limits. Although EPA agrees that data published for HCP in EPA Method 508.1, Rev. 2.0 does not support the ±30% limits for HCP, the failure is due to the extremely low spiking levels of HCP used, .i.e., four to six times the method MDL of 0.004 µg/L. In Section 9.3 of most Supplement III methods the specified minimum spiking level is ten times the MDL, which for HCP would be 0.04 µg/L, or at some midpoint of the calibration curve between the MDL and the MCL, which for HCP would be 25 µg/L. Data in the Supplement III version of EPA Method 525.2 was obtained with HCP spiked at higher concentrations and supports the ±30% recovery control limits. EPA Method 525.2 data supports the HCP control limits in EPA Method 508.1 because the procedure for the recovery of HCP from a drinking water sample is identical in both methods. The main difference between the methods is the detection system, which would not affect recovery of HCP from drinking water in any way.

2. Nitrate and Nitrite Determinations

Nitrate 48-Hour Holding Time: Two commenters believe the 48-hour limit specified in the September 1998 rule for unacidified samples is not justified when the drinking water has been disinfected. The commenters provided data and cited a reference [Williams 1979] to demonstrate the stability of nitrate in chlorinated drinking water samples that have not been acidified. One commenter recommended a holding time of 14 to 28 days. The proposed 48 hour limit was based on the recommended preservation conditions in the approved methods published by EPA, ASTM and Standard Methods. Data submitted by the commenters and in an EPA study [EPA 1987] support a longer holding time. The JAWWA report showed no difference between the two types (acidified and unacidified) of samples over a period of 14 days; the EPA report recommended a holding time of 16 days. EPA accepts the commenters' data and is increasing the holding time to 14 days at 4° C for chlorinated, unacidified samples but is keeping the current requirement of 48 hours for unacidified, unchlorinated drinking water samples.

Nitrite Determinations in Some Disinfected Drinking Water Samples: The September 1998 notice included a footnote 2 in the preservation table at § 141.23(k)(2) which explained that analysis of samples disinfected with a strong oxidant (such as free chlorine, chlorine dioxide or ozone) can only provide a total nitrate (nitrate plus nitrite) result because all nitrite will be oxidized to nitrate. One commenter suggested that EPA drop the new footnote because it was incorrect. The commenter provided data to show that nitrite can occur in supplies disinfected with chlorine if a sufficiently high level of ammonia is present. EPA proposed the footnote to remove a burden from PWSs that conduct unnecessary measurements of nitrite that has been oxidized to nitrate in a chlorinated water sample. These measurements are a burden when samples must be shipped, because the maximum holding time for nitrite samples is 48 hours. Although chlorine and other strong oxidant disinfectants will usually oxidize nitrite to nitrate in a water sample, EPA agrees that this may not occur in all chlorinated water supplies. Thus, the footnote has not been added to the preservation table. EPA may use other means to reduce the burden of nitrite analysis at a PWS when use of a strong oxidant disinfectant clearly makes a nitrite determination unnecessary.

3. Approval of 20th Edition of Standard Methods

Several commenters applauded EPA's decision to approve 19th edition of Standards Methods but urged EPA to consider approval of 20th edition as it will be published before this final rule takes effect. The timing of promulgation of this rule and publication of the 20th edition did not allow sufficient time for review of the 20th edition by the Agency. The Agency has begun this review and once a review is complete intends to propose to incorporate the latest edition of Standard Methods and other voluntary consensus standards, seek comments and finalize these changes.

4. EPA's Decision Against Withdrawal of Older Editions of Consensus Methods

Three commenters expressed concern that EPA has chosen to cite not only the most recent edition of Standard Methods but also older editions which are no longer available from the publisher. The Agency believes that the differences between the methods in earlier and newer editions are not significant to warrant the removal of older editions or impose any possible additional economic burden (especially on small laboratories) to require the purchase of new editions.

C. Response to Significant Comments Received on the January 14, 1999 (64 FR 2538) Notice

1. False-Positive Rates for m-ColiBlue24® Test and E*Colite® Test

Several commenters contended that the false-positive rates for the E*Colite® Test and m-ColiBlue24® Test were too high and consequently opposed approval of these tests without an additional analytical procedure to ensure that those positives were actually coliforms. According to data submitted by the manufacturers that developed the two proposed tests, the false positive rates were: 16.0% for total coliforms and 7.2% for *E. coli* (E*Colite Test®), and 26.8% for total coliforms and 2.5% for *E. coli* (m-ColiBlue24® Test).

As part of its process for evaluating new methods for regulated drinking water contaminants, EPA recommends that applicants follow the testing protocols developed by EPA for use under the Alternative Test Procedure (ATP) and provide EPA with the resulting data. The two existing protocols for total coliforms/*E. coli* direct the applicant to provide the false-positive rate, false-negative rate, comparison data with an EPA-specified reference method, and other information. The current protocols, however, do not set an upper limit for the false-positive and false-negative rates. Because the two applicants met all the conditions of the protocol, and the protocols do not set an upper limit for the false-positive rate, EPA next decided whether the false-positive results were sufficiently great so as to require a verification step.

The Agency decided that the rates are not so high to require a verification step. First, the definition of ''total coliforms'' is not tightly defined. The definition is not strictly based upon taxonomy, but rather on the basis of gas production from the fermentation of lactose. EPA has approved some coliform tests (e.g., Colilert test) that are based not upon this process, but rather on some other means of determining whether the organism uses lactose. Therefore, the different methods may not be testing for exactly the same set of organisms, and this situation clouds the meaning of the term ''false-positive.'' Second, the Agency believes that public health would not be jeopardized with the higher false-positive rates because any false-positive result would err on the side of safety. Third, the Agency notes that a single total coliform-positive sample does not result in an MCL violation. Thus the adverse consequence of a ''false-positive'' for the system is mitigated. Finally, water systems have a choice among several methods currently approved for coliform. The user should take the false-positive rate (and, more importantly, the false-negative rate) into account in choosing which analytical methods to use for compliance sampling. Therefore, the Agency is not requiring a verification step for these two methods although systems/laboratories may elect to verify a total coliform-positive test at their discretion. The Agency notes that the *Manual for the Certification of Laboratories Analyzing Drinking Water* (4th ed., EPA 815–B–97–001, March 1997), at paragraph 5.1.8, encourages laboratories to perform parallel testing between a newly approved test and another EPA-approved procedure for enumerating total coliforms for at least several months and/or over several seasons to assess the effectiveness of the new test for the wide variety of water types submitted for analysis.

To emphasize the point that systems and laboratories should carefully choose which coliform method to use, the Agency has added a footnote to the table on approved methods for total coliforms in 141.21(f) that states:

> EPA strongly recommends that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring total coliforms. EPA also encourages laboratories to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The Agency suggests that laboratories perform these studies on a minimum of 5% of all total coliform-positive samples, except for those methods where verification/confirmation is already required, e.g., the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test. Methods for establishing false-positive and negative rates may be based on lactose fermentation, the rapid test for β-galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).

In addition to this footnote, to assist systems and laboratories in choosing a method, EPA is planning two future actions. First, EPA intends to prepare and widely distribute a list of the Agency-approved coliform methods, along with published false-positive and false-negative rates for each. Second, EPA intends to re-evaluate whether the alternate test procedure protocol for

coliforms should include specific limits for the false-positive and false-negative rates, whether to specify more precisely how these rates are to be determined, and whether to revise the comparison study to correct for the false-positive rates.

As a result of these measures, the Agency might undertake rulemaking that would require laboratories to use another test to verify the results from one or more of the coliform methods that the Agency has previously approved for drinking water analyses or are being approved in today's rule. Alternatively, the Agency may issue guidance rather than regulations on this issue. EPA is approving the three proposed coliform methods in today's rule rather than delay approval until the conclusion of this re-evaluation, because (1) The issue is not whether the test should be approved, but rather whether a verification step is needed, (2) Any future verification requirement may cover not only the three proposed coliform methods, but also previously EPA-approved methods, and (3) The Agency may issue guidance to the States, laboratories, and water systems on this issue rather than regulations. In the interim, EPA is recommending that each laboratory establish false-negative and false-positive rates for the water matrices to be tested, if it uses a method(s) for which EPA does not currently require a confirmation/verification step.

2. m-ColiBlue24® Test and E*Colite® Test: Presence-Absence vs. Density Measurements

Commenters requested clarification whether the m-ColiBlue24® Test and E*Colite® Test were being proposed as presence-absence type tests or density tests. EPA proposed, and is approving, these two tests only as presence-absence type tests, i.e., to determine the presence or absence of total coliforms and *E. coli* in a 100-mL water sample under the Total Coliform Rule (TCR). The two methods have not been approved for use under the SWTR by unfiltered systems to enumerate densities of total coliforms in the source water.

3. m-ColiBlue24® Test: Incubation Time

Commenters requested clarification of the incubation time for m-ColiBlue24®. EPA is approving this method and the Colisure test as 24-hour tests.

4. E*Colite® Test: Accidental Release of Bactericide

E*Colite® Test has a bactericide compartment that is separated by a seal from the reaction compartment. Two commenters were concerned that an accidental release of the bactericide could result in either sample loss or undetected false-negatives. According to a letter to EPA, dated April 13, 1999, from the manufacturer, Charm Sciences has quality assurance criteria for the integrity of the seal between the reaction compartment and the bactericide compartment. The Agency has included the letter in the docket for today's rule. Charm Sciences tests the seal between the bactericide and the culture in raw material acceptance specifications. Test bags must have a failure rate of <0.2% after 72 hours incubation at 37° C. In addition, the manufacturer adds a red dye to the bactericide so that a faulty seal between the compartments is quickly identified by the user as a flawed test. Finally, Charm Sciences, in an improvement, dispenses the bactericide in a protective foil pouch contained inside the bactericide compartment. This additional pouch offers a failure rate <0.2%. According to Charm Sciences, the probability of a simultaneous compartment seal failure and a pouch failure would be P<0.00004. As a result, the Agency believes an accidental release of bactericide is improbable.

5. Magnesium: Inductively Coupled Plasma—Mass Spectrometry (EPA Method 200.8)

The January 14 notice proposed six analytical methods for magnesium. EPA is approving all six methods. One commenter recommended that EPA approve the use of EPA Method 200.8, Inductively Coupled Plasma—Mass Spectrometry, in addition to the other six methods for analysis of magnesium. The Agency, however, does not have the data to support the use of EPA Method 200.8 for magnesium, and thus is not approving this method.

6. Lead: Anodic Stripping Voltammetry Method (Method 3130 B in *Standard Methods*)

The January 14 notice proposed a new alternate test procedure for lead, Method 1001, *Lead in Drinking Water Differential Pulse Anodic Stripping Voltammetry (DPASV)*, developed by Palintest LTD. Two commenters recommended that EPA approve the Anodic Stripping Voltammetry Method for lead (Method 3130 B) that appears in *Standard Methods*. The commenters did not provide their rationale, but apparently believe that approval is warranted based upon the fact that it is a consensus method equivalent to the proposed Palintest Procedure.

EPA reviewed Method 3130 in *Standard Methods* to determine whether the method could be approved on the basis that it was equivalent to the proposed Palintest Procedure (Method 1001). While the Agency notes that both procedures employ the same measurement technique, i.e., Differential Pulse Anodic Stripping Voltammetry, it does not believe that this fact, by itself, is sufficient to claim that the methods are equivalent.

Based upon the description provided in *Standard Methods*, the Agency does not believe there is sufficient data to show that the methods are equivalent. Method 3130 (Sections 1a and 1c) mentions sample digestion, and references Section 3030. While Section 3030 presents several acid digestion procedures, there is no supporting data employing the cited procedure(s) to show the efficacy of Method 3130 in conjunction with the measurement phase. In addition, in the section on ''procedure'' (Section 4), there is no mention of a specific value for the detection limit, nor linear dynamic range data, for either the hanging mercury drop electrode or the thin mercury film electrode, in the context of the operating parameters listed in the table, ''Instrumental conditions.''

Also, the section on ''quality control'' (Section 6) only states that the guidelines in Section 3020 should be followed. The guidelines in 3020, Quality Control, state that one should refer to individual method(s) for method specific quality control requirements. Thus, Method 3130 neither presents nor provides an acceptable cite for method quality assurance. Although Section 1020 B, Quality Control, discusses and/or describes the necessary elements of QC, it does not present the necessary data to demonstrate equivalency.

For the reasons indicated above, EPA is not approving Method 3130 in this rule. However, the Agency may decide to approve this method as a consensus method under a subsequent edition of *Standard Methods*, once the concerns indicated above are resolved.

V. Changes Between the Proposed Rules and the Final Rule

Except as noted below, the actions in today's final rule are the same as the proposed actions.

A. Changes to the July 31, 1998 Proposed Rule

MI Agar Medium for Coliform Determinations

The Agency proposed that results from MI Agar can be read following 16–24 hour incubation. In today's final rule the Agency has approved MI Agar as a 24 hour test.

B. Changes to September 3, 1998 Proposed Rule

1. Acid Herbicide Methods: EPA 515.1 (Rev. 4.1) and ASTM D 5317–93

EPA will not withdraw EPA Method 515.1 (Rev. 4.0) as proposed in the September rule and replace it with EPA Method 515.1 (Rev. 4.1) for the determination of acid herbicides the data in Rev. 4.1 does not support the upper limit of ± 30% for the recovery of some method analytes. Because of this change, EPA will not require that the ± 30% criterion be applied to determinations of acid herbicides using ASTM D 5317–93. EPA Method 515.1 Rev. 4.1 is published in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III* (Supplement III), EPA/600/R–95/131, August 1995. EPA Method 515.1 Rev. 4.0 is published in *Methods for the Determination of Organic Compounds in Drinking Water*, EPA/600/4–88/039, December 1988, Revised, July 1991. The other 13 compliance methods in Supplement III are approved in today's rule and replace the previously approved versions of these methods. EPA is withdrawing approval of the previous versions of the 13 EPA methods effective on June 1, 2001.

2. Nitrate and Nitrite Determinations

EPA is changing two of the amendments that were proposed at 141.23(k)(2) for determinations of nitrate or nitrite. The proposed amendments would have eliminated the requirement to determine nitrite in some drinking waters that are disinfected and require unacidified, chlorinated samples to be analyzed within 48 hours of collection. Under certain conditions nitrite is not completely oxidized to nitrate in disinfected water supplies, EPA will not eliminate the requirement to determine nitrite in disinfected water supplies. Therefore, EPA is increasing the proposed holding time for unacidified samples of chlorinated drinking water from 48 hours to 14 days.

3. Acidification of Samples

The footnotes to the table of preservation requirements at § 141.23(k)(2) are revised to allow use of dilute rather than concentrated acids and to clarify that current regulations do not require that samples for determination of metals be acidified in the field at the time of collection. This information was previously omitted from the table, because most approved methods specify use of dilute acid or that metals (not nitrate) samples may be analyzed 16 hours after they have been acidified at the laboratory.

4. Methods for Monitoring Unregulated Contaminants

The methods for unregulated monitoring at 40 CFR 141.40 will not be updated, because other regulatory actions (the Unregulated Contaminant Monitoring Rule, UCMR) will supersede the currently specified methods. These changes were published as a final rule on September 17, 1999 (64 FR 50556).

C. Changes to January 14, 1999 Proposed Rule

There were no changes to the actions or methods proposed in this rule.

VI. Performance-Based Measurement System

EPA plans to implement in the future a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs. The Agency is currently determining the specific steps necessary to implement PBMS in its programs and preparing an implementation plan. Final decisions have not yet been made concerning the implementation of PBMS in water programs. However, EPA is currently evaluating what relevant performance characteristics should be specified for monitoring methods used in the water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Safe Drinking Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of regulated contaminants in the drinking water program regulations.

VII. Regulation Assessment Requirements

A. Executive Order 12866

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

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601 (3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be those public water systems serving 10,000 or fewer customers. Public water systems includes both publicly and privately owned water systems. In accordance with the RFA requirements, EPA proposed using this alternative definition for governmental jurisdictions, small businesses and small not-for-profit enterprises in the **Federal Register** (63 FR 7620–7621 (February 13, 1998)), requested public comment, consulted with the Small

Business Administration (SBA) on the alternative definition as it relates to small businesses, and finalized the alternative definition in the final Consumer Confidence Report regulation on, 63 FR 44524–44525 (August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to all future drinking water regulations.

After considering the economic impact of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Today's rule approves new and revised versions of currently approved EPA Methods, ASTM Methods and Standard Methods for compliance with drinking water standards and monitoring requirements. Previous versions of these ASTM and Standard Methods will not be withdrawn. Public water systems and laboratories performing analyses on behalf of these systems may continue to use them after the promulgation of today's rule. Previous versions of 13 EPA Methods, however, will be withdrawn after 18 months. The delayed effective date for withdrawal should provide ample time for the changeover. The incremental change in cost associated with the use of the new versions of EPA methods will be very minor because the new versions contain only technical enhancements and editorial improvements. This rule also provides public water systems additional options for detecting total coliforms and E. coli in drinking water under the Total Coliform Rule and source water under the Surface Water Treatment Rule, for measuring magnesium under the DBP Rule, and for measuring lead under the Lead and Copper rule.

This rule also made minor technical corrections, amendments, or clarifications to the regulations and laboratory certification requirements. Laboratories conducting analysis for contaminants in drinking water are required to be certified for proficiency in the analytical method they actually use for drinking water compliance monitoring. Thus, in the case of laboratories that choose to be certified for an analyte using more than one approved method, the regulation will require such laboratories to analyze a PE sample for each method for which certification is requested. Currently most laboratories elect to be certified for only one method and there is no reason to believe this situation will change. Even if some small laboratories elect to seek certification for more than one method for some analytes, EPA has concluded that less than 24 small laboratories (1% of the total) will elect to do so. The consequent economic impact on small government laboratories would only be the annual cost of an additional PE analysis for the additional method of their choosing which could run as much as $100 or as little as $10 per laboratory. The cost per laboratory depends on the complexity of the additional method for which the laboratory chooses to be certified.

The requirement to hold samples at 10 °C during transit/storage under the Surface Water Treatment Rule is not expected to cause any significant increase in monitoring cost for small water systems. The requirement will affect only a selected number of small systems. The requirement to hold total and fecal coliform samples at 10 °C during transit/storage will affect only systems which use surface water and do not filter. Distribution system samples collected for the analysis of heterotrophic bacteria [measured as heterotrophic plate count (HPC)] are also required to be held at 10 °C during transit/storage. However, the analysis of heterotrophic bacteria is an optional substitute for maintaining a detectable disinfection residual. The requirement to hold samples below 10 °C can be easily met by shipping samples in reusable ice packs. EPA estimates a one time cost of less than $5 per sample for the ice packs; over a period of time this represents only a slight increase in sample shipping cost under current requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The rule approves use of additional analytical methods by systems conducting analysis for contaminants in drinking water and thus provides operational flexibility to the system. Any mandate to use a standardized testing procedure for a particular contaminant was established by EPA in an earlier rulemaking. Today's rule merely allows additional standardized procedures. Although, the rule withdraws earlier outdated versions of some methods, EPA anticipates no increase in expenditure or burden on the testing laboratories because newer methods are easier and more efficient to use. Thus, no increase in expenditure or burden on the laboratories' client public water systems is expected.

The rule also approves six methods for magnesium for use under the Stage 1 DBP Rule. Currently there are no EPA approved methods for magnesium, though earlier rulemaking established the need for standardized testing (in order to avoid other requirements). The methods will allow certain systems using softening that are unable to meet the specified level of total organic carbon removal to analyze for magnesium as one of several alternative performance criteria. EPA estimates that the cost of a magnesium analysis should not exceed $20 per sample; systems analyzing magnesium under the DBP Rule will be required to collect 24

samples per year, which will cost no more than $20 \times 24 = \$480$ per year. EPA believes that less than 1% of the 1,395 surface water systems covered by the DBP Rule will choose to monitor for magnesium as one of several criteria. As noted earlier, however, today's rule did not establish a new requirement for standardized testing of magnesium. That requirement was established in earlier rulemaking (though EPA neglected to specify acceptable standardized procedures at that time).

Today's rule affects laboratory testing requirements in ways other than approval of additional standardized test procedures. Some of these changes impose Federal mandates, but the effect of the new mandate will be well below $100 millions dollars in any one year. Today's rule authorizes changes to the composition of Performance Evaluation (PE) samples, requires yearly analysis of PE samples, establishes a requirement that laboratories be certified based on the proficiency with the method they actually use, and establishes a temperature requirement for certain samples prior to testing. The cost of PE program should decrease because the testing laboratories have to analyze for fewer analytes. The authorized changes to PE sample composition may actually decrease the burden associated with existing mandates.

Requiring PE sample analysis once a year will not adversely affect the systems because all States that conduct laboratory certification programs currently require yearly PE sample analysis. Today's rulemaking merely formalizes this national consistency among the States.

The amendment requiring that laboratories be certified based on the proficiency on the method they actually use to report the compliance data will impose a minor requirement for laboratories that choose to be certified for an analyte by more than one method. Previously, laboratories could satisfy PE testing requirement using any approved method regardless of the method actually used. Today's action merely codifies the common sense intention that laboratories establish proficiency with the methods they actually use. Though the requirement to establish proficiency now mandates use of the method actually used for compliance testing, EPA believes the potential incremental cost of an extra PE sample analysis is small, manageable and reasonable, and justified by the need to ensure that a laboratory is qualified to report data with each method. Currently most laboratories elect to be certified by the one method that they routinely use. There is no reason to believe laboratories will be compelled to incur the cost of an additional PE sample in the future.

The requirement to hold source water samples below 10 °C during transit/storage under the Surface Water Treatment Rule will affect only a small fraction (1–9%) of the water utilities. The effect on monitoring cost will be very minor, and attributable to a slight increase in sample shipping cost. Therefore, the mandate associated with the sample holding temperature should be insignificant.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The requirements will not be significant according to the information presented in the previous discussion of the Regulatory Flexibility Act. The requirements will not be unique because large and small governments would be affected the same way. Thus today's rule is not subject to the requirements of section 203 of the UMRA.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., EPA must submit an information collection request covering information collection requirements in a rule to the Office of Management and Budget (OMB) for review and approval. This rule does not contain any information collection requirements, and therefore is not subject to the Paperwork Reduction Act.

E. Science Advisory Board and National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with Section 1412 (d) and (e) of the SDWA, the Agency submitted all three rules in the proposal phase to the Science Advisory Board, the National Drinking Water Advisory Council, and the Secretary of Health and Human Services for their review. They had no comments.

F. National Technology Transfer and Advancement Act

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

This rulemaking involves technical standards. EPA is approving new versions of ASTM and Standard Methods for many regulated drinking water contaminants. ASTM and SM are both voluntary consensus standard bodies responsible for promoting adoption of uniform and efficient methods for analysis. In addition, EPA conducted a search to identify applicable consensus standards that would be acceptable for compliance determinations under the SDWA for the measurement of Diquat, six acid herbicides, magnesium, and lead and is approving consensus methods whenever possible. EPA identified two methods (ASTM D 5317–93 and SM 6640 B) for the acid herbicides. EPA is approving ASTM Method D 5317–93 for acid herbicides but decided not to use SM 6640 B in this rulemaking. The use of this voluntary consensus standard would have been impractical with applicable law because of significant shortcomings in the sample preparation and quality control sections of the method instructions. The Stage 1 DBP disinfection by-products final rule allows systems to demonstrate compliance with a total organic carbon removal requirement by demonstrating the removal of magnesium from the water supply. In today's rule, EPA has approved five voluntary consensus standards, SM 3500–Mg versions B, C, and E; ASTM D 511–93 versions A and B, for determination of magnesium. These methods have the sensitivity and precision necessary to determine magnesium removal at the levels specified in the Stage 1 DBP rule.

EPA identified no voluntary consensus standards for Diquat, and none were brought to the Agency's attention in comments. Therefore, EPA has decided to use EPA Method 549.2. A commenter recommended that EPA include thallium as an approved analyte in SM 3113 B. While SM 3113 B lists thallium in the potential analytical scope, the method does not contain accuracy and precision statistical data for determinations of thallium. The Agency does not have and the commenter did not provide the sensitivity, accuracy and precision statistical data the Agency would need to approve this technique for compliance determinations of thallium. Therefore, EPA decided not to include thallium in this rulemaking. A commenter recommended that the

Agency approve a voluntary consensus standard (SM 3130 B) for lead, because the commenter believes it is equivalent to the Palintest Method 1001 that is approved in today's rule. EPA reviewed SM 3130 B and concluded that is it not equivalent to the technique used in Method 1001, and the performance data in the method are not complete enough for the Agency to determine whether SM 3130 B would produce results equivalent to Method 1001 or to other methods approved for determinations of lead.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997)

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an ''economically significant'' rule as defined under E.O. 12866.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rule 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, as specified in Executive Order 13132. Today's rule approves new and revised versions of currently approved EPA Methods, ASTM Methods and Standard Methods for measurement of compliance with drinking water standards. This rule also provides public water systems, many of which are owned or operated by political subdivisions of States, with additional options for detection of total coliforms and *E. coli* in drinking water under the Total Coliform Rule and source water under the Surface Water Treatment Rule, as well as for measurement of magnesium under the DBP Rule, and for measurement of lead under the Lead and Copper rule. Though public water systems may be owned or operated by political subdivisions of States, the additional measurement flexibility afforded by today's rule will in no way affect the allocation of responsibilities among various levels of government.

This rule also made minor technical corrections, amendments, or clarifications to the regulations and laboratory certification requirements. Laboratories conducting analysis for contaminants in drinking water are required to be certified for proficiency in the analytical method they actually use for drinking water compliance monitoring. Thus, in the case of laboratories that choose to be certified for an analyte using more than one approved method, the regulation will require such laboratories to analyze a PE sample for each method for which certification is requested. Today's rule also requires that source water samples be held at 10°C during transit/storage under the Surface Water Treatment Rule. For government laboratories that will be affected by this rule, the affect will not have federalism implications because the rule will not impose substantial direct compliance costs, nor will it affect existing relationships between the national government and the States, nor will it affect the distribution of powers and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA's promulgation of analytical methods is authorized under section 1401(1)(D) and 1445(a) of the Safe Drinking Water Act. This rule approves new and updated analytical methods for drinking water compliance monitoring and makes method related corrections and amendments in the regulations. The

choice of new and updated analytical methods will actually save compliance cost as newer methods are more efficient and easier to use. Methods related corrections and amendments may cause a small increase in compliance cost but the increase will be very minor as discussed in the preamble. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 3, 2000.

VIII. References

APHA 1992. Eighteenth edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

APHA 1995. Nineteenth edition of *Standard Methods for the Examination of Water and Wastewater,* 1995, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

ASTM 1994. *Annual Book of ASTM Standards,* 1994, Vol. 11.01 and 11.02, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

ASTM 1996. *Annual Book of ASTM Standards,* 1996, Vol. 11.01 and 11.02, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

AWWA 1996. ''Standard Methods—A Closer Look'', Posavec, Steve, in *Opflow,* Vol. 22, No. 2, February 1996, American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235.

Brenner 1993. Brenner, K.P., et al., ''New medium for the simultaneous detection of total coliform and *Escherichia coli* in water'', Appl. Environ. Microbiol. 59:3534–3544.

Brenner 1996a. Brenner, K.P., et al., ''Comparison of the recoveries of *Escherichia coli* and total coliform from drinking water by the MI Agar method'', Appl. Environ. Microbiol. 62:203–208.

Brenner 1996b. Brenner, K.P., *et al.*, ''Interlaboratory evaluation of MI Agar and the U.S. Environmental Protection Agency—approved membrane filter method for the recovery of total coliform and *Escherichia coli* from drinking water'', J. Microbiol. Methods 27:111–119.

EPA 1987. ''Development of Preservation Techniques and Establishment of Maximum Holding Times: Inorganic Constituents of the National Pollutant Discharge Elimination System and Safe Drinking Water Act'', EPA/600/S4–86/043, March 1987.

EPA 1990a. ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement I'', July 1990, NTIS PB91–146027.

EPA 1991. ''Methods for the Determination of Organic Compounds in Drinking Water'', December 1988, revised July 1991, NTIS PB91–231480.

EPA 1992. ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,'' August 1992, NTIS PB92–207703.

EPA 1993. ''Methods for the Determination of Inorganic Substances in Environmental Samples'', August 1993, NTIS PB94–120821.

EPA 1994. ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', May 1994, NTIS PB95–125472.

EPA 1994b. *Technical Notes on Drinking Water Methods,* EPA/600/R–94/173, October 1994, NTIS PB95–104766.

EPA 1995. ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,'' EPA/600/R–95/131, August 1995, NTIS PB95–261616.

EPA 1996. EPA Methods 515.3, ''Determination of Chlorinated Acids in Drinking Water by Liquid-liquid Extraction, Derivatization And Gas Chromatography With Electron Capture Detection,'' Revision 1.0, EPA/815/B–99/001, July 1996. Available from U.S. Environmental Protection Agency, National Exposure Research Laboratory (NERL)-Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268.

EPA 1997a. EPA Methods 549.2 ''Determination of Diquat And Paraquat in Drinking Water by Liquid-solid Extraction And High Performance Liquid Chromatography With Ultraviolet Detection'', Revision 1.0, EPA/815/B–99/002, June 1997. Available from U.S. Environmental Protection Agency, National Exposure Research Laboratory (NERL)-Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268.

EPA 1997b. *Manual for the Certification of Laboratories Analyzing Drinking Water,* Fourth Edition, Office of Water Resource Center (RC–4100), 401 M. Street SW, Washington, D.C. 20460, EPA/81/B–97/001, March 1997.

NY 1996. Suffolk County Water Authority 1996. Data Package pertaining to EPA Method 508.1 and the use of a NP detector. Suffolk County Water Authority Laboratory, 260 Motor Parkway, P.O. Box 18043, Hauppauge, New York 11788–8843.

Palintest 1999. Method 1001: Lead in Drinking Water by Differential Pulse Anodic Stripping Voltammetry, August 1999. Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018.

USGS 1989. Methods I–3720–85, I–3300–85, I–1030–85, I–1601–85, I–2598–85, I–1700–85 and I–2700–85 in *Techniques of Water Resources Investigations of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989, U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

USGS 1993. Method I–2601–90 in *Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments,* Open File Report 93–125, 1993, U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

Williams 1979. Williams, T. J, *et al.*, ''An Evaluation of the Need for Preserving Potable Water Samples for Nitrate Testing'', JAWWA, March 1979, pp. 157–160.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Environmental protection, Chemicals, Incorporation by reference, Indian-lands, Water supply.

Dated: November 22, 1999.

Carol M. Browner,

Administrator.

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

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended by:

a. Revising paragraph (f)(3);

b. Revising the next to last sentence of paragraph (f)(5);

c. Revising the second sentence of paragraph (f)(6)(i);

d. Revising the second sentence of paragraph (f)(6)(ii);

e. Adding paragraphs (f)(6)(v), (f)(6)(vi) and (f)(6)(vii); and

f. Revising the second sentence of paragraph (f)(8).

The revisions and additions read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) Public water systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table.

Organism	Methodology [12]	Citation [1]
Total Coliforms [2].	Total Coliform Fermentation Technique [3,4,5].	9221A, B
	Total Coliform	9222
	Membrane Filter Technique [6]	A, B, C
	Presence-Absence (P-A) Coliform Test [5,7]	9221
	ONPG-MUG Test [8]	9223
	Colisure Test [9]	
	E*Colite® Test [10]	
	m-ColiBlue24® Test [11]	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10 and 11 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW, Washington, D.C. 20460 (Telephone: 202–260–3027); or at the Office of FEDERAL REGISTER, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 20408.

[1] Methods 9221 A, B; 9222 A, B, C; 9221 D and 9223 are contained in *Standard Methods for the Examination of Water and Wastewater,* 18th edition (1992) and 19th edition (1995) American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005; either edition may be used.

[2] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 °C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, ''New medium for the simultaneous detection of total coliform and *Escherichia coli* in water'' by Brenner, K.P., et al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100), 401 M. Street SW, Washington, D.C. 20460, EPA/600/J–99/225.

[7] Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

[8] The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[9] A description of the Colisure Test, Feb 28, 1994, may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092. The Colisure Test may be read after an incubation time of 24 hours.

[10] A description of the E*Colite® Test, ''Presence/Absence for Coliforms and *E. Coli* in Water,'' Dec 21, 1997, is available from Charm Sciences, Inc., 36 Franklin Street, Malden, MA 02148–4120.

[11] A description of the m-ColiBlue24® Test, Aug 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, IA 50010.

[12] EPA strongly recommends that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring total coliforms. EPA also encourages laboratories to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The Agency suggests that laboratories perform these studies on a minimum of 5% of all total coliform-positive samples, except for those methods where verification/confirmation is already required, e.g., the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test. Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β-galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).

* * * * *

(5) * * * The preparation of EC medium is described in Method 9221E (paragraph 1a) in *Standard Methods for the Examination of Water and Wastewater,* 18th edition, 1992 and in the 19th edition, 1995; either edition may be used. * * *

(6) * * *

(i) * * * EC medium is described in Method 9221 E as referenced in paragraph (f)(5) of this section. * * *

(ii) * * * Nutrient Agar is described in Method 9221 B (paragraph 3) in *Standard Methods for the Examination of Water and Wastewater,* 18th edition, 1992 and in the 19th edition, 1995; either edition may be used. * * *

* * * * *

(v) The membrane filter method with MI agar, a description of which is cited in footnote 6 to the table in paragraph (f)(3) of this section.

(vi) E*Colite® Test, a description of which is cited in footnote 10 to the table at paragraph (f)(3) of this section.

(vii) m-ColiBlue24® Test, a description of which is cited in footnote 11 to the table in paragraph (f)(3) of this section.

* * * * *

(8) * * * Copies of the analytical methods cited in Standard Methods for the Examination of Water and Wastewater (18th and 19th editions) may be obtained from the American Public Health Association *et al.;* 1015 Fifteenth Street NW., Washington, DC 20005. * * *

* * * * *

3. Section 141.23 is amended by:

a. Revising paragraph (a)(4)(iii);

b. Revising the table and footnotes in paragraph (k)(1);

c. Revising paragrah (k)(2) including the table;

d. Revising paragraph (k)(3)(i); and

e. Revising paragraph (k)(3)(ii) introductory text.

The revisions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(iii) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other
Alkalinity:				
Titrimetric		D1067–92B	2320 B	I–1030–85 [5]
Electrometric titration				
Antimony:				
ICP-Mass Spectrometry	[2] 200.8			
Hydride-Atomic Absorption		D–3697–92		
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace			3113 B	
Arsenic[14]:				

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other
Inductively Coupled Plasma	[2] 200.7		3120 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace		D–2972–93C	3113 B	
Hydride Atomic Absorption		D–2972–93B	3114 B	
Asbestos:				
Transmission Electron Microscopy	[9] 100.1			
Transmission Electron Microscopy	[10] 100.2			
Barium:				
Inductively Coupled Plasma	[2] 200.7		3120 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Direct			3111 D	
Atomic Absorption; Furnace			3113 B	
Beryllium:				
Inductively Coupled Plasma	[2] 200.7		3120 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace		D3645–93B	3113 B	
Cadmium:				
Inductively Coupled Plasma	[2] 200.7			
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace			3113 B	
Calcium:				
EDTA titrimetric		D511–93A	3500–Ca D	
Atomic absorption; direct aspiration		D511–93B	3111 B	
Inductively-coupled plasma	[2] 200.7		3120 B	
Chromium:				
Inductively Coupled Plasma	[2] 200.7		3120 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace			3113 B	
Copper:				
Atomic absorption; furnace		D1688–95C	3113 B	
Atomic absorption; direct aspiration		D1688–95A	3111 B	
ICP	[2] 200.7		3120 B	
ICP—Mass spectrometry	[2] 200.8			
Atomic absorption; platform	[2] 200.9			
Conductivity Conductance		D1125–95A	2510 B	
Cyanide:				
Manual Distillation followed by		D2036–91A	4500–CN^- C	
Spectrophotometric, Amenable		D2036–91B	4500–CN^- G	
Spectrophotometric.				
Manual		D2036–91A	4500–CN^- E	I–3300–85 [5]
Semi-automated	[6] 335.4			
Selective Electrode			4500–CN^- F	
Fluoride:				
Ion Chromatography	[6] 300.0	D4327–91	4110 B	
Manual Distill.; Color. SPADNS			4500–F^- B, D	
Manual Electrode		D1179–93B	4500–F^- C	
Automated Electrode				380–75WE [11]
Automated Alizarin			4500–F^- E	129–71W [11]
Lead:				
Atomic absorption; furnace		D3559–95D	3113 B	
ICP-Mass spectrometry	[2] 200.8			
Atomic absorption; platform	[2] 200.9			
Differential Pulse Anodic Stripping Voltammetry				Method 1001 [15]
Magnesium:				
Atomic Absorption		D 511–93 B	3111 B	
ICP	[2] 200.7		3120 B	
Complexation Titrimetric Methods		D 511–93 A	3500–Mg E	
Mercury:				
Manual, Cold Vapor	[2] 245.1	D3223–91	3112 B	
Automated, Cold Vapor	[1] 245.2			
ICP-Mass Spectrometry	[2] 200.8			
Nickel:				
Inductively Coupled Plasma	[2] 200.7		3120 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Direct			3111 B	
Atomic Absorption; Furnace			3113 B	
Nitrate:				
Ion Chromatography	[6] 300.0	D4327–91	4110 B	B–1011 [8]
Automated Cadmium Reduction	[6] 353.2	D3867–90A	4500–NO_3^- F	

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other
Ion Selective Electrode	.....		4500–NO_3^- D	601 [7]
Manual Cadmium Reduction	.....	D3867–90B	4500–NO_3^- E	
Nitrite:				
Ion Chromatography	[6] 300.0	D4327–91	4110 B	B–1011 [8]
Automated Cadmium Reduction	[6] 353.2	D3867–90A	4500–NO_3^- F	
Manual Cadmium Reduction	.....	D3867–90B	4500–NO_3^- E	
Spectrophotometric	.....		4500–NO_2^- B	
Orthophosphate: [12]				
Colorimetric, automated, ascorbic acid	[6] 365.1		4500–P F	
Colorimetric, ascorbic acid, single reagent	.....	D515–88A	4500–P E	
Colorimetric, phosphomolybdate;	.....			I–1602–85 [5]
automated-segmented flow;	.....			I–2601–90 [5]
automated discrete	.....			I–2598–85 [5]
Ion Chromatography	[6] 300.0	D4327–91	4110 B	
pH: Electrometric	[1] 150.1	D1293–95	4500–H^+ B	
	[1] 150.2			
Selenium:				
Hydride-Atomic Absorption	.....	D3859–93A	3114 B	
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furance	.....	D3859–93B	3113 B	
Silica:				
Colorimetric, molybdate blue;	.....			I–1700–85 [5]
automated-segmented flow	.....			I–2700–85 [5]
Colorimetric	.....	D859–95		
Molybdosilicate	.....		4500–Si D	
Heteropoly blue	.....		4500–Si E	
Automated method for molybdate-reactive silica	.....		4500–Si F	
Inductively-coupled plasma	[3] 200.7		3120 B	
Sodium:				
Inductively-coupled plasma	[2] 200.7			
Atomic Absorption; direct aspiration	.....		3111 B	
Temperature: Thermometric	.....		2550	
Thallium:				
ICP-Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1–11 and 15 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] ''Methods for Chemical Analysis of Water and Wastes'', EPA/600/4–79/020, March 1983. Available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,* 1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards,* 1994, Vols. 11.01. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,* 1992 and 1995, respectively, American Public Health Association; either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[5] Method I–2601–90, *Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments,* Open File Report 93–125, 1993; For Methods I–1030–85; I–1601–85; I–1700–85; I–2598–85; I–2700–85; and I–3300–85 See *Techniques of Water Resources Investigation of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–120821.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water'', July 1994, PN 221890–001, Analytical Technology, Inc. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography,'' August 1987. Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, ''Analytical Method For Determination of Asbestos Fibers in Water'', EPA/600/4–83/043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] 10 Method 100.2, ''Determination of Asbestos Structure Over 10-μm In Length In Drinking Water'', EPA/600/R–94/134, June 1994. Available at NTIS, PB94–201902.

[11] Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater'', December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater'', February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12] Unfiltered, no digestion or hydrolysis.

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 μL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] The description for Method Number 1001 for lead is available from Palintest, LTD, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018. Or from the Hach Company, P.O. Box 389, Loveland, CO 8053.

(2) Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the following table:

Contaminant	Preservative [1]	Container [2]	Time [3]
Antimony	HNO_3	P or G	6 months
Asbestos	4°C	P or G	48 hours [4]
Barium	HNO_3	P or G	6 months
Beryllium	HNO_3	P or G	6 months
Cadmium	HNO_3	P or G	6 months
Chromium	HNO_3	P or G	6 months
Cyanide	4°C, NaOH	P or G	14 days
Fluoride	None	P or G	1 month
Mercury	HNO_3	P or G	28 days
Nickel	HNO_3	P or G	6 months
Nitrate	4°C	P or G	48 hours [5]
Nitrate-Nitrite [6]	H_2SO_4	P or G	28 days
Nitrite	4°C	P or G	48 hours
Selenium	HNO_3	P or G	6 months
Thallium	HNO_3	P or G	6 months

[1] When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid or adjusted with sodium hydroxide to pH > 12. When chilling is indicated the sample must be shipped and stored at 4°C or less.

[2] P=plastic, hard or soft; G=glass, hard or soft.

[3] In all cases samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers or holding times that is specified in method.

[4] Instructions for containers, preservation procedures and holding times as specified in Method 100.2 must be adhered to for all compliance analyses including those conducted with Method 100.1.

[5] If the sample is chlorinated, the holding time for an unacidified sample kept at 4°C is extended to 14 days.

[6] Nitrate-Nitrite refers to a measurement of total nitrate.

(3) * * *

(i) Analyze Performance Evaluation (PE) samples provided by EPA, the State or by a third party (with the approval of the State or EPA) at least once a year.

(ii) For each contaminant that has been included in the PE sample and for each method for which the laboratory desires certification achieve quantitative results on the analyses that are within the following acceptance limits:

* * * * *

4. Section 141.24 is amended by:

a. Revising the section heading

b. Revising paragraph (e);

c. Revising paragraphs (f)(14)(ii);

d. Revising paragraphs (f)(17)(i)(A), (f)(17)(i)(B), (f)(17)(ii) introductory text; and paragraph (f)(17)(ii)(A);

e. Revising paragraph (h)(10)(ii);

f. Revising paragraph (h)(13) introductory text, (h)(13)(i); and

g. Revising paragraph (h)(19)(i)(A)and (h)(19)(i)(B) introductory text to read as follows:

§ 141.24 Organic chemicals, sampling and analytical requirements.

* * * * *

(e) Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA.

(1) The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Method 508A and 515.1 are in *Methods for the Determination of Organic Compounds in Drinking Water,* EPA/600/4–88–039, December 1988, Revised, July 1991. Methods 547, 550 and 550.1 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I,* EPA/600–4–90–020, July 1990. Methods 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,* EPA/600/R–92–129, August 1992. Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2 525.2, 531.1, 551.1 and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,* EPA/600/R–95–131, August 1995. Method 1613 is titled ''Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS'', EPA/821–B–94–005, October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703, PB95–261616 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Method 6651 shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater,* 18th edition, 1992 and 19th edition, 1995, American Public Health Association (APHA); either edition may be used. Method 6610 shall be followed in accordance with the *Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater,* 1994 or with the 19th edition of *Standard Methods for the Examination of Water and Wastewater,* 1995, APHA; either publication may be used. The APHA documents are available from APHA, 1015 Fifteenth Street NW., Washington, D.C. 20005. Other required analytical test procedures germane to the conduct of these analyses are contained in *Technical Notes on Drinking Water Methods,* EPA/600/R–94–173, October 1994, NTIS PB95–104766. EPA Methods 515.3 and 549.2 are available from U.S. Environmental Protection Agency, National Exposure Research Laboratory (NERL)–Cincinnati, 26 West Martin Luther King Drive, Cincinnati, OH 45268. ASTM Method D 5317–93 is available in the *Annual Book of ASTM Standards,* 1996, Vol. 11.02, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or in any edition published after 1993.

Contaminant	Method [1]
Benzene	502.2, 524.2
Carbon tetrachloride	502.2, 524.2, 551.1
Chlorobenzene	502.2, 524.2
1,2-Dichlorobenzene	502.2, 524.2
1,4-Dichlorobenzene	502.2, 524.2
1,2-Dichloroethane	502.2, 524.2
cis-Dichloroethylene	502.2, 524.2
trans-Dichloroethylene	502.2, 524.2
Dichloromethane	502.2, 524.2
1,2-Dichloropropane	502.2, 524.2
Ethylbenzene	502.2, 524.2
Styrene	502.2, 524.2
Tetrachloroethylene	502.2, 524.2, 551.1
1,1,1-Trichloroethane	502.2, 524.2, 551.1
Trichloroethylene	502.2, 524.2, 551.1
Toluene	502.2, 524.2
1,2,4-Trichlorobenzene	502.2, 524.2
1,1-Dichloroethylene	502.2, 524.2
1,1,2-Trichloroethane	502.2, 524.2, 551.1
Vinyl chloride	502.2, 524.2
Xylenes (total)	502.2, 524.2
2,3,7,8-TCDD (dioxin)	1613
2,4-D [4] (as acid, salts and esters).	515.2, 555, 515.1, 515.3, D5317–93
2,4,5-TP [4] (Silvex)	515.2, 555, 515.1, 515.3, D5317–93
Alachlor [2]	507, 525.2, 508.1, 505, 551.1
Atrazine [2]	507, 525.2, 508.1, 505, 551.1
Benzo(a)pyrene	525.2, 550, 550.1
Carbofuran	531.1, 6610
Chlordane	508, 525.2, 508.1, 505
Dalapon	552.1, 515.1, 552.2, 515.3
Di(2-ethylhexyl)adipate	506, 525.2
Di(2-ethylhexyl)phthalate	506, 525.2
Dibromochloropropane (DBCP).	504.1, 551.1
Dinoseb [4]	515.2, 555, 515.1, 515.3
Diquat	549.2
Endothall	548.1
Endrin	508, 525.2, 508.1, 505, 551.1
Ethylene dibromide (EDB).	504.1, 551.1
Glyphosate	547, 6651

Contaminant	Method [1]
Heptachlor	508, 525.2, 508.1, 505, 551.1
Heptachlor Epoxide	508, 525.2, 508.1, 505, 551.1
Hexachlorobenzene	508, 525.2, 508.1, 505, 551.1
Hexachlorocyclopentadiene.	508, 525.2, 508.1, 505, 551.1
Lindane	508, 525.2, 508.1, 505, 551.1
Methoxychlor	508, 525.2, 508.1, 505, 551.1
Oxamyl	531.1, 6610
PCBs [3] (as decachlorobiphenyl).	508A
(as Aroclors)	508.1, 508, 525.2, 505
Pentachlorophenol	515.2, 525.2, 555, 515.1, 515.3, D5317–93
Picloram [4]	515.2, 555, 515.1, 515.3, D5317–93
Simazine [2]	507, 525.2, 508.1, 505, 551.1
Toxaphene	508, 508.1, 525.2, 505
Total Trihalomethanes	502.2, 524.2, 551.1

[1] For previously approved EPA methods which remain available for compliance monitoring until June 1, 2001, see paragraph (e)(2) of this section.

[2] Substitution of the detector specified in Method 505, 507, 508 or 508.1 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorous detector may be used provided all regulatory requirements and quality control criteria are met.

[3] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505 may have more difficulty in achieving the required detection limits than users of Methods 508.1, 525.2 or 508.

[4] Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3 and 555, and ASTM Method D 5317–93.

(2) The following EPA methods will remain available for compliance monitoring until June 1, 2001. The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. EPA methods 502.2 Rev. 2.0, 505 Rev. 2.0, 507 Rev. 2.0, 508 Rev. 3.0, 531.1 Rev. 3.0 are in ''Methods for the Determination of Organic Compounds in Drinking Water'', December 1988, revised July 1991; methods 506 and 551 are in ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement I'', July 1990; methods 515.2 Rev. 1.0 and 524.2 Rev. 4.0 are in ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,'' August 1992; and methods 504.1 Rev. 1.0, 508.1 Rev. 1.0, 525.2 Rev.1.0 are available from US EPA NERL, Cincinnati, OH 45268

(f) * * *

(14) * * *

(ii) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

* * * * *

(17) * * *

(i) * * *

(A) Analyze Performance Evaluation (PE) samples provided by EPA, the State, or by a third party (with the approval of the State or EPA) at least once a year by each method for which the laboratory desires certification.

(B) Achieve the quantitative acceptance limits under paragraphs (f)(17)(i)(C) and (D) of this section for at least 80 percent of the regulated organic contaminants included in the PE sample.

* * * * *

(ii) To receive certification to conduct analyses for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation (PE) samples provided by EPA, the State, or by a third party (with the approval of the State or EPA) at least once a year by each method for which the laboratory desires certification.

* * * * *

(h) * * *

(10) * * *

(ii) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days after completion of the composite analysis or before the holding time for the initial sample is exceeded whichever is sooner.

* * * * *

(13) Analysis for PCBs shall be conducted as follows using the methods in paragraph (e) of this section:

(i) Each system which monitors for PCBs shall analyze each sample using either Method 508.1, 525.2, 508 or 505. Users of Method 505 may have more difficulty in achieving the required Aroclor detection limits than users of Methods 508.1, 525.2 or 508.

* * * * *

(19) * * *

(i) * * *

(A) Analyze Performance Evaluation (PE) samples provided by EPA, the State, or by a third party (with the approval of the State or EPA) at least once a year by each method for which the laboratory desires certification.

(B) For each contaminant that has been included in the PE sample achieve quantitative results on the analyses that are within the following acceptance limits:

* * * * *

5. Section 141.28 is amended by revising paragraph (a) to read as follows:

§ 141.28 Certified laboratories.

(a) For the purpose of determining compliance with §§ 141.21 through 141.27, 141.30, 141.40, 141.74 and 141.89, samples may be considered only if they have been analyzed by a laboratory certified by the State except that measurements for alkalinity, calcium, conductivity, disinfectant residual, orthophosphate, pH, silica, temperature and turbidity may be performed by any person acceptable to the State.

* * * * *

6. Section 141.74 is amended by revising the first five sentences in paragraph (a) introductory text, the table and footnotes in paragraph (a)(1), and the first and second sentences in paragraph (a)(2) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) *Analytical requirements.* Only the analytical method(s) specified in this paragraph, or otherwise approved by EPA, may be used to demonstrate compliance with §§ 141.71, 141.72 and 141.73. Measurements for pH, turbidity, temperature and residual disinfectant concentrations must be conducted by a person approved by the State. Measurement for total coliforms, fecal coliforms and HPC must be conducted by a laboratory certified by the State or EPA to do such analysis. Until laboratory certification criteria are developed for the analysis of fecal coliforms and HPC, any laboratory certified for total coliforms analysis by the State or EPA is deemed certified for fecal coliforms and HPC analysis. The following procedures shall be conducted in accordance with the publications listed in the following section. * * *

(1) * * *

Organism	Methodology	Citation [1]
Total Coliform [2]	Total Coliform Fermentation Technique [3,4,5]	9221 A, B, C
	Total Coliform Membrane Filter Technique [6]	9222 A, B, C

Organism	Methodology	Citation [1]
	ONPG–MUG Test [7]	9223
Fecal Coliforms [2]	Fecal Coliform Procedure [8]	9221 E
	Fecal Coliform Filter Procedure	9222 D
Heterotrophic bacteria [2]	Pour Plate Method	9215 B
Turbidity	Nephelometric Method	2130 B
	Nephelometric Method	180.1 [9]
	Great Lakes Instruments	Method 2 [10]

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 7, 9 and 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW, Washington, D.C. 20460 (Telephone: 202–260–3027); or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 20408.

[1] Except where noted, all methods refer to *Standard Methods for the Examination of Water and Wastewater,* 18th edition, 1992 and 19th edition, 1995, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005; either edition may be used.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems must hold samples below 10°C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] MI agar also may be used. Preparation and use of MI agar is set forth in the article, ''New medium for the simultaneous detection of total coliform and Escherichia coli in water'' by Brenner, K.P., et al., 1993, Appl. Environ. Microbiol. 59:3534–3544. Also available from the Office of Water Resource Center (RC–4100), 401 M Street SW, Washington, D.C. 20460, EPA 600/J–99/225.

[7] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[8] A–1 Broth may be held up to three months in a tightly closed screw cap tube at 4°C.

[9] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93/100, August 1993. Available at NTIS, PB94–121811.

[10] GLI Method 2, ''Turbidity'', November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. The methods are contained in both the 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,* 1992 and 1995; either edition may be used. * * * * * * * * * *

7. Section 141.89 is amended by revising paragraph (a)(1) introductory text, (a)(1)(i) to read as follows and by removing the semicolon at the end of paragraph (a)(1)(ii)(B) and adding a period in it's place.

§ 141.89 Analytical methods.

(a) * * *

(1) Analyses for alkalinity, calcium, conductivity, orthophosphate, pH, silica, and temperature may be performed by any person acceptable to the State. Analyses under this section for lead and copper shall only be conducted by laboratories that have been certified by EPA or the State. To obtain certification to conduct analyses for lead and copper, laboratories must:

(i) Analyze Performance Evaluation samples, which include lead and copper, provided by or acceptable to EPA or the State at least once a year by each method for which the laboratory desires certification; and

* * * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.4 is amended by revising the table and footnotes in paragraph (b) to read as follows:

§ 143.4 Monitoring.

* * * * * *

(b) * * *

Contaminant	EPA	ASTM [3]	SM [4]	Other
Aluminum	[2] 200.7		3120 B	
	[2] 200.8		3113 B	
	[2] 200.9		3111 D	
Chloride	[1] 300.0	D4327–91	4110 B	
	.....		4500–Cl^- D	
	.....	D512–89B	4500–Cl^- B	
Color	.....		2120 B	
Foaming Agents	.....		5540 C	
Iron	[2] 200.7		3120 B	
	[2] 200.9		3111 B	
	.....		3113 B	
Manganese	[2] 200.7		3120 B	
	[2] 200.8		3111 B	
	[2] 200.9		3113 B	
Odor	.....		2150 B	
Silver	[2] 200.7		3120 B	[5] I–3720–85
	[2] 200.8		3111 B	
	[2] 200.9		3113 B	
Sulfate	[1] 300.0	D4327–91	4110 B	
	[1] 375.2		4500–SO_4^{2-} F	
	.....		4500–SO_4^{2-} C, D	
	.....	D516–90	4500–SO_4^{2-} E	

Contaminant	EPA	ASTM [3]	SM [4]	Other
TDS	.....		2540 C	
Zinc	[2] 200.7		3120 B	
	[2] 200.8		3111 B	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW, Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

[1] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA/600/R–93–100, August 1993. Available at NTIS, PB94–120821.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] *Annual Book of ASTM Standards,* 1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,* 1992 and 1995, American Public Health Association; either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[5] Method I–3720–85, *Techniques of Water Resources Investigation of the U.S. Geological Survey,* Book 5, Chapter A–1, 3rd ed., 1989; Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225–0425.

[FR Doc. 99–30901 Filed 11–30–99; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 1, 1999

COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
Allocation of duty-exemptions—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; published 12-1-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna; published 11-1-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 80/P.L. 106–105

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Nov. 18, 1999; 113 Stat. 1484)

H.J. Res. 83/P.L. 106–106

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S. 468/P.L. 106–107

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H.R. 2454/P.L. 106–108

Arctic Tundra Habitat Emergency Conservation Act (Nov. 24, 1999; 113 Stat. 1491)

H.R. 2724/P.L. 106–109

To make technical corrections to the Water Resources Development Act of 1999. (Nov. 24, 1999; 113 Stat. 1494)

S. 1235/P.L. 106–110

To amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training. (Nov. 24, 1999; 113 Stat. 1497)

H.R. 100/P.L. 106–111

To establish designations for United States Postal Service buildings in Philadelphia, Pennsylvania. (Nov. 29, 1999; 113 Stat. 1499)

H.R. 197/P.L. 106–112

To designate the facility of the United States Postal Service at 410 North 6th Street in Garden City, Kansas, as the ''Clifford R. Hope Post Office''. (Nov. 29, 1999; 113 Stat. 1500)

H.R. 3194/P.L. 106–113

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S. 278/P.L. 106–114

To direct the Secretary of the Interior to convey certain

lands to the county of Rio Arriba, New Mexico. (Nov. 29, 1999; 113 Stat. 1538)

S. 382/P.L. 106–115

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To clarify certain boundaries on maps relating to the Coastal Barrier Resources System. (Nov. 29, 1999; 113 Stat. 1544)

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A new table will be published in the first issue of each month.

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December 27	January 11	January 26	February 10	February 25	March 29
December 28	January 12	January 27	February 11	February 28	March 29
December 29	January 13	January 28	February 14	February 28	March 29
December 30	January 14	January 31	February 14	February 28	March 30