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Thursday
December 9, 1999

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Pay Under Other Systems

AGENCY: Office of Personnel Management.

ACTION: Technical amendment.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** of Friday September 21, 1979 (44 FR 54689). The regulations provided a general basis for delegation to permit agencies to take specific personnel actions without prior approval by the Office of Personnel Management.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Genua, (202) 606–2858, or FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: As published, the final regulations contained errors in the designation scheme. The correction amends § 534.202 by redesignating paragraphs (1), (2), and (3) as (a), (b), and (c).

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students.

Accordingly, 5 CFR part 534 is corrected by making the following correcting amendments.

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

§ 534.202 [Corrected]

2. In § 534.202 paragraphs (1), (2), and (3) are redesignated as paragraphs (a), (b), and (c), respectively.

Office of Personnel Management.

Jacquline D. Carter,

Federal Register Liaison Officer.

[FR Doc. 99–31868 Filed 12–8–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–22]

Revision of Class E Airspace; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Corpus Christi, TX.

EFFECTIVE DATES: The direct final rule published at 64 FR 53899 is effective 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 5, 1999, (64 FR 53899). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 30, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Forth Worth, TX, on December 2, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–31980 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 99–ASW–21]

Revision of Class E Airspace; Falfurrias, TX.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: this notice confirms the effective date of a direct final rule which revises Class E airspace at Falfurrias, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 53898 is effective 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 5, 1999 (64 FR 53898). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 30, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on December 2, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–31979 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–18]

Revision of Class E Airspace; Georgetown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Georgetown, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 53894 is effective 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 5, 1999 (64 [FR 53894). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 30, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on December 2, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–31978 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–23]

Revision of Class E Airspace; Alice, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Alice, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 53896 is effective 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–232–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 5, 1999 (64 FR 53896). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 30, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Forth, Worth, TX, on December 2, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–31977 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–20]

Revision of Class E Airspace; Mineral Wells, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Mineral Wells, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 53895 is effective 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 5, 1999 (64 FR 53895). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 30, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX on December 2, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–31976 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 981229328–9249–02; I.D. 120998C]

RIN 0648–AK31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16A; OMB Control Numbers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures in Amendment 16A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule prohibits possession of reef fish exhibiting trap rash on board a vessel that is in the exclusive economic zone (EEZ) of the Gulf of Mexico and that does not have a valid fish trap endorsement and requires fish trap

vessel owners or operators to provide trip initiation and trip termination reports and to comply with a vessel/gear inspection requirement. The provision of Amendment 16A that would have prohibited the use of fish traps in the EEZ of the Gulf of Mexico south of 25°03' N. lat. after February 7, 2001, has been disapproved. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule, publishes the OMB control number for these collections, and corrects the list of control numbers applicable to title 50 of the Code of Federal Regulations. The intended effects of this rule are to enhance enforceability of fish trap measures and to conserve and manage the reef fish resources of the Gulf of Mexico.

DATES: This rule is effective January 10, 2000.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On December 18, 1998, NMFS announced the availability of Amendment 16A and requested comments on the amendment (63 FR 70093). On March 5, 1999, NMFS published a proposed rule to implement the measures in Amendment 16A and additional measures proposed by NMFS and requested comments on the rule (64 FR 10613). The background and rationale for the measures in the amendment and proposed rule, including a detailed explanation of inspection and reporting requirements, are contained in the preamble to the proposed rule and are not repeated here. On March 18, 1999, after considering the comments received on the amendment, NMFS partially approved Amendment 16A. NMFS disapproved the provision of Amendment 16A prohibiting the use of fish traps in the EEZ of the Gulf of Mexico south of 25°03' N. lat. after February 7, 2001.

NMFS implemented a 10-year phaseout of the fish trap fishery ending February 7, 2007, under Amendment 14 (62 FR 13983, March 25, 1997). Amendment 16A proposed a shorter phaseout period (ending February 7, 2001) for an area in Federal waters south of Cape Sable, FL (25°03' N. lat.) at the southernmost point of the Florida peninsula. NMFS disapproved this measure based on national standard 7 of the Magnuson-Stevens Act because no conservation benefits were shown, the measure would impose an unnecessary burden on fishermen, and the costs do not appear to be justified. Amendment 16A and subsequent public comment on the proposed rule demonstrate no overriding conservation benefits from the accelerated phaseout to justify overturning the Council's previous commitment to a 10-year phaseout. NMFS previously approved the elimination of fish traps in the Gulf of Mexico after February 7, 2007, as proposed in Reef Fish Amendment 14.

In the proposed rule, NMFS proposed a change from the one-time inspection proposed by the Council in Amendment 16A to an annual inspection. NMFS stated in the proposed rule that the need to monitor compliance in the fishery justified inspections on an annual basis. After further review, NMFS has concluded that annual inspections would be overly burdensome on participants in the fishery. Consequently, NMFS revised this final rule to require only a one-time inspection that is intended to accomplish the Council's objective of ensuring that all fish trap gear used in the Gulf of Mexico is in compliance with fish trap regulations.

Comments and Responses

NMFS received 6 comments on Amendment 16A and on the proposed rule, including a minority report from two members of the Council.

Comment 1: A commenter objected to the use of trap rash as a diagnostic tool that indicates that a fish was caught in a wire fish trap. This commenter stated that fish legally caught with stone crab pots always have trap rash.

Response: Trap rash is extreme physical damage to fish involving loss of body parts (e.g., fins, spines, teeth) and cuts, especially to the head, snout or mouth, resulting from prolonged retention in wire traps. Physical conditions resulting from brief retention in legal stone crab traps or coolers are not similar and cannot be confused with trap rash. Trap rash only occurs during prolonged retention in wire traps, and NMFS' enforcement experience indicates that prolonged retention is only associated with illegal traps. Legal fish traps are required to be tended on each fishing trip, and such practice does not allow sufficient time for trap rash to develop. Fish retained briefly in a stone crab trap or cooler may exhibit minor physical irritation resulting from having rubbed against the trap or cooler but do not have the serious physical damage referred to as trap rash.

Comment 2: Four commenters supported the accelerated phaseout of fish traps south of Cape Sable and objected to the NMFS disapproval of this measure in Amendment 16A. One commenter argued that the accelerated phaseout measure is consistent with national standard 7 of the Magnuson-Stevens Act and would result in significant conservation benefits and improved enforcement.

Response: NMFS believes the proposed accelerated phaseout of fish traps is inconsistent with national standard 7 of the Magnuson-Stevens Act because no conservation benefits were shown, the measure would impose an unnecessary burden on fishermen, and the costs do not appear to be justified. The Council's Regulatory Impact Review suggests that if the accelerated area phaseout had been approved, substantial increases in fish trapping costs due to relocation would have forced some vessels to cease their fishing operations. The Council did not show that other benefits would have accrued to the fishery that would have outweighed the negative costs. Furthermore, Amendment 16A does not substantiate the Council's assumption that continued fish trapping in the proposed area would contribute to bycatch problems, user group conflicts, or illegal trap use in adjacent state waters. The document demonstrates no overriding conservation benefits from the accelerated phaseout to justify overturning the Council's previous commitment to a 10-year phaseout. NMFS continues to support the elimination of fish traps in the Gulf of Mexico after February 7, 2007, as approved in Reef Fish Amendment 14.

Comment 3: Two Council members, in a minority report, opposed the accelerated phaseout of fish traps south of Cape Sable. The report states that this measure is a violation of national standards 2, 4, 5, 6, 7, and 8 of the Magnuson-Stevens Act. The report concludes that the measure is arbitrary

and capricious, and recommends disapproval.

Response: NMFS concurs that this measure was not adequately justified by the Council for the reasons stated above. NMFS disapproved this measure based on national standard 7 of the Magnuson-Stevens Act.

Changes From the Proposed Rule

In § 622.31(c)(2), the proposed language regarding the accelerated phaseout of fish traps south of Cape Sable, FL (25.05° N. lat.) was removed due to the disapproval of that provision.

In § 622.5(a)(1)(ii)(A)(*1*), the language proposed by NMFS that would have required an annual vessel/gear inspection was revised to require only a one-time inspection. This revision was based on NMFS' subsequent determination that annual inspections would be unduly burdensome.

Classification

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the AA, determined that the approved measures of Amendment 16A are necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that, with the exception of the measure that was not approved, Amendment 16A is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a FRFA for the final rule implementing Amendment 16A to the FMP. The FRFA was based on the IRFA, public comments, and subsequent analysis by NMFS. A summary of the FRFA follows.

This rule is needed because reports that fish trap fishing violations are continuing. The objective is to provide for improved monitoring and reporting of trap fishing operations as a means to increase the effectiveness of law enforcement activities. Amendment 16A proposed to prohibit the use of fish traps in the EEZ of the Gulf of Mexico south of 25°03' N. lat. after February 7, 2001; to prohibit possession of reef fish exhibiting trap rash (i.e., physical injuries characteristic of confinement in wire fish traps) on board a vessel that does not have a valid fish trap endorsement; and to require that fish trap vessel owners or operators provide trip initiation and trip termination reports and to comply with a vessel/gear inspection requirement. NMFS received several comments during the public comment period that addressed the economic impacts of the proposed accelerated phaseout of fish trapping in the area south of 25°03' N. lat. These comments indicated that there would be increased costs associated with longer transits to alternate fishing grounds and that the proposal would have increased safety risks. There were also comments in favor of the Council's proposal for an accelerated phase out, but these comments did not address issues about economic impacts. In general, NMFS agrees with the fishermen's economic concerns but disagrees with general comments supporting the accelerated phaseout. NMFS found that the accelerated phaseout was not supported by information in Amendment 16A, other available information, or by the public comments. Hence, the accelerated phaseout was disapproved, and that provision was removed from the final rule. There were no substantive public comments regarding the economic impacts of other provisions of the rule.

Approximately 86 vessels currently have fish trap endorsements. All of these are small entities, and all will be affected to about the same degree by the approved provisions of the rule. Existing data indicate that one class of fish trap vessels reported average annual gross sales of $93,426, average annual income net of variable costs and crew shares of $19,409, and average boat resale value of $55,846. Another class of vessels reported figures of $86,039 average gross sales, average annual net income of $21,025, and $48,118 boat resale value.

This rule contains two provisions that will require additional reporting and compliance efforts but no additional recordkeeping. All permitted trap fishermen will be required to schedule an appointment with NMFS law enforcement and have their vessels and trap gear inspected by a law enforcement officer. This will take an estimated 2 to 4 hours to comply. In addition, fishermen will be required to provide trip initiation and termination reports via a toll free call. Each call will take 5 minutes, or a total of 10 minutes per trip. Because the average vessel takes 29 trips per year, the average annual time burden per vessel is estimated to be 290 minutes or about 5 hours.

The Magnuson-Stevens Act provides the legal basis for all the approved provisions of the rule. Under existing regulations, all fish traps are to be phased out over a 10-year period. Three alternatives for a different phaseout period were considered in Amendment 16A: status quo, a 2-year phaseout of all fish trapping, and a 2-year phaseout for the area south of 25°03' N. lat. NMFS rejected the Council's alternative for the early phaseout of the use of fish traps south of 25°03' N. lat. because the associated negative economic impacts were not adequately justified or offset by benefits. Five alternatives were considered for a provision regarding the possession of reef fish exhibiting trap rash. The preferred alternative prohibits possession of reef fish that exhibit trap rash on board any vessel not possessing a valid fish trap endorsement. If this situation is observed by a law enforcement officer, it is considered to be prima facie evidence that the fish were taken illegally. Three rejected alternatives would have limited the possession of reef fish to a trip limit to be determined. These three rejected alternatives had an unknown level of economic impacts because there was no final determination of the actual trip limits. Another alternative would have provided that a spiny lobster or stone crab vessel that also had a reef fish permit could keep the same quantity of reef fish as any other permitted reef fish vessel. That alternative was rejected because it would not provide law enforcement with an adequate means to address the problem of illegal traps, even if the condition of trap rash was evident. Finally, the status quo was considered and rejected on the basis that a solution was needed to the use of trap rash as an indicator of the use of illegal traps. Two alternatives to the proposed provisions for inspection of the vessels/traps and to the requirement for trip initiation and termination reports were considered and rejected. One alternative was to close the fishery to all fish trapping for one month to allow time for the inspections of vessels and gear. This was rejected because a fixed one-month closure was considered unnecessarily burdensome compared to the preferred alternative that provides flexibility for scheduling inspections at times most convenient and least burdensome to the fishermen. The status quo was considered and rejected because it did not address the trap issue.

Copies of the FRFA are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that

collection of information displays a currently valid OMB control number.

This rule contains two new collection-of-information requirements subject to the Paperwork Reduction Act (PRA)—namely, a requirement for fish trap vessel operators to provide, via toll-free telephone calls, trip initiation and trip termination reports and a requirement for fish trap owners/operators to schedule, via telephone call, an appointment with NMFS enforcement to allow inspection of fish trap gear, fish trap permits and tags, and vessels. These requirements have been approved by OMB under OMB control number 0648–0392. The public reporting burdens for the telephone calls for the trip initiation and termination reports, and for scheduling the fish trap inspection are estimated at 5 minutes each per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by adding the following entry in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
622.5	–0392
* * * * *	

50 CFR CHAPTER VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

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

4. In § 622.5, paragraph (a)(1)(ii)(B) is added and reserved, and paragraph (a)(1)(ii)(A) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(A) *Fish traps.* In addition to the other reporting requirements in paragraph (a)(1)(ii) of this section, the owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must comply with the following requirements.

(*1*) *Inspection.* The RA will establish a 1-month period for mandatory inspection of all fish trap gear, permits, and vessels. The RA will provide written notification of the inspection period to each owner of a vessel for which a fish trap endorsement has been issued as required under § 622.4(a)(2)(i). Each such owner or operator must contact the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL (SAC) or his designee by telephone (727–570–5344) to schedule an inspection during the 1-month period. Requests for inspection must be made between 8:00 a.m. and 4:30 p.m. Monday through Friday and must be made at least 72 hours in advance of the desired inspection date. Inspections will be conducted Monday through Friday between 8:00 a.m. and 4:30 p.m. only. On the inspection date, the owner or operator must make all fish trap gear with attached trap tags and buoys and all applicable permits available for inspection on land. Vessels must also be made available for inspection as directed by the SAC or his designee. Upon completion of the inspection and a determination that all fish trap gear, permits, and vessels are in compliance, an owner or operator may resume fishing with the lawful gear. However, an owner or operator who fails to comply with the inspection requirements during the 1-month inspection period or during any other random inspection may not use or possess a fish trap in the Gulf EEZ until the required inspection or reinspection, as directed by the SAC, has been completed and all fish trap gear, permits, and vessels are determined to be in compliance with all applicable regulations.

(*2*) *Trip reports.* For each fishing trip on which a fish trap will be used or possessed, an owner or operator of a vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i), must submit a trip initiation report and a trip termination report to the SAC or his designee, by telephone, using the following 24–hour toll-free number—800–305–0697.

(*i*) *Trip initiation report.* The trip initiation report must be submitted before beginning the trip and must include: vessel name; official number; number of traps to be deployed; sequence of trap tag numbers; date, time, and point of departure; and intended time and date of trip termination.

(*ii*) *Trip termination report.* The trip termination report must be submitted immediately upon returning to port and prior to any offloading of catch or fish traps. The trip termination report must include: vessel name; official number; name and address of dealer where catch will be offloaded and sold; the time offloading will begin; notification of any lost traps; and notification of any traps left deployed for any reason.

(B) [Reserved]

* * * * *

4. In § 622.7, paragraph (d) is revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(d) Falsify or fail to maintain, submit, or provide information or fail to comply with inspection requirements or restrictions, as specified in § 622.5(a) through (f).

* * * * *

5. In § 622.41, paragraph (i) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(i) *Gulf reef fish exhibiting trap rash.* Gulf reef fish in or from the Gulf EEZ that exhibit trap rash may be possessed on board a vessel only if that vessel has a valid fish trap endorsement, as required under § 622.4(a)(2)(i), on board.

Possession of such fish on board a vessel without a valid fish trap endorsement is prima facie evidence of illegal trap use and is prohibited. For the purpose of this paragraph, trap rash is defined as physical damage to fish that characteristically results from contact with wire fish traps. Such damage includes, but is not limited to, broken fin spines, fin rays, or teeth; visually obvious loss of scales; and cuts or abrasions on the body of the fish, particularly on the head, snout, or mouth.

[FR Doc. 99–31969 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–22–F

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 101]

Staff Accounting Bulletin No. 101

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin summarizes certain of the staff's views in applying generally accepted accounting principles to revenue recognition in financial statements. The staff is providing this guidance due, in part, to the large number of revenue recognition issues that registrants encounter. For example, a March 1999 report entitled *Fraudulent Financial Reporting: 1987–1997 An Analysis of U. S. Public Companies*, sponsored by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission, indicated that over half of financial reporting frauds in the study involved overstating revenue.

EFFECTIVE DATES: December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Rodgers, Scott Taub, or Eric Jacobsen, Professional Accounting Fellows (202/942–4400) or Robert Bayless, Division of Corporation Finance (202/942–2960), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549; electronic addresses: RodgersR@sec.gov; TaubS@sec.gov; JacobsenE@sec.gov; BaylessR@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in the 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: December 3, 1999

Jonathan G. Katz,

Secretary.

PART 211—[AMENDED]

Subpart B

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 101 to the table found in Subpart B.

Staff Accounting Bulletin No. 101

[The text of Staff Accounting Bulletin No. 101 will not appear in the CFR.]

The staff hereby adds new major Topic 13, ''Revenue Recognition,'' and Topic 13–A, ''Views on Selected Revenue Recognition Issues,'' to the Staff Accounting Bulletin Series. Topic 13–A provides the staff's views in applying generally accepted accounting principles to selected revenue recognition issues. In addition, the staff hereby revises Topic 8–A to conform to FASB Statement No. 13, *Accounting for Leases.*

Topic 13: Revenue Recognition

A. Selected Revenue Recognition Issues

1. Revenue Recognition—General

The accounting literature on revenue recognition includes both broad conceptual discussions as well as certain industry-specific guidance. Examples of existing literature on revenue recognition include Financial Accounting Standards Board (FASB) Statements of Financial Accounting Standards (SFAS) No. 13, *Accounting for Leases*, No. 45, *Accounting for Franchise Fee Revenue*, No. 48, *Revenue Recognition When Right of Return Exists*, No. 49, *Accounting for Product Financing Arrangements*, No. 50, *Financial Reporting in the Record and Music Industry*, No. 51, *Financial Reporting by Cable Television Companies*, and No. 66, *Accounting for Sales of Real Estate*; Accounting Principles Board (APB) Opinion No. 10, *Omnibus Opinion—1966*; Accounting Research Bulletin (ARB) Nos. 43 (Chapter 1a) and 45, *Long-Term Construction-Type Contracts*; American Institute of Certified Public Accountants (AICPA) Statements of Position (SOP) No. 81–1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts*, and No. 97–2, *Software Revenue Recognition*; Emerging Issues Task Force (EITF) Issue No. 88–18, *Sales of Future Revenues*, No. 91–9, *Revenue and Expense Recognition for Freight Services in Process*, No. 95–1, *Revenue Recognition on Sales with a Guaranteed Minimum Resale Value*, and No. 95–4, *Revenue Recognition on Equipment Sold and Subsequently Repurchased Subject to an Operating Lease*; and FASB Statement of Financial Accounting Concepts (SFAC) No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*.[1] If a transaction is within the scope of specific authoritative literature that provides revenue recognition guidance, that literature should be applied. However, in the absence of authoritative literature addressing a specific arrangement or a specific industry, the staff will consider the existing authoritative accounting standards as well as the broad revenue recognition criteria specified in the FASB's conceptual framework that contain basic guidelines for revenue recognition.

Based on these guidelines, revenue should not be recognized until it is realized or realizable and earned.[2] SFAC No. 5, paragraph 83(b) states that ''an entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues'' [footnote reference omitted]. Paragraph 84(a) continues ''the two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery)'' [footnote reference omitted]. In addition, paragraph 84(d) states that ''If services are rendered or rights to use assets extend continuously over time (for example, interest or rent), reliable measures based on contractual prices

[1] In February 1999, the AICPA published a booklet entitled ''Audit Issues in Revenue Recognition.'' This booklet provides an overview of the current authoritative accounting literature and auditing procedures for revenue recognition and identifies indicators of improper revenue recognition.

[2] SFAC No. 5, ¶ 83–84; ARB No. 43, Chapter 1A, ¶ 1; APB Opinion No. 10, ¶ 12. The citations provided herein are not intended to present the complete population of citations where a particular criterion is relevant. Rather, the citations are intended to provide the reader with additional reference material.

established in advance are commonly available, and revenues may be recognized as earned as time passes.''

The staff believes that revenue generally is realized or realizable and earned when all of the following criteria are met:

- Persuasive evidence of an arrangement exists,[3]
- Delivery has occurred or services have been rendered,[4]
- The seller's price to the buyer is fixed or determinable,[5] and
- Collectibility is reasonably assured.[6]

2. Persuasive Evidence of an Arrangement

Question 1

Facts: Company A has product available to ship to customers prior to the end of its current fiscal quarter. Customer Beta places an order for the product, and Company A delivers the product prior to the end of its current fiscal quarter. Company A's normal and customary business practice for this class of customer is to enter into a written sales agreement that requires the signatures of the authorized representatives of the Company and its customer to be binding. Company A prepares a written sales agreement, and its authorized representative signs the agreement before the end of the quarter. However, Customer Beta does not sign the agreement because Customer Beta is awaiting the requisite approval by its legal department. Customer Beta's purchasing department has orally agreed to the sale and stated that it is highly likely that the contract will be approved the first week of Company A's next fiscal quarter.

Question: May Company A recognize the revenue in the current fiscal quarter for the sale of the product to Customer Beta when (1) the product is delivered by the end of its current fiscal quarter and (2) the final written sales agreement is executed by Customer Beta's authorized representative within a few days after the end of the current fiscal quarter?

Interpretive Response: No. Generally the staff believes that, in view of Company A's business practice of requiring a written sales agreement for this class of customer, persuasive evidence of an arrangement would require a final agreement that has been executed by the properly authorized personnel of the customer. In the staff's view, Customer Beta's execution of the sales agreement after the end of the quarter causes the transaction to be considered a transaction of the subsequent period.[7] Further, if an arrangement is subject to subsequent approval (*e.g.,* by the management committee or board of directors) or execution of another agreement, revenue recognition would be inappropriate until that subsequent approval or agreement is complete.

Customary business practices and processes for documenting sales transactions vary among companies and industries. Business practices and processes may also vary within individual companies (*e.g.,* based on the class of customer, nature of product or service, or other distinguishable factors). If a company does not have a standard or customary business practice of relying on written contracts to document a sales arrangement, it usually would be expected to have other forms of written or electronic evidence to document the transaction. For example, a company may not use written contracts but instead may rely on binding purchase orders from third parties or on-line authorizations that include the terms of the sale and that are binding on the customer. In that situation, that documentation could represent persuasive evidence of an arrangement.

The staff is aware that sometimes a customer and seller enter into ''side'' agreements to a master contract that effectively amend the master contract. Registrants should ensure that appropriate policies, procedures, and internal controls exist and are properly documented so as to provide reasonable assurances that sales transactions, including those affected by side agreements, are properly accounted for in accordance with generally accepted accounting principles and to ensure compliance with Section 13 of the Securities Exchange Act of 1934 (*i.e.,* the Foreign Corrupt Practices Act). Side agreements could include cancellation, termination, or other provisions that affect revenue recognition. The existence of a subsequently executed side agreement may be an indicator that the original agreement was not final and revenue recognition was not appropriate.

Question 2

Facts: Company Z enters into an arrangement with Customer A to deliver Company Z's products to Customer A on a consignment basis. Pursuant to the terms of the arrangement, Customer A is a consignee, and title to the products does not pass from Company Z to Customer A until Customer A consumes the products in its operations. Company Z delivers product to Customer A under the terms of their arrangement.

Question: May Company Z recognize revenue upon delivery of its product to Customer A?

Interpretive Response: No. Products delivered to a consignee pursuant to a consignment arrangement are not sales and do not qualify for revenue recognition until a sale occurs. The staff believes that revenue recognition is not appropriate because the seller retains the risks and rewards of ownership of the product and title usually does not pass to the consignee.

Other situations may exist where title to delivered products passes to a buyer, but the substance of the transaction is that of a consignment or a financing. Such arrangements require a careful analysis of the facts and circumstances of the transaction, as well as an understanding of the rights and obligations of the parties, and the seller's customary business practices in such arrangements. The staff believes that the presence of one or more of the following characteristics in a transaction precludes revenue recognition even if title to the product has passed to the buyer:

1. The buyer has the right to return the product and:

(a) the buyer does not pay the seller at the time of sale, and the buyer is not

[3] SFAC No. 2, *Qualitative Characteristics of Accounting Information*, ¶ 63 states ''Representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent.'' The staff believes that evidence of an exchange arrangement must exist to determine if the accounting treatment represents faithfully the transaction. See also SOP 97–2, ¶ 8. The use of the term ''arrangement'' in this Staff Accounting Bulletin is meant to identify the final understanding between the parties as to the specific nature and terms of the agreed-upon transaction.

[4] SFAC No. 5, ¶ 84(a), (b), and (d). Revenue should not be recognized until the seller has substantially accomplished what it must do pursuant to the terms of the arrangement, which usually occurs upon delivery or performance of the services.

[5] SFAC No. 5, ¶ 83(a); SFAS No. 48, ¶ 6(a); SOP 97–2, ¶ 8. SOP 97–2 defines a ''fixed fee'' as a ''fee required to be paid at a set amount that is not subject to refund or adjustment. A fixed fee includes amounts designated as minimum royalties.'' Paragraphs 26–33 of SOP 97–2 discuss how to apply the fixed or determinable fee criterion in software transactions. The staff believes that the guidance in paragraphs 26 and 30–33 is appropriate for other sales transactions where authoritative guidance does not otherwise exist. The staff notes that paragraphs 27 through 29 specifically consider software transactions, however, the staff believes that guidance should be considered in other sales transactions in which the risk of technological obsolescence is high.

[6] ARB No. 43, Chapter 1A, ¶ 1 and APB Opinion No. 10, ¶ 12. See also SFAC No. 5, ¶ 84(g) and SOP 97–2, ¶ 8.

[7] AICPA, Codification of Statements on Auditing Standards (AU) § 560.05, *Subsequent Events.*

obligated to pay the seller at a specified date or dates.[8]

(b) the buyer does not pay the seller at the time of sale but rather is obligated to pay at a specified date or dates, and the buyer's obligation to pay is contractually or implicitly excused until the buyer resells the product or subsequently consumes or uses the product,[9]

(c) the buyer's obligation to the seller would be changed (e.g., the seller would forgive the obligation or grant a refund) in the event of theft or physical destruction or damage of the product,[10]

(d) the buyer acquiring the product for resale does not have economic substance apart from that provided by the seller,[11] or

(e) the seller has significant obligations for future performance to directly bring about resale of the product by the buyer.[12]

2. The seller is required to repurchase the product (or a substantially identical product or processed goods of which the product is a component) at specified prices that are not subject to change except for fluctuations due to finance and holding costs,[13] and the amounts to be paid by the seller will be adjusted, as necessary, to cover substantially all fluctuations in costs incurred by the buyer in purchasing and holding the product (including interest).[14] The staff believes that indicators of the latter condition include:

(a) the seller provides interest-free or significantly below market financing to the buyer beyond the seller's customary sales terms and until the products are resold,

(b) the seller pays interest costs on behalf of the buyer under a third-party financing arrangement, or

(c) the seller has a practice of refunding (or intends to refund) a portion of the original sales price representative of interest expense for the period from when the buyer paid the seller until the buyer resells the product.

3. The transaction possesses the characteristics set forth in EITF Issue No. 95–1, *Revenue Recognition on Sales with a Guaranteed Minimum Resale Value,* and does not qualify for sales-type lease accounting.

4. The product is delivered for demonstration purposes.[15]

This list is not meant to be a checklist of all characteristics of a consignment or a financing arrangement, and other characteristics may exist. Accordingly, the staff believes that judgment is necessary in assessing whether the substance of a transaction is a consignment, a financing, or other arrangement for which revenue recognition is not appropriate. If title to the goods has passed but the substance of the arrangement is not a sale, the consigned inventory should be reported separately from other inventory in the consignor's financial statements as ''inventory consigned to others'' or another appropriate caption.

3. Delivery and Performance

Question 3

Facts: Company A receives purchase orders for products it manufactures. At the end of its fiscal quarters, customers may not yet be ready to take delivery of the products for various reasons. These reasons may include, but are not limited to, a lack of available space for inventory, having more than sufficient inventory in their distribution channel, or delays in customers' production schedules.

Questions: May Company A recognize revenue for the sale of its products once it has completed manufacturing if it segregates the inventory of the products in its own warehouse from its own products?

May Company A recognize revenue for the sale if it ships the products to a third-party warehouse but (1) Company A retains title to the product and (2) payment by the customer is dependent upon ultimate delivery to a customer-specified site?

Interpretative Response: Generally, no. The staff believes that delivery generally is not considered to have occurred unless the customer has taken title and assumed the risks and rewards of ownership of the products specified in the customer's purchase order or sales agreement. Typically this occurs when a product is delivered to the customer's delivery site (if the terms of the sale are ''FOB destination'') or when a product is shipped to the customer (if the terms are ''FOB shipping point'').

The Commission has set forth criteria to be met in order to recognize revenue when delivery has not occurred.[16] These include:

1. The risks of ownership must have passed to the buyer;

2. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;

3. The buyer, not the seller, must request that the transaction be on a bill and hold basis.[17] The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;

4. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (*e.g.,* storage periods are customary in the industry);

5. The seller must not have retained any specific performance obligations such that the earning process is not complete;

6. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and

7. The equipment [product] must be complete and ready for shipment.

The above listed conditions are the important conceptual criteria which should be used in evaluating any purported bill and hold sale. This listing is not intended as a checklist. In some circumstances, a transaction may meet all factors listed above but not meet the requirements for revenue recognition. The Commission also has noted that in applying the above criteria to a purported bill and hold sale, the individuals responsible for the preparation and filing of financial statements also should consider the following factors:[18]

1. The date by which the seller expects payment, and whether the seller has modified its normal billing and credit terms for this buyer;[19]

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[8] SFAS No. 48, ¶ 6(b) and 22.

[9] SFAS No. 48, ¶ 6(b) and 22. The arrangement may not specify that payment is contingent upon subsequent resale or consumption. However, if the seller has an established business practice permitting customers to defer payment beyond the specified due date(s) until the products are resold or consumed, then the staff believes that the seller's right to receive cash representing the sales price is contingent.

[10] SFAS No. 48, ¶ 6(c).

[11] SFAS No. 48, ¶ 6(d).

[12] 12 SFAS No. 48, ¶ 6(e).

[13] SFAS No. 49, ¶ 5(a). Paragraph 5(a) provides examples of circumstances that meet this requirement. As discussed further therein, this condition is present if (a) a resale price guarantee exists, (b) the seller has an option to purchase the product, the economic effect of which compels the seller to purchase the product, or (c) the buyer has an option whereby it can require the seller to purchase the product.

[14] SFAS No. 49, ¶ 5(b).

[15] See SOP 97–2, ¶ 25.

[16] See In the Matter of Stewart Parness, Accounting and Auditing Enforcement (AAER) Release No. 108 (August 5, 1986); SEC v. Bollinger Industries, Inc., et al, Lit. Rel. No. 15093 (September 30, 1996); In the Matter of Laser Photonics, Inc., AAER No. 971 (September 30, 1997); In the Matter of Cypress Bioscience Inc., AAER No. 817 (September 19, 1996). Also see SFAC No. 5, ¶ 84(a). and SOP 97–2, ¶ 22.

[17] Such requests typically should be set forth in writing by the buyer.

[18] See Note 16, supra.

[19] Such individuals should consider whether APB Opinion No. 21, *Interest on Receivables and Payables,* pertaining to the need for discounting the related receivable, is applicable. APB Opinion No. 21, ¶ 3(a), indicates that the requirements of that Opinion to record receivables at a discounted value

2. The seller's past experiences with and pattern of bill and hold transactions;

3. Whether the buyer has the expected risk of loss in the event of a decline in the market value of goods;

4. Whether the seller's custodial risks are insurable and insured;

5. Whether extended procedures are necessary in order to assure that there are no exceptions to the buyer's commitment to accept and pay for the goods sold (*i.e.,* that the business reasons for the bill and hold have not introduced a contingency to the buyer's commitment).

Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. If the customer specifies an intermediate site but a substantial portion of the sales price is not payable until delivery is made to a final site, then revenue should not be recognized until final delivery has occurred.[20]

After delivery of a product or performance of a service, if uncertainty exists about customer acceptance, revenue should not be recognized until acceptance occurs.[21] Customer acceptance provisions may be included in a contract, among other reasons, to enforce a customer's rights to (1) test the delivered product, (2) require the seller to perform additional services subsequent to delivery of an initial product or performance of an initial service (*e.g.,* a seller is required to install or activate delivered equipment), or (3) identify other work necessary to be done before accepting the product. The staff presumes that such contractual customer acceptance provisions are substantive, bargained-for terms of an arrangement. Accordingly, when such contractual customer acceptance provisions exist, the staff generally believes that the seller should not recognize revenue until customer acceptance occurs or the acceptance provisions lapse.

A seller should substantially complete or fulfill the terms specified in the arrangement in order for delivery or performance to have occurred.[22] When applying the substantially complete notion, the staff believes that only inconsequential or perfunctory actions may remain incomplete such that the failure to complete the actions would not result in the customer receiving a refund or rejecting the delivered products or services performed to date. In addition, the seller should have a demonstrated history of completing the remaining tasks in a timely manner and reliably estimating the remaining costs. If revenue is recognized upon substantial completion of the arrangement, all remaining costs of performance or delivery should be accrued.

If an arrangement (*i.e.,* outside the scope of SOP 81–1) requires the delivery or performance of multiple deliverables, or ''elements,'' the delivery of an individual element is considered not to have occurred if there are undelivered elements that are essential to the functionality of the delivered element because the customer does not have the full use of the delivered element.[23]

In licensing and similar arrangements (*e.g.*, licenses of motion pictures, software, technology, and other intangibles), the staff believes that delivery does not occur for revenue recognition purposes until the license term begins.[24] Accordingly, if a licensed product or technology is physically delivered to the customer, but the license term has not yet begun, revenue should not be recognized prior to inception of the license term. Upon inception of the license term, revenue should be recognized in a manner consistent with the nature of the transaction and the earnings process.

Question 4

Facts: Company R is a retailer that offers ''layaway'' sales to its customers. Company R retains the merchandise, sets it aside in its inventory, and collects a cash deposit from the customer. Although Company R may set a time period within which the customer must finalize the purchase, Company R does not require the customer to enter into an installment note or other fixed payment commitment or agreement when the initial deposit is received. The merchandise generally is not released to the customer until the customer pays the full purchase price. In the event that the customer fails to pay the remaining purchase price, the customer forfeits its cash deposit. In the event the merchandise is lost, damaged, or destroyed, Company R either must refund the cash deposit to the customer or provide replacement merchandise.

Question: In the staff's view, when may Company R recognize revenue for merchandise sold under its layaway program?

Interpretive Response: Provided that the other criteria for revenue recognition are met, the staff believes that Company R should recognize revenue from sales made under its layaway program upon delivery of the merchandise to the customer. Until then, the amount of cash received should be recognized as a liability entitled such as ''deposits received from customers for layaway sales'' or a similarly descriptive caption. Because Company R retains the risks of ownership of the merchandise, receives only a deposit from the customer, and does not have an enforceable right to the remainder of the purchase price, the staff would object to Company R recognizing any revenue upon receipt of the cash deposit. This is consistent with item two (2) in the Commission's criteria for bill-and-hold transactions which states that ''the customer must have made a fixed commitment to purchase the goods.''

Question 5

Facts: Registrants may negotiate arrangements pursuant to which they may receive nonrefundable fees upon entering into arrangements or on certain specified dates. The fees may ostensibly be received for conveyance of a license or other intangible right or for delivery of particular products or services. Various business factors may influence how the registrant and customer structure the payment terms. For example, in exchange for a greater up-front fee for an intangible right, the registrant may be willing to receive lower unit prices for related products to be delivered in the future. In some circumstances, the right, product, or service conveyed in conjunction with the nonrefundable fee has no utility to the purchaser separate and independent

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are not intended to apply to ''receivables and payables arising from transactions with customers or suppliers in the *normal course of business which are due in customary trade terms* not exceeding approximately one year'' (emphasis added).

[20] SOP 97–2, ¶ 22.

[21] SOP 97–2, ¶ 20. Also, SFAC No. 5, ¶ 83(b) states ''revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues.'' If an arrangement expressly requires customer acceptance, the staff generally believes that customer acceptance should occur before the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues, especially when the seller is obligated to perform additional steps.

[22] 22 SFAC No. 5, ¶ 83(b) states that ''revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled the benefits represented by the revenues.''

[23] SOP 97–2, ¶ 13, and 68–70.

[24] SFAS No. 53, *Financial Reporting by Producers and Distributors of Motion Picture Films*, ¶ 6. The FASB has issued an Exposure Draft to rescind SFAS No. 53. The AICPA's Accounting Standards Executive Committee intends to issue a new SOP that would replace SFAS No. 53 and provide authoritative guidance on accounting for motion pictures. The Exposure Draft of the proposed new SOP contains a similar criterion for revenue recognition of a licensed film (*i.e.,* the license period of the arrangement has begun and the customer can begin its exploitation, exhibition, or sale).

of the registrant's performance of the other elements of the arrangement. Therefore, in the absence of the registrant's continuing involvement under the arrangement, the customer would not have paid the fee. Examples of this type of arrangement include the following:

- A registrant sells a lifetime membership in a health club. After paying a nonrefundable ''initiation fee,'' the customer is permitted to use the health club indefinitely, so long as the customer also pays an additional usage fee each month. The monthly usage fees collected from all customers are adequate to cover the operating costs of the health club.
- A registrant in the biotechnology industry agrees to provide research and development activities for a customer for a specified term. The customer needs to use certain technology owned by the registrant for use in the research and development activities. The technology is not sold or licensed separately without the research and development activities. Under the terms of the arrangement, the customer is required to pay a nonrefundable ''technology access fee'' in addition to periodic payments for research and development activities over the term of the contract.
- A registrant requires a customer to pay a nonrefundable ''activation fee'' when entering into an arrangement to provide telecommunications services. The terms of the arrangement require the customer to pay a monthly usage fee that is adequate to recover the registrant's operating costs. The costs incurred to activate the telecommunications service are nominal.

Question: When should the revenue relating to nonrefundable, up-front fees in these types of arrangements be recognized?

Interpretive Response: The staff believes that registrants should consider the specific facts and circumstances to determine the appropriate accounting for nonrefundable, up-front fees. Unless the up-front fee is in exchange for products delivered or services performed that represent the culmination of a separate earnings process,[25] the deferral of revenue is appropriate.

In the situations described above, the staff does not view the activities completed by the registrants (*i.e.,* selling the membership, signing the contract, or enrolling the customer or activating telecommunications services) as discrete earnings events.[26] The terms, conditions, and amounts of these fees typically are negotiated in conjunction with the pricing of all the elements of the arrangement, and the customer would ascribe a significantly lower, and perhaps no, value to elements ostensibly associated with the up-front fee in the absence of the registrant's performance of other contract elements. The fact that the registrants do not sell the initial rights, products, or services separately (*i.e.,* without the registrants' continuing involvement) supports the staff's view. The staff believes that the customers are purchasing the on-going rights, products, or services being provided through the registrants' continuing involvement. Further, the staff believes that the earnings process is completed by performing under the terms of the arrangements, not simply by originating a revenue-generating arrangement.

Supply or service transactions may involve the charge of a nonrefundable initial fee with subsequent periodic payments for future products or services. The initial fees may, in substance, be wholly or partly an advance payment for future products or services. In the examples above, the on-going rights or services being provided or products being delivered are essential to the customers receiving the expected benefit of the up-front payment. Therefore, the up-front fee and the continuing performance obligation related to the services to be provided or products to be delivered are assessed as an integrated package. In such circumstances, the staff believes that up-front fees, even if nonrefundable, are earned as the products and/or services are delivered and/or performed over the term of the arrangement or the expected period of performance [27] and generally should be deferred and recognized systematically over the periods that the fees are earned.[28]

Question 6

Facts: Company A provides its customers with activity tracking or similar services (*e.g.,* tracking of property tax payment activity, sending delinquency letters on overdue accounts, etc.) for a ten-year period. Company A requires customers to prepay for all the services for the term specified in the arrangement. The on-going services to be provided are generally automated after the initial customer set-up. At the outset of the arrangement, Company A performs set-up procedures to facilitate delivery of its on-going services to the customers.[29] Such procedures consist primarily of establishing the necessary records and files in Company A's pre-existing computer systems in order to provide the services. Once the initial customer set-up activities are complete, Company A provides its services in accordance with the arrangement. Company A is not required to refund any portion of the fee if the customer terminates the services or does not utilize all of the services to which it is entitled. However, Company A is required to provide a refund if Company A terminates the arrangement early. Assume Company A's activities are not within the scope of SFAS No. 91.

Question: When should Company A recognize the service revenue?

Interpretive Response: The staff believes that, provided all other revenue recognition criteria are met, service revenue should be recognized on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period

[25] See SFAC No. 5, footnote 51, for a description of the ''earning process.''

[26] In a similar situation, lenders may collect nonrefundable loan origination fees in connection with lending activities. The FASB concluded in SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases,* that loan origination is not a separate revenue-producing activity of a lender, and therefore, those nonrefundable fees collected at the outset of the loan arrangement are not recognized as revenue upon receipt but are deferred and recognized over the life of the loan (paragraphs 5 and 37).

[27] The revenue recognition period should extend beyond the initial contractual period if the relationship with the customer is expected to extend beyond the initial term and the customer continues to benefit from the payment of the up-front fee (*e.g.,* if subsequent renewals are priced at a bargain to the initial up-front fee).

[28] A systematic method would be on a straight-line basis, unless evidence suggests that revenue is earned or obligations are fulfilled in a different pattern, in which case that pattern should be followed.

[29] Footnote 1 of SOP 98–5, *Reporting on the Costs of Start-Up Activities,* states that ''this SOP does not address the financial reporting of costs incurred related to ongoing customer acquisition, such as policy acquisition costs in Financial Accounting Standards Board (FASB) Statement No. 60, *Accounting and Reporting by Insurance Enterprises*, and loan origination costs in FASB Statement No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases.* The SOP addresses the more substantive one-time efforts to establish business with an entirely new class of customers (for example, a manufacturer who does all of its business with retailers attempts to sell merchandise directly to the public).'' As such, the set-up costs incurred in this example are not within the scope of SOP 98–5. The staff believes that the incremental direct costs (SFAS No. 91 provides an analogous definition) incurred related to the acquisition or origination of a customer contract, unless specifically provided for in the authoritative literature, should be accounted for in accordance with paragraph 4 of FASB Technical Bulletin (FTB) 90–1, *Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts* or paragraph 5 of SFAS No. 91.

during which those specified services will be performed,[30] whichever is longer. In this case, the customer contracted for the on-going activity tracking service, not for the set-up activities. The staff notes that the customer could not, and would not, separately purchase the set-up services without the on-going services. The services specified in the arrangement are performed continuously over the contractual term of the arrangement (and any subsequent renewals). Therefore, the staff believes that Company A should recognize revenue on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period during which those specified services will be performed, whichever is longer.

In this situation, the staff would object to Company A recognizing revenue in proportion to the costs incurred because the set-up costs incurred bear no direct relationship to the performance of services specified in the arrangement. The staff also believes that it is inappropriate to recognize the entire amount of the prepayment as revenue at the outset of the arrangement by accruing the remaining costs because the services required by the contract have not been performed.

4. Fixed or Determinable Sales Price

A company's contracts may include customer cancellation or termination clauses. Cancellation or termination provisions may be indicative of a demonstration period or an otherwise incomplete transaction. Examples of transactions that financial management and auditors should be aware of and where such provisions may exist include ''side'' agreements and significant transactions with unusual terms and conditions. These contractual provisions raise questions as to whether the sales price is fixed or determinable. The sales price in arrangements that are cancelable by the customer are neither fixed nor determinable until the cancellation privileges lapse.[31] If the cancellation privileges expire ratably over a stated contractual term, the sales price is considered to become determinable ratably over the stated term.[32] Short-term rights of return, such as thirty-day money-back guarantees, and other customary rights to return products are not considered to be cancellation privileges, but should be accounted for in accordance with SFAS No. 48.[33]

Question 7

Facts: Company M is a discount retailer. It generates revenue from annual membership fees it charges customers to shop at its stores and from the sale of products at a discount price to those customers. The membership arrangements with retail customers require the customer to pay the entire membership fee (*e.g.,* $35) at the outset of the arrangement. However, the customer has the unilateral right to cancel the arrangement at any time during its term and receive a full refund of the initial fee. Based on historical data collected over time for a large number of homogeneous transactions, Company M estimates that approximately 40% of the customers will request a refund before the end of the membership contract term. Company M's data for the past five years indicates that significant variations between actual and estimated cancellations have not occurred, and Company M does not expect significant variations to occur in the foreseeable future.

Question: May Company M recognize in earnings the revenue for the membership fees and accrue the costs to provide membership services at the outset of the arrangement?

Interpretive Response: No. In the staff's view, it would be inappropriate for Company M to recognize the membership fees as earned revenue upon billing or receipt of the initial fee with a corresponding accrual for estimated costs to provide the membership services. This conclusion is based on Company M's remaining and unfulfilled contractual obligation to perform services (*i.e.*, make available and offer products for sale at a discounted price) throughout the membership period. Therefore, the earnings process, irrespective of whether a cancellation clause exists, is not complete.

In addition, the ability of the member to receive a full refund of the membership fee up to the last day of the membership term raises an uncertainty as to whether the fee is fixed or determinable at any point before the end of the term. Generally, the staff believes that a sales price is not fixed or determinable when a customer has the unilateral right to terminate or cancel the contract and receive a cash refund. A sales price or fee that is variable until the occurrence of future events (*other than* product returns that are within the scope of SFAS No. 48) generally is not fixed or determinable until the future event occurs. The revenue from such transactions should not be recognized in earnings until the sales price or fee becomes fixed or determinable. Moreover, revenue should not be recognized in earnings by assessing the probability that significant, but unfulfilled, terms of a contract will be fulfilled at some point in the future. Accordingly, the revenue from such transactions should not be recognized in earnings prior to the refund privileges expiring. The amounts received from customers or subscribers (*i.e.*, the $35 fee mentioned above) should be credited to a monetary liability account such as ''customers' refundable fees.''

The staff believes that if a customer has the unilateral right to receive both (1) the seller's substantial performance under an arrangement (*e.g.*, providing services or delivering product) and (2) a cash refund of prepaid fees, then the prepaid fees should be accounted for as a monetary liability in accordance with SFAS No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, paragraph 16. SFAS No. 125 provides that liabilities may be derecognized only if (1) the debtor pays the creditor and is relieved of its obligation for the liability (*paying the creditor* includes delivery of cash, other financial assets, goods, or services or reacquisition by the debtor of its outstanding debt securities) or (2) the debtor is legally released from being the primary obligor under the liability.[34] If a customer has the unilateral right to receive both (1) the seller's substantial performance under the arrangement and (2) a cash refund of prepaid fees, then the refund obligation is not relieved upon performance of the service or delivery of the products. Rather, the seller's refund obligation is relieved only upon refunding the cash or expiration of the refund privilege.

Some have argued that there may be a limited exception to the general rule that revenue from membership or other service transaction fees should not be recognized in earnings prior to the refund privileges expiring. Despite the fact that SFAS No. 48 expressly does not apply to the accounting for service revenue if part or all of the service fee is refundable under cancellation privileges granted to the buyer,[35] they believe that in certain circumstances a potential refund of a membership fee may be seen as being similar to a right of return of products under SFAS No. 48. They argue that revenue from

[30] See Note 27, supra.

[31] SOP 97–2, ¶31.

[32] Ibid.

[33] Ibid.

[34] 34 SFAS No. 125, ¶ 16.

[35] SFAS No. 48, ¶ 4.

membership fees, net of estimated refunds, may be recognized ratably over the period the services are performed whenever pertinent conditions of SFAS No. 48 are met, namely, there is a large population of transactions that grant customers the same unilateral termination or cancellation rights and reasonable estimates can be made of how many customers likely will exercise those rights.

The staff believes that, because service arrangements are specifically excluded from the scope of SFAS No. 48, the most direct authoritative literature to be applied to the extinguishment of obligations under such contracts is SFAS No. 125. As noted above, because the refund privilege extends to the end of the contract term irrespective of the amount of the service performed, SFAS No. 125 indicates that the liability would not be extinguished (and therefore no revenue would be recognized in earnings) until the cancellation or termination and related refund privileges expire. Nonetheless, the staff recognizes that over the years the accounting for membership refunds evolved based on analogy to SFAS No. 48 and that practice did not change when SFAS No. 125 became effective. Reasonable people held, and continue to hold, different views about the application of the accounting literature. For the staff to prohibit such accounting in this SAB may result in significant change in practice that, in these particular circumstances, may be more appropriately addressed in a formal rulemaking or standards-setting project.

Pending further action in this area by the FASB, the staff will not object to the recognition of refundable membership fees, net of estimated refunds, as earned revenue over the membership term in the limited circumstances where *all* of the following criteria have been met:[36]

- The estimates of terminations or cancellations and refunded revenues are being made for a large pool of homogeneous items (*e.g.*, membership or other service transactions with the same characteristics such as terms, periods, class of customers, nature of service, etc.).
- Reliable estimates of the expected refunds can be made on a timely basis.[37] Either of the following two items would be considered indicative of an inability to make reliable estimates: (1) recurring, significant differences between actual experience and estimated cancellation or termination rates (*e.g.*, an actual cancellation rate of 40% versus an estimated rate of 25%) even if the impact of the difference on the amount of estimated refunds is not material to the consolidated financial statements[38] or (2) recurring variances between the actual and estimated amount of refunds that are material to either revenue or net income in quarterly or annual financial statements. In addition, the staff believes that an estimate, for purposes of meeting this criterion, would not be reliable unless it is remote[39] that material adjustments (both individually and in the aggregate) to previously recognized revenue would be required. The staff presumes that reliable estimates cannot be made if the customer's termination or cancellation and refund privileges exceed one year.
- There is a sufficient company-specific historical basis upon which to estimate the refunds,[40] and the company believes that such historical experience is predictive of future events. In assessing these items, the staff believes that estimates of future refunds should take into consideration, among other things, such factors as historical experience by service type and class of customer, changing trends in historical experience and the basis thereof (*e.g.*, economic conditions), the impact or introduction of competing services or products, and changes in the customer's ''accessibility'' to the refund (*i.e.*, how easy it is for customers to obtain the refund).
- The amount of the membership fee specified in the agreement at the outset of the arrangement is fixed, other than the customer's right to request a refund.

If Company M does not meet all of the foregoing criteria, the staff believes that Company M should not recognize in earnings any revenue for the membership fee until the cancellation privileges and refund rights expire.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the initial amounts received from customer or subscribers (*i.e.*, the $35 fee mentioned above) should be allocated to two liability accounts. The amount of the fee representing estimated refunds should be credited to a monetary liability account, such as ''customers' refundable fees,'' and the remaining amount of the fee representing unearned revenue should be credited to a nonmonetary liability account, such as ''unearned revenues.'' For each income statement presented, registrants should disclose in the footnotes to the financial statements the amounts of (1) the unearned revenue and (2) refund obligations as of the beginning of each period, the amount of cash received from customers, the amount of revenue recognized in earnings, the amount of refunds paid, other adjustments (with an explanation thereof), and the ending balance of (1) unearned revenue and (2) refund obligations.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the staff believes that adjustments for changes in estimated refunds should be recorded using a retrospective approach whereby the unearned revenue and refund obligations are remeasured and adjusted at each balance sheet date with the offset being recorded as earned revenue.

Companies offering memberships often distribute membership packets describing and discussing the terms, conditions, and benefits of membership. Packets may include vouchers, for example, that provide new members with discounts or other benefits. The costs associated with the vouchers should be expensed when distributed. Advertising costs to solicit members should be accounted for in accordance with SOP 93–7, *Reporting on Advertising Costs.* Incremental direct costs incurred in connection with enrolling customers (*e.g.,* commissions paid to agents) should be accounted for as follows: (1) If revenue is deferred until the cancellation or termination privileges expire, incremental direct costs should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the earlier of termination or cancellation or refund; or (2) if revenue,

[36] The staff will question further analogies to the guidance in SFAS No. 48 for transactions expressly excluded from its scope.

[37] Reliability is defined in SFAC No. 2 as ''the quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to represent.'' Paragraph 63 of SFAC No. 5 reiterates the definition of reliability, requiring that ''the information is representationally faithful, verifiable, and neutral.''

[38] For example, if an estimate of the expected cancellation rate varies from the actual cancellation rate by 100% but the dollar amount of the error is immaterial to the consolidated financial statements, some would argue that the estimate could still be viewed as reliable. The staff disagrees with that argument.

[39] The term ''remote'' is used here with the same definition as used in SFAS No. 5, *Accounting for Contingencies.*

[40] Paragraph 8 of SFAS No. 48 notes various factors that may impair the ability to make a reasonable estimate of returns, including the lack of sufficient historical experience. The staff typically expects that the historical experience be based on the particular registrant's historical experience for a service and/or class of customer. In general, the staff typically expects a start-up company, a company introducing new services, or a company introducing services to a new class of customer to have at least two years of experience to be able to make reasonable and reliable estimates.

net of estimated refunds, is recognized in earnings over the membership period, a like percentage of incremental direct costs should be deferred and recognized in earnings in the same pattern as revenue is recognized, and the remaining portion should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the refund occurs.[41] All costs other than incremental direct costs (*e.g.,* indirect costs) should be expensed as incurred.

Question 8

Facts: Company A owns and leases retail space to retailers. Company A (lessor) renews a lease with a customer (lessee) that is classified as an operating lease. The lease term is one year and provides that the lease payments are $1.2 million, payable in equal monthly installments on the first day of each month, plus one percent of the lessee's net sales in excess of $25 million if the net sales exceed $25 million during the lease term (*i.e.,* contingent rental). The lessee has historically experienced annual net sales in excess of $25 million in the particular space being leased, and it is probable that the lessee will generate in excess of $25 million net sales during the term of the lease.

Question: In the staff's view, should the lessor recognize any rental income attributable to the one percent of the lessee's net sales exceeding $25 million before the lessee actually achieves the $25 million net sales threshold?

Interpretive Response: No. The staff believes that contingent rental income ''accrues'' (*i.e.,* it should be recognized as revenue) when the changes in the factor(s) on which the contingent lease payments is (are) based actually occur.[42]

SFAS No. 13, *Accounting for Leases,* paragraph 19(b) states that lessors should account for operating leases as follows: ''Rent shall be reported in income over the lease term as it becomes receivable according to the provisions of the lease. However, if the rentals vary from a straight-line basis, the income shall be recognized on a straight-line basis unless another systematic and rational basis is more representative of the time pattern in which use benefit from the leased property is diminished, in which case that basis shall be used.''

SFAS No. 29, *Determining Contingent Rentals,* amended SFAS No. 13 and clarifies that ''lease payments that depend on a factor that does not exist or is not measurable at the inception of the lease, such as future sales volume, would be contingent rentals in their entirety and, accordingly, would be excluded from minimum lease payments and included in the determination of income as they accrue.'' [Summary] Paragraph 17 of SFAS No. 29 provides the following example of determining contingent rentals:

> A lease agreement for retail store space could stipulate a monthly base rental of $200 and a monthly supplemental rental of one-fourth of one percent of monthly sales volume during the lease term. Even if the lease agreement is a renewal for store space that had averaged monthly sales of $25,000 for the past 2 years, minimum lease payments would include only the $200 monthly base rental; the supplemental rental is a contingent rental that is excluded from minimum lease payments. The future sales for the lease term do not exist at the inception of the lease, and future rentals would be limited to $200 per month if the store were subsequently closed and no sales were made thereafter.

FASB Technical Bulletin (FTB) 85–3, *Accounting for Operating Leases with Scheduled Rent Increases,* addresses whether it is appropriate for lessors in operating leases to recognize scheduled rent increases on a basis other than as required in SFAS No. 13, paragraph 19(b). Paragraph 2 of FTB 85–3 states ''using factors such as the time value of money, anticipated inflation, or *expected future revenues* [emphasis added] to allocate scheduled rent increases is inappropriate because these factors do not relate to the *time pattern* of the physical usage of the leased property. However, such factors may affect the periodic reported rental income or expense if the lease agreement involves contingent rentals, which are excluded from minimum lease payments and accounted for separately under Statement 13, as amended by Statement 29.'' In developing the basis for why scheduled rent increases should be recognized on a straight-line basis, the FASB distinguishes the accounting for scheduled rent increases from contingent rentals. Paragraph 13 states ''There is an important substantive difference between lease rentals that are contingent upon some specified future event and scheduled rent increases that are unaffected by future events; the accounting under Statement 13 reflects that difference. If the lessor and lessee eliminate the risk of variable payments by agreeing to scheduled rent increases, the accounting should reflect those different circumstances.''

The example provided in SFAS No. 29 implies that contingent rental income in leases classified as sales-type or direct-financing leases becomes ''accruable'' when the changes in the factors on which the contingent lease payments are based actually occur. FTB 85–3 indicates that contingent rental income in operating leases should not be recognized in a manner consistent with scheduled rent increases (*i.e.,* on a straight-line basis over the lease term or another systematic and rational allocation basis if it is more representative of the time pattern in which the leased property is physically employed) because the risk of variable payments inherent in contingent rentals is substantively different than scheduled rent increases. The staff believes that the reasoning in FTB 85–3 supports the conclusion that the risks inherent in variable payments associated with contingent rentals should be reflected in financial statements on a basis different than rental payments that adjust on a scheduled basis and, therefore, operating lease income associated with contingent rents would not be recognized as time passes or as the leased property is physically employed. Furthermore, prior to the lessee's achievement of the target upon which contingent rentals are based, the lessor has no legal claims on the contingent amounts. Consequently, the staff believes that it is inappropriate to anticipate changes in the factors on which contingent rental income in operating leases is based and recognize rental income prior to the resolution of the lease contingencies.

Because Company A's contingent rental income is based upon whether the customer achieves net sales of $25 million, the contingent rentals, which may not materialize, should not be recognized until the customer's net sales actually exceed $25 million. Once the $25 million threshold is met, Company A would recognize the contingent rental income as it becomes accruable, in this case, as the customer recognizes net sales. The staff does not believe that it is appropriate to recognize revenue

[41] SFAS No. 91, paragraph 5 and FTB 90–1, paragraph 4 both provide for the deferral of incremental direct costs associated with acquiring a revenue-producing contract. Even though the revenue discussed in this example is refundable, if a registrant meets the aforementioned criteria for revenue recognition over the membership period, the staff would analogize to this guidance. However, if neither a nonrefundable contract nor a reliable basis for estimating net cash inflows under refundable contracts exists to provide a basis for recovery of incremental direct costs, the staff believes that such costs should be expensed as incurred. See Note 29, supra.

[42] Lessees should follow the guidance established in EITF Issue No. 98–9, *Accounting for Contingent Rent.*

based upon the probability of a factor being achieved. The contingent revenue should be recorded in the period in which the contingency is resolved.

Question 9

Facts: Paragraph 8 of SFAS No. 48 lists a number of factors that may impair the ability to make a reasonable estimate of product returns in sales transactions when a right of return exists.[43] The paragraph concludes by stating ''other factors may preclude a reasonable estimate.''

Question: What ''other factors,'' in addition to those listed in paragraph 8 of SFAS No. 48, has the staff identified that may preclude a registrant from making a reasonable and reliable estimate of product returns?

Interpretive Response: The staff believes that the following additional factors, among others, may affect or preclude the ability to make reasonable and reliable estimates of product returns: (1) Significant increases in or excess levels of inventory in a distribution channel (sometimes referred to as ''channel stuffing''), (2) lack of ''visibility'' into or the inability to determine or observe the levels of inventory in a distribution channel and the current level of sales to end users, (3) expected introductions of new products that may result in the technological obsolescence of and larger than expected returns of current products, (4) the significance of a particular distributor to the registrant's (or a reporting segment's) business, sales and marketing, (5) the newness of a product, (6) the introduction of competitors' products with superior technology or greater expected market acceptance, and other factors that affect market demand and changing trends in that demand for the registrant's products. Registrants and their auditors should carefully analyze all factors, including trends in historical data, that may affect registrants' ability to make reasonable and reliable estimates of product returns.

The staff reminds registrants that if a transaction fails to meet all of the conditions of paragraphs 6 and 8 in SFAS No. 48, no revenue may be recognized until those conditions are subsequently met or the return privilege has substantially expired, whichever occurs first.[44] Simply deferring recognition of the gross margin on the transaction is not appropriate.

5. Income Statement Presentation

Question 10

Facts: Company A operates an internet site from which it will sell Company T's products. Customers place their orders for the product by making a product selection directly from the internet site and providing a credit card number for the payment. Company A receives the order and authorization from the credit card company, and passes the order on to Company T. Company T ships the product directly to the customer. Company A does not take title to the product and has no risk of loss or other responsibility for the product. Company T is responsible for all product returns, defects, and disputed credit card charges. The product is typically sold for $175 of which Company A receives $25. In the event a credit card transaction is rejected, Company A loses its margin on the sale (*i.e.,* the $25).

Question: In the staff's view, should Company A report revenue on a gross basis as $175 along with costs of sales of $150 or on a net basis as $25, similar to a commission?

Interpretive Response: Company A should report the revenue from the product on a net basis. In assessing whether revenue should be reported gross with separate display of cost of sales to arrive at gross profit or on a net basis, the staff considers whether the registrant:

1. Acts as principal in the transaction,
2. Takes title to the products,
3. Has risks and rewards of ownership, such as the risk of loss for collection, delivery, or returns, and
4. Acts as an agent or broker (including performing services, in substance, as an agent or broker) with compensation on a commission or fee basis.[45]

If the company performs as an agent or broker without assuming the risks and rewards of ownership of the goods, sales should be reported on a net basis.

B. Disclosures

Question 1

Question: What disclosures are required with respect to the recognition of revenue?

Interpretive Response: A registrant should disclose its accounting policy for the recognition of revenue pursuant to APB Opinion No. 22, *Disclosure of Accounting Policies*. Paragraph 12 thereof states that ''the disclosure should encompass important judgments as to appropriateness of principles relating to recognition of revenue. * * *'' Because revenue recognition generally involves some level of judgment, the staff believes that a registrant should always disclose its revenue recognition policy. If a company has different policies for different types of revenue transactions, including barter sales, the policy for each material type of transaction should be disclosed. If sales transactions have multiple elements, such as a product and service, the accounting policy should clearly state the accounting policy for each element as well as how multiple elements are determined and valued. In addition, the staff believes that changes in estimated returns recognized in accordance with SFAS No. 48 should be disclosed, if material (*e.g.*, a change in estimate from two percent of sales to one percent of sales).

Regulation S–X requires that revenue from the sales of products, services, and other products each be separately disclosed on the face of the income statement.[46] The staff believes that costs relating to each type of revenue similarly should be reported separately on the face of the income statement.

Management's Discussion and Analysis (MD&A) requires a discussion of liquidity, capital resources, results of operations and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.[47] This includes unusual or infrequent transactions, known trends or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase or decrease. The Commission stated in Financial Reporting Release (FRR) 36 that MD&A should ''give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects

[43] These factors include ''(a) the susceptibility of the product to significant external factors, such as technological obsolescence or changes in demand, (b) relatively long periods in which a particular product may be returned, (c) absence of historical experience with similar types of sales of similar products, or inability to apply such experience because of changing circumstances, for example, changes in the selling enterprise's marketing policies and relationships with its customers, and (d) absence of a large volume of relatively homogeneous transactions.''

[44] SFAS No. 48, ¶6.

[45] See, for example, ARB 43, Chapter 11A, ¶20; SOP 81–1, ¶58–60; and SFAS No. 45, ¶16.

[46] See Regulation S–X, Article 5–03 (b) (1) and (2).

[47] See Regulation S–K, Article 303 and Financial Reporting Release No. 36.

for the future.''[48] Examples of such revenue transactions or events that the staff has asked to be disclosed and discussed in accordance with FRR 36 are:

- Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period.
- Granting of extended payment terms that will result in a longer collection period for accounts receivable (regardless of whether revenue has been recognized) and slower cash inflows from operations, and the effect on liquidity and capital resources. (The fair value of trade receivables should be disclosed in the footnotes to the financial statements when the fair value does not approximate the carrying amount.)[49]
- Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.
- An increasing trend toward sales to a different class of customer, such as a reseller distribution channel that has a lower gross profit margin than existing sales that are principally made to end users. Also, increasing service revenue that has a higher profit margin than product sales.
- Seasonal trends or variations in sales.
- A gain or loss from the sale of an asset(s).[50]

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with APB Opinion No. 20, *Accounting Changes*, no later than the first fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in Staff Accounting Bulletin Topic 11–M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period*, should be provided. With regard to question 10 of Topic 13–A and Topic 8–A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with generally accepted accounting principles, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in APB Opinion No. 20 for the correction of an error.[51] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

Topic 8: Retail Companies

A. Sales of Leased or Licensed Departments

Facts: Department stores and other retailers customarily include the sales of leased or licensed departments in the amount reported as ''total revenues.''

Question: Does the staff have any objection to this practice?

Interpretive Response: In November 1975 the staff issued staff accounting bulletin number 1 that addressed this issue. In that bulletin the staff did not object to retailers presenting sales of leased or licensed departments in the amount reported as ''total revenues'' because of industry practice. Subsequently, in November 1976 the FASB issued SFAS No. 13. In June 1995, the AICPA staff amended its Technical Practice Aid (TPA) section 5100.16, *Rental Revenue Based on Percentage of Sales*, based upon an interpretation of SFAS No. 13 that leases of departments within a retail establishment are leases of tangible assets within the scope of SFAS No. 13.[52] Consistent with the interpretation in TPA section 5100.16, the staff believes that SFAS No. 13 requires department stores and other retailers that lease or license store space to account for rental income from leased departments in accordance with SFAS No. 13. Accordingly, it would be inappropriate for a department store or other retailer to include in its revenue the sales of the leased or licensed departments. Rather, the department store or other retailer should include the rental income as part of its gross revenue. The staff would not object to disclosure in the footnotes to the financial statements of the amount of the lessee's sales from leased departments. If the arrangement is not a lease but rather a service arrangement that provides for payment of a fee or commission, the retailer should recognize the fee or commission as revenue when earned. If the retailer assumes the risk of bad debts associated with the lessee's merchandise sales, the retailer generally should present bad debt expense in accordance with Regulation S–X article 5–03 (b)(5).

*B. * * **

This Staff Accounting Bulletin is not intended to change current guidance in the accounting literature. For this reason, adherence to the principles described in this Staff Accounting Bulletin should not raise the costs associated with record-keeping or with audits of financial statements.

[FR Doc. 99–31832 Filed 12–8–99; 8:45 am]

BILLING CODE 8010–01–P

[48] FRR 36, also see In the Matter of Caterpillar Inc., AAER No. 363 (March 31, 1992).

[49] SFAS No. 107, *Disclosures about Fair Values of Financial Instruments.*

[50] Gains or losses from the sale of assets should be reported as ''other general expenses'' pursuant to Regulation S–X, Article 5–03(b)(6). Any material item should be stated separately.

[51] APB Opinion No. 20, ¶13 and ¶36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term ''error'' as used in APB Opinion No. 20 includes ''oversight or misuse of facts that existed at the time that the financial statements were prepared,'' that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit.*

[52] SFAS No. 13, ¶1 defines a lease as ''the right to use property, plant, or equipment (land or depreciable assets or both) usually for a stated period of time.''

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA81

Agency Records Centers; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the **Federal Register** of December 2, 1999, a final rule revising the standards that

records center storage facilities must meet to store Federal records. This document corrects several editorial and printing errors in that final rule. Two of the corrections substantively affect the final rule. The date in the definition of ''Existing records storage facility'' is corrected to read January 2, 2000. The text following the first sentence of § 1228.228(n)(4) should have been part of paragraph (n)(4).

DATES: Effective January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–713–7360, ext. 226.

SUPPLEMENTARY INFORMATION: In the document FR 99–30973 published on December 2 1999 (99 FR 67634), make the following corrections:

1. On page 67635, in the second column, correct the second heading to read: ''**Definitions (§ 1228.226)**''.

2. On page 67637, in the first column, correct the last line of that column to read ''source of water leakage, but to permit''.

§ 1228.226 [Corrected]

3. On page 67643, in the third column, in § 1228.226, in the definition of ''Existing records storage facility'', 4th line, correct the date ''September 30, 1999,'' to read ''January 2, 2000,''.

§ 1228.228 [Corrected]

4. On page 67644, in the third column, in § 1228.228(k), 4th and 5th lines, add quotation marks at the beginning and end of the title ''Vulnerability Assessment of Federal Facilities''.

5. On page 67645, in the first column, in § 1228.228(n)(4), the undesignated paragraph following paragraph (n)(4) is correctly designated as the second and third sentences of paragraph (n)(4).

Dated: December 6, 1999.

Nancy Y. Allard,

Federal Register Liaison.

[FR Doc. 99–31985 Filed 12–8–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 95–21; FCC 99–322]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies petitions for reconsideration and amends on its own motion its regulations concerning ex parte presentations in Commission proceedings, which were comprehensively revised in 1997. The current amendments modify the rules in minor respects based on the Commission's experience with the revised rules since 1997. The intended effect of the current amendments is to further make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

DATES: Effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, GC Docket No. 95–21, adopted on October 28, 1999, and released November 9, 1999. The full text of the memorandum opinion and order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Room CY–B400, 445 12th Street, SW, Washington DC 20554, telephone (202) 314–3070.

Summary of Memorandum Opinion and Order

1. In 1997, the Commission revised its rules governing ex parte presentations in Commission proceedings. *Report and Order*, 62 FR 15852 (April 3, 1997). The revision was intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stressed that the ex parte rules are important and that full compliance is expected.

2. Two law firms, Hogan & Hartson and Lukas, McGowan, Nace & Gutierrez, seek reconsideration of the revised rules. Hogan & Hartson contends that the Commission should treat all proceedings as ''permit-but-disclose'' except for certain quasi-judicial proceedings. Lukas, McGowan, Nace & Gutierrez proposes that informal complaints under 47 U.S.C. 208 should be treated as ''restricted.'' The Commission finds both petitions for reconsideration without merit and denies them.

3. The Commission, however, finds that, although its experience with the revised rules has generally been positive, certain areas warrant further consideration. The Commission therefore takes the opportunity to modify the revised rules in certain minor respects. The modifications are:

A. Parties

1. In proceedings designated for hearing, only persons formally given party status will be treated as parties for ex parte purposes.

2. The ''viewer/listener'' exception, under which viewers or listeners do not become parties because they comment on a pending broadcast application and do not have to serve the broadcaster, is clarified.

3. Members of Congress and other governmental officials will not become parties merely by serving a presentation; they will be made parties only if that is warranted based on an affirmative request for party status.

4. Petitions to revoke and petitions for orders to show cause will be treated the same as complaints.

B. Classification of Proceedings

1. Requests for modification of payment arrangements under 47 CFR 64.1001 will be treated as permit-but-disclose instead of restricted.

2. BOC applications to provide in-region interLATA services pursuant to 47 U.S.C. 271(d), petitions for Commission preemption of authority to review interconnection agreements under 47 U.S.C. 252(e)(5), and petitions for preemption under 47 U.S.C. 253 will be treated as permit-but-disclose instead of restricted.

3. Persons filing petitions for declaratory rulings or rulemakings that seek Commission preemption will be required to serve any state or local government, the actions of which are cited as a basis for requesting preemption. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under 47 CFR 1.1212(d) and the parties are so informed.

C. Exempt Presentations

1. Presentations between Commission staff and administrators, such as the Universal Service Administrative Company, will be exempt.

D. Status Inquiries

1. The newly-adopted exemption for oral status inquiries requesting action by a particular date or giving reasons that a proceeding should be expedited other than to avoid administrative delay will apply only in non-hearing proceedings.

E. Clarifications and Typographical Errors

1. The rules are amended where necessary to clarify them and eliminate typographical errors.

F. Public Notices

1. The Bureaus and Offices are encouraged to specify the ex parte status of proceedings when they issue public notices.

Regulatory Flexibility Certification

4. The NPRM (60 FR 8995 (February 16, 1995)) incorporated an Initial Regulatory Flexibility Analysis (IFRA) of the proposed rules pursuant to 5 U.S.C. 605. No comments were received in direct response to the IFRA. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless the Commission certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The Commission believes that the rules it adopted will not have a significant economic impact on a substantial number of small entities.

5. As noted, the Commission's purpose in revising the ex parte rules is to simplify and clarify them. It finds that the modifications do not impose any additional compliance burden on persons dealing with the Commission including small entities. It also finds that the revised rules clarify the situations in which ex parte presentations are permissible, when they must be reported on the record, and when they are prohibited, without significantly changing the current rules substantively. The Commission believes that the revised rules do not otherwise affect the rights of persons to participate as parties in Commission proceedings. It further finds that there is no reason to believe that operation of the revised rules will impose any costs on parties in particular proceedings subject to those rules, beyond those costs incurred under our former rules. Rather, the Commission anticipates that the revisions will serve to make the rules easier to comply with and more effective for small entities as well as others. By increasing the frequency with which the Commission issues reports of ex parte presentations, the amended rules will make it easier for small entities and others to determine when ex parte presentations have occurred.

6. Accordingly, the Commission certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), and 309.

2. Section 1.1202 is amended by revising the note to paragraph (a), paragraph (d) introductory text, paragraphs (d)(1) through (d)(5) and by adding note 5 to paragraph (d) to read as follows:

§ 1.1202 Definitions.

(a) * * *

Note to paragraph (a): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

* * * * *

(d) *Party.* Unless otherwise ordered by the Commission, the following persons are parties:

(1) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and § 5.21, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and § 5.21;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a) (1) or (2).

* * * * *

Note 5 to paragraph (d): A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

3. Section 1.1203 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decisionmakers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period prescribed in paragraph (b) of this section unless:

* * * * *

4. Section 1.1204 is amended by revising paragraph (a) introductory text, paragraphs (a)(6), (a)(9), (a)(10)(iii), and (a)(11), by adding paragraph (a)(12), and by adding the note to paragraph (b) to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings.

(a) *Exempt ex parte presentations.* The following types of presentations are exempt from the prohibitions in restricted proceedings (§ 1.1208), the disclosure requirements in permit-but-disclose proceedings (§ 1.1206), and the prohibitions during the Sunshine Agenda period prohibition (§ 1.1203):

* * * * *

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding) *provided that,* any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

* * * * *

(9) The presentation is made pursuant to an express or implied promise of confidentiality to protect an individual from the possibility of reprisal, or there is a reasonable expectation that disclosure would endanger the life or physical safety of an individual;

(10) * * *

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure of any new written information elicited from such request or a summary of any new oral information elicited from such request must be made in accordance with the requirements of § 1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

* * * * *

(11) The presentation is an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A detailed summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement.

(12) The presentation is between Commission staff and:

(i) The administrator of the interstate telecommunications relay services fund relating to administration of the telecommunications relay services fund pursuant to 47 U.S.C. 225;

(ii) The North American Numbering Plan Administrator or the North American Numbering Plan Billing and Collection Agent relating to the administration of the North American Numbering Plan pursuant to 47 U.S.C. 251(e);

(iii) The Universal Service Administrative Company relating to the administration of universal service support mechanisms pursuant to 47 U.S.C. 254; or

(iv) The Number Portability Administrator relating to the administration of local number portability pursuant to 47 U.S.C. 251(b)(2) and (e); provided that the relevant administrator has not filed comments or otherwise participated as a party in the proceeding.

(b) * * *

Note 4 to paragraph (b): In the case of petitions for rulemaking that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

* * * * *

5. Section 1.1206 is amended by adding note 1 to paragraph (a) introductory text, revising and redesignating note 1 as note 2, and by revising and redesignating note 2 as note 3, and by adding paragraphs (a)(12) through (a)(14) to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

Note 1 to paragraph (a) introductory text: In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) of this section and the parties are so informed.

* * * * *

(7) * * *

Note 2 to paragraph (a): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

* * * * *

(12) A modification request filed pursuant to § 64.1001 of this chapter;

(13) Applications by Bell Operating Companies to provide in-region, interLATA services pursuant to § 271(d) of the Communications Act; and

(14) Petitions for Commission preemption of authority to review interconnection agreements under § 252(e)(5) of the Communications Act and petitions for preemption under § 253 of the Communications Act.

Note 3 to paragraph (a): In a permit-but-disclose proceeding involving only one ''party,'' as defined in § 1.1202(d) of this section, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

6. Section 1.1208 is amended by revising the undesignated text to read as follows:

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) of this section, ex parte presentations (other than ex parte presentations exempt under § 1.1204(a) of this section) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) of this section until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which ex parte presentations are prohibited, referred to as ''restricted'' proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

7. Section 1.1210 is revised to read as follows:

§ 1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any improper presentation under the provisions of this section.

[FR Doc. 99–31620 Filed 12–8–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 120299A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the portion of the 1999 total allowable catch (TAC) of Pacific cod allocated to these vessels in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 6, 1999 until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the portion of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI as 83,500 metric tons (mt) which was then modified by two reallocations of Pacific cod TAC (64 FR 52472, September 29, 1999; the second document has just been submitted to the *Office of the Federal Register* and will be published in approximately the second week of December) to 95,300 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7).

The fishery for Pacific cod by vessels using hook-and-line or pot gear in the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on October 19, 1999 (64 FR 56475, October 20, 1999), in order to reserve amounts of Pacific cod anticipated to be needed for incidental catch in other fisheries.

NMFS has determined that, with the reallocation of Pacific cod from catcher/processors and catcher vessels using trawl gear to vessels using hook-and-line or pot gear, 2,000 mt remain in the portion of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI. Because this amount exceeds anticipated needs for incidental catch of Pacific cod in other fisheries, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the BSAI.

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: December 3, 1999.

Richard W. Surdi,

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

[FR Doc. 99–31954 Filed 12–6–99; 3:58 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 120299B]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod from trawl catcher/processors and trawl catcher vessels to vessels using hook-and-line or pot gear. This action is necessary to allow the 1999 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective December 6, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(5), the Final 1999 Harvest Specifications for Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the Pacific cod initial TAC for the BSAI as 163,725 metric tons (mt). Of this amount, 3,275 mt was allocated to vessels using jig gear, 38,475 mt to trawl catcher vessels, 38,475 mt to trawl catcher/processors, and 83,500 mt to vessels using hook-and-line or pot gear. Subsequently, 5,000 mt were reallocated from the trawl catcher/processors to vessels using hook-and-line or pot gear and 2,800 mt were reallocated from vessels using jig gear to vessels using hook-and-line or pot gear (64 FR 52472, September 29, 1999). That reallocation resulted in allocations of 475 mt to vessels using jig gear, 38,475 mt to trawl catcher vessels, 33,475 mt to trawl catcher/processors, and 91,300 mt to vessels using hook-and-line or pot gear.

As of November 20, 1999, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 2,500 mt of Pacific cod remain in the trawl catcher/processor allocation and approximately 2,500 mt remain in the trawl catcher vessel allocation. Based on effort projections and recognizing that directed fishing for Pacific cod by trawl catcher/processors and trawl catcher vessels will be constrained by Pacific halibut bycatch restrictions, the Regional Administrator has determined that trawl catcher/processors will not be able to harvest 2,000 mt of Pacific cod and trawl catcher vessels will not be able to harvest 2,000 mt allocated to these sectors under § 679.20(a)(7)(i)(B).

Therefore, in accordance with § 679.20(a)(7)(ii)(B), NMFS is apportioning the projected unused amount, 2,000 mt of Pacific cod from trawl catcher/processors and 2,000 mt of Pacific cod from trawl catcher vessels to vessels using hook-and-line or pot gear. The resulting apportionments of Pacific cod are 475 mt to vessels using jig gear, 36,475 mt to trawl catcher vessels, 31,475 mt to trawl catcher/processors, and 95,300 mt to vessels using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for hook-and-line or pot gear in the BSAI. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

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

Dated: December 3, 1999.

Richard W. Surdi,

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

[FR Doc. 99–31953 Filed 12–6–99; 3:58 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 236
Thursday, December 9, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1999–27]

General Public Political Communications Coordinated With Candidates

AGENCY: Federal Election Commission.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing new rules to address coordinated communications made in support of or in opposition to clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 24, 2000. If the Commission receives requests to testify, it will hold a hearing on these proposed rules on February 16, 2000, at 10:00 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to coordnprm@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed rules that would address coordinated communications made in support of or in opposition to clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission is also seeking comment on whether these same rules, or a different standard, should apply to expenditures, including communications, made by party committees that are coordinated with the parties' candidates.

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* (''FECA'' or the ''Act'') prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes various limits on the amount of money or in-kind contributions other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). While individuals and persons other than corporations and labor organizations can make independent expenditures in connection with federal campaigns, these expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. As such, they are subject to the various limits and prohibitions set out in the Act. *Buckley* v. *Valeo,* 424 U.S. 1, 46–47 (1976) (footnote omitted) (*''Buckley''*); *Federal Election Commission* v. *The Christian Coalition,* 52 F.Supp.2d 45, 85 (D.D.C. 1999) (*''Christian Coalition''*). The Act defines ''contribution'' at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The proposed rules, which define the term *coordinated general public political communication,* would be located in a new section of the Commission's rules, 11 CFR 100.23. They are intended to incorporate into the Commission's rules the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra.* This is a supplemental Notice of Proposed Rulemaking (''NPRM'') to a 1997 NPRM that addressed coordinated activities between candidates and political parties. 62 FR 24367 (May 5, 1997).

A. History of the Rulemaking

In 1997, the Commission published a Notice of Proposed Rulemaking (''NPRM'') seeking comments on proposed revisions to 11 CFR 110.7, which implements the provisions of 2 U.S.C. 441a(d) regarding party committee coordinated expenditures and spending limits. 62 FR 24367 (May 5, 1997). Section 441a(d) of the FECA permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amounts they may contribute directly to those candidates. These section 441a(d) expenditures are commonly referred to as ''coordinated party expenditures'' because such expenditures can be made after extensive consultation with the candidates and their campaign staffs.

Former 11 CFR 110.7(b)(4) had presumed that party committees were incapable of making independent expenditures, because of the close relationship between candidates and their party. This regulation was implicated by the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado*). In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such independent expenditures to the coordinated expenditure limits found in section 441a(d) of the FECA. *Id.* at 613–14.

Following the *Colorado* Supreme Court decision, and in response to a

rulemaking petition, the Commission promulgated a Final Rule on August 7, 1996 that repealed paragraph (b)(4) of section 110.7 to the extent that this paragraph prohibited national and state committees of political parties from making independent expenditures for congressional candidates. 61 FR 40961 (Aug. 7, 1996). On the same date, the Commission published a Notice of Availability seeking comment on other significant issues arising from the *Colorado* decision. 61 FR 41036 (Aug. 7, 1996). These included possible amendments to 11 CFR Part 109, the Commission's rules addressing independent expenditures by any person, and 11 CFR 110.7 to provide standards for determining when party committee expenditures qualify as ''independent'' or are considered ''coordinated'' with federal candidates. Another issue raised was whether to modify or repeal the rule barring national party committees from making independent expenditures on behalf of Presidential candidates in the general election. *See* 11 CFR 110.7(a)(5). No statements supporting or opposing the petition were received by the close of the comment period.

On May 5, 1997 the Commission issued an NPRM in which it sought comments on proposed revisions to these regulations. 62 FR 24367 (May 5, 1997). Ten comments were received in response to this NPRM. On June 18, 1997, the Commission held a public hearing on this rulemaking, at which six witnesses testified.

The Commission subsequently decided to hold the 1997 rulemaking in abeyance until it received further direction from the courts. The coordinated spending limits were invalidated on Constitutional grounds by the district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 41 F.Supp.2d 1197 (D. Colo. 1999), on remand from the *Colorado* Supreme Court decision. This case is currently on appeal to the Court of Appeals for the Tenth Circuit, with oral argument scheduled for early next year.

On December 16, 1998, the Commission published a new NPRM putting forth proposed amendments to its rules governing publicly financed Presidential primary and general election candidates. 63 FR 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their Presidential candidates, which had been raised in the earlier NPRM, were addressed in the public funding rulemaking. For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their Presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual Presidential nominees.

The Commission received seven written comments on coordinated expenditures in response to the 1998 NPRM. The Commission subsequently reopened the comment period and held a public hearing on March 24, 1999, at which four witnesses presented testimony on coordination issues.

On November 3, 1999, the Commission promulgated new paragraph (d) of section 110.7, addressing pre-nomination coordinated expenditures. 64 FR 59606 (Nov. 3, 1999). The new paragraph states that party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. It further states that all pre-nomination coordinated expenditures shall be subject to the section 441a(d) coordinated expenditure limitations, whether or not the candidate with whom they are coordinated receives the party's nomination. Please note that new paragraph 110.7(d) applies to all federal elections. For additional information, see *Explanation and Justification to Section 110.7, Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d)),* 64 FR 42579, 42580–81 (Aug. 5, 1999).

At this point, the Commission is continuing to evaluate possible amendments to 11 CFR 110.7 and 109.1 regarding the definitions of ''coordinated'' and ''independent'' expenditures, the standards applicable to party committee advertisements directed to the general public, and the possible repeal or modification of 11 CFR 110.7(a)(5), which currently bars national party committees from making independent expenditures in connection with Presidential general election campaigns. Consequently, revised proposals on these topics may be put out for additional public comment in the future. In addition, the Commission may consider amending 11 CFR 109.1(b)(4) to refer to the coordination standard in 11 CFR 100.23 applicable to general public political communications. However, in addition to the specific proposals discussed below that address other types of coordinated communications, comments are sought as to whether it would be advisable to continue to await further judicial resolution of the Constitutional question involving the limits on coordinated party expenditures before issuing new rules on such spending.

B. Post-Colorado Judicial Opinions

1. The Christian Coalition Decision

The *Christian Coalition* case arose out of an FEC enforcement action alleging coordination between the Christian Coalition and various federal campaigns in connection with the 1990, 1992, and 1994 elections, resulting in disbursements from the general corporate treasury for voter guides, ''get out the vote'' activities, direct mailings and payments to speakers. The Christian Coalition characterized these activities as independent corporate speech, and the FEC alleged that because of the varying degrees of interaction between the Christian Coalition and those candidates and their campaigns, the activities should be treated as in-kind contributions that violated the Act's contribution limits and/or prohibitions.

In setting out a working definition of ''coordination'' to address this situation, the *Christian Coalition* court explained that ''the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative quid pro quo palpable without chilling protected contact between candidates and corporations and unions.'' 52 F.Supp.2d at 88–89. The court continued that ''First Amendment clarity demands a definition of 'coordination'' that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interest in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association.'' *Id.* at 91. In its opinion the district court referred to ''expressive expenditures,'' as opposed to expenditures for other types of campaign support, and defined a ''coordinated expressive expenditure'' as ''one for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign.'' *Id.* at 85, n. 45.

The court went on to explain that ''an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or

where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) 'volume' (e.g., number of copies of printed materials or frequency of media spots). 'Substantial discussion or negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.'' *Id.* at 92. The court acknowledged that ''a standard that requires 'substantial' anything leaves room for factual dispute,'' but reasoned that the standard reflects a reasonable balance between possibly chilling some protected speech and the need to protect against the ''real dangers to the integrity of the electoral process'' expressive expenditures may present. *Id.*

The district court proceeded to apply this standard to the challenged campaign activities. In most instances the court did not find coordination. For example, the court found no coordination between the Christian Coalition and the Bush-Quayle campaign in the preparation of voter guides in connection with the 1992 Presidential campaign, explaining that, while the campaign was generally aware President Bush would compare favorably in the eyes of the target audience with the other candidates profiled in the guides, the campaign staff did not seek to discuss the issues that would be profiled or how they would be worded. Nor did they seek to influence the Coalition's decisions as to how many guides would be produced, and when and where they would be distributed. *Id.* at 93–95. Similarly, the fact that a Coalition official served as a volunteer in a 1994 House campaign and also made decisions as to where the Coalition's voter guides would be distributed in connection with the House campaign did not amount to coordination where the official did not make his decisions based on any discussions or negotiations with the campaign for which he volunteered. *Id.* at 95–96. In contrast, the court found coordination where the Coalition provided a Senate campaign consultant with a commercially valuable mailing list. *Id.* at 96. The Commission subsequently decided not to appeal the district court's decision.

2. The Clifton and Public Citizen Decisions

In *Clifton* v. *Federal Election Commission,* 114 F.3d 1309 (1st Cir. 1997), *cert. denied,* 118 S.Ct. 1036 (1998) (*''Clifton''*), a three-judge panel of the United States Court of Appeals for the First Circuit ruled in a split decision that coordination in the context of voter guides ''implie[s] some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue.'' 114 F.3d at 1311, citing *Buckley,* 424 U.S. at 46–47 and n. 53 (1976). Over a strong dissent, the panel invalidated those portions of the Commission's voter guide regulations at 11 CFR 114.4(c)(5)(i), (ii)(C) that limit any contact with candidates to written inquiries and replies, and generally require all candidates for the same office to receive equal space and prominence in the guide. *Id.* at 1317. The court also invalidated the Commission's voting record rules at 11 CFR 114.4(c)(4) to the extent they limit contact with candidates to written inquiries on candidates' positions. *Id.* In *Federal Election Commission* v. *Public Citizen, Inc.,* 1999 WL 731056 (N.D. Ga. 1999), a federal district court followed the *Clifton* ''collaboration'' language in holding that contacts between a public interest group and a candidate made in connection with an advertising campaign to defeat a candidate for the House of Representatives were not coordinated for purposes of the FECA. The Commission did not appeal that portion of the *Public Citizen* decision that addresses the coordination standard.

C. Proposed Rules

The Commission is proposing to add a new section 11 CFR 100.23 to its rules, to address coordinated communications made in connection with federal campaigns that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission believes it is appropriate to place this language in a separate section of the rules to properly alert the regulated community of this standard.

The proposed new section, which would be entitled *Coordinated General Public Political Communications,* would largely follow the language of the *Christian Coalition* decision, discussed above. The Commission is, however, proposing to use the phrase ''general public political communication'' in place of ''expressive expenditure,'' the term used by the *Christian Coalition* court, because that term may not give the regulated community adequate notice of the types of communications that would be covered by these rules.

The Commission is proposing to define the term ''general public political communications'' to include those made through a broadcasting station, including a cable television operator; newspaper; magazine; outdoor advertising facility; mailing or any electronic medium, including over the Internet or on a web site. It would be limited to those communications having an intended audience of over one hundred people. *See* proposed 11 CFR 100.23(e)(1). Including cable television broadcasts is consistent with the Commission's candidate debate regulations at 11 CFR 100.13(a)(2), while including communications made over the Internet reflects the expanding role of that medium in federal campaigns. The exclusion of communications with an intended audience of one hundred people or fewer mirrors the Commission's disclaimer rules at 11 CFR 110.11(a)(3), which exempt from the disclaimer requirements direct mailings of one hundred pieces or less.

Please note that the term ''general public political communication'' is similar to the term ''general public political advertising,'' which appears in three places in the Act and in several sections of the regulations. The term has similar and generally consistent meanings in the Act and the Commission's rules. For example, the definitions of ''contribution'' and ''expenditure'' at 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv) respectively refer to ''broadcasting stations, newspapers, magazines, or similar types of general public political advertising.'' Section 441d(a) of the Act, which addresses communications that require a disclaimer, includes the same list and adds outdoor advertising facilities and direct mailings. The corresponding rules are found at 11 CFR 100.7(b)(9) (definition of ''contribution''), 100.8(b)(10) (definition of ''expenditure''), and 110.11(a)(1) (communications requiring disclaimers). Consequently, the Commission believes the term ''general public political communications'' describes the types of communications the court had in mind in *Christian Coalition* in a manner consistent with sections 431(8) and (9) and 441d(a) of the Act.

The proposed rules in 11 CFR 100.23 would also be limited to communications that include a ''clearly identified candidate.'' The term ''clearly identified candidate'' would have the same meaning as that in 11 CFR 100.17 and 2 U.S.C. 431(17). Thus, it would include instances where the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ''the President,'' ''your Congressman,'' or ''the incumbent,'' or through an

unambiguous reference to his or her status as a candidate such as ''the Democratic Presidential nominee'' or ''the Republican candidate for Senate in the State of Georgia.''

Proposed paragraph 11 CFR 100.23(c) contains the text of the coordination standard. The Commission is seeking comments on alternative language at two places in this paragraph. The first would appear in the introductory portion of the paragraph. Under Alternative 1–A, a communication would be considered to be coordinated if the communication was paid for by persons other than the candidate, the candidate's authorized committee, or a party committee, and was created, produced or distributed as discussed below.

Alternative 1–B would add the additional qualification that the communication be distributed primarily in the geographic area in which the candidate was running in order to be considered coordinated with a candidate or party committee. Alternative 1–B is intended to address the concern that the costs of national legislative campaigns that refer to clearly-identified candidates, and may be endorsed by or designed by one or more of the named candidates, not be considered expenditures on behalf of those candidates' campaigns. For example, expenditures made in connection with a national campaign to support the so-called ''Shays-Meehan'' campaign finance legislation would not be considered contributions to Rep. Shays or Rep. Meehan, even if the group distributing the advertisement had consulted with them to design the national advertising campaign in support of their legislation and referred to it as the ''Shays-Meehan bill'' in the advertising.

One potential concern with the geographic limitation language proposed in Alternative 1–B is that in many parts of the country the media market may cover several adjacent states. Thus, political advertisements broadcast from a station in these areas arguably may not be ''distributed primarily in the geographic area in which [a] candidate [is] running.'' For example, much television and radio advertising made in connection with New Hampshire elections is aired over Boston broadcast media, because there is no other major city from which to air these broadcasts. Many broadcasts aimed at New Jersey elections are aired over New York City media because a large number of New Jersey voters receive these broadcasts.

Alternative 1–B would also exclude from the definition of coordination communications in which a candidate in one state solicits funds on behalf of a candidate in another, as long as contributors were asked to send their contributions directly to the candidate on whose behalf they were made. Similarly, Alternative 1–B would not cover an outside organization's solicitations on behalf of a candidate, if these were made primarily outside the geographic area in which the candidate was running, and if the outside organization does not collect and forward the contributions to the candidate.

The Commission welcomes comments on alternative ways to accomplish the desired result of Alternative 1–B through means other than the proposed geographic limitation language.

The Commission is also seeking comment on two alternatives of a provision to be located in 11 CFR 100.23(c)(1) that addresses communications made at the request or suggestion of the candidate or campaign. Alternative 2–A would state that coordination occurs when a communication is created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, candidate's authorized committee, a party committee, or the agent of any of the foregoing. Alternative 2–B would limit such coordination to those instances where the parties also discuss the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement.

Alternative 2–A reflects the following language in the *Christian Coalition* decision, in which the court stated, ''The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions.'' 52 F.Supp.2d at 91. Alternative 2–B would further restrict coordinated communications to those instances in which discussion of these additional topics takes place.

Proposed 11 CFR 100.23(c)(2) would treat communications as coordinated after the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

Under proposed 11 CFR 100.23(c)(3), a communication would be considered coordinated if it was made after substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. It would further provide that substantial discussion or negotiation could be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

The Commission recognizes, as did the *Christian Coalition* court, that use of the term ''substantial'' means that enforcement matters involving this standard will likely be fact-specific. 52 F.Supp.2d at 92. However, it may be possible to clarify the application of this standard to specific facts and circumstances by use of the Commission's advisory opinion process. *See* 2 U.S.C. 437f.

Consistent with the *Buckley, Christian Coalition* and *Clifton* decisions, the proposed rules would provide at 11 CFR 100.23(d) that a candidate's or political party's response to an inquiry regarding the candidate's or the party's position on legislative or public policy issues does not alone make the communication coordinated.

As discussed above, although money spent on these communications is referred to as a coordinated *expenditure,* the expenditure is treated under the FECA as an in-kind *contribution.* Thus, the proposed rules state at 11 CFR 100.23(b) that any general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate, or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. 441a and must be reported as a contribution and an expenditure as required at 2 U.S.C. 434.

D. Hypotheticals

In order to properly evaluate the practical effect of the proposed coordination regulations, certain Commissioners seek comment on the following hypotheticals. In particular, the Commissioners would like comments on whether (1) the activities described in the hypotheticals constitute coordination under the draft language contained in the Notice of

Proposed Rulemaking; and (2) whether the communications described in the hypotheticals are subject to the Commission's jurisdiction.

I. Candidate Smith is slightly behind in the polls, low on money, and needs help. It is the week before the election and he knows that a wealthy contributor is planning to run an independent expenditure advertisement to assist the Smith campaign. Smith contacts the contributor and complains that nobody has focused on an important matter in the campaign: various problems in the personal life of his opponent, Congressman Jones. Because of this oversight, candidate Smith believes that Congressman Jones is viewed in a better light by the electorate. Candidate Smith, however, does not want to run such an advertisement himself for fear of being accused of negative advertising.

During his meeting with candidate Smith, the wealthy supporter says, ''That's a great idea! Thanks for the information.'' After the meeting, the wealthy supporter changes the advertisement to say: ''Congressman Jones is a liar, tax cheat, wife-beater, and absentee legislator—keep that in mind on Tuesday.'' The advertisement runs on the weekend before the election. Is this a coordinated expenditure? Would it make a difference if the wealthy supporter said nothing during his meeting with the candidate?

II. The Texas Savings and Loan League would like to reinforce the public's confidence in the safety of deposits in federally insured Texas Savings and Loan institutions. To this end, it runs a public service announcement featuring the State's senior United States Senator who is also a candidate for re-election. The advertisement, which runs in January of the election year, opens with a live picture of the Senator against a background with the Texas Savings and Loan Association and logo:

ANNOUNCER: ''Senator William Moore.''

SENATOR MOORE: ''For fifty-four years now, savings and loan deposits have been guaranteed by the United States government. Throughout all of that time, not one penny of insured deposits has been lost in Texas, or anywhere else in the country. Your deposit of up to $100,000 is as good as gold in a federally insured Texas savings and loan. As safe as Fort Knox.''

BILLBOARD: ''This message brought to you as a public service by your local Savings and Loan Association.''

Since the candidate appeared in the advertisement, it would appear to have been ''coordinated'' or made in cooperation with the candidate. As such, should the advertisement be viewed as an in-kind contribution to the Moore campaign? Or, does content and timing matter? What if the advertisement ran the week before the election and concluded with the words, ''Please support Senator William Moore!''? Before deciding whether to apply the Commission's coordination regulations, should the Commission decide whether the content of the advertisement is ''in connection with'' or ''for the purpose of influencing'' an election? If so, should the Commission provide guidance to the regulated community and define those terms in the coordination rulemaking?

E. Coordinated Party Expenditures

As explained above, the Commission has an ongoing rulemaking addressing coordinated party expenditures, i.e., political party expenditures that are coordinated with particular candidates. The details of those proposals, which included several alternatives, can be found in the NPRM published on May 5, 1997. 62 FR 24367 (May 5, 1997). That rulemaking had been held in abeyance because the issues are involved in ongoing litigation. However, the Commission welcomes comments on whether the standard for coordination proposed in this supplemental NPRM on coordination should be applied to political party expenditures for general public political communications that are coordinated with particular candidates. If not, (1) why should a different standard be applied to coordination in that context? (2) What should that different standard be?

The Commission also welcomes comments on any related issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would conform to court decisions that expand the definition of certain coordinated communications made in support of or in opposition to clearly identified candidates. Therefore, no significant economic impact would result.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 438(a)(8).

2. Part 100 would be amended by adding new section 100.23 to read as follows:

§ 100.23 Coordinated General Public Political Communications.

(a) *Scope.* This section applies to general public political communications paid for by persons other than candidates, authorized committees, and party committees.

(b) *Treatment as expenditures and contributions.* Any general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii).

Alternative 1–A for Paragraph (c) Introductory Text

(c) *Coordination with candidates and party committees.* A general public political communication is considered to be coordinated if the communication is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and is created, produced or distributed—

Alternative 1–B for Paragraph (c) Introductory Text

(c) *Coordination with candidates and party committees.* A general public political communication is considered to be coordinated if the communication is distributed primarily in the geographic area in which a candidate is running, is paid for by any person other than that candidate, the candidate's authorized committee, or a party committee, and is created, produced or distributed—

Alternative 2–A for Paragraph (c)(1)

(1) At the request or suggestion of, or authorized by, the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing;

Alternative 2–B for Paragraph (c)(1)

(1) At the request or suggestion of, or authorized by, the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing regarding the content, timing, location, mode, intended audience, volume of distribution or

frequency of placement of that communication, the result of which is collaboration or agreement;

(2) After the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or

(3) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

(e) *Definitions.* For purposes of this section:

(1) *General public political communications* include those made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.

(2) *Clearly identified* has the same meaning as set forth in 11 CFR 100.17.

Dated: December 3, 1999.

Scott E. Thomas,

Chairman, Federal Election Committee.

[FR Doc. 99–31825 Filed 12–8–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that currently requires installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; a revision to the Airplane Flight Manual (AFM) relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. That AD was prompted by reports of uncommanded engine thrust reductions (rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. This action would add a requirement for the installation/replacement of new placards. This proposal also would provide for an optional terminating modification for the AFM revision and installation/replacement of placards. The actions specified by the proposed AD are intended to prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–174–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 10, 1996, the FAA issued AD 96–14–09, amendment 39–9694 (61 FR 37199, July 17, 1996), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, to require installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; and a revision to the Airplane

Flight Manual (AFM) relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. That action was prompted by reports of uncommanded engine thrust reductions (rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. The requirements of that AD are intended to prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, British Aerospace has issued Service Bulletin SB.11–137–30405A, dated March 26, 1998, which describes procedures for installation of a placard on the flight deck to indicate that a 26,000 feet altitude limitation in icing is applicable, and replacement of a certain ice protection panel placard with a new placard for N2 limitations.

British Aerospace also has issued Service Bulletin SB.71–72–30473A, dated July 8, 1998, and Revision 1, dated November 2, 1998, which describes procedures for modification of all four engines. These modifications include:

- Reduction of the length core-flow/fan-flow splitter (cut-back splitter) to reduce ice crystal/water ingestion to the core;
- Modification of the splitter lip insulating baffle to reduce heat loss;
- Installation of a heated exit guide vane (EGV) to prevent ice build up;
- Relocation of the engine anti-ice air source to the combustor bleed plenum to reduce system heat loss;
- Installation of a new anti-ice valve with improved couplings; and
- Modification of plumbing to install improved insulated connections.

The service bulletin also describes certain revisions to the AFM for operation of the airplane following installation of modified engines. Accomplishment of the modification on all four engines and insertion of the AFM revisions would eliminate the need for the installation/replacement of the placards described in Service Bulletin SB.11–137–30405A.

The FAA has issued AD 99–15–06, amendment 39–11225 (64 FR 38557, July 19, 1999), applicable to AlliedSignal Inc. Model ALF502R–5 and ALF502R–3A turbofan engines, to require incorporation of an improved fan core inlet anti-ice system (*i.e.*, modification of those engines in accordance with Service Bulletin SB.71–72–30473A). The actions specified in that AD are intended to prevent ice accretion on the fan core inlet stator vane surfaces, which can result in engine rollback and loss of thrust control in icing conditions. Operators should note that Service Bulletin SB.71–72–30473A only reflects procedures for installation of engines that have been modified in accordance with the requirements of AD 99–15–06.

Accomplishment of the actions specified in Service Bulletin SB.11–137–30405A is intended to adequately address the identified unsafe condition. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified Service Bulletin SB.11–137–30405A as mandatory, approved Service Bulletin SB.71–72–30473A, and issued British airworthiness directives 004–03–98 and 003–06–96, Revision 1, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–14–09 to continue to require modification of the air brake auto-retract function; and a revision to the AFM relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. In addition, the proposed AD would require accomplishment of the actions specified in British Aerospace Service Bulletin SB.11–137–30405A, described previously. The proposal also would provide for an optional terminating modification for the AFM revision and installation/replacement of placards.

Cost Impact

There are approximately 40 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 96–14–09, and retained in this proposed AD, take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $9,600, or $240 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $2,400, or $60 per airplane.

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

Should an operator elect to accomplish the actions associated with the optional terminating modification, it would take approximately 34 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,400 per airplane. Based on these figures, the cost impact of the proposed optional terminating modification is estimated to be $4,440 per airplane.

Regulatory Impact

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

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

location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9694 (61 FR 37199, July 17, 1996), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft

(Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 98–NM–174–AD. Supersedes AD 96–14–09, Amendment 39–9694.

Applicability: All Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight, accomplish the following:

Restatement of Requirements of AD 96–14–09, Amendment 39–9694

Placard Installation

(a) For airplanes listed in British Aerospace Service Bulletin SB.11–97–012858A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

Modification

(b) For airplanes listed in British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), modify the air brake auto-retract function, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

Airplane Flight Manual Revision

(c) Within 6 days after July 22, 1996 (the effective date of AD 96–14–09, amendment 39–9694), amend the FAA-approved Airplane Flight Manual (AFM) as required by paragraphs (c)(1) and (c)(2) of this AD.

(1) Remove the following Temporary Revisions (TR) from the Limitations Section and Normal/Abnormal Procedures Section, as applicable:

(i) For Model BAe 146–100A series airplanes: TR 30, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(ii) For Model BAe 146–200A series airplanes: TR 41, Issue No. 2 (Document No. BAe 3.3), dated February 1994, or TR 42, Issue No. 2 (Document No. BAe 3.3), dated February 1994, as applicable.

(iii) For Model BAe 146–300A series airplanes: TR 23, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(2) Insert the following TR's into the Limitations Section and the Normal/Abnormal Procedures/Handling Section, as applicable.

(i) For Model BAe 146–100A series airplanes: TR 32, Issue No. 2 (Document BAe 3.3), dated July 1996.

(ii) For Model BAe 146–200A series airplanes: TR 44, Issue No. 2 (Document BAe 3.6), dated July 1996.

(iii) For Model BAe 146–300A series airplanes: TR 25, Issue No. 2 (Document BAe 3.11), dated July 1996.

(d) When the TR's specified in paragraph (c)(2) have been incorporated into an AFM General Revision, the applicable AFM General Revision may be inserted into the corresponding FAA-approved AFM, provided the information contained in the AFM General Revision corresponds identically to that specified in TR 32, TR 44, or TR 25.

New Requirements of this AD

Placard Installation

(e) Within 30 days after the effective date of this AD, install a placard on the flight deck to indicate that a 26,000 feet altitude limitation in icing is applicable, and replace the ice protection panel placard with a new placard for N2 limitations, in accordance with British Aerospace Service Bulletin SB.11–137–30405A, dated March 26, 1998. Upon accomplishment of this placard installation, the placard required by paragraph (a) of this AD may be removed.

Optional Terminating Modification

(f) Modification of all four engines [*i.e.*, reduction of the length core-flow/fan-flow splitter (cut-back splitter); modification of the splitter lip insulating baffle; installation of a heated exit guide vane (EGV); relocation of the engine anti-ice air source to the combustor bleed plenum; installation of a new anti-ice valve with improved couplings; and installation of improved insulated connections], and insertions of AFM revisions, in accordance with British Aerospace Service Bulletin SB.71–72–30473A, dated July 8, 1998, or Revision 1, dated November 2, 1998; constitutes terminating action for the requirements of this AD. After the modification is accomplished, the AFM revisions and placards required by paragraphs (c), (d), and (e) of this AD may be removed.

Note 2: British Aerospace Service Bulletin SB.71–72–30473A, dated July 8, 1998, and Revision 1, dated November 2, 1998, only describes procedures for installation of engines that have been modified in accordance with the requirements of AD 99–15–06, amendment 39–11225.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–14–09, amendment 39–9694, are approved as alternative methods of compliance with this AD.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in British airworthiness directives 004–03–98 and 003–06–96, Revision 1.

Issued in Renton, Washington, on December 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31874 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries Model Astra SPX series airplanes. This proposal would require a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracks in the lower scissors fitting and fitting attachment bolts of the horizontal stabilizer, which could result in possible in-flight loss of the horizontal stabilizer and consequent reduced controllability of the airplane.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–256–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries Model Astra SPX series airplanes. The CAAI advises that the six attachment bolt holes drilled in the lower scissors fitting of the horizontal stabilizer may be countersunk to 90 degrees instead of the specified 100 degrees. Incorrect countersinking of the attachment bolt holes can degrade the structural integrity of the horizontal stabilizer attachment. This condition, if not corrected, could result in cracks in the lower scissors fitting and fitting attachment bolts of the horizontal stabilizer, possible in-flight loss of the horizontal stabilizer, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Astra Alert Service Bulletin 1125–55A–192, Revision 1, dated June 1, 1999, which describes procedures for a one-time detailed visual inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary. Corrective actions include detailed visual inspection of the fitting attachment bolts to detect concave bolt heads, rework of the bolt holes, and replacement of the existing bolts with new bolts. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 55–99–04–02R2, dated August 4, 1999, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although Astra Alert Service Bulletin 1125–55A–192, Revision 1, lists the effectivity of the alert service bulletin as Model ASTRA SPX series airplanes having serial numbers 085 through 102 and 105 through 112, Israeli airworthiness directive 55–99–04–02R2 states that it

applies to airplanes having serial numbers 085 through 112 inclusive. The applicability specified in this proposed AD reflects the applicability specified in the Israeli airworthiness directive.

Cost Impact

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed inspection to measure the countersink angle of the bolt holes, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,800, or $1,200 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Israel Aircraft Industries, Ltd.: Docket 99–NM–256–AD.

Applicability: Model Astra SPX series airplanes, serial numbers 085 through 112 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the lower scissors fitting and fitting attachment bolts of the horizontal stabilizer, which could result in possible in-flight loss of the horizontal stabilizer and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 30 flight hours after the effective date of this AD, perform a detailed visual inspection of the bolt holes in the lower scissors fitting of the horizontal stabilizer to measure the countersink angle, in accordance with Astra Alert Service Bulletin 1125–55A–192, Revision 1, dated June 1, 1999.

(1) If the measured angle of countersink is within the limits specified in the alert service bulletin, no further action is required by this AD.

(2) If the measured countersink angle is outside the limits specified in the alert service bulletin, prior to further flight, perform a detailed visual inspection of the fitting attachment bolts in the lower scissors fitting of the horizontal stabilizer to detect concave bolt heads, in accordance with the alert service bulletin.

(i) If no bolt head is found to be concave, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 50 flight hours; and, within 250 flight hours after the initial inspection required by paragraph (a) of this AD, rework all bolt holes and replace the existing bolts with new bolts in accordance with the Accomplishment Instructions of the alert service bulletin. Such rework constitutes terminating action for the repetitive inspections required by this paragraph.

(ii) If any bolt head is found to be concave, prior to further flight, rework all bolt holes and replace the existing bolts with new bolts, in accordance with the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 55–99–04–02R2, dated August 4, 1999.

Issued in Renton, Washington, on December 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31875 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This proposal would require repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane; corrective actions, if necessary; and incorporation of certain structural modifications. This proposal is prompted by new recommendations related to incidents of fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. The actions specified by the proposed AD are intended to prevent corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by January 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–129–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–129–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737 series airplanes) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AAWG was to sponsor ''Task Groups'' to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;

2. Develop corrosion-directed inspections and prevention programs;

3. Review the adequacy of each operator's structural maintenance program;

4. Review and update the Supplemental Inspection Documents (SID); and

5. Assess repair quality.

The Structures Task Group (STG) assigned to review the Lockheed Model L–1011–385 series airplanes was formed in 1988, and included operators of Model L–1011–385 series airplanes, Lockheed, the FAA, and observers from regulatory agencies. Certain recommendations made by the STG (pursuant to Item 1., described previously) are contained in Lockheed Service Bulletins 093–51–035, Revision 1, dated December 16, 1991, and 093–51–040, Revision 1, dated October 1, 1997. The FAA previously issued AD 94–05–01, amendment 39–8839 (59 FR 10275, March 4, 1994), to require the structural inspections and the modifications recommended in that document.

Since the issuance of that AD, the STG has recommended accomplishment of certain other structural inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, and incorporation of certain structural modifications. Corrosion or fatigue cracking of certain structural elements, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998 (hereinafter referred to as the ''Collector Service Bulletin''). The Collector Service Bulletin describes

certain repetitive inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, including areas around the wing/root joint of the fuselage, aft pressure bulkhead of the fuselage, and the center section wing box in the wings. The Collector Service Bulletin also describes structural modifications of various elements of the airplane that have been recommended by the STG, including modification of the C1A cargo door, modification of the actuator support fitting for the horizontal stabilizer, reinforcement of the mid beam longeron at fuselage station 1363 and waterline 168.4, and reinforcement of the intermediate spar shear web of the center box in the wings. The Collector Service Bulletin also references appropriate sources of accomplishment instructions for the structural inspections and modifications.

Accomplishment of the actions specified in the Collector Service Bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Collector Service Bulletin described previously, except as discussed below.

Other Relevant Rulemaking

The FAA has previously issued notice of proposed rulemaking (NPRM), Rules Docket 98–NM–35–AD (64 FR 34170, June 25, 1999), to require the structural inspections and modifications recommended in Lockheed Service Bulletin 093–51–040, Revision 1, dated October 1, 1997. However, this proposed AD would not affect the requirements of that previously issued proposed AD.

Cost Impact

There are approximately 235 airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 32 work hours per airplane (for Table I) and 97 work hours per airplane (for Table II) to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $224,640, or $1,920 per airplane, per inspection cycle (for Table I), and $680,940, or $5,820 per airplane, per inspection cycle (for Table II).

It would take approximately 614 work hours per airplane to accomplish the proposed modifications, at an average labor rate of $60 per work hour. Required parts would cost approximately $142,275 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $20,956,455, or $179,115 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed: Docket 99–NM–129–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion or fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) Perform structural inspections to detect corrosion or fatigue cracking of certain structural elements of the airplane, in accordance with the applicable service bulletins listed under ''Service Bulletin Number, Revision, and Date'' in Tables I and II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998. Perform the initial inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat the inspections at intervals not to exceed those specified in the applicable service bulletin.

(1) Prior to the threshold specified in the individual service bulletin as listed in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998, as applicable.

(2) Within one repetitive interval after the effective date of this AD, as specified in the individual service bulletin listed in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998, as applicable.

Corrective Action

(b) If any cracking or corrosion is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD.

(1) Repair in accordance with the applicable service bulletin referenced in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998.

(2) Repair in accordance with the applicable section of the Lockheed L–1011 Structural Repair Manual.

(3) Accomplish the terminating modification in accordance with the

applicable service bulletin referenced in Table I or II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998.

(4) Repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Terminating Action

(c) Install the terminating modification referenced in each service bulletin listed in Table II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998; in accordance with the applicable service bulletin listed under ''Service Bulletin Number, Revision, and Date'' in Table II of Lockheed Tristar L–1011 Service Bulletin 093–51–041; at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD. Such installation constitutes terminating action for the applicable structural inspection required by paragraph (a) of this AD.

(1) Prior to the threshold specified in the applicable service bulletin listed in Table II of Lockheed Tristar L–1011 Service Bulletin 093–51–041, dated April 27, 1998.

(2) Within 5 years or 5,000 flight cycles after the effective date of this AD, whichever occurs first.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on December 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31876 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–319–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes; Model Mystere-Falcon 20, 50, 200, and 900 Series Airplanes; and Model Falcon 10, 900EX, and 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Fan Jet Falcon series airplanes; Model Mystere-Falcon 20, 50, 200, and 900 series airplanes; and Model Falcon 10, 900EX, and 2000 series airplanes. This proposal would require a functional test of the passenger oxygen masks, determination of the part number of the installed oxygen mask bags; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that proper plastic bags of the passenger oxygen masks are installed, and that the masks are functioning properly. Improper plastic bags that have cracks or improperly functioning masks could result in insufficient oxygen to passengers in the event of rapid depressurization of the airplane.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–319–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Fan Jet Falcon series airplanes, Model Mystere-Falcon 20, 50, 200, and 900 series airplanes, and Model Falcon 10, 900EX, and 2000 series airplanes; equipped with certain EROS passenger oxygen masks. The DGAC advises that, during a functional test of the passenger oxygen system on a Model Falcon 50

series airplane, oxygen bags were found cracked at the junction between the bag and the hose.

Investigation revealed that the manufacturer of the oxygen system, EROS, incorporated new plastic bags on certain oxygen masks during 1997 without changing the existing part number of the oxygen masks. These plastic bags do not conform to the existing design standards for oxygen masks installed on the subject airplanes, and may be subject to cracking. This condition, if not corrected, could result in insufficient oxygen to passengers in the event of rapid depressurization of the airplane.

Explanation of Foreign Airworthiness Directives

The DGAC has issued airworthiness directives 1999–270–025(B), dated June 30, 1999 (for Model Fan Jet Falcon series airplanes, Model Mystere-Falcon 20 and 200 series airplanes); 1999–271–026(B), dated June 30, 1999 (for Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 900EX series airplanes); 1999–267–010(B), dated June 30, 1999 (for Model Falcon 2000 series airplanes); and 1999–269–024(B), dated June 30, 1999 (for Model Falcon 10 series airplanes); in order to assure the continued airworthiness of these airplanes in France. These French airworthiness directives require a functional test of the passenger masks; determination of the part number of the installed bags; and corrective action, if necessary. The corrective action involves replacing the oxygen mask bags or rendering the passenger seat inoperative. Accomplishment of these actions is intended to adequately address the identified unsafe condition.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a functional test of the passenger oxygen masks; determination of the part number of the installed bags; and corrective action, if necessary.

Cost Impact

The FAA estimates that as many as 767 airplanes of U.S. registry may be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed test and determination, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $184,080, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Docket 99–NM–319–AD.

Applicability: Model Fan Jet Falcon series airplanes, Model Mystere-Falcon 20, 50, 200, and 900 series airplanes, and Model Falcon 10, 900EX, and 2000 series airplanes; equipped with EROS passenger oxygen masks, part number (P/N) MW 37–09, MW 37–11, MW 37–14, MW 37–18, MW 37–28, MW 37–31, or MW 37–36; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper plastic bags of the passenger oxygen masks are installed, and that the masks are functioning properly, accomplish the following:

Functional Test and Determination of Part Number (P/N)

(a) Within 10 flights after the effective date of this AD, perform a functional test of the passenger oxygen masks in accordance with Chapter 5 (ATA Code 35) of the airplane maintenance manual (AMM) for the affected airplanes, as applicable; and determine the P/N of the installed oxygen mask bags.

Corrective Actions

(b) If any Scott oxygen mask bag, P/N 289–801–235, is installed, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the bag with a new bag, P/N 289–601–235, in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

(2) Render any affected seat inoperative, and within 30 days after rendering the affected seat inoperative, accomplish the action specified in paragraph (b)(1) of this AD.

(c) If any discrepancy is detected during the functional test required by paragraph (a) of this AD, prior to further flight, repair the discrepancy in accordance with Chapter 5 (ATA Code 35) of the AMM for the affected airplanes, as applicable.

Spares

(d) As of the effective date of this AD, no person shall install a SCOTT oxygen mask bag, P/N 289–801–235, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–270–025(B), dated June 30, 1999 (for Model Jet Falcon series airplanes, and Model Mystere-Falcon 20 and 200 series airplanes); 1999–271–026(B), dated June 30, 1999 (for Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 900EX series airplanes); 1999–267–010(B), dated June 30, 1999 (for Model Falcon 2000 series airplanes); and 1999–269–024(B), dated June 30, 1999 (for Model Falcon 10 series airplanes).

Issued in Renton, Washington, on December 3, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31877 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Presentation of First-Class and Standard Mail (A) Automation Letter Mail for Verification Under New SAVE Verification Procedures and Revisions to Combined Postage Payment Standards

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service will implement new Standardized Acceptance and Verification (SAVE) procedures for First-Class and Standard Mail (A) automation letter mail in mid-December 1999. These new SAVE procedures will replace existing verification procedures for many First-Class and Standard Mail (A) automation letter mailings. To facilitate these new SAVE procedures, the Postal Service is proposing that, effective March 1, 2000, for mailings produced by MLOCRs and barcode sorters, and effective July 1, 2000, for mailings produced by other means, mailers of First-Class and Standard Mail (A) automation letter rate mailings must physically separate Mixed AADC trays from other mail when the mailings are presented to the Postal Service for verification. In addition, for mailings of 10,000 or more pieces, the Postal Service is proposing to eliminate the current option that standardized documentation is not required with a mailing when the exact rate of postage is affixed to each piece or when it consists of identical weight pieces and is physically separated by rate category when presented to the Postal Service for verification. Under the proposal, effective March 1 for mailings produced by MLOCRs and barcode sorters, and effective July 1 for mailings produced by other means, each First-Class and Standard Mail (A) automation letter rate mailing of 10,000 or more pieces must be accompanied by paper documentation in a standardized format or, if authorized, with electronic documentation.

The Postal Service recently revised rate marking requirements for MLOCR mailers and documentation requirements for mailers who participate in automation letter mail value added refund (VAR) (DMM P014.4.0) and combined postage payment systems (DMM P760). In addition to these changes, the Postal Service is also hereby proposing, effective March 1, 2000, to amend the DMM standards for combined mailings to specify that First-Class Mail pieces weighing over one ounce and paid with precanceled stamps will not be permitted to be included in such mailings.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268–6351 (Domestic Mail Manual changes), or Scott Hamel, (703) 329–3660 (SAVE procedures).

SUPPLEMENTARY INFORMATION: The Postal Service is working on a number of fronts to help business mailers provide the highest quality of letter/card mail possible. Programs such as the Coding Accuracy Support System (CASS), Mail Quality Control (MQC), Presort Accuracy Validation and Evaluation (PAVE), and Mail Preparation Total Quality Management (MPTQM) provide quality assurance within the mailer's mail preparation process so that mailings presented to the Postal Service are properly prepared and can be handled efficiently.

Postal Service verification of mailings for proper preparation before entry into the mailstream is also a form of quality control. The Postal Service is moving toward greater use of technology in this verification process using devices such as Automated Barcode Evaluation (ABE), and proposed for early 2000 (initially for diagnostic purposes only) use of portable barcode verifiers for barcodes on tray and sack labels, and proposed for fall 2000, the Mailing Evaluation Readability Lookup Instrument (MERLIN). Technology promises to be the most viable and objective means of measuring quality. The Postal Service recognizes, however, that there always will be a need for commensurate manual verification procedures to cover instances when automated devices are not available. The SAVE verification procedures are primarily manual.

SAVE is the Postal Service's response to requests by business mailers for a verification process that is predictable, fair, consistent, and documented. SAVE also directs Postal Service attention to where the risk of poor quality lies. There are two verification levels and error rate thresholds under SAVE. The first level is for mailers who have been

certified by the Postal Service under the Mail Preparation Total Quality Management (MPTQM) program. The second level is for mailers who are not part of the MPTQM program. Mailers who have made commitments to quality under the MPTQM program will have certain portions of SAVE verifications performed on a less frequent basis, or not at all if that aspect of mail preparation is verified under MPTQM assurance reviews. Under SAVE, mailers will receive feedback on the quality of their mail to facilitate resolution of mail quality problems. SAVE incorporates most of the separate procedures used today to verify mail. For example, it employs the current ABE and short paid mail verification procedures. However, under SAVE, various separate verification checks have been standardized, made more complete, and structured. Corrective actions have been clarified and more diagnostic information will be provided to mailers. SAVE provides verification procedures for First-Class and Standard Mail (A) automation letter mailings, including those submitted under value added refund (VAR) procedures and combined mailing postage payment systems. A standard 4% error tolerance will apply to mailings verified under SAVE, including VAR and combined mailings. VAR mailings, for the first time, will be treated like all other mailings when postage adjustments become necessary. Rather than lose a value added refund when the error tolerance is exceeded, VAR mailers will pay a postage adjustment.

The amount of additional postage that must be paid for a mailing exceeding the 4% error tolerance under SAVE procedures will be calculated by determining the difference between the First-Class single-piece rate postage (based on weight) and the average weight per piece based on the First-Class or Standard Mail (A) automation letter rates claimed by the mailer. This difference in postage per piece will be multiplied by the number of pieces in the mailing to determine the total workshare discount. The total workshare discount will be multiplied by the verification error percentage to determine the additional postage due.

Mailers were provided information about SAVE in business sessions at the last two Postal Forums. During Postal Forum sessions the primary Postal Service SAVE development technician explained the procedures in great detail and demonstrated the forms to be used, and the process for checking mail and determining postage adjustments. Several detailed presentations also have been made to members of the National Association of Presort Mailers, at their request. In addition, every MLOCR mailer in the country was invited by letter to a special meeting in April 1999 to hear about SAVE and other topics. Feedback from these groups was used when designing the procedures. Notice of the start-up of SAVE procedures for First-Class and Standard Mail (A) automation letter mail prepared with MLOCRs and/or barcode sorters beginning in the middle of December 1999 was announced in the December 2, 1999, Postal Bulletin. That Postal Bulletin contains information concerning a phase-in period from mid-December 1999 through February 29, 2000. During the phase-in period, mailings found to have errors under the SAVE verification procedures will not be assessed additional postage unless the error rate for the mailing is 5% or more.

These SAVE standards apply to the initial acceptance procedures applied by the business mail entry unit. Nothing in SAVE or other verification procedures prevents independent review of mail by Revenue Assurance, the Inspection Service, the Office of Inspector General, or others. Nor do they prevent a postage adjustment based on these reviews. In instances of fraud or related activities, the postage adjustment may be based on the mail as presented to the Postal Service even if the overall error rate is less than that established in these procedures.

This proposed rule requests comments from mailers on two key mail preparation changes that are necessary for smooth application of the SAVE verification procedures. The first change will require mailers of First-Class and Standard Mail (A) automation letter mail to separate mixed AADC trays from other mail when presented to the Postal Service for verification. The second change will require submission of standardized documentation with all mailings of First-Class and Standard Mail (A) automation letter mail that contain 10,000 or more pieces. That is, the current provision allowing mailers to submit mailings without documentation if the mailings either (1) have exact postage affixed to each piece or (2) consist of identical weight pieces that are physically separated by rate category when presented to the Postal Service for verification will be deleted for mailings of 10,000 or more pieces.

As part of its efforts towards a standardized process, the Postal Service has separately adopted several clearer, standardized reports to be presented by the mailer with First-Class and Standard Mail (A) automation mailings that are submitted under VAR and/or combined postage payment systems. In addition, the Postal Service has announced new marking requirements for First-Class and Standard Mail (A) automation letter mailings that are prepared using MLOCRs and for which the MLOCR is used to apply the rate marking. These new marking and documentation requirements were developed in conjunction with MLOCR manufacturers and supporting software vendors and were announced and discussed at a special MLOCR users group meeting and at the last two Postal Forums. The Domestic Mail Manual changes incorporating the new marking and documentation requirements were published in the Postal Bulletin of December 2, 1999. The documentation formats have been incorporated in software provided by MLOCR manufacturers. If copies of the documentation are not available from an MLOCR vendor, sample copies may be obtained from the Rates and Classification Service Center (RCSC) that serves a particular mailer. Beginning January 3, 2000, the new markings must be used on pieces in First-Class and Standard Mail (A) automation letter mailings that are prepared using MLOCRs and for which the MLOCR is used to apply the rate marking. Also effective January 3, 2000, all mailers entering mail under VAR and/or combined postage payment procedures (DMM P014 and P760) will be required to meet the new documentation requirements. During the SAVE verification process, the new markings and documentation will help business mail acceptance clerks determine if the proper amount of postage has been claimed by the mailer.

Separate from these mail preparation revisions, but as part of the update to the procedures for submitting mailings under the combined mailing postage payment system, the Postal Service is hereby proposing to clarify the standards concerning precanceled stamp mail contained in such mailings. The change limits the weight of First-Class Mail prepared with precanceled stamps that are entered under the combined mailing postage payment system to pieces weighing a maximum of one ounce. The Postal Service does not provide a precanceled stamp that represents postage for additional ounces of First-Class Mail. Therefore First-Class rate precanceled stamp mailers would only be able to affix postage for any additional ounces for pieces weighing over one ounce if they had a permit for mailer precancelation under DMM P023. Additionally, for pieces weighing over two ounces, precanceled stamp

mailers would not be able to affix postage for the first ounce that reflects the lower first-ounce rate for presorted pieces weighing over two ounces, as is required for metered mailers under this postage payment procedure. The additional documentation that would be required to be added to combined mailing procedures to document postage paid and owed for precanceled stamp pieces weighing over one ounce would be extremely burdensome. Furthermore, the Postal Service understands that there are few mailers, if any, that have a need to include First-Class mail weighing over one ounce and paid with precanceled stamps in combined mailings under DMM P760. Accordingly, the Postal Service proposes to revise the DMM to specify that First-Class precanceled stamp mail weighing over one ounce may not be included in combined mailings.

In summary, the proposed Domestic Mail Manual changes needed to implement the new verification procedures for automation letter mailings and to revise the requirements for combined mailings are:

(1) For First-Class and Standard Mail (A) automation letter mailings, mixed AADC trays must be physically separated from other trays when the mail is presented to the USPS for verification. The proposed effective date for this change is March 1, 2000, for mail produced by MLOCRs and barcode sorters, and July 1, 2000, for other automation letter mail.

(2) For all First-Class and Standard Mail (A) automation letter mailings containing 10,000 or more pieces, documentation must be submitted on paper in a standardized format. Alternatively, if authorized by the Postal Service, the standardized documentation may be submitted in an electronic format. The proposed effective date for this change is March 1, 2000, for mail produced by MLOCRs and barcode sorters, and July 1, 2000, for other automation letter mail.

(3) The Postal Service proposes to amend the DMM standards for combined mailings to prohibit inclusion in such mailings of First-Class Mail pieces that weigh over one ounce and are paid with precanceled stamps. The proposed effective date for this revision is March 1, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M000 General Preparation Standards

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

1.0 Basic Standards

* * * * *

[Amend 1.3 to read as follows:]

1.3 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing. Each mailing must also be accompanied by presort and rate documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or by standardized documentation under P012. Exception: For mailings of fewer than 10,000 pieces, presort and rate documentation is not required if postage at the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Mailers may use a single postage statement and a single documentation report for all rate levels in a single mailing. Standard Mail (A) mailers may use a single postage statement and a single documentation report (with a separate summary for carrier route and a separate summary for all other rate levels) for both an automation carrier route mailing and a mailing containing pieces prepared at 5-digit, 3-digit, and basic automation rates as applicable, when both mailings are submitted for entry at the same time. Combined mailings of more than one Periodicals publication also must be documented under M200. First-Class and Standard Mail (A) mailings prepared under the value added refund procedures or as combined mailings must meet additional standardized documentation requirements under P014 and P760.

* * * * *

[New 1.8 is added to read as follows:]

1.8 Presentation

Upon presentation of letter-size automation rate First-Class Mail and Standard Mail (A) mailings to the Postal Service for verification, mailers must physically segregate mixed AADC trays from other trays in the mailing.

* * * * *

P Postage and Payment Methods

P000 Basic Information

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P700 Special Postage Payment Systems

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P760 First-Class or Standard Mail (A) Mailings With Different Payment Methods

* * * * *

2.0 Postage

* * * * *

[Amend 2.3 to restrict precanceled stamp pieces to those weighing one ounce or less to read as follows:]

2.3 Precanceled Pieces—First-Class Mail

Pieces with precanceled stamps in a combined mailing must not weigh more than one ounce and must bear postage for the first ounce in any denomination of precanceled stamp permitted in a Presorted or automation rate mailing. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's postage due advance deposit account. Full postage at the single-piece First-Class rates must be paid on accompanying single-piece rate mail using one of the methods under P100. Additional preparation to verify postage due may be required by the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–31968 Filed 12–8–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL–6505–5]

Proposed Exclusion from the Definition of Solid Waste; Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a variance from EPA's hazardous waste requirements for certain materials reclaimed by the World Resources Company (WRC) from metal-bearing sludges. This action responds to a petition submittted by WRC requesting that the Agency exclude from the RCRA definition of solid waste its concentrate material that is partially reclaimed from metal-bearing sludges and sold to smelters. If the Agency finalizes this action, the variance will be limited to five years.

DATES: EPA will accept public comments on its proposed decision until February 7, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–99–WRCP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 401 M St., SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically to: *rcra-docket@epamail.epa.gov.* Comments in electronic format should also be identified by the docket number F–99–WRCP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M St. SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC) located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from the regulatory docket at no charge. Additional copies cost $0.15/page. The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund/EPCRA/UST Hotline at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ms. Marilyn Goode, U.S. Environmental Protection Agency, MC 5304W, 401 M Street SW, Washington, DC 20460, (703) 308–8800, electronic mail: goode.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: The index to the docket record is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov/epaoswer/osw/hazwaste.htm#id.*
FTP: FTP: *ftp.epa.gov.*
Login: Anonymous
Password: Your Internet Address
Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

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I. Background

A. Authority

Under 40 CFR 260.30(c), facilities may petition EPA to exclude from the definition of solid waste material that has been reclaimed but must be reclaimed further before recovery is complete. To qualify for the exclusion, the material resulting from initial reclamation must be commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). Petitioners must provide sufficient information to EPA to allow the Agency to make a determination that the material is not a solid waste, pursuant to criteria set forth at 40 CFR 260.31(c).

B. Summary of Petition

Pursuant to 40 CFR 260.30(c), WRC submitted to EPA a petition for a variance from classification as solid waste for metal-rich concentrate material produced at its facility in Phoenix, Arizona. WRC produces the concentrate primarily from sludges generated by electroplating operations. The sludges are rich in metals, and are generally classifed as hazardous wastes. WRC then sells the partially reclaimed material to primary smelters for metals extraction. Currently, the partially reclaimed material produced at the Phoenix facility is fully regulated as hazardous waste, must be managed and sold as hazardous waste, and off-site shipments must be accompanied by a hazardous waste manifest. In support of its variance application, WRC provided data and information in its application about each of the factors listed in 40 CFR 260.31(c).

1. Applicability of the Variance

At its Phoenix facility, WRC principally reclaims wastewater treatment sludges (F006) received from generators who conduct electroplating and metal finishing operations. From

these sludges, WRC ''produces'' a metal-rich concentrate material. In addition, the facility also receives and partly reclaims hazardous wastes listed as F019 (wastewater treatment sludges from chemical conversion coating of aluminum) and D004 through D011 (characteristic hazardous wastes). WRC's petition, and the proposed exclusion addressed in this notice, pertain only to the metal-bearing sludges listed as hazardous wastes F006 and F019 and partially reclaimed at WRC's Phoenix, Arizona facility. Other hazardous wastes managed by WRC at its Arizona facility and all hazardous wastes managed at other WRC facilities are not addressed in this proposed decision and must continue to be managed as solid and/or hazardous wastes in accordance with all applicable RCRA regulatory requirements.

The Agency notes that sludges that are hazardous only because they exhibit a characteristic of hazardous waste that are reclaimed are currently excluded from classification as solid waste pursuant to 40 CFR 261.2(c)(3). Therefore, sludges that are reclaimed by WRC and designated as hazardous wastes D004 through D011 are not solid wastes. In addition, if this variance is finalized and if these characteristic sludges are mixed with the listed metal-bearing sludges covered by the variance prior to or during the reclamation process at WRC's Phoenix facility, the mixture will not be classified as a solid waste provided the mixture is sent off-site for further reclamation and is handled in accordance with all the conditions of this variance.

2. Description of WRC's Partial Reclamation Process

Operations at WRC's Phoenix facility are governed by a Consent Agreement and Consent Order (CA/CO) executed by EPA Region IX, WRC, and the Arizona Department of Environmental Quality, hereafter referred to as ''ADEQ'' (see In the Matter of World Resources Company, EPA I.D. No. AZD980735500, United States Environmental Protection Agency, Region IX, September 3, 1996). The CA/CO includes a requirement to submit an application for a treatment and storage permit to ADEQ. At the Arizona facility, WRC accepts F006 raw material (as well as other metal-bearing sludges) that it judges to be acceptable for recycling based on laboratory and process testing of generated sludges. WRC prepares a waste profile for the wastestreams received from each generator, which includes physical descriptions and constituent content. The material is unloaded, examined, and sampled on receiving pads in a processing enclosure. WRC dries the received waste through evaporative processes. The material is spread out in a controlled area, mechanically furrowed, and periodically rotor-tilled to facilitate drying. The physical characteristics of the material changes from a wet cohesive nonfree-flowing mass into a granular free-flowing form. The moisture content of the F006 received is reduced by one-half. The entire processing area is located on a concrete pad which covers several acres, with a compacted native soil and flexible membrane liner underneath the pad.

The F006 is then blended by mechanical mixing with other waste streams received from various generators to achieve concentrates that meet the contractual specifications (e.g, recoverable metals contents) of its customers. Other than water, WRC neither adds any materials to, nor removes any materials from the F006 and F019 metal-bearing sludges that it receives from generators and processes. The resulting concentrate contains metal hydroxides and oxides of iron, aluminum and magnesium. WRC markets the concentrates as copper, nickel, and tin concentrates to smelters that recover various metals contained in these concentrates.

II. Summary of Regulatory Provisions Governing Petitions

40 CFR 260.30 provides that the EPA Administrator may grant a variance from the classification of solid waste, on a case-by-case basis, for materials that have been reclaimed but must be reclaimed further before recovery is completed. Such a variance generally is contingent upon the material resulting from the initial reclamation being ''commodity-like.'' If this variance is finalized, the concentrates partially reclaimed from metal-bearing sludges F006 and F019 that are shipped to smelters may travel without a hazardous waste manifest and will not be subject to any RCRA controls other than the conditions of this variance (discussed in section IV of this notice). Incoming hazardous waste received by WRC at the Phoenix facility is not covered by the variance and must be manifested and managed as a hazardous waste until shipped to smelters for further reclamation.

40 CFR 260.31(c) specifies five criteria for evaluating whether a specific material qualifies for a ''partially reclaimed material'' variance from the definition of solid waste. In addition, 40 CFR 260.31(c)(6) allows EPA to consider ''other relevant factors'' when determining whether or not to grant a requested variance for materials that have been reclaimed, but must be reclaimed further. The first evaluation criterion (40 CFR 260.31(c)(1)) is the degree of processing a material has undergone and the degree of further processing that is required for the material to be rendered ''commodity-like.'' Materials that have undergone substantial processing to reclaim valuable or recyclable materials (but still must undergo a degree of further processing) generally satisfy this criterion. Materials that are still substantially ''waste-like'' and that need a significant degree of further processing or ''treatment'' to be rendered ''commodity-like'' do not satisfy the evaluation criterion.

The second evaluation criterion (§ 260.31(c)(2)) requires an evaluation of the economic value of the material that has been reclaimed, but must be further reclaimed. This criterion is also useful in determining whether a material is indeed ''commodity-like.'' To satisfy this criterion, petitioners must demonstrate that the initial reclamation process increases or contributes to the value of the material and that there is a market for the reclaimed material. Petitioners generally can demonstrate that this factor is met by providing sales information, including quantities of the material sold, additional demand for the material (if any), and the price paid for the material by purchasers.

The third evaluation criterion (40 CFR 260.31(c)(3)) is the degree to which the reclaimed material is like an analogous raw material. Petitioners must demonstrate that the partially reclaimed material is similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. In addition, the petitioner should demonstrate that the partially reclaimed material does not contain significant concentrations of hazardous constituents not found in an analogous raw material and that do not contribute to the value of the partially reclaimed material when used for its intended purpose.

Under the fourth evaluation criterion (40 CFR 260.31(c)(4)), petitioners must demonstrate that an end market for the partially reclaimed material is guaranteed. Petitioners must demonstrate that there is a secure demand and long-term market for the partially reclaimed material and that the chance of large quantities of the material being stockpiled due to insufficient demand is unlikely. If a petitioner cannot demonstrate that the material enjoys a consistent level of demand, with reasonable expectations for the

same or greater level of demand once a variance is granted, there may be risk of the material being stockpiled or stored for a significant period of time in containers or other storage units that do not have to meet RCRA Subtitle C storage standards. Such situations may pose significant risks to human health or the environment.

The fifth evaluation criterion (40 CFR 260.31(c)(5)) concerns the extent to which the partially reclaimed material is handled to minimize loss. Petitioners must demonstrate that the material is handled as if it were a valuable commodity and in a manner that is protective of human health and the environment.

In addition to the five evaluation factors discussed above, EPA may consider other relevant factors in determining whether or not to grant a variance from the definition of solid waste for materials that have been reclaimed but must be reclaimed further before recovery is complete (40 CFR 260.31(c)(6)). These other factors may be raised by the petitioner, the Agency, or other interested parties. Such factors may be directly applicable to EPA's decision to grant a variance, or may be indirectly applicable, but relevant in assigning priorities for evaluating a particular petition. For example, EPA might choose to evaluate the long-term viability of the recycling or reuse market for the partially reclaimed material and the contribution that a variance may play in expanding or stabilizing this market. In addition, EPA might wish to assess past or ongoing releases at facilities managing the partially reclaimed material, or the degree to which corrective action activities are being conducted at facilities managing the material.

III. Evaluation of WRC's Petition Against Each of the Established Evaluation Factors

A. The Degree of Processing the Material has Undergone and the Degree of Further Processing That is Required

The processing steps performed by WRC include sampling and testing incoming batches of sludge, evaporating water from the sludges, and blending certain listed metal-bearing sludges from different sources to form a metal concentrate. The procedure is not elaborate, and the lack of substantial physical processing could, under different circumstances, lead the Agency to conclude that this criterion had not been met. However, despite the elementary nature of the physical processing, EPA has concluded that the company is nevertheless performing a valuable service for generators of F006 by testing, drying, and blending their sludges to ensure that the resultant materials are judged by smelters to be acceptable feedstocks. Many smelters are reluctant to take F006 sludges directly from electroplating operations because of the administrative, handling, and quality control activities necessary to manage the relatively small volumes generated by individual electroplaters and to ensure that materials sent to smelters are appropriate and acceptable for the smelting process. The blending, drying, consolidating, and analytical processes conducted by WRC may eliminate the amount of pre-processing and quality control of sludges that would otherwise be necessary at the smelting facility. In support of this view, WRC has long-term contracts with generators of F006 sludges to perform this testing, drying, and blending service, and the contracts appear to ensure acceptability of the material by smelting facilities. In addition, the Agency notes that WRC's concentrate has considerably higher economic value than ''as-generated'' F006 sludges. This indicates that, despite the simple nature of the physical processing involved, the resultant product is more ''commodity-like'' than ''waste-like,'' and thus the intent of this criterion would be satisfied.

However, the Agency has a potential concern about the legitimacy of the WRC reclamation process. This concern is whether the F006 and F019 sludges accepted and blended to form a concentrate have sufficiently high levels of metals to contribute to an end product that is acceptable to smelters. If listed sludges containing low or virtually no metal content are accepted at the facility and blended with other materials (e.g., non-RCRA wastes from electroplating operations) to produce a material that is acceptable to smelters, the facility may actually be ''treating'' the low metal-content sludge and not legitimately recycling the RCRA hazardous waste. Since metal recovery is the ultimate purpose for the recycling or reclamation operation, the minimum metal content of the incoming hazardous wastes is an important factor in evaluating the legitimacy of the process and the applicability of the variance. Having a recoverable amount of metals in each of the F006 and F019 incoming sludges is a necessary condition for WRC's process to be judged a legitimate reclamation operation.

To address this legitimacy concern, the Agency is proposing to condition the exclusion for the partially reclaimed material on the requirement that all F-listed sludges received destined for partial reclamation to produce the concentrate material must have a minimum copper, nickel or tin content of two percent on a dry-weight basis, or the equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). To set this condition, EPA analyzed smelter specifications for incoming materials and concluded, generally, that metal-bearing secondary materials with a content of less than two percent on a dry weight basis for copper, nickel, or tin (or an equivalent precious metal value) are not acceptable material at smelters. The minimum metal content for F-listed sludge materials received by WRC is based upon information collected by the Agency on smelter specifications for minimum metal content in an ore or reclaimed material. This information is available in the rulemaking docket for this proposed variance. The minimum metal content based on smelter specifications (rather than use of a higher minimum for metals) is also designed to provide incentives for recycling F006 and F019.

To ensure compliance with the minimum metal content condition for F-listed metal-bearing sludges received by WRC's Phoenix facility, the Agency is placing an additional condition upon the facility to ensure that WRC adequately monitors the metals content of the hazardous waste materials received for reclamation. Upon receipt of any non-conforming shipment of sludge material, WRC must contact the generator and notify the generator that WRC cannot accept further material due to the low metal content of the waste. However, WRC may accept one additional non-conforming shipment if it arrives within fourteen days of the first shipment. The Agency is allowing the facility to receive two non-conforming shipments over a period of 14 days to provide WRC with sufficient time to contact the generator and discuss a remedy or designate a different waste management alternative. The 14-day period allows WRC to receive shipments that may already be in transport at the time the facility discovers that the first shipment is not in compliance with the metal content condition of the exclusion. After this 14-day grace period, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this variance.

To ensure that all concentrates covered by this variance are sent to smelters rather than to disposal

facilities, WRC has also agreed to provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all outgoing shipments of concentrate were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

B. The Value of the Material After It Has Been Partially Reclaimed

The concentrate produced by WRC has a positive economic market value and is purchased by metals smelters. WRC provided sales data to the Agency for the period of January 1, 1994 to June 30, 1995 documenting that the facility sold its partially reclaimed material to smelters and received a positive economic value (after taking into account average transportation costs).

C. The Degree to Which the Partially Reclaimed Material is Like an Analogous Raw Material

WRC asserts that its partially reclaimed materials are analogous to virgin ores used as raw materials by metal smelters. WRC's partially reclaimed materials are marketed by WRC as copper, nickel, and tin concentrates. Each concentrate contains various mixes of these metals, as well as precious metals such as gold, silver, platinum and palladium. WRC submitted analytical data to the Agency indicating that its concentrates contain recoverable levels of metals and metals concentrate at levels higher than the metal content specifications for incoming materials for smelters.

The Agency conducted an analysis comparing the toxic constituents in the metals concentrates managed by WRC with the constituents in analogous virgin ore concentrates. The Agency found, for the most part, that the concentration levels for the toxic constituents found in the WRC concentrates are comparable to the concentrations of toxic constituents typically found in virgin metal concentrates. The exception is cyanide. Metals concentrates reclaimed by WRC have higher concentrations of cyanide than typically found in virgin ore concentrates.

As a result of its comparative analysis of the toxic constituents in WRC concentrate materials and virgin metal concentrates, as well as the results of a ground water risk screening analysis conducted by the Agency (and explained below), the Agency is proposing to set a limit on the level of cyanide in WRC metals concentrate as a condition of the variance. The Agency is proposing to condition its proposed grant of the variance on the requirement that the level of cyanide in WRC's metal concentrate (produced at the Phoenix facility) is below the best demonstrated available technology (BDAT) treatment standards for cyanide at 40 CFR 268.40 (i.e., 590 ppm cyanide.) For a more detailed discussion of the proposed cyanide limit, see Section E. below.

D. The Extent to Which an End Market for the Partially Reclaimed Material is Guaranteed

The concentrate produced by WRC appears to have a stable long-term market. WRC has multi-year contracts for the sale of its reclaimed materials with at least four smelters. Additional market information provided by WRC indicates that its purchasers have additional excess smelting capacity that exceeds WRC's production capabilities.

E. The Extent to Which the Partially Reclaimed Material is Handled to Minimize Loss

Operations at WRC's Phoenix facility are governed by the CA/CO described in section I.B.2 of this document, and will be covered by a RCRA Part B treatment and storage permit. Incoming material is accompanied by a hazardous waste manifest, and all processing is performed on a concrete pad, with a compacted native soil and flexible membrane liner beneath the pad. Treatment and storage activities prior to shipment off-site are subject to all applicable 40 CFR Part 265 standards, including general facility standards, preparedness and prevention, groundwater protection and monitoring, closure and post-closure requirements, and financial responsibility.

The partially reclaimed materials produced by WRC's Phoenix facility are shipped to smelters by either highway or rail. The Department of Transportation (DOT) regulations specify that the materials must be classified and handled as a hazardous material due to the fact that the materials contain nickel hydroxide. Shipments of materials classified by DOT as hazardous materials are subject to the marking, labeling, and shipping requirements of 49 CFR part 172, including the requirement that the materials must be accompanied by a shipping paper, or bill of lading, completed in accordance with Subpart C of 49 CFR part 172. Copies of these papers must be retained by the shipper and carrier for a period of one year.

WRC has demonstrated that its partially reclaimed metal-bearing sludges are managed in a way that is designed to prevent loss, both at the Phoenix facility and at the smelters. WRC also points out that the company enters into recycling agreements with the generators from whom WRC receives F006 sludge (as well as other metal-bearing sludges). These agreements obligate WRC to recycle all of the wastes and to annually certify to the generators that all shipments of the waste are accepted and recycled. Therefore, WRC has the incentive to handle all incoming wastes in a manner that prevents releases or losses to the environment. WRC also points out that the value of its recycled material represents a significant investment by WRC that can only be recovered by delivering the reclaimed material to smelters in accordance with its sales contracts.

EPA agrees that the economic value of the partially reclaimed material produced by WRC and the facility's contractual relationships with smelters provide sufficient incentives for WRC to prevent releases to the environment. In addition, the Agency notes that granting this variance may produce environmental benefits by increasing the volume of F006 that is recycled, thus reducing copper and nickel mining which have caused environmental concerns in the past.

However, to address all concerns about safe handling of WRC concentrate, the Agency is proposing to condition the grant of the variance on the requirement that WRC include a provision in its contractual agreements with metal smelting facilities that smelters receiving partially reclaimed materials from WRC do not store the materials on the land. In this manner, metal concentrates produced by WRC from listed hazardous wastes and transported to smelting facilities will be precluded from land storage. In addition, EPA is proposing to condition the grant of the variance on the requirement that WRC send a one-time notification of the variance and its conditions to any countries where metal smelters accepting WRC concentrate are located.

To evaluate the potential for releases of cyanide from the partially reclaimed material stored at smelters, the Agency conducted a ground water risk screening analysis to assess the risk levels associated with potential releases of cyanide from electroplating sludges. To accomplish this analysis, EPA conducted a risk screening that modeled total cyanide concentrations of 590

ppm, the current treatment standard for F006 under the land disposal restriction program (40 CFR 268.40.) The purpose of EPA's risk screening analysis for cyanide in electroplating sludge was to determine whether or not the concentration of cyanide in the ground water at a receptor well down gradient of a waste pile of electroplating sludge will exceed the Federal Drinking Water Standard limit of 0.20 mg/L. The risk screening analysis was performed using EPA's Composite Model for Leachate Migration and with Transformation Products (EPACMTP, EPA 1997, 1996a, 1996b, 1996c).

The approach used by the Agency in the risk screening analysis assumed two waste management scenarios representing a median or central tendency risk level scenario and a high-end risk scenario. The ''central tendency'' risk level scenario included a waste pile directly on the ground with a total area of 465.40 square meters and located 430 meters from the nearest drinking water well. The ''high end value'' risk level scenario simulated a waste pile having a total area of 18,575.7 square meters and located 102 meters from the nearest drinking water well. [1]

The results of the model simulations for both scenarios indicated that concentrations of cyanide in the ground water do not exceed the maximum Federal Drinking Water Standard of 0.20 mg/L. The maximum receptor well concentration for the central tendency scenario was zero and that of the high-end scenario was 0.0175 mg/L. The most important parameter responsible for the low concentrations of cyanide in these results is the assumed rapid hydrolysis rate of cyanide, $8.4y^{-1}$. This rate corresponds to a half-life of approximately 30 days. The model results predict that the cyanide will have been completely transformed before it reaches the receptor in the central tendency scenario. In the high-end case, the ground water travel time is sufficiently short that cyanide reaches the well, although the maximum concentration is below the drinking water standard. If these results are compared to corresponding scenarios that assume no hydrolysis, the maximum receptor well concentration for the central tendency is 0.07 mg/L and the maximum receptor well concentration for the high-end scenario is 17.79 mg/L.[2] In the case of no hydrolysis, the predicted concentration of cyanide in ground water exceeds the Federal Drinking Water Standard by a multiple of 0.35 under the central tendency scenario and by a multiple of 88.45 under the high-end scenario.

Given these results, the Agency has determined that it is important to establish a limit on the level of cyanide in the partially reclaimed materials produced and sold by WRC. The Agency has decided to establish this limit at 590 ppm cyanide, which was used as the model cyanide concentration in its risk screening analysis. This level is the limit established as the BDAT treatment standard limit under the Land Disposal Restrictions Program. WRC claims that its partially reclaimed product does not exceed a cyanide concentration limit of 590 ppm. The Agency points out that if the partially reclaimed material should exceed the established concentration limit for cyanide and the facility must treat the material to reduce the cyanide concentration, the material would no longer qualify for this variance. Under such circumstances, the material is substantially ''waste-like.'' In addition, the facility would have to manage the material as a RCRA hazardous waste and comply with all applicable hazardous waste management requirements (e.g. storage, transportation, and land disposal restriction (LDR) requirements)).

IV. Summary of the Agency's Proposed Decision

The Agency is proposing to conditionally grant the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters or other metal recovery facilities after being partially reclaimed by WRC. The Agency is proposing to grant this variance for a time period of five years, subject to the following conditions:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content. Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a cyanide concentration of no greater than 590 ppm and may not be placed on the land at metal smelting facilities. To ensure compliance with this condition, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(4) WRC must send a one-time notification of the variance and its conditions to any country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

The Agency reiterates that this proposed conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the proposed variance does not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

V. Request for Comments

The Agency will accept and consider comments on this proposed decision until the date shown at the beginning of this notice. After EPA reviews and considers any public comments received on the proposed decision, the

[1] ''Ground Water Risk Screening Analysis for Cyanide in Electroplating Sludge Managed in Waste Piles,'' HydroGeoLogic Inc., June 1997.

[2] Model runs were made with and without the hydrolysis rate to isolate the impact of storage time duration from the overwhelming effect of hydrolysis rate.

Agency will publish a final decision in response to the petition.

VI. Effect of Variance in Arizona

EPA notes that Arizona is authorized to administer and enforce the RCRA hazardous waste program pursuant to section 3006 of RCRA. Generally, when EPA grants a variance under 40 CFR 260.30, the variance would be automatically effective only in unauthorized States. However, there are two circumstances that make this variance effective in the State of Arizona. First, WRC, EPA Region IX and the Arizona Department of Environmental Quality (ADEQ) executed a Consent Agreement and Consent Order (CA/CO) that finalized regulatory requirements for the WRC recycling facility at Phoenix. Under the CA/CO, if EPA makes a favorable decision regarding WRC's petition for a variance, Arizona is obligated to ''honor and give legal effect to the variance determination within the State of Arizona.'' Second, Arizona's regulations at A.A.C. R18–8–260(J) (Supp. 98–2) (which incorporates and modifies 40 CFR 260.30 entitled ''Variances from classification as a solid waste'') provides that ''any person wishing to submit a variance petition shall submit the petition, under this subsection, to EPA. Where the Administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the Director shall accept the determination, provided the Director determines that the action is consistent with the policies and purposes of the HWMA'' (the Hazardous Waste Management Act underlying Arizona's authorized status). Since the Director has made such a determination, no further action will be necessary before the variance takes effect under state law upon promulgation by EPA.

VII. Administrative Requirements:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 3, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–31965 Filed 12–8–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF54

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. The operations are similar to and include all activities covered by our original 5-year Beaufort Sea incidental take regulations effective from December 16, 1993, through December 15, 1998, and current regulations in effect from January 28, 1999, through January 30, 2000, except that these proposed regulations would also allow incidental, unintentional takes resulting from subsea pipeline activities placed offshore at the Northstar facility in the Beaufort Sea. We are proposing that this rule be effective for 3 years, from January 31, 2000, through January 31, 2003.

We propose a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species, and no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives. We base this finding on results from 6 years of monitoring interactions between marine mammals and Industry, and using oil spill trajectory models and polar bears density models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

DATES: Comments on this proposed rule must be received by January 10, 2000.

ADDRESSES: You may submit comments by any of the following methods:

1. By mail to: John Bridges, Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. By FAX by sending to: 907–786–3816.

3. By Internet, electronic mail by sending to: FW7MMM@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AF54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at US Fish and Wildlife Service, Office of Marine Mammals Management, 907–786–3810 or 1–800–362–5148.

4. By hand-delivery to: Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, US Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907–786–3810 or 1–800–362–5148.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammals Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of US Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by US citizens (You) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographics region. We may grant permission for incidental takes for periods of up to 5 years.

Under the provisions of the Act, we would allow the incidental taking of these marine mammals only if our Director finds, based on the best scientific evidence available, that the total of such taking for 3-year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives. If these findings are made, we will establish regulations for the activity that set forth: (1) Permissible methods of taking; (2) Means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) Requirement for monitoring and reporting.

The term ''take'' as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, or kill any marine mammal.

Harrassment as defined by the Act, as amended in 1994, ''* * * means any act of pursuit, torment, or annoyance which—

(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

As a result of 1986 amendments to the Act, we amended 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) with a final rule published on September 29, 1989. Section 18.27(c) included, among other things, a revised definition of ''negligible impact'' and a new definition for ''unmitigable adverse impact'' as follows. Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) Causing the marine mammals to abandon or avoid hunting area,

(ii) Directly displacing subsistence users, or

(iii) Placing physical barriers between the marine mammals and the subsistence hunters, and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Industry conducts activities such as oil and gas exploration, development, and production in marine mammals habitat, and risks violating the prohibitations on the taking of marine mammals. Although there is no legal requirements for Industry to obtain incidental take authority, Industry has chosen to seek authorization to avoid the uncertainties associated with conducting activities in marine mammal habitat. Along with their request for incidental take authority, Industry has also developed and implemented polar bear conservation measures.

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and for Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Service, Inc., Mobil Oil Corporation, Northern Geophysical of America Western, Texaco Inc., Unocal Corporation, and Geophysical Company requested that we promulgate regulations pursuant to Section 101(a)(5) of the Act.

The geographic region defined in Industry's 1991 application included offshore waters beginning at a north/south line at Barrow, Alaska, east to the Canadian border, including all Alaska state waters and Outer Continental Shelf (OCS) waters. The onshore region was defined by the name north/south line at Barrow, extending 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge was excluded from the proposal.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when such taking(s) occurred during Industry activities during year-round operations in the Beaufort Sea Region as described in the preceding paragraph. The regulations were issued for 18 months. At the same time, the Secretary of the Interior directed us to develop, then begin implementation of, a polar bear habitat conservation strategy before extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. We developed *The Habitat Conservation Strategy for Polar Bears in Alaska* to ensure that the regulations met with the intent of the *1973 International Agreement on the Conservation of Polar Bears.* On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805). We then extended the regulations for an additional 42 months to expire on December 15, 1998.

On August 28, 1997, BP Exploration (Alaska), Inc., submitted a petition for itself and for ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company for rulemaking pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations beginning at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations beginning at 50 CFR 18.121 that were in effect through December 15, 1998 (see above).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried subsea pipeline to transport crude oil to existing onshore infrastructure. Based on preliminary information related to subsea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period. The information published in the Northstar DEIS suggested that the probability of an oil spill was 21–23 percent over the life of the project, and that up to 30 polar bears could be killed by a spill.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska. On January 28, 1999, we issued final regulations effective through January 30, 2000. These regulations do not authorize the

incidental take of polar bears and Pacific walrus during construction or operation of subsea pipelines in the Beaufort Sea.

Subsequent to January 28, 1999, the U.S. Army Corps of Engineers finalized the Northstar Environmental Impact Statement in February 1999. Construction of the Northstar gravel island and subsea pipeline are scheduled for the winter of 1999–2000, with production beginning in the latter half of 2000. The Liberty development is proposed for early 2003. The Department of the Interior's Minerals Management Service (MMS) has published a Preliminary Draft EIS, and a Draft EIS is currently in preparation.

Summary of Current Request

The proposed regulations respond to the August 28, 1997, request by BP Exploration (Alaska), Inc. for the extension of incidental take regulations. That request was for a period of 5 years, from December 16, 1998, through December 15, 2003. As previously mentioned, we issued regulations for 1 year that will expire on January 30, 2000. The current proposal addresses the time period from January 31, 2000, through January 31, 2003.

Description of Proposed Regulations

Due to the preliminary nature of the Liberty environmental assessment, we are unable to evaluate the potential impact of that development at this time. These proposed regulations are for a 3-year period from January 31, 2000, through January 31, 2003, and include consideration of subsea pipeline activities associated with the Northstar project. The proposed regulations will allow Industry to incidentally take polar bear and Pacific walrus within the same area as covered by our previous regulations; defined by a north/south line at Barrow, Alaska, including all Alaska State waters and OCS waters, and east of that line to the Canadian border; with the onshore region being the same north/south line at Barrow, 25 miles inland and east to the Canning River. Once again, the Arctic National Wildlife Refuge is excluded from the proposal.

The proposed regulations do not authorize the actual activities associated with oil and gas exploration, development, and production, but rather authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The MMS and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

As in previous regulations, the proposed rule requires an applicant to obtain a Letter of Authorization (LOA) to conduct exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA.

Further, applicants for LOAs must submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Applicants for LOAs must also include a Plan of Cooperation. The purpose of the Plan is to ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses continue to be negligible. The Plan must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

Each request for an LOA is evaluated on the specific activity and the specific location, and we condition each LOA for that activity and location if necessary. For example, a request to conduct activities on barrier islands with active polar bear dens or a history of polar bear denning will be conditioned to avoid the area until after the bears normally exit their dens.

Description of Activity

In accordance with 50 CFR 18.27, Industry has submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(b)(A) of the Act. Activities covered in this proposed rule include exploration, development, and production of oil and gas, as well as wildlife monitoring associated with these activities.

Exploration activities include geological and geophysical surveys, which may involve geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. Drilling operations include drill ships, floating drill platforms such as the *Kulluk,* ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures, concrete island drilling system, and single steel drilling caisson.

A large number of variables influence exploration activities, therefore, predictions as to the exact dates and locations of exploratory operations that will take place over the next 3 years would be speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Alaska's North Slope encompasses an area 88,280 square miles and contains 13 separate oil and gas fields in production: Prudhoe Bay, North Prudhoe Bay State, Kuparuk, Endicott, Point McIntyre, Lisburne, Milne Point, Cascade, West Beach, Niakuk, Schrader Bluff, Badami and Sag Delta North. Additional discoveries have been made at the Northstar and Apline fields, both of which are now in the development phase. Discovery has also been made at the Liberty site, where development is planned for 2003.

During the period covered by the proposed regulations, we anticipate a similar level of activity at existing production facilities as during the previous 6 years. One notable difference is the new Northstar project, the first offshore production facility on the North Slope, and the only offshore production facility considered in this proposal.

Biological Information

Pacific Walrus

Pacific walrus (*Odobenus rosmarus*) typically inhabit the waters of the Chukchi and Bering seas. Most of the population congregates near the ice edge of the Chukchi Sea pack ice west of Point Barrow during the summer. In the winter, walrus inhabit the pack ice of the Bering Sea, with concentrations occurring in the Gulf of Anadyr, south of St. Lawrence Island, and south of Nunivak Island.

Walrus occur infrequently in the Beaufort Sea. Data from our marking, Tagging, and Reporting Program show that, from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates show that nearly all of the 73 walrus were taken west of Barrow. In 4 years of monitoring Industry's activities in the Beaufort Sea, on-site monitors have observed only two walrus.

Polar Bear

Polar bears (*Ursus maritimus*) occur in the Northern hemisphere, where their distribution is circumpolar, and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. Two stocks occur

in Alaska: the Chukchi/Bering seas stock, whose size is unknown; and the Southern Beaufort Sea stock, which was estimated in 1992 to number about 1,800 bears.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter; however, other polar bears may burrow out depressions to escape harsh winter winds. The average reproduction interval for polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these data, a polar bear may produce about 10 cubs in her lifetime.

The fur and blubber of the polar bear protect it from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; however, occasionally, polar bears hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears also scavenge on marine mammal carcasses washed up on shore, and eat non-food items such as styrofoam, plastic, car batteries, antifreeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by disease or parasites. The most significant source of mortality is humans. Since 1972, with the passage of the Act, only Alaska Natives are allowed to hunt polar bears in Alaska. Bears are used for subsistence purposes such as the manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing the population is not depleted and takes are non-wasteful. From 1980–1997, the total annual harvest in Alaska averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi and Bering seas area.

Polar bears in the near shore Alaskan Beaufort Sea are widely distributed in low numbers across the area with an average density of about one bear per 30 to 50 square miles. However, polar bears have been observed congregating on barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale carcasses on barrier islands. In November 1996, biologists from the U.S. Geological Survey observed 28 polar bears near a bowhead whale carcass on Cross Island, and approximately 11 polar bears within a 2-mile radius of another bowhead whale carcass near the village of Kaktovik on Barter island. In October 1997, we observed 47 polar bears on barrier islands and the mainland from Prudhoe Bay to the Canadian border, a distance of approximately 100 miles.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Pacific Walrus

Oil and gas industry activities that generate noise such as air and vessel traffic, seismic surveys, ice breakers, supply ships, and drilling may frighten or displace Pacific walrus. As previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow. Pacific walrus do not normally range into the Beaufort Sea. Occasionally, a single walrus may be sighted east of Point Barrow. From 1994 to 1997, two Pacific walrus were sighted during an open-water seismic program. The program was conducted in the vicinity of Gwyder Bay approximately 10 miles west of Prudhoe Bay. Marine mammal monitors sighted one sub-adult walrus approximately 5 miles northwest of Howe Island and BP Exploration's Endicott Unit. The second, a single adult walrus, was observed from a survey aircraft approximately 20 miles north of Pingok Island.

In winter, Pacific walrus inhabit the pack ice of the Bering Sea. As the winter range of the Pacific walrus is well beyond the geographic area covered by these regulations, we do not expect any impacts to walrus from oil and gas activities during winter.

If walrus are present, their movements may be affected by stationary drilling structures. Walrus are attracted to certain activities and are repelled from others by noise or smell. In 1989 an incident occurred during a drilling operation in the Chukchi Sea where a young walrus surfaced in the center hole (i.e., moonpool) of a drill ship. The crew used a cargo net to remove the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again. No similar incidents have been reported in the area of the proposed regulations.

Seismic surveys generally take place on solid ice or in open water. Since walrus activity occurs near the ice edge, interactions between walrus and seismic surveys are unlikely.

Due to the small number of walrus in the area covered by the proposed regulations, oil and gas industry activities will not result in more than a negligible impact on this species.

Subsistence Use of Pacific Walrus

As the primary range of Pacific walrus is west and south of the Beaufort Sea, it is not surprising that few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. Walrus constitute a small portion of the total marine mammal harvest for the village of Barrow. In the past 6 years, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but 1 of the 73 walrus were taken west of Point Barrow, beyond the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walrus east of Point Barrow and have taken only one walrus in the last 10 years.

Polar Bear

In the southern Beaufort sea, polar bears spend the majority of their lives on the ice, which limits the opportunity for impacts from Industry. For example, although polar bears have been documented in open water, miles from the ice edge or ice floes, it is a relatively rare occurrence. Therefore, exploration activities in the open-water season will not have more than a negligible impact on the polar bear.

Polar bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At time when the ice edge is near shore and then quickly retreats northward, bears may remain along the coast or on barrier islands for several weeks until the ice returns. For those brief periods, there is increased likelihood of interactions between polar bears and Industry activities. We have found that polar bear interaction planning and training requirements of the LOA process have increased polar bear awareness, and have helped minimize these encounters. For example, in 1999 Exxon terminated work on Flaxman Island due to the presence of several polar bears in the vicinity of their work area.

Disturbances to denning females, either on land or on ice, are of particular concern. As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance of denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and probable denning habitat. A standard condition of LOAs requires Industry to maintain a one-mile buffer

between survey activities and known denning sites. In addition, we may require Industry to avoid denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we are conducting research in cooperation with Industry to evaluate the use of remote sensing techniques, such as Forward Looking Infrared (FLIR) imagery to detect active dens.

Industry activities that occur on or near the ice have greater possibility for encountering polar bears. Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associate with there activities. As mentioned above, the LOA process requires the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take to minimize impacts, such as garage disposal procedures to reduce the attraction of polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site. The result of these polar bear interaction plans and training is that when a bear encounters Industry activities, it is detected quickly, and responded to appropriately. Most often, this involves deterring the bear from the site, with minimal effect. Without such plans and training, the undesirable outcome could be lethal take in defense of human life.

Over the span of our incidental take regulations, Industry reported 103 polar bear sightings. Of these, only 29 were instances where a bear was attracted to and/or deterred from the site. We have no indication that encounters which merely alter the behavior and movement of individual bears have any long-term effects on those bears. It is therefore unlikely that the small number of benign encounters between polar bears and Industry would have a significant overall effect on the population.

No lethal takes have occurred during the period covered by incidental take regulations. Even before regulations were issued, lethal takes by Industry were a rare occurrence. Since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was in defense of human life.

Oil Spills

In addition to routine operations, the potential exists for polar bears to be impacted by oil spills. Spills of crude oil and petroleum products associated with onshore production facilities are usually minor spills that are contained and removed upon discovery. As polar bears spend the majority of their time onshore, they are unlikely to encounter oil from an onshore spill.

Oil spills are of concern in the marine environment, where spilled oil will accumulate at the ice edge, in leads, and similar areas of importance to polar bears. Oil spilled from offshore production activities was not considered in our previous regulations. The Northstar Project will transport crude oil from a reconstructed gravel island in the Beaufort Sea to shore via a 5.96-mile buried subsea pipeline. The pipeline will be buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Construction of Northstar will begin in the winter of 1999–2000.

Polar bears are at risk from an oil spill in the Beaufort Sea. Limited data from a Canadian study suggest that polar bears experimentally oiled with crude oil may die. This finding is consistent with what is known of other marine mammals that rely on their fur for insulation. The Northstar FEIS concluded that mortality of up to 30 polar bears could occur as the result of an oil spill greater than 1,000 barrels. This estimate was based on observations of aggregations of polar bears on barrier islands in the Beaufort Sea.

Two independent lines of evidence support our determination that only a negligible impact to the Beaufort Sea polar bear stock will occur from Northstar, one largely anecdotal, and the other quantitative. The largely anecdotal information is based on observations of polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea. This information suggests that polar bear aggregations may occur for brief periods in the fall. The presence and duration of these aggregations are influenced by the presence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales. In order for significant impacts to polar bears to occur, an oil spill would have to occur, an aggregation of bears would have to present, the spill would have to contact the aggregation, and many of the bears would have to be killed. We believe the probability of all these events occurring simultaneously is low.

The quantitative rationale for negligible impact is based on a risk assessment that considered oil spill probability estimates for the Northstar Project, an oil spill trajectory model, and a polar bear distribution model. The Northeast FEIS provides estimates of the probability that one or more spills greater than 1,000 barrels of oil will occur over the project's life of 15 years. We consider here only spill probabilities for the drilling platform and subsea pipeline as these are the spill locations that would affect polar bears. When calculated for the 3-year period covered by the proposed regulations, we estimate the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment is 3–10 percent.

Applied Sciences Associates, Inc., was contracted by BP Exploration Inc. to run the OILMAP oil spill trajectory model. The size of the modeled spill was set at 3,600 barrels, simulating rupture and drainage of the entire subsea pipeline. Each spill was modeled by tracking the location of 100 ''spillets,'' each representing 36 barrels. Spillets were driven by wind, and their movements affected by the presence of sea ice. Open water and broken ice scenarios were each modeled with 250 simulations. A solid ice scenario was also modeled, in which oil was trapped beneath the ice and did not spread. In this event, we found it unlikely that polar bears would contact oil, and removed this scenario from further analysis. Each simulation was run for 96 hours with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system (GIS).

Telemetry data suggest that polar bears are widely distributed in low numbers across the Beaufort Sea with a density of about one bear per 30–50 square miles. The U.S. Geological Survey, Biological Resources Division, developed a polar bear distribution model based on extensive telemetry data that estimates the number of bears expected to occur within a grid of the Beaufort Sea with a cell size of 0.25 km^2. Each of the simulated oil spills was overlaid with the polar bear distribution grid. If a spillet passed through a grid cell, the bears in that cell were considered killed by the spill. In the open water scenario, the estimated number of bears killed ranged from less than 1 to 78, with a median of 8. In the broken ice scenario, results ranged from less than 1 to 108, with a median of 21. These results are based on an ''average'' distribution of polar bears and do not include potential aggregations of bears.

We estimated the likelihood of occurrence of mortality for various numbers of bears by multiplying the probability of mortality by the spill probability for each period for the year, and summing those probabilities over the entire year. We calculate that the probability of a spill that would cause

mortality of one or more bears is 0.9–3.1 percent. As the threshold number of bears is increased, the likelihood of that event decreases. Thus the probability of a spill that would cause a mortality of 5 or more bears is 0.7–2.5 percent; for 10 or more bears is 0.6–2.0 percent; and for 20 or more bears is 0.3–1 percent.

The greatest source of uncertainty in our calculations is the probability of an oil spill occurring. The oil spill probability estimates for the Northstar Project were calculated using data for subsea pipelines outside of Alaska and outside of the Arctic. These spill probability estimates, therefore, do not reflect conditions that are routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, there is some uncertainty about the validity of oil spill probabilities as presented in the Northstar FEIS. However, if the probability of a spill were actually twice the estimated value, the probability of a spill that would cause a mortality of one or more bears is still low (about 6 percent).

This analysis is dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. These include variation in spill probabilities during the year, the length of time the oil spill trajectory model was run, whether or not containment occurred during the trajectory model, lack of efforts to deter wildlife during the model runs, contact with a spillet constitutes mortality, aggregations of bears not included, etc. We determined that the assumptions that would overestimate and underestimate mortalities were generally in balance.

We conclude that if an oil spill were to occur during the fall of spring broken-ice periods, there could be a significant impact to polar bears. However, in balancing the level of impact with the probability of occurrence, we conclude that the probability of serious impacts (large-volume spills that cause high polar bear mortalities) is low. Therefore we conclude that the effect of operations associated with the Northstar development will have a negligible impact on polar bears.

Subsistence Use of Polar Bear

Within the area covered by the proposed regulations, polar bears are taken in Barrow, Nuiqsut, or Kaktovik; however, it is not considered a primary subsistence species in these villages. Data from our Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1998, a total of 94 polar bears was reported harvested by residents of Barrow; 7 by residents of the village of Nuiqsut; and 10 by residents of the village of Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions. Native subsistence polar bear hunting could be affected by an oil spill. Hunting areas where polar bears are historically taken may be viewed as tainted by an oil spill.

Industry works with local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. The Industry works with the local Native groups to develop a Plan of Cooperation to address subsistence mitigation measures to be incorporated into the Industry's plan of operation.

Cumulative Effects

Based on past LOA monitoring reports, the level of interaction between Industry and marine mammals (Pacific walrus and polar bears) has had a negligible impact on these species. Additional information, such as subsistence harvested levels and incidental observations of polar bears near shore, provides evidence that these populations have not been adversely affected. The projected level of activities during the period covered by the proposed regulations (existing onshore development and proposed exploratory activities) are similar in scale to previous levels. Therefore, we conclude that projected onshore activities will have a negligible impact on polar bears and Pacific walrus.

While the actual construction and operation of the Northstar development is not expected to significantly increase the impacts to Pacific walrus and polar bears, concern about potential oil spills in the marine environment was raised in the Northstar FEIS. We have analyzed the likelihood of an oil spill in the marine environment that would kill a significant number of polar bears and found it to be negligible. Thus, after considering the cumulative effects of existing onshore development, proposed exploratory activities, and the new Northstar subsea pipeline, we find that these activities will have a negligible impact on polar bears and Pacific walrus.

Conclusions

Based on the previous discussion, we propose the following findings regarding this action:

Impact on Species

We find, based on the best scientific information available, the results of monitoring data from our previous regulations and the results of our modeling assessments, that the effects of oil and gas related exploration, development, and production activities from January 31, 2000, through January 31, 2003, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat. In making this proposed finding, we are following Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. (53 FR at 8474: accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986)

In the event of a catastrophic spill, we would reassess the impacts to the polar bear and walrus populations and reconsider the appropriateness of authorizations for incidental taking through Section 101(a)(5)(A) of the Act.

Our proposed finding of ''negligible impact'' applies to oil and gas exploration, development, and production activities. The following are generic conditions intended to minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may expand the conditions in the LOAs based upon site-specific and species-specific reasons.

(1) These regulation do not authorize intentional taking of polar bear or Pacific walrus.

(2)For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities will be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to each LOA request. In potential denning areas, we may require pre-activity surveys (*e.g.,* aerial surveys) to determine the presence or absence of denning activity.

(3) Each activity authorized by an LOA requires a site-specific plan of

operation and a site-specific monitoring and reporting plan. The purpose of the required plan is to ensure that the level of activity and possible takes will be consistent with our proposed finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus, their habitat, and where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

Impact on Subsistence Take

We propose to find, based on the best scientific information available, and the results of monitoring data, that the effects of oil and gas exploration, development, and production activities for the next 3 years in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses.

Polar bear and Pacific walrus represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that a Plan of Cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue to not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

Monitoring plans are required to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed exploratory activity, and the applicant must submit a final monitoring report to us no later than 90 days after completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Since development and production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require annual approval of the monitoring results for continued operation under the LOA.

Required Determinations

We have prepared a draft Environmental Assessment (EA) in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health of safety, of State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The proposed rule is not likely to result in an annual effect on the economy of $100 million of more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1)

Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, *§ 18.123 When is this rule effective?* (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be 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 that 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.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) and assigned clearance number 1018–0070. The OMB approval of our collection of this information will expire in October 2001. The proposed section 18.129 contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018–0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Report Program, see 50 CFR 18.23(f)(12).

Comments and materials received in response to this action are available for public inspection during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service proposes to amend Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

2. Revise Subpart J to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 What specified activities does this rule cover?
18.122 In what specified geographic region does this rule apply?
18.123 When is this rule effective?
18.124 How do you obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the monitoring and reporting requirements?
18.129 What are the information collection requirements?

§ 18.121 What specified activities does this rule cover?

Regulations in this subpart apply to the incidental, but not intentional, task of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The offshore exploration, development, and production facility, known as Northstart, is covered by this rule. Further offshore development and production, such as the proposed Liberty project, is not covered by this rule.

§ 18.122 In what specified geographic region does this rule apply?

This rule applies to the specified geographic region defined by a north/south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this rule.

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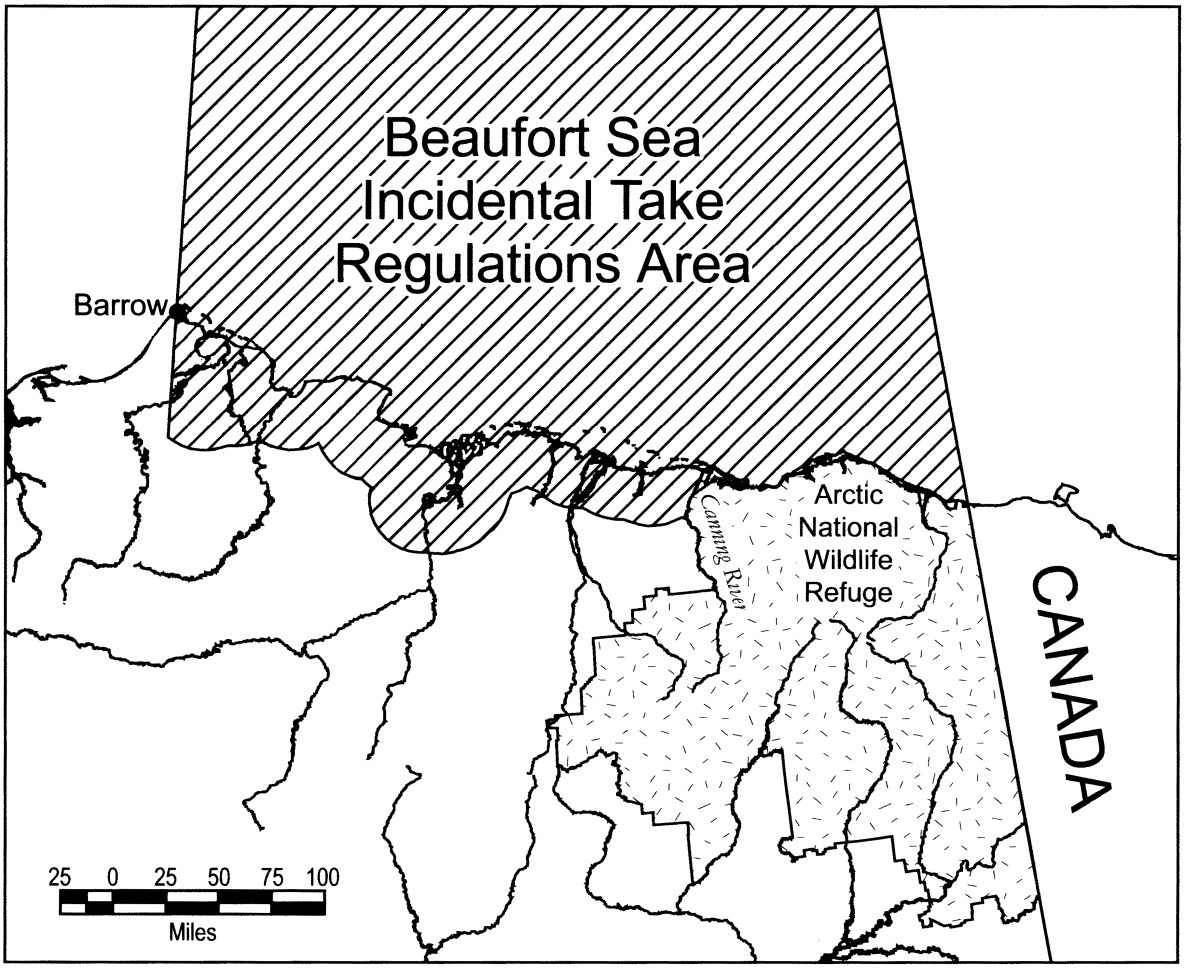

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§ 18.123 When is this rule effective?

Regulations in this subpart are effective January 31, 2000, through January 31, 2003, for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do you obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c) of this part.

(b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may take a polar bear or Pacific walrus in execution of those activities and desire incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. You must submit the application for authorization to our Alaska Regional Director (see 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activities. Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. You must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

§ 18.125 What Criteria does the Service use to evaluate Letter of Authorization requests?

(a) When you request a Letter of Authorization, we will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

(b) In accordance with § 18.27(f)(5) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in § 18.125(b) will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations; and

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine associated impacts.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take of polar bear or Pacific walrus; and

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of your Letter of Authorization.

§ 18.128 What are the monitoring and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) We may place an observer on site of the activity on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letters of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letters of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimated level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect the information in order to describe the proposed activity and estimate the impacts of potential taking by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) For the initial year, we estimate your burden to be 200 hours to develop an application requesting us to

promulgate incidental take regulations. For the initial year and annually thereafter when you conduct operations under this rule, we estimate an 8-hour burden per Letters of Authorization, a 4-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, D.C. 20503.

Dated: November 17, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–31906 Filed 12–6–99; 12:13 pm]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 64, No. 236
Thursday, December 9, 1999

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–091–1]

Availability of Draft Pest Risk Assessment for the Importation of Honeybees and Honeybee Germ Plasm from New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are advising the public that a draft pest risk assessment has been prepared by the Animal and Plant Health Inspection Service for the importation of honeybees and honeybee germ plasm from New Zealand. We are making this draft pest risk assessment available to the public for review and comment.

DATES: We invite you to comment on the draft pest risk assessment. We will consider all comments that we receive by February 7, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–091–1.

A copy of the draft pest risk assessment, and any comments that we receive on it, may be reviewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Robert V. Flanders, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1228; (301) 734–5930.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture has received a request from the Government of New Zealand to allow the importation into the United States of adult honeybees (*Apis mellifera*) (specifically queens and package bees) and honeybee germ plasm from New Zealand. The request was made in accordance with the General Agreement on Tariffs and Trade.

To determine whether the risk associated with such importation is low enough for us to initiate rulemaking to implement this change to our regulations, we have prepared a draft pest risk assessment, entitled ''Risk Assessment: Importation of Adult Queens, Package Bees, and Germ Plasm of Honeybees (*Apis mellifera L.*) From New Zealand,'' in consultation with the Government of New Zealand. The draft pest risk assessment identifies quarantine pests associated with the importation of honeybees and honeybee germ plasm from New Zealand and qualitatively assesses the likelihood of the introduction of these quarantine pests into the United States, as well as the consequences of introduction.

We are making this draft pest risk assessment available to the public for review and comment. In particular, we request feedback on the risk factors, methodology, and documentation used in the draft pest risk assessment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

The draft pest risk assessment is available in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice), on the Internet at http://www.aphis.usda.gov/ppq/pra/honeybees/, by calling the Plant Protection and Quarantine automated fax retrieval system at (301) 734–3560 and requesting document 0512, or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 281; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 3rd day of December 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–31955 Filed 12–8–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of a Previously Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for an information collection previously approved in support of the Agency's personnel employment system for its county committee employees who are not considered Federal Civil Service employees within the meaning of 5 U.S.C. 2105.

DATES: Comments on this notice must be received on or before February 7, 2000 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Donald Samuels, Personnel Management Specialist, Human Resources Division, Farm Service Agency, USDA, STOP 0592, 1400 Independence Avenue, SW, Washington, DC 20250–0592; telephone (202) 418–8988; e-mail Don__Samuels@wdc.fsa.usda.gov: or facsimile (202) 418–9121.

SUPPLEMENTARY INFORMATION:

Title: Selection and Functions of Farm Service Agency State, County, and Community Committees.

OMB Control Number: 0560–0016.

Type of Request: Extension of a Previously Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0016, as identified above, is needed to enable the Farm Service Agency (FSA) to effectively administer the regulations at 7 CFR part 7 relating to the selection and function of Farm Service Agency State, County and Community Committees. Information requested on

the FSA–675, Application for FSA County Office Employment, is for the purpose of identifying applicants for vacant positions in FSA county offices. These employees, who are not Federal Civil Service employees within the meaning of 5 U.S.C. 2105 staff approximately 2,400 county FSA offices throughout the nation. Total employment figures equal about 12,444. Part 7, Sections 7.1 through 7.40 of the Secretary's Regulations provides for this system and sets some specific requirements for the type of information that must be considered prior to employment.

Estimate of Burden: Public reporting burden for this information collection is difficult to determine because it is directly related to the number of vacancies that exist and the level of interest candidates may show for any particular vacancy. However, past records indicate approximately 9,000 responses per year. The average time per response would be in the area of 1 hour per applicant.

Respondents: Applicants for Employment.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,000 hours.

Topics for comment include, but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Don Samuels, Personnel Management Specialist, Human Resources Division, Farm Service Agency, USDA, STOP 0592, 1400 Independence Avenue, SW, Washington, D.C. 20250–0592; telephone (202) 418–8988. Copies of the information collection may be obtained from Don Samuels at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., on December 2, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–31871 Filed 12–8–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice and request for nominations.

SUMMARY: The Secretary of Agriculture has established an advisory committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership for the Lake Tahoe Region. Nominations of persons to serve as the local government representative or as the Tahoe Regional Planning Agency representative of the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by December 27, 1999.

ADDRESSES: Send nominations with telephone numbers for membership on the Committee to: FACA Nominations, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Jeannie Stafford, Lake Tahoe Basin Management Unit, (530) 573–2641.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has established the Lake Tahoe Federal Advisory Committee on July 13, 1998 and will be selected nominations for two vacant positions. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives.

The Committee will consist of no more than 20 members representing a broad array of interests in the Lake Tahoe Region. Representatives have been selected from the following sectors: (1) Gaming; (2) environmental; (3) natural resources; (4) ski resorts; (5) North Shore economic and recreation interests; (6) South Shore economic and recreation interests; (7) resort associations; (8) education; (9) property rights advocates; (10) member-at-large; (11) member-at-large; (12) science and research; (13) local government (vacant); (14) Washoe Tribe; (15) State of California; (16) State of Nevada; (17) Tahoe Regional Planning Agency (vacant); (18) Union/labor interests; (19) transportation; and (20) member-at-large.

Nominations representing local government or Tahoe Regional Planning Agency should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee.

Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: December 2, 1999.

Edmund Gee,

Acting Forest Supervisor, Lake Tahoe Basin Management Unit.

[FR Doc. 99–31880 Filed 12–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Silvies Canyon Watershed Restoration Project, Malheur National Forest, Grant and Harney Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) an a proposal to improve the ecosystem health within a portion of the 81,000 acre Silvies Canyon Watershed. The proposed restoration activities will be in compliance with the

1990 Malheur National Forest Land and Management Plan (Forest Plan), as amended, which provides overall guidance for management of this area. Proposed restoration activities are located on the Burns and Bear Valley Ranger Districts within the Silvies Canyon Watershed. The watershed is located about 20 air miles north of Burns, OR. Implementation of proposed restoration activities are scheduled to begin in late fiscal year 2000. The Malheur National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by January 3, 2000.

ADDRESSES: Send written comments and sugestions concerning the management of this area to James M. Keniston, Burns District Ranger, HC 74, Box 12870, Hines, OR 97738.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Joan Suther, NEPA Coordinator, Burns Ranger District, HC 74, Box 12870, Hines, OR 97738; phone 541–573–4300.

SUPPLEMENTARY INFORMATION: The Silvies Canyon Watershed is comprised of about 81,000 acres within seven subwatersheds, of which about 65,000 acres are within the Malheur National Forest Boundary. Of this acreage, about 1,962 acres are privately owned and about 1,069 acres are administered by the USDI, Bureau of Land Management. About 31,527 acres (51%) are in Management Area 1—General Forest; about 15,022 acres (24%) are in Management Area 4—Big Game Winter Range Maintenance; about 8,111 acres (13%) are in Management Area 10—Semi-Primitive Non-Motorized; about 809 acres (1+%) are in Management Area 13—Old Growth; about 1,702 acres (3%) are within Management Area 14—Visual Corridors; and about 4,938 acres (8%) are within RHCAs. The 8,000+ acres in Management Area 10—Semi-Primitive Non-Motorized are associated with the Myrtle-Silvies Roadless Area. This roadless area contains elk winter range, perennial streams, hiking and equestrian trails, a jeep trail along the Silvies River, and is included in cattle grazing allotments. The southern ⅓ of the planning area is dominated by shrublands, juniper, and ponderosa pine; the middle portion is ponderosa pine and mixed conifer; and the northern section is dominated by mixed conifer and lodgepole pine.

The purpose and need for activities is to:

- Improve the health, vigor, and resiliency of vegetation to insects, disease, wildfire, and other disturbances, to move closely resemble historical conditions;
- Reduce road related impacts, specifically negative impacts to water quality, fish habitat, and wildlife habitat; and
- Improve riparian conditions in reaches of streams that do not presently meet riparian management objectives (RMOs).

The proposed action includes a variety of activities to meet the three purpose and need statements.

(1) Proposed restoration activities that would improve vegetation so it is more resilient to insects, disease, wildfire, and other disturbances include:

- Harvesting commercial timber to control tree stocking and manage species composition to favor trees most suited for specific sites on about 12,500 acres within 35 units. This would include about 7,500 acres of commercial thinning, primarily in ponderosa pine stands; and about 5,000 acres of intermediate commercial treatment, focused on understory thinning of mixed conifer sites; no clearcuts are proposed, and no trees over 21″ dbh would be harvested;
- Landscape scale burning (about 42,000 acres within 9 burning areas) in all vegetation types to reduce excess fuel accumulations and stocking levels to reduce potential severity of future wildfires;
- Reducing fuels and stocking through other methods including firewood and post and pole cutting, juniper felling (cut and leave on site), piling, and pre-commercial thinning on about 11,300 acres within 35 units; and
- Managing existing noxious weed sites through manual, mechanical, and chemical methods, and reducing the potential for additional sites becoming established.

(2) Specific actions to reduce road related impacts to water quality, fish habitat and wildlife habitat would include:

- Closing or decommissioning an estimated 120 miles of 280 roads no longer necessary for resource management, especially roads within sensitive areas such as riparian habitat conservation areas (RHCAs);
- Seasonal closures of an estimated 80 miles of 100 roads if needed for future resource management and not causing unacceptable impacts to watershed health when open; and
- Implementing such instream activities as installing or replacing existing culverts with culverts designed for fish passage.

(3) Actions that would improve riparian conditions in areas not meeting RMOs include:

- Planting riparian vegetation and protecting it from livestock and wildlife foraging;
- Adding large wood to stream reaches deficient in cover or pool habitat (possibly using helicopters and other equipment);
- Restoring flood plain function where flow regime is degraded by past activities;
- Reintroducing fire to RHCAs to meet RMOs;
- Managing forest vegetation through commercial or pre-commercial thinning within RHCAs to meet RMOs;
- Treating aspen stands to stimulate regeneration; and
- Fencing riparian areas that cannot be managed or enhanced by other methods.

The Silvies Canyon Watershed Restoration Project will focus vegetative restoration activities in the following subwatersheds: Myrtle Park, Sage Hen Creek, Stancliffe Creek, and Burnt Mountain, with fewer activities anticipated in Boulder Creek/Fawn Creek, Myrtle Creek, and Red Hill.

Preliminary issues identified include effects to threatened, endangered, proposed, sensitive, and management indicator species; RHCAs; water quality; forest stand conditions (as related to stand composition and tree densities, increased insect populations, and fuel levels); roadless areas; road densities, decommissioning roads, and access; and forest wood (timber) products.

The scoping process will include: (1) Identifying potential issues; (2) identifying issues to be analyzed in depth; (3) eliminating non-significant issues or those which have been covered by a previous environmental analysis; (4) exploring additional alternatives; and (5) identifying potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

A full range of alternatives to the proposed action will be considered, including a no action alternative and an alternative focused on restoration without the use of commercial timber harvest. The no action alternative will serve as a baseline for comparison of alternatives. Additional alternatives will be developed to address significant issues identified during the scoping and public involvement process. Emerging issues may modify action alternatives in

number, location, and type of project activities.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the freedom of information act (FOIA) permits such confidentiality. However, they should be aware that, under FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Public meetings are anticipated to occur following issuance of the draft EIS. Public meetings will be announced in the Malheur National Forest's newspaper of record, the Blue Mountain Eagle, as well as the Burns Times Herald.

The Forest Service is seeking information and comments from other Federal, State, and Local agencies; tribes; organizations; and individuals interested in or affected by the proposed action. Comments will be appreciated throughout the analysis process. Input will be used in preparation of the draft EIS. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review in March 2000. The comment period on the draft EIS will be 45 days from the date the EPA's Notice of Availability appears in the **Federal Register**. Those interested in the management of Malheur National Forest should participate at that time.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir, 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

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

After the 45-day comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in June 2000. In the final EIS, the Forest Service is required to respond to substantive comments received during the public comment period. The Forest Service is the lead agency. The Forest Supervisor is the responsible official. The responsible official will consider comments, responses to comments, and environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the Silvies Canyon Watershed Restoration decision and rationale for that decision in the Record of Decision. That decision will be subject to review under Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 1, 1999.

Bonnie Wood,

Forest Supervisor.

[FR Doc. 99–31882 Filed 12–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of the Technical Guidance for Developing Comprehensive Nutrient Management Plans

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The United States Department of Agriculture (USDA) is seeking comments on the draft Technincal Guidance for Developing Comprehensive Nutrient Management Plans (CNMPs). USDA is asking for comments from individuals, the livestock industry, private consultants, State, Tribal, and local governments or subgroups thereof, universities, colleges, environmental groups, and other organizations. These comments will assist USDA in the development and implementation of the final Technical Guidance for Developing Comprehensive Nutrient Management Plans. This guidance document is intended for use for Natural Resources Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that either will be developing or assisting in the development of CNMPs.

DATES: Comments will be received for a 90-day comment period commencing December 9, 1999.

ADDRESSES: Address all requests and comments to: Francine A. Gordon, Management Assistant, Natural Resources Conservation Service, ATTN: CNMP, 5601 Sunnyside Avenue, Stop Code 5473, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: Obie Ashford, Natural Resources Conservation Service, 301–504–2197; fax 301–504–2264, e-mail obie.ashford@usda.gov

SUPPLEMENTARY INFORMATION: The Technical Guidance for Developing Comprehensive Nutrient Management Plans is a document intended for use by the Natural Resource Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that either will be developing or assisting in the development of CNMPs. The purpose of this document is to provide technical guidance for local, tribal, State, or Federal programs, not to establish regulatory requirements. This technical guidance is not intended as a sole source or reference for developing

CNMPs. CNMP is a subset of a conservation plan that is unique to animal feeding operations. A CNMP is a group of conservation practices and management activities which, when combined into a system, will help to ensure that both production and natural resource goals are achieved. It incorporates practices to utilize animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality. The objective of a CNMP is to combine management activities and conservation practices into a system that, when implemented, will minimize the adverse impacts of animal feeding operations on water quality.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination to USDA, write Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250–9410, or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed at Washington, D.C., on December 3, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

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Technical Guidance for Developing Comprehensive Nutrient Management Plans (CNMPs)

1.0 Introduction

Technical Guidance for Developing Comprehensive Nutrient Management Plans (CNMPs) is a document intended for use by Natural Resources Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that either will be developing or assisting in the development of CNMPs. The purpose of this document is to provide technical guidance for the development of CNMPs, not to establish regulatory requirements for local, tribal, State, or Federal programs. This technical guidance is not intended as a sole source of reference for developing CNMPs. Rather, it is to be used as a tool in support of the planning process (see Appendix A), as contained in the NRCS National Planning Procedures Handbook (NPPH). (See Appendix B.) It provides a list of essential elements that need to be considered in developing a CNMP. To effectively use this technical guidance, the planner needs a solid understanding of agricultural waste management systems, nutrient management, the NRCS planning process, and the NRCS Field Office Technical Guide.

2.0 Definition

A Comprehensive Nutrient Management Plan (CNMP) is a subset of a conservation plan that is unique to animal feeding operations. A CNMP is a grouping of conservation practices and management activities which, when combined into a system, will help to ensure that both production and natural resource goals are achieved. It incorporates practices to utilize animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality. A CNMP is developed to assist landowners/operators with meeting all applicable local, tribal, State, and Federal regulations. For certain unique, impacted watersheds or water bodies, special management activities or conservation practices may be necessary to help the landowner/operator meet specific local, tribal, State, or Federal regulations.

The conservation practices and management activities in a CNMP for which NRCS maintains technical standards are to meet these standards. Components of a CNMP for which NRCS does not currently maintain standards are to meet criteria established by Land Grant Universities, industry, or appropriate others. Ultimately, it is the landowner's/operator's responsibility as the decision-maker to select the system of conservation practices and management activities that best meet his/her production and environmental needs from the alternatives available.

3.0 Objective

The objective of a CNMP is to combine management activities and conservation practices into a system that, when implemented, will minimize the adverse impacts of animal feeding operations on water quality. CNMPs are to be developed in accordance with procedures contained in the NRCS National Planning Procedures Handbook (NPPH) (Appendix B) and meet the technical requirements of the NRCS local Field Office Technical Guide (FOTG). For guidance on CNMP plan format and content see Appendix C. For a given enterprise to meet this objective, a significant increase, over current levels, in the intensity and comprehensiveness of technical assistance provided to producers may be required.

Elements to consider:

1. Animal Outputs—Manure and Wastewater Collection, Handling, Storage, Treatment, and Transfer
2. Evaluation and Treatment of Sites Proposed for Land Application
3. Land Application
4. Records of CNMP Implementation
5. Inputs to Animals
6. Other Utilization Activities

4. Elements to Consider

4.1 Animal Outputs—Manure and Wastewater Collection, Handling, Storage, and Treatment, and Transfer

A manure and wastewater management system for a given animal feeding operation (AFO) should include all the components and management activities necessary to minimize degradation of water quality. A system may consist of a single component, such as a clean water diversion, or as many components as necessary to meet the production and environmental objectives of the landowner/operator while minimizing the environmental impacts. An on-site visit(s) is required to identify existing and potential nature resource concerns, problems, and opportunities in the siting of manure

and wastewater management system components, including the identification and documentation of infrastructure physical features such as buildings, roads, houses, fences, power lines, and other utilities Sufficient data and information need to be gathered to analyze and understand the treatment needs in and around the production site.

A complete manure and wastewater management system may include, but is not limited to, activities that address:

- adequate collection, storage, and/or treatment that allows application during favorable weather conditions and at times compatible with crop management
- identification of needed water control devices around the production facility
- disposal of dead animals
- disposal of animal medical wastes
- spills and catastrophic events
- spoiled feed and other contaminants
- milk house cleanup water
- testing of manure and organic sources
- insect control
- silage leachates
- visual improvement
- off-site conditions
- identification of operation and maintenance (O&M) practices/activities

Note: The planned manure and wastewater management system needs to be in conformance with the NRCS Waste Management System Standard (Code 312). (See Appendix D). Components of the planned system need to be in conformance with the applicable practice standards.

4.2 Evaluation and Treatment of Sites Proposed for Land Application

An on-site visit is required to identify existing and potential natural resource concerns, problems, and opportunities for the conservation management unit (CMU) [1]. This process will be used to identify and assess operations and activities needed to address existing and potential natural resource problems. the CMU assessment will include, but is not limited to:

- identification of the potential for nitrogen or phosphorus transport off-site
- aerial site photographs or maps
- soil features and limitations
- identification of sensitive areas such as sinkholes, streams, springs, lakes, ponds, wells, gullies, and drinking water sources with setbacks, as necessary
- identification of conservation practices and management activities needed for erosion control and water management
- soil test analysis for pH, nutrients, sodic condition, and organic contents
- identification of pathogens and odors
- other site information features such as property boundaries and location of streams and water bodies
- identification of operation and maintenance (O&M) practices/activities

Notes: 1. A documented record will be kept of the site assessment for each CMU. As part of the CNMP, this record will need to address problems or concerns identified during the on-site assessment of the land application unit.

2. The operation and maintenance plan will need to address all structural and operational components in the CNMP.

3. This planning and assessment process integrates economic, social, and environmental considerations into a system that meets the needs of the natural resources and assists the landowner/operator in meeting Federal, State, tribal and local requirements.

4. Technical requirements will be in accordance with the NRCS National Planning Procedures Handbook (NPPH) and the FOTG. (See Appendix E).

4.3 Land Application

The potential short- and long-term impacts of planned land application of all nutrients and organic by-products (*e.g.,* animal manure, wastewater, commercial fertilizers, crop residues, legume credits, irrigation water, etc.) must be evaluated and documented for each CMU.

This should include:

- developing a nutrient budget for nitrogen, phosphorus, and potassium that includes all potential sources of nutrients
- planned crop sequence
- current soil test results
- manure and organic by-product source testing results
- realistic yield goals
- crop nutrient use
- form, source, amount, timing and method of application of nutrients
- calibration of application equipment

Note: Site specific technical requirements will be based on the NRCS Nutrient Management Standard (Code 590). (See Appendix D).

4.4 Record of CNMP Implementation

If the landowner/operator is to safely manage and assess CNMP, it is critical that his/her maintain a record of activities and the functionality of the system be maintained. A record-keeping plan should be implemented that addresses key elements of the CNMP to aid in proper application and provide for assessment documentation.

This record may include:

- recommended nutrient application rates by CMU
- quanities, analysis and source of nutrients and organic by-products applied
- dates on which nutrients were applied, by CMU
- weather conditions during nutrient application
- methods by which nutrients were applied, by CMU
- crops planted and planting and harvesting dates, by CMU
- dates of review, including person performing the review and recommendations that resulted from the review
- results of any plant tissue sampling and testing, when used, by CMU
- nutrient application equipment calibration
- off-site use of manure

Notes: Specific record-keeping guidance may be obtained from Land Grant Universities, Industry, or appropriate others. In situations where the CNMP is part of a permitting or other regulating program, it is the responsibility of the producer to maintain any required documentation, including plans and implementation records, and make them available to the regulatory organization if required.

4.5 Inputs to Animals—Feed Management

Feed management activities may be used to reduce the nutrient content of manure, making it easier to manage in a land application scenario. Feed management is a planning consideration not a technical standard. These activities may include phase feeding, amino acid supplemented low crude protein diets, and the use of low phytin phosphorus grain and enzymes, such as phytase or other additives. Information and recommendations regarding feed management may be obtained from Land Grant Universities, industry, USDA—Agricultural Research Service, or other appropriate sources.

4.6 Other Utilization Activities

Using manure and organic by-products to provide for environmentally-safe alternatives should be an integral part of the overall CNMP. This is especially true where past land application of manure and organic by-products is a problem because of residual soil nutrient content and where future land application will make conditions worse. Also, it should be recognized that most other utilization strategies, such as biogas generation or

[1] Conservation management unit (CMU)—a field, group of fields, or other land units of the same land use and having similar treatment needs and planned management. A CMU has definite boundaries, such as fence, drainage, vegetation, topography, or soil lines.

composing may result in the inadvertent loss of nitrogen, but not phosphorus or other plant nutrients. It is the producers responsibility, as the decision maker, to select the utilization options to be used.

Alternatives include, but are not limited to;

- transport and safe use off-site
- power generation (*e.g.,* methane generation for fuel, combustion of litter, for energy, etc.)
- converting to high-value product (*e.g.,* composting, fertilizer, etc.)
- soil conditioning

Note: All manure and organic by-product utilization activities are to comply with Federal, State, Tribal, and local laws. Specific technical requirements will be based on NRCS Waste Utilization Standard (Code 633) and Nutrient Management Standard (Code 590). (See Appendix D.)

Appendix A—The Natural Resources Conservation Service Planning Process

NRCS uses a three-phase, nine-step planning process. The three phases and nine steps from a linear perspective are:

Phase I—Collection and Analysis (Understanding the Problems and Opportunities)

1. Identify Problems
2. Determine Objectives
3. Inventory Resources
4. Analyze Resource Data

Phase II—Decision Support (Understanding the Solutions)

5. Formulate Alternatives
6. Evaluate Alternatives
7. Make Decisions

Phase III—Application and Evaluation (Understanding the Results)

8. Implement the Plan
9. Evaluate the Plan

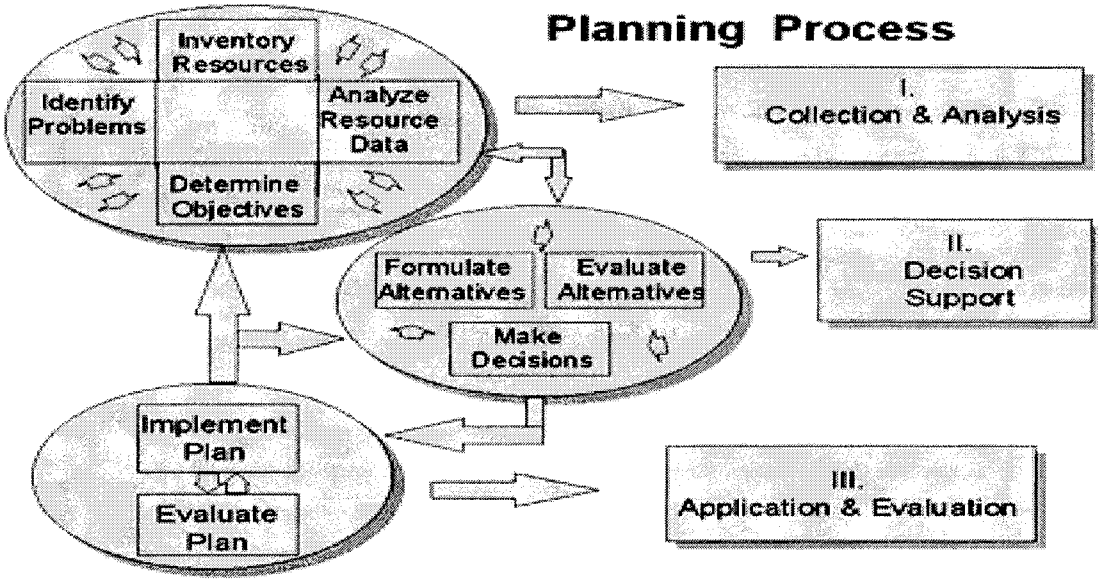

Figure 1

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The planning process is straight forward, but not necessarily linear (See Figure 1). It is a cycling process—iterative—there is a need to cycle back. All three phases and all nine steps are vital for successful conservation planning.

- The planning process may start with any of the first three planning steps or planning step nine.
- There may be a need to cycle back to step three (inventory resources), while working on step four (analyze resource data), if more inventory information is needed.
- Step one (identify problems) and step two (determine objectives) will not be finalized until step four (analyze resource data) is completed. The analysis in step four will, at the very least, require a brief review of problem identification and objective determination to make sure they are suitable.
- There also may be a need for the landowner/operator to revise his objectives as alternatives are formulated and evaluated.
- Once the plan is developed, there may be a need to go back through the entire planning process and revise the plan, or that may become necessary while the plan is being implemented and evaluated. A revision may be necessary because of a change in objectives, size of the unit, livestock numbers, economics, weather conditions, etc.
- Based on the results of implementation, there also may be a need to look at additional alternatives if the results of plan implementation are not solving the identified problems or meeting the landowner's/operator's objectives.

Appendix B—Technical References, Handbooks, and Policy Directives

Technical References and Handbooks

The Natural Resource Conservation Service has numerous technical references and handbooks it uses to assist in the development of conservation plans and their various components. Listed below are those technical references and handbooks generally associated with the development of comprehensive nutrient management plans.

United States Department of Agriculture, Natural Resources Conservation Service (NRCS), National Engineering Handbook, Part 651, Agricultural Waste Management Field Handbook. This handbook is available on the NRCS web site at http://www.ncg.nrcs.usda.gov/tech__ref.html and from the National Technical Information Service at the address shown at the end of this Appendix.

United States Department of Agriculture, Natural Resource Conservation Service, National Range and Pasture Handbook. This handbook is available on the NRCS web site at http://www.ncg.nrcs.usda.gov/tech__ref.html.

United States Department of Agriculture, Natural Resource Conservation Service, National Agronomy Manual. This manual is presently under revision and is scheduled for release in Spring of 2000. The draft version is available on the USDA server in Ft. Worth, TX at ftp://ftp.ftw.nrcs.usda.gov/pub/NAM/.

United States Department of Agriculture, Natural Resource Conservation Service, National Planning Procedures Handbook (NPPH). This handbook is available from the NRCS, Conservation Operations Division, by contacting: Director, Conservation Operations Division, Natural Resources Conservation Service, 12th and Independence SW, Washington, DC 20013.

United States Department of Agriculture, Natural Resource Conservation Service, Conservation Planning Course. This course is available on the NRCS web site at http://www.ncg.nrcs.usda.gov/start.htm.

United States Department of Agriculture, Natural Resource Conservation Service, Agronomy Technical Notes. These notes are available on the NRCS web site at http://www.ncg.nrcs.usda.gov/tech__notes.html.

United States Department of Agriculture, Natural Resource Conservation Service, Soil Quality Information Sheets. These sheets are available on the NRCS web site at http://www.ncg.nrcs.usda.gov/tech__notes.html.

Hard copies of available publications can be purchased from: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA. 22161; Telephone: 1–800–553–6847.

Policy Directives

NRCS policy is contained in Natural Resources Conservation Service, General Manual. The index for the entire manual can be found at NRCS web site http://policy.nrcs.usda.gov/national/gm/index.htm. Listed below are those policy directives contained in the General Manual generally associated with the development of comprehensive nutrient management plans.

Natural Resources Conservation Service, General Manual, Title 450, Technology, Part 401, Technical Guides. This part of the General Manual is available at the NRCS web site at http://policy.nrcs.usda.gov/national/gm/title450/part401/index.htm.

Natural Resources Conservation Service, ''General Manual'', Title 190, Ecological Sciences, Part 402, Nutrient Management. This part of the General Manual is available at the NRCS web site at http://www.nhq.nrcs.usda.gov/BCS/nutri/gm-190.html.

Appendix C—Comprehensive Nutrient Management Plan Format and Content

Introduction

The conservation plan is developed by the landowner/operator for his/her use to record decisions for natural resource protection, conservation, and enhancement.

Decisions and resource information needed during implementation and maintenance of the plan are recorded. The plan narrative and supporting documents provide guidance for implementation and may serve as a basis for compliance with State and Federal regulations and/or program funding through Federal, State, or local financial support initiatives.

A comprehensive nutrient management plan (CNMP) is to include all land units, on which manure and organic by-products will be generated, handled, or applied, and that the landowner/operator either owns or has decision making authority over.

The following guidance helps to maintain quality and provide appropriate documentation of a plan. The list shows the suggested items to be given to the landowner/operator. However, the plan content should be tailored to meet the landowner's/operator's needs.

Plan Format and Content

The plan document provided to the landowner/operator should be a quality document containing meaningful information for the landowner/operator. It should include the following items:

1. A folder, binder, or other means to assemble the contents of the plan.

2. A soil map with appropriate interpretations, such as land capability groupings, woodland suitability groups, pasture and hayland suitability groups, and other interpretive information regarding suitability for specific land uses.

3. Appropriate worksheets developed with the landowner/operator. The worksheets should include such things as resource impact summaries, forage inventories, erosion estimates, and cost estimates.

4. Available job sheets and other prepared material applicable to the landowner's/operator's specific planned practices.

5. Operation and maintenance agreements and procedures. More detailed operation and maintenance procedures, depending on their extent and complexity, may be contained in a separate document, but must be referenced in the CNMP in conjunction with the conservation system and practices contained in the plan.

6. In some cases, engineering designs may be included. However, these designs generally are kept in the office file under the landowner's/operator's name.

7. A conservation plan map. At a minimum, each map should include the following:

a. Title block showing:

- ''Conservation Plan Map''
- ''Prepared with assistance from _____(Name)
- Name of the conservation district, county and State
- Scale of the map
- Date prepared
- North arrow

b. Body of map with:

- Boundary lines of the planning unit outlined
- Field boundaries
- Land use and acres for each land unit correlating to landowner/operator land use in the case file
- Appropriate map symbols and a map symbol legend on the map, or as an attachment

c. Land use designations:

- Landowner/operator—specific land use designations (*e.g.,* cropland, grazed range, forest, etc.) will be used on the plan map.

8. A record of the landowner's/operator's decisions.

- The recorded decisions will apply to land units reflecting common land use, objectives, and treatment needs (referred to as conservation management units).
- Include the appropriate land unit label, official practice name, brief description of the practice, and schedule of practice application in the proper sequence by calendar year.

9. Available maps, sketches, and designs resulting from the planning process that will be useful to the landowner/operator in implementing the plan.

The CNMP Case File Will Contain:

1. Landowner's/operator's objectives and decisions
2. Assistance notes
3. Engineering notes
4. Operation and maintenance agreements and plans
5. Design documentation
6. Documentation of applied practices
7. Forms and worksheets used in developing and evaluating alternatives
8. Environmental documentation
9. Maps—conservation plan and soils
10. Other appropriate supporting documents

Appendix D—Conservation Practice Standards

Natural Resources Conservation Service (NRCS) conservation practice standards provide guidance for applying technology on the land, and set the minimum level for acceptable application of the technology.

NRCS issues national conservation practice standards in its National Handbook of Conservation Practices (NHCP). National standards for each practice are available at the NRCS web site http://www.ncg.nrcs.usda.gov/nhcp__2.html. State Conservationists determine which national standards will be used in his/her State.

State Conservationists that choose to use national standards, without changes, adapt them for use in their State and issue them as State conservation practice standards. State Conservationists add the technical detail needed to effectively use the standards at the field office level. Also, State Conservationists can make their conservation practiced standards more restrictive, but not less restrictive. State conservation practice are contained in Section IV of the Field Office Technical Guide.

Copies of NRCS State conservation practice standards are not currently available from the NRCS Homepage, but may be available later. Copies presently can be obtained by contacting the appropriate NRCS State Office. (See Appendix F.)

Following is a listing of the most commonly considered conservation practice standards that may be used when developing a comprehensive nutrient management plan (CNMP):

Practice code	Practice name	Date of last revision	Presently under revision
317	Composting Facility	12/90	• [1]
328	Conservation Crop Rotation	6/99	
332	Contour Buffer Strips	3/99	
340	Cover and Green Manure Crop	10/77	• [1]
589C	Cross Wind Trap Strips	3/99	• [1]
362	Diversion	10/85	• [1]
382	Fence	4/95	•
393	Filter Strip	3/99	
410	Grade Stabilization Structure	10/85	• [1]
412	Grassed Waterway	10/85	• [1]
449	Irrigation Water Management	3/99	
590	Nutrient Management	4/99	
595A	Pest Management	7/97	• [1]
516	Pipeline	10/85	•
521A	Pond Sealing or Lining—Flexible Membrane	6/84	• [1]
521C	Pond Sealing or Lining—Bentonite Sealant	10/77	•
329A	Residue Management, No-till and Strip Till	3/99	
329B	Residue Management, Mulch Till	3/99	
558	Roof Runoff Management	6/84	•
574	Spring Development	10/87	•
585	Stripcropping, Contour	10/78	•
600	Terrace	4/82	•
614	Trough or Tank	10/87	•
472	Use Exclusion	6/94	•
312	Waste Management System	4/79	• [1]
313	Waste Storage Facility	4/95	• [1]
359	Waste Treatment Lagoon	6/84	• [1]
633	Waste Utilization	4/99	•
XXX	Closure of Waste Impoundments	Proposed	•

[1] New release anticipated in 2000.

Appendix E—Field Office Technical Guide

The Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG) is an essential tool for resource planning. The FOTG contains five Sections:

General Resource References—References, maps, cost lists, typical crop budgets, and other information for use in understanding the field office working area, or in making decisions about resource use and resource management.

Soil and Site Information—Soils are described and interpreted to help make decisions about land use and management. In most cases, this will be an electronic database.

Resource Management Systems—Guidance for developing conservation management systems. A description of the resource considerations and their acceptable levels of quality or criteria are included in this section.

Practice Standards and Specifications—Contains standards and specifications for conservation practices used in the field office. Conservation practice standards contain minimum quality criteria for designing and planning each practice; specifications describe requirements necessary to install a practice.

Conservation Effects—Contains Conservation Practices Physical Effects matrices that outline the impact of practices on various aspects of the five major resources—soil, air, water, plants, and animals.

The FOTG is a document that is being updated continually to reflect changes in technology, resource information, and agency policy. The FOTG contains information that is unique to States and local field offices within States. To obtain information contained within the FOTG, contact a United States Department of Agriculture, NRCS, State Office (See Appendix F for a listing).

Appendix F—State offices

United States Department of Agriculture

Natural Resources Conservation Service

Alabama

3381 Skyway Drive, P.O. Box 311, Auburn, AL 36830
Phone: 334/887–4500 Fax: 334/887–4552

Alaska

949 East 36th Ave., Suite 400, Anchorage, AK 99508–4302
Phone: 907/271–2424 Fax: 907/271–3951

Arizona

3003 North Central Avenue, Suite 800, Phoenix, AZ 85012–2945
Phone: 602/280–8801 Fax: 602/280–8809

Arkansas

Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228
Phone: 501/301–3121 Fax: 501/301–3194

California

430 G Street, Suite 4164, Davis, CA 95616–4164
Phone: 530/792–5600 Fax: 530/792–5790

Colorado

655 Parfet Street, Room E200C, Lakewood, CO 80215–5517
Phone: 303/236–2886 x 202 Fax: 303/236–2896

Connecticut

16 Professional Park Road, Storrs, CT 06268–1299
Phone: 860/487–4011 Fax: 860/487–4054

Delaware

1203 College Park Drive, Suite 101, Dover, DE 19904–8713
Phone: 302/678–4160 Fax: 302/678–0843

Florida

2614 N.W. 43d Street, Gainesville, FL 32606–6611
Phone: 352/338–9500 Fax: 352/338–9574

Georgia

Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601–2769
Phone: 706/546–2272 Fax: 706/546–2120

Guam

Director, Pacific Basin Area, FHB Building, Suite 301, 400 Route 8, Maite, GU 96927
Phone: 671/472–7490 Fax: 671/472–7288

Hawaii

300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, HI 96850–0002
Phone: 808/541–2600 x100 Fax: 808/541–1335

Idaho

9173 West Barnes Drive, Suite C, Boise, ID 83709
Phone: 208/378–5700 Fax: 208/378–5735

Illinois

1902 Fox Drive, Champaign, IL 61820–7335
Phone: 217/398–5267 Fax: 217/373–4550

Indiana

6013 Lakeside Blvd., Indianapolis, IN 46278–2933
Phone: 317/290–3200 Fax: 317/290–3225

Iowa

693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, IA 50309–2180
Phone: 515/284–6655 Fax: 515/284–4394

Kansas

760 South Broadway, Salina, KS 67401–4642
Phone: 785/823–4565 Fax: 785/823–4540

Kentucky

771 Corporate Drive, Suite 110, Lexington, KY 40503–5479
Phone: 606/224–7350 Fax: 606/224–7399

Louisiana

3737 Government St, Alexandria, LA 71302
Phone: 318/473–7751 Fax: 318/473–7626

Maine

5 Godfrey Drive, Orono, ME 04473
Phone: 207/866–7241 Fax: 207/866–7262

Maryland

John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401–5534
Phone: 410/757–0861 x314 Fax: 410/757–0687

Massachusetts

451 West Street, Amherst, MA 01002–2995
Phone: 413/253–4351 Fax: 413/253–4375

Michigan

1405 South Harrison Road, Room 101, East Lansing, MI 48823–5243
Phone: 517/337–6701 x1201 Fax: 517/337–6905

Minnesota

375 Jackson Street, Suite 600, St. Paul, MN 55101–1854
Phone: 651/602–7856 Fax: 651/602–7914 or 7915

Mississippi

Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269
Phone: 601/965–5205 Fax: 601/965–4940

Missouri

Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203–2546
Phone: 573/876–0901 Fax: 573/876–0913

Montana

Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59175–4704
Phone: 406/587–6868 Fax: 406/587–6761

Nebraska

Federal Building, Room 152, 100 Centennial Mall, North, Lincoln, NE 68508–3866
Phone: 402/437–5300 Fax: 402/437–5327

Nevada

5301 Longley Lane, Building F, Suite 201, Reno, NV 89511–1805
Phone: 702/784–5863 Fax: 702/784–5939

New Hampshire

Federal Building, 2 Madbury Road, Durham, NH 03824–2043
Phone: 603/433–0505 Fax: 603/868–5301

New Jersey

1370 Hamilton Street, Somerset, NJ 08873–3157
Phone: 732/246–1171 Fax: 732/246–2358

New Mexico

6200 Jefferson Street, N.E., Suite 305, Albuquerque, NM 87109–3734
Phone: 505/761–4400 Fax: 505/761–4462

New York

441 South Salina Street, Suite 354, Syracuse, NY 13202–2450
Phone: 315/477–6504 Fax: 315/477–6550

North Carolina

4405 Bland Road, Suite 205, Raleigh, NC 27609–6293
Phone: 919/873–2102 Fax: 919/873–2156

North Dakota

220 E. Rosser Avenue, Room 278, P.O. Box 1458, Bismarck, ND 58502–1458
Phone: 701/250–4421 Fax: 701/250–4778

Ohio

200 North High Street, Room 522, Columbus, OH 43215–2478
Phone: 614/469–6962 Fax: 614/469–2083

Oklahoma

USDA Agri-Center Bldg., 100 USDA, Suite 203, Stillwater, OK 74074–2655
Phone: 405/742–1204 Fax: 405/742–1201

Oregon

101 SW Main Street, Suite 1300, Portland, OR 97204–3221
Phone: 503/414–3221 Fax: 503/414–3277

Pennsylvania

1 Credit Union Place, Suite 340, Harrisburg, PA 17110–2993
Phone: 717/237–2210 Fax: 717/237–2238

Puerto Rico

Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123
Phone: 787/766–5206 Fax: 787/766–5987

Rhode Island

60 Quaker Lane, Suite 46, Warwick, RI 02886–0111
Phone: 401/828–1300 Fax: 401/828–0433

South Carolina

Strom Thurmond Federal Building, 1835 Assembly Street, Room 950, Columbia, SC 29201–2489
Phone: 803/253–2935 Fax: 803/253–3670

South Dakota

Federal Building, Room 203, 200 Fourth Street, S.W., Huron, SD 57350–2475
Phone: 605/352–1200 Fax: 605/352–1270

Tennessee

675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878
Phone: 615/736–5471 Fax: 615/736–7135

Texas

W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682
Phone: 254/742–9800 Fax: 254/742–9819

Utah

W.F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138
P.O. Box 11340, SLC, UT 84147–0350
Phone: 801/524–5050 Fax: 801/524–4403

Vermont

60 Union Street, Winooski, VT 05404–1999 Fax: 802/951–6327
Phone: 802/951–6795

Virginia

Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014
Phone: 804/287–1676 Fax: 804/287–1737

Washington

Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348
Phone: 509/323–2900 Fax: 509/323–2909

West Virginia

75 High Street, Room 301, Morgantown, WV 26505
Phone: 304/291–4152 x136 Fax: 304/291–4628

Wisconsin

6515 Watts Road, Suite 200, Madison, WI 53719–2726
Phone: 608/276–8732 x229 Fax: 608/276–5890

Wyoming

Federal Building, Room 3124, 100 East B Street, Casper, WY 82601–1911

Phone: 307/261–6453 Fax: 207/261–6490

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BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

In the Matter of: Macosia International, 2004 Baltimore Street, Laredo, Texas 78041, Respondent

Decision and Order

On August 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating an administrative proceeding against Macosia International (hereinafter ''Macosia''). The charging letter alleged that Macosia committed four violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (1999)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. secs. 2401–2420 (1991 & Supp. 1999)) (the Act).[2]

Specifically, the charging letter alleged that, on four separate occasions between on or about August 17, 1993 and on or about August 18, 1994, Macosia exported handcuffs and leg irons from the United States to Mexico without obtaining the validated export license required by § 772.1(b) of the former Regulations. BXA alleged that, by exporting handcuffs and leg irons to any person or destination or for any use in violation of or contrary to the terms of the Act, or any regulation, order, or license issued thereunder, Macosia violated Section 787.6 of the former Regulations in connection with each of the exports, for a total of four violations.

Macosia failed to answer or otherwise respond to the charging letter. Accordingly, pursuant to the default procedures set forth in § 766.7 of the regulations, BXA moved that the Administrative Law Judge (hereinafter the ''ALJ'') find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found that service of the charging letter was made on Macosia on September 10, 1998 and that, because it filed no answer to the charging letter, Macosia was in default. The ALJ also found the facts to be as alleged in the charging letter, and concluded that those facts establish that Macosia committed four violations of the former Regulations, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for the violations is a denial, for a period of seven years, of all of Macosia's export privileges. As provided by § 766.22 of the regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered, First, that, for a period of seven years from the date of this Order, Macosia International, 2004 Baltimore Street, Laredo, Texas 78041, and all of its successors or assignees, officers, representatives, agents, and employees when acting for or on behalf of Macosia International may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Macosia International and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

[1] The alleged violations occurred in 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 CFR parts 768–799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)) and August 10, 1999 (64 FR 44101, August 13, 1999), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1999)).

Dated: November 29, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–31957 Filed 12–8–99 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review and New Shipper Review

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

ACTION: Notice of Extension of Time Limits For Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0666 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

Background

In accordance with 19 CFR 351.213(b)(2), Aceros Camesa, S.A. de C.V. (''Camesa''), a Mexican producer of subject merchandise, requested that we conduct an administrative review of its sales. Petitioners in the proceeding, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (''the Committee'') also requested a review of Camesa's sales, in accordance with 19 CFR 351.213(b)(1). We published a notice of initiation of this antidumping duty administrative review on April 30, 1999 (64 FR 23269).

In accordance with 19 CFR 351.214, Cablesa, S.A. de C.V. (''Cablesa''), a Mexican producer of subject merchandise, requested that we conduct a new shipper review of its sales. We published a notice of initiation of this new shipper review on May 7, 1999 (64 FR 24573). After receiving a waiver of the normal time limits for a new shipper review from Cablesa under 19 CFR 351.214(j)(3), we decided to publish the results of this new shipper review simultaneously with the results of the administrative review. *See* 64 FR 61825 (November 15, 1999).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act directs the Department to make a preliminary determination within 245 days for each administrative review. The section provides, however, that ''if it is not practicable to complete the review within the foregoing time, the administrative authority may extend that 245-day period to 365 days * * *.'' Due to the reasons enumerated in the *Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Review of Steel Wire Rope from Mexico,* dated November 30, 1999, the Department has determined that it is not practicable to complete this review within the 245-day time limit.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results of the administrative review and new shipper review by seven days to December 8, 1999.

Dated: November 30, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–31982 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from two respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. This review covers two manufacturers and exporters of the subject merchandise, Tuberia Nacional S.A. de C.V. (TUNA) and Hylsa S.A. de C.V. (Hylsa). The period of review (POR) is November 1, 1997, through October 31, 1998.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury (TUNA), Charles Rast (Hylsa), or Linda Ludwig, Enforcement Group III, Office 8, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–0195, (202) 482–1324, or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1997/98 review period on November 12, 1998 (63 FR 63287). Respondents TUNA and Hylsa requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 23, 1998. See 63 FR 71091 (December 17, 1998).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 12, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to November 30, 1999. See Extension of Time Limit: Circular Welded Non-Alloy Pipe From Mexico; Antidumping Administrative Review, 64 FR 43982 (August 12, 1999).

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered each circular welded non-alloy steel pipe and tube product produced by the respondents, covered by the descriptions in the ''Scope of the Review'' section of this notice, supra, and sold in the home market during the POR, to be a foreign like product for purposes of determining appropriate product comparisons to US sales of circular welded non-alloy steel pipe and tube. Where there were no sales of identical merchandise in the home market to compare to US sales, we compared US sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's December 23, 1998 questionnaire, or to constructed value (CV).

Normal Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe from Mexico to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A (d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual US transactions.

We have used the date of invoice as the date of sale for all home market sales made by both TUNA and Hylsa during the POR. For US sales made by TUNA, we have also used the date of invoice as the date of sale. For US sales made by Hylsa, we have used the reported purchase order date as the date of sale because it is the most accurate on the record. See Analysis Memorandum for Hylsa, dated November 30, 1999.

Export Price and Constructed Export Price

Hylsa

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling and U.S. customs duties.

Tuna

For TUNA, we analyzed sales made to the United States, and determined that there are both EP and CEP sales in the United States during the POR. For certain sales to the United States, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by TUNA's U.S. affiliate (Acerotex) after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We determined that the remaining sales were EP sales based on the fact that TUNA sold the subject merchandise directly to the unaffiliated U.S. customer prior to importation, and CEP treatment was not otherwise indicated. We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling and U.S. customs duties.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's-length were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403 and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's-length. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR. 60472 (November 10, 1997); 62 FR 27295, 27355–56 (May 19, 1997). We

included those sales that passed the arm's-length test in our analysis (see 19 CFR 351.403; 62 FR at 27355–56). For TUNA, we used sales from TUNA directly to unaffiliated customers, and from affiliated resellers to the first unaffiliated customer, as the basis for determining normal value. See TUNA Analysis Memorandum, dated November 30, 1999. For Hylsa, we excluded from our analysis downstream sales made by affiliated customers because of their small volumes. See Memorandum to the File, dated October 20, 1999.

Where appropriate, in accordance with section 773(a)(6)(A) of the Act, we deducted credit expenses, warranties, advertising, insurance, packing, and certain discounts, and we added interest revenue.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).)

As the Department explained in Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (Cement from Mexico), 62 FR 17156 (April 9, 1997), for both EP and CEP the relevant transaction for the LOT analysis is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged by the exporter to the importer if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an unaffiliated U.S. customer the expenses referenced in section 772(d) of the Act and the profit allocated to these expenses. These expenses represent activities undertaken by the affiliated importer in making the sale to the unaffiliated customers. Because the expenses deducted under section 772(d) of the Act are incurred for selling activities in the United States, the deduction of these expenses may yield a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer, and we do not remove them to obtain the price on which the CEP LOT is based.

To determine whether some or all home market sales are at a different LOT than U.S. sales, we examined the stages of marketing and the selling functions in both markets. An analysis of the selling functions substantiates or invalidates the claimed LOTs.

Hylsa

For sales made by Hylsa during the POR, the record shows that sales in both markets were made at the same LOT. In the U.S. market, Hylsa sold to unaffiliated industrial end-users and distributors. In the home market, Hylsa sold to unaffiliated industrial end-users, distributors, and employees. Based on Hylsa's questionnaire responses, selling functions performed for customers in either market generally did not vary according to customer category or channel of distribution. Accordingly, we preliminary find that all sales in the home market and the U.S. market were made at the same level of trade, and we are not making a LOT adjustment.

TUNA

Our analysis of the data submitted by TUNA indicates that sales to the United States were made through two channels of distribution, and sales in the home market were through multiple channels of distribution. Furthermore, there were differences in selling functions between certain types of customers in both markets, depending upon the channel of distribution. All sales in the home market to unaffiliated parties were to end users. Conversely, sales in the United States were to distributors.

An examination of the selling functions in both markets indicates that TUNA performs a ''core'' of selling functions in the home market for all customers. These functions include inventory maintenance, salesman visits to customers, and technical services. Depending upon the channel of distribution, TUNA also performs additional selling functions for certain customers in the home market. TUNA provides just in time (JIT), and other specialized services to one channel of trade, which are not provided to any other home market customers. In a separate channel of trade, TUNA performs additional selling functions, related principally to affiliated resellers, which allows the resellers to perform selling functions for their unaffiliated customers. The selling functions provided by TUNA in this channel of trade are unique.

Based on our analysis, we preliminarily determine that there are three levels of trade in the home market. Those sales receiving JIT and other specialized services constitute one level of trade. Downstream sales through affiliates receive a unique set of selling functions and thus constitute a separate level of trade. All other sales in the home market constitute a third level of trade, in which there exists only the ''core'' selling functions.

In the United States, we preliminarily determine that there are two separate levels of trade. These correspond to EP and CEP sales, respectively. For CEP sales, we found minimal selling functions performed by TUNA for its U.S. affiliate. Accordingly, the CEP is at a different LOT than any of those HM LOTs. For EP sales, we found that TUNA performs certain selling functions consistent with the ''core'' functions performed for sales in the home market. Therefore, the selling functions are the same, and we preliminarily determine that EP sales in the U.S. are at the same level of trade as those sales in the home market which do not receive JIT services, or services provided on downstream sales (i.e. the third level of trade in the home market).

Section 773(a)(7)(A) of the Act directs us to make an adjustment for differences in LOTs where such differences affect price comparability. For CEP, because there is insufficient data to perform an analysis of the affect on price comparability, and each home market LOT is more advanced than the CEP LOT, the Department must make a CEP offset. Therefore, regarding those sales

to the United States which are classified as CEP sales, in accordance with section 773(a)(7)(B) of the Act, a CEP offset is warranted.

As we have determined that TUNA's home market sales at the third LOT are at the same level of trade as the EP sales in the United States, we have made no LOT adjustment when TUNA's EP sales matched sales at this LOT. See TUNA Analysis Memorandum, dated November 30, 1999.

Cost-of-Production Analysis

Because the Department disregarded sales below cost for both Hylsa and TUNA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production analysis in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

We calculated the COP based on the sum of Hylsa's and TUNA's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling, general, and administrative expenses (''SG&A''), and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs for TUNA, except as follows. Our analysis of the most recently submitted data by TUNA indicated that certain home market sales were not assigned a cost. As facts available, we assigned an average cost, by size and finish, to sales which might match to United States sales. We will request supplemental information on these certain home market sales and consider responsive submission prior to the publication of the final determination.

For Hylsa, we adjusted COPs to reflect similar physical characteristics for certain products. We subsequently weight-averaged the reported costs by control number. See Hylsa Analysis Memorandum.

B. Test of Home-Market Prices

We used the respondents' weighted-average COPs for the period November 1, 1997 through October 31, 1998. We compared the weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) Within an extended period of time, such sales were made in substantial quantities, and (2) Such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

In accordance with section 773(b)(2)(C), where less than 20 percent of Hylsa's and TUNA's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a TUNA's and Hylsa's sales during the POR were at prices less than the COP, we determine such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Furthermore, because we compared prices to POR average COPs, we determined that below-cost prices do not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded such below-cost sales of TUNA and Hylsa. Where all contemporaneous sales of comparison products were disregarded, we calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TUNA's and Hylsa's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses as reported in the U.S. sales database and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, *e.g.*, Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
TUNA	1.92
Hylsa	10.38

The Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed (19 CFR 351.224). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject

merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of circular welded-non-alloy steel pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c), in which case the cash deposit rate will be zero; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) If the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 36.62%, the ''all other'' rate from the original investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31983 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Administrative Review

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

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: We have preliminarily determined that sales by China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation have been made below normal value during the period of review of February 1, 1998, through January 31, 1999. China Hunan International Economic Development (Group) Corporation did not respond to our questionnaire and has been assigned a dumping margin based on adverse facts available. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

We have also determined that the review of China National Electronics Import & Export Hunan Company and Minmetals Precious & Rare Minerals Import & Export Corporation should be rescinded. Furthermore, neither Shieldalloy Metallurgical Corporation nor London & Scandinavian Metallurgical Co., Limited, subsidiaries of Metallurg, Inc., submitted a timely request for review. Therefore, sales by these companies have not been reviewed.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATES: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Paul Stolz, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

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

Background

On February 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on manganese metal from the People's Republic of China (PRC). *See Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China,* 61 FR 4415 (February 6, 1996) (*LTFV Investigation*). In accordance with 19 CFR 351.213(b)(2), on February 25, 1999, China Hunan International Economic Development (Group) Corporation (HIED), China Metallurgical Import & Export Hunan Corp./Hunan Nonferrous Metals Import & Export Associate Corp. (CMIECHN/CNIECHN), and Minmetals Precious & Rare Minerals Import & Export (Minmetals) requested that we conduct an administrative review of this order. On February 26, 1999, Elkem Metals Company [1] (Elkem/Eramet) requested that we conduct an administrative review of this order covering HIED, CMIECHN/CNIECHN, Minmetals, and China National Electronics Import & Export Hunan Company (CEIEC). On February 26, 1999, Kerr-McGee Chemical, LLC (Kerr-McGee) requested that we conduct an administrative review of this order covering HIED.

On March 29, 1999, in accordance with 19 CFR 351.213(c)(3), we published a notice of initiation of this antidumping duty administrative review. *See* 64 FR 14860. On April 20, 1999, Sumitomo Canada, Limited, (SCL), submitted an entry of appearance and requested that it receive a questionnaire so that it could establish the identity of its Chinese supplier and that its sales were made to U.S. customers not below normal value.

The Department is conducting this administrative review in accordance with section 751 of the Act. The period of review (POR) is February 1, 1998 through January 31, 1999.

Scope of Review

The merchandise covered by this review is manganese metal, which is

[1] Subsequent to this request, on June 30, 1999, the manganese metal production operations of Elkem Metals Company were acquired by Eramet Marietta Inc. Thus, this petitioner is referred to in this notice as ''Elkem/Eramet.''

composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Partial Rescission

CEIEC notified the Department that it had not made any U.S. sales of subject merchandise during the POR. Entry data provided by the U.S. Customs Service confirms that there were no POR entries from CEIEC of manganese metal. Also, on May 7, 1999, Minmetals informed the Department that although it had made two shipments of subject merchandise to the United States at the end of the POR, it believes these shipments did not enter the United States during the POR. The Department has not identified any customs entries of subject merchandise from Minmetals during the POR.

Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to CEIEC and Minmetals. *See* 19 CFR 351.213(d)(3); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 46763 (September 5, 1996).

Untimely Requests for Review

On April 20, 1999, 22 days after initiation of this administrative review, SCL submitted an entry of appearance, a request for access to business proprietary information and a request that it receive a questionnaire. On April 28, 1999, Shieldalloy Metallurgical Corporation (SMC) and London & Scandinavian Metallurgical Co., Limited, (LSM), subsidiaries of Metallurg, Inc., submitted a request that the Department extend the time limit for requesting an administrative review of LSM and that the Department initiate a review of its U.S. sales. The Department declined to extend the time limit for requesting an administrative review and did not initiate a review of LSM. Although these companies were not reviewed, based upon SCL's July 15, 1999 submission, and upon LSM's August 30, 1999 submission, we were able to ascertain SCL's and LSM's suppliers and confirm that SCL and LSM entered the merchandise at the appropriate cash deposit rate. Therefore, we intend to instruct Customs to liquidate these entries collecting the antidumping duties posted at the time of entry. This is consistent with the Department's consideration of SCL's entries during the last review. *See Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 64 FR 49447 (September 13, 1999).

Verification

As provided in section 782(i) of the Act, we verified factor information provided by a supplier, Xiang Tan Manganese Mine (XTMM). We also conducted a sales verification at CMIECHN/CNIECHN. Our verification at each of these companies consisted of standard verification procedures, including the examination of relevant sales and financial records and the selection of original documentation containing relevant information. Our verification results are detailed in the verification reports on file in the Central Records Unit (CRU) in room B–099 of the Department's main building.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in nonmarket economy (NME) countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) Any legislative enactments decentralizing control of companies; and (3) Any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589. A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *see also Sparklers* at 20589.

In our final LTFV determination, we determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See LTFV Investigation.* For this period of review, CMIECHN/CNIECHN responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and CMIECHN/CNIECHN continues to demonstrate an absence of government control, both in law and in fact, with respect to this company's exports, in accordance with the criteria identified in *Sparklers and Silicon Carbide.*

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination.

1. Application of Facts Available

We preliminarily determine that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of facts otherwise available is appropriate for HIED because it did not submit a response to our questionnaire issued to it on April 20, 1999.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action* (SAA), H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 at 870 (1994). To examine whether the respondent

''cooperated'' by ''acting to the best of its ability'' under section 776(b) of the Act, the Department considers, *inter alia,* the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, HIED failed to respond to the Department's questionnaire. Thus, we have determined that HIED withheld information we requested and significantly impeded the antidumping proceeding.

We have, therefore, determined that HIED has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation.* This margin represents the highest margin in the petition, as modified by the Department for the purposes of initiation. *See Initiation of Antidumping Duty Investigation: Manganese Metal from the PRC,* 59 FR 61869 (December 2, 1994) (*LTFV Initiation*).

Information derived from the petition constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.'' In addition, the SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

The PRC-wide rate being used in this proceeding as adverse facts available was previously corroborated. See *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 64 FR 49447 (September 13, 1999). We have no new information that would lead us to reconsider that decision.

Export Price

For U.S. sales made by CMIECHN/CNIECHN we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price treatment was not otherwise indicated.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance. The costs for these items were valued in the surrogate country (see discussion below).

U.S. Customs entry data for the POR indicate that CMIECHN/CNIECHN was the direct exporter for many more shipments of manganese metal than could be accounted for by CMIECHN/CNIECHN's verified U.S. sales. Based upon our verification of CMIECHN/CNIECHN's total U.S. sales, we have preliminarily determined that these additional entries are not U.S. sales by CMIECHN/CNIECHN for the purposes of this review.

Given our preliminary finding that these additional entries are not CMIECHN/CNIECHN sales for the purposes of this review, and consistent with our methodology adopted in the previous review, we have not calculated an export price for these entries. Also, for the reasons enumerated in the *Use of Facts Otherwise Available* section below, we likewise have not calculated an export price for HIED's sales.

Normal Value

1. Nonmarket-Economy Status

For the calculation of dumping margins for merchandise originating in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices or constructed value under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we preliminarily determine that India is the most comparable surrogate to the PRC. (*See* Memorandum to Susan Kuhbach from Jeff May; ''Non-Market-Economy Status and Surrogate Country Selection'' dated July 13, 1999, a public copy of which is available in the Central Records Unit.) In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above and which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as described below.

We valued manganese ore using a June 1998 export price quote (in U.S. dollars) from a Brazilian manganese mine for manganese carbonate ore. We adjusted this price further to account for the reported manganese content of the ore used in the PRC manufacture of the

subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (March, 1998 through March, 1999) and the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (March, 1998) (*Import Statistics*). Where necessary, we adjusted these values to reflect inflation up to the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for the PRC as calculated by the Department.

For selling, general, and administrative expenses (SG&A), factory overhead, and profit values, we used information from the *Reserve Bank of India Bulletin* (January, 1997) for the Indian industrial grouping ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of materials and energy. Using the same source, we also calculated the SG&A expense as a percentage of the cost of materials, energy and factory overhead, and profit as a percentage of the cost of production (*i.e.,* materials, energy, labor, factory overhead and SG&A).

For most packing materials values, we used per-unit values based on the data in the *Import Statistics.* For iron drums, however, we used a price quote from an Indian manufacturer rather than a value from the *Import Statistics* because the quoted price was for the appropriate type of container used, whereas the *Import Statistics* were aggregated over various types of containers. We made further adjustments to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value electricity, we used the average rate applicable to large industrial users throughout India as reported in the *1995 Confederation of Indian Industries Handbook of Statistics.* We adjusted the March 1, 1995, value to reflect inflation up to the POR using the WPI published by the IMF.

To value rail freight, we relied on rate tables published by the Indian Railway Conference Association. To value truck freight, we used a price quotation from an Indian freight provider.

For a more detailed explanation of the methodology used in calculating various surrogate values, *see* Memorandum to the File from Case Team; ''Calculations for the Preliminary Results'' (December 2, 1999).

Preliminary Results of the Review

We hereby determine that the following weighted-average margins exist for the period February 1, 1998, through January 31, 1999:

Manufacturer/exporter	Margin (percent)
CMIECHN/CNIECHN	2.00
PRC-wide	143.32

Because we are rescinding the review with respect to CEIEC and Minmetals, the respective company-specific rates for these companies remain unchanged. Likewise, because SMC and LSM submitted an untimely request for review, LSM's sales of subject merchandise during the POR were not reviewed. Moreover, an administrative review was not initiated with respect to SCL for this POR, and, therefore, SCL's U.S. sales were not reviewed.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment and Cash Deposit Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

In order to assess duties on appropriate entries as a result of this review, we have calculated entry-specific duty assessment rates based on the ratio of the amount of duty calculated for each of CMIECHN/CNIECHN's verified sales during the POR to the total entered value of the corresponding entry. The Department will instruct the Customs Service to assess these rates on those entries which correspond to sales verified by the Department as having been made directly by CMIECHN/CNIECHN. With respect to SCL and LSM, third country resellers which established the identity of their suppliers, the Department will instruct Customs to liquidate these entries at the cash deposit rate in effect for their supplier(s) at the time of entry.

As discussed in the *Export Price* section above, however, the Customs entry data for the POR indicates that many more shipments of manganese metal listing CMIECHN/CNIECHN as the manufacturer/exporter were entered into the United States than the number of POR sales reported by CMIECHN/CNIECHN. On those entries listing CMIECHN/CNIECHN as the direct exporter but for which there are no corresponding verified sales, the Department will instruct the Customs Service to assess the PRC-wide rate of 143.32 percent. This is consistent with the Department's practice as applied during the last review. *See Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 64 FR 49449 (September 13, 1999). The Department will likewise instruct the Customs Service to assess the PRC-wide rate on all POR entries from HIED and on all other PRC exporters that do not have separate rates.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for CMIECHN/CNIECHN, the cash deposit rate will be the rates established in the final results of this review for this firm; (2) for Minmetals and CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rates will continue to be 5.88 percent and 11.77 percent, respectively (these are the rates which currently apply to these companies); (3) for sales made by LSM and SCL, the cash deposit rates will be those cash deposit rates in effect at the time of entry for their respective PRC supplier(s);[2] (4) for other non-PRC

[2] *See e.g., Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 64 FR 49447 (September 13, 1999); *Fresh Garlic from the PRC; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review,* 62 FR 23758, 23760; *Sparklers from the*

exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter; and (5) for all other PRC exporters, including HIED, the cash deposit rate will be 143.32 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 2, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–31984 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Evaluation of the Common Industry Format (CIF) for Reporting the Results of Usability Tests

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 7, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the Internet at LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Sharon Laskowski, Ph.D., National Institute of Standards and Technology (NIST), 100 Bureau Drive, Stop 8940, Gaithersburg, MD 20899–8940.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Common Industry Format (CIF) has been developed as part of the IUSR (Industry USability Reporting: http://www.nist.gov/iusr) Project. The goal of that project is to find ways to highlight the importance of usability in software development. Companies that make software can now use the CIF to communicate their findings on usability; the CIF can be used by companies that buy software to help make more informed decisions.

CIFter (Common Industry Format—Testing of Usability Evaluation Reports) is a project that seeks to determine whether the extent of the variability in usability test results can be minimized by using a common format for reporting results. CIFter participants will use the CIF (developed in the NIST IUSR project) in the context of an experimental setting to report on results of user testing of a web site to be designated by CIFter.

In order to validate the use of the CIF for reporting usability results, the CIFter project team plans to identify a website and 5 or more evaluation teams. These teams will be recruited from professional usability practitioners, the software industry, and academic institutions. Each of the teams will perform testing of the website and will report the results of their evaluation in the recommended format (CIF).

Alternatively, NIST expects that members of the IUSR project, both in the U.S. and Europe, might submit completed CIF forms to facilitate comparison of reports from a variety of companies. NIST's role in such cases would be to facilitate sharing of the results among its industrial participants.

II. Method of Collection

After performing a usability analysis of a software product, participants will complete the CIF form and return it to NIST. All elements of the CIF are free-form text rather than checklists.

III. Data

OMB Approval Number: None.
Agency Form Number: None.
Type of Request: New collection.
Burden: 120 hours.
Number of Respondents: 30.
Average Hours Per Response: 4 hours.
Affected Public: Researchers in academic, public and business settings.
Respondent's Obligation: Voluntary.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: December 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–31963 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120399B]

Endangered Species; Permits

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

ACTION: Issuance of a modification to scientific research permit 1159.

SUMMARY: Notice is hereby given that NMFS has issued a modification to scientific research permit 1159 to Dr. Robert Brownell of NMFS Southwest Fisheries Science Center (SWFSC).

ADDRESSES: The application and related documents are available for review by appointment in the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

PRC; Final Results of Antidumping Duty Administrative Review, 61 FR 39630, 39631.

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

All statements and opinions contained in the permit action summary are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: endangered green turtle (*Chelonia mydas*), endangered hawksbill turtle (*Eretmochelys imbricata*), endangered leatherback turtle (*Dermochelys coriacea*), threatened loggerhead turtle (*Caretta caretta*), and endangered olive ridley turtle (*Lepidochelys olivacea*).

Modification Issued

SWFSC currently possesses a 3-year scientific research permit (1159) to take listed sea turtles opportunistically during marine mammal research surveys in the eastern tropical Pacific. Authorization was granted to take up to 400 turtles over the three year period to include the following species: olive ridley, green, leatherback, hawksbill, and loggerhead. The turtles would be weighed, photographed, flipper tagged, blood sampled, and tissue sampled. Additionally, stomach lavage would be performed on captured turtles to identify prey items and up to 30 turtles would be outfitted with satellite transmitters. The purpose of the research is to obtain data on the geographic distribution and stock assessment, migratory and dive behavior, and habitat needs and primary foraging areas of turtles at sea. On November 10, 1999, SWFSC applied for an emergency modification to permit 1159 as a result of unexpectedly high numbers of olive ridley turtles encountered during survey efforts. Modification #2 authorizes increased take of olive ridley turtles from 330 to 500. No additional stomach lavage or satellite tagging is authorized. Modification #2 to Permit 1159 was issued on November 23, 1999, authorizing take of listed species and is valid for the duration of the permit, which expires December 31, 2000.

Dated: December 6, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–31970 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 64 FR 6050, published on February 8, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 9, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
334/634	190,400 dozen.
338/339	2,900,000 dozen.
347/348/647/648	3,600,000 dozen.
645/646	158,624 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32015 Filed 12–8–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Advisory Group will meet at Langley AFB, VA from January 13–14, 2000 from 8 a.m. to 5 p.m.

The purpose of the meeting is to provide advice to the Commander of the Aerospace Command and Control Intelligence, Surveillance, and Reconnaissance Center on their Technology Programs.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code,

specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–31956 Filed 12–8–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Disposal, Transfer, or Retention of the Family Housing and Announcement of Intent To Prepare an Environmental Assessment (EA) for the Revitalization of the Family Housing at Fort Buchanan, Puerto Rico

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: On January 28, 1999, the Department of the Army announced in the **Federal Register** (64 FR 4399) its intent to prepare an EIS for the disposal, transfer or retention of the family housing at Fort Buchanan, Puerto Rico. The proposed action was intended to implement the recommendation of the 1995 Defense Base Closure and Realignment Commission to dispose of the family housing.

Subsequent to the Commission's recommendation, the Secretary of Defense was authorized by Section 8142 of the 1999 DoD Appropriations Act (Pub. L. 105–262) to retain all or a portion of the family housing to meet military family housing needs arising out of the relocation of elements of the United States Army South (USARSO) to Fort Buchanan. That relocation was due to the requirements of the Panama Canal Treaty between the United States and Panama. On May 17, 1999, acting on behalf of the Secretary of Defense, the Secretary of the Army decided to retain 215 housing units. Additionally, the 146 remaining units will be used as ''swing space'' until they are no longer required and then will be demolished. ''Swing space'' is housing for military families awaiting revitalization of their housing. Since the scope of the proposed action has changed, an EIS is no longer required under the National Environmental Policy Act. Instead, the Army will prepare an EA for the revitalization of the family housing as a result of the USARSO move to Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Dr. Neil Robison, U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile (CESAM–PD), 109 St. Joseph Street, Mobile, AL 36602; phone (334) 690–3018 and telefax (334) 690–2605.

Dated: December 1, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health OASA(I&E).

[FR Doc. 99–31828 Filed 12–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete Systems of Records.

SUMMARY: The Department of the Army is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 10, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC-PAD-RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 2, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350-6 FORSCOM

SYSTEM NAME:

U.S. Army Marksmanship Unit Data System (AMUDS) *(February 22, 1993, 58 FR 10002).*

Reason: This system is obsolete. Records have been destroyed.

A0351 DAMO

SYSTEM NAME:

USAWC Cooperative Degree Program Files *(February 22, 1993, 58 FR 10002).*

Reason: Records are no longer being maintained by the Department of the Army, but by the civilian universities participating in the master's degree program.

[FR Doc. 99–31759 Filed 12–8–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 7, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision,

extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 3, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: State and local implementation of the Individuals with Disabilities Education Act (IDEA) '97.

Frequency: One time.

Affected Public: State, local, or tribal government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,995. Burden Hours: 4,709.

Abstract: The Office of Special Education Programs (OSEP) is conducting a five-year study to evaluate the state and local impact and implementation of the Individuals with Disabilities Education Act (IDEA) of 1997. The evaluation will provide information on the types and impacts of policies and practices engaged in by states, school districts, and schools to implement the provisions of IDEA '97, particularly with regard to nine key issues identified by the law. OSEP is engaging in this evaluation to report to Congress, in accordance with the provisions of IDEA '97 (Sec. 674). Clearance is sought for multiple instruments. Respondents will be state special education directors, district special education directors, and school principals.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–31834 Filed 12–8–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 10, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 3, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Goals 2000 Comprehensive Local Reform Assistance.

Frequency: Annually.

Affected Public: State, local, or tribal government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 400. Burden Hours: 12,000.

Abstract: Section 304(e) of the Goals 2000: Educate America Act authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in Goals 2000 as of that date. Both the Oklahoma and Montana SEAs have approved LEA participation in this direct grant program. The Goals 2000 Act is designed to help States and communities develop and implement their own education reforms focused on challenging academic standards in order to increase student academic achievement.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–31833 Filed 12–8–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–88–000]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 1999:

Fortieth Revised Sheet No. 8
Fortieth Revised Sheet No. 9
Thirty-ninth Revised Sheet No. 13
Forty-eighth revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $1.8 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,156,641 to $1,796,681, based primarily on a one-time refund from Northern Natural Gas Company.

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 portests 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31846 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–89–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective January 1, 2000:

1st Revised Twenty-Fifth Revised Sheet No. 17

ANR states that the purpose of this filing is to establish the revised Gas Research Institute surcharges approved in the Commission's September 29, 1999 order at Docket No. RP99–323–000.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31847 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–90–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 3, 1999.

Take notice that on November 30, 1999, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-ninth Revised Sheet No. 11, with an effective date of January 1, 2000.

CIG states that the filing was made pursuant to CIG's FERC Gas Tariff, First Revised Volume No. 1, General Terms and Conditions, Article 21.5 (Account No. 858 Stranded Costs).

CIG states that copies of the filing were served upon the company's jurisdictional firm 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31848 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–102–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on December 1, 1999, Columbia Gas Transmission Corporation

(Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2000:

Fortieth Revised Sheet No. 25
Fortieth Revised Sheet No. 26
Fortieth Revised Sheet No. 27
Thirty-seventh Revised Sheet No. 28

Columbia states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 29, 1999 in Gas Research Institute's (GRI) Docket No. RP99–323–000 (Order Approving Settlement) (88 FERC 61,293), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia is submitting revised tariff sheets to reflect the 2000 GRI funding mechanism.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31860 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–103–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on December 1, 1999, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of this FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to become effective January 1, 2000:

Twenty-second Revised Sheet No. 18
Twelfth Revised Sheet No. 18A
Twenty-third Revised Sheet No. 19

Columbia Gulf states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 29, 1999 in Gas Research Institute's (GRI) Docket No. RP99–323–000 (Order Approving Settlement) (88 FERC ¶ 61,293), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia Gulf is submitting revised tariff sheets to reflect the 1999 GRI funding mechanism.

Columbia Gulf states further that copies of this filing have been mailed to all of its customers and affected state regulatory 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31861 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–5–000]

Coral Mexico Pipeline, LLC; Notice of Petition for Rate Approval

December 3, 1999.

Take notice that on November 29, 1999, Coral Mexico Pipeline, LLC (Coral), a new intrastate pipeline company, filed a Petition for Rate Approval (Petition) pursuant to Section 284.123(b)(2) of the Commission's regulations, 18 CFR 284.123(b)(2). In the Petition, Coral requests the Commission to approve: (1) a two-part maximum firm transportation rate consisting of a demand charge of $6.5612 per MMBtu of reserved Maximum Daily Transportation Quantity, and a commodity charge of $0.00 per MMBtu of gas transported; and (2) a maximum interruptible rate of $0.2157 per MMBtu of gas transported. Coral further proposes to retain as reimbursement for compressor fuel varying amounts ranging between 0.57% to 1.55%, depending on the Points of Redelivery used.

Coral states that the foregoing postage stamp rates will, if approved by the Commission, be applicable to firm and interruptible transportation services to be provided by Coral pursuant to section 311(a)(2) of the Natural Gas Policy Act through a new pipeline to be constructed, owned and operated by Coral (the Import/Export Facility), and through pipeline capacity to be leased by Coral (the Leased Capacity). The Import/Export Facility will consist of approximately 97 miles of 24-inch pipeline that extend from the International border between the United States and Mexico to a point of interconnection with the existing intrastate pipeline facilities of Tejas Gas Pipeline, L.L.C. (Tejas) located in King Ranch, Kleberg County, Texas. The Leased Capacity will be capacity leased on the existing inrastate pipeline facilities of Tejas, Tejas Gas Operating, LLC, Gulf Energy Pipeline, LLC, and Corpus Christi Transmission Company, L.P.

Pursuant to section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the Petition's filing date, the rates proposed therein will be deemed to be fair and equitable and not in excess of an amount that interstate pipelines would be permitted to charge for similar services. The Commission may, prior to the expiration of the 150-

day period, extend the time for action or institute a proceeding.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 18, 1999. 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31842 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–94–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

December 3, 1999.

Take notice that on November 30, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixteenth Revised Sheet No. 4. East Tennessee requests an effective date of January 1, 2000.

East Tennessee states that the revised tariff sheet is being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998 (the GRI Settlement), and the Commission's ''Order Approving the Gas Research Institute's Year 2000 Research, Development and Demonstration Program and 2000–2004 Five-Year Plan'' issued on September 29, 1999 in Docket No. RP99–323. Gas Research Institute, 83 FRCC ¶61,093 (1998), order on reh'g, 83 FERC ¶61,331 (1998); Gas Research Institute, 88 FERC ¶61, 293 (1999). East Tennessee further states that the revised tariff sheet revises the Gas Research Institute surcharges for 2000.

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. Protest 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31852 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–91–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2000:

Thirty-Sixth Revised Sheet No. 8A
Twenty-Seventh Revised Sheet No. 8A.01
Twenty-Eighth Revised Sheet No. 8A.02
Thirty-Second Revised Sheet No. 8B
Twenty-Fifth Revised Sheet No. 8B.01

FGT states that it is filing the referenced tariff sheets pursuant to the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (GRI Settlement) as approved by the Federal Energy Regulatory Commission Order issued April 29, 1998 in Docket No. RP97–199–003. The funding mechanism includes the approved GRI demand charges of 20 cents per MMBtu per month (.66¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 12.3 cents per MMBtu per month (.40¢ MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.72 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 2000 funding mechanism includes a volumetric charge of 1.60 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 1999 GRI charges.

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 be 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31849 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–85–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

December 3, 1999.

Take notice that on November 30, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 7 and Fifth Revised Sheet No. 48, proposed to be effective January 1, 2000.

Great Lakes states that the tariff sheets described above reflect the revised funding surcharges for the Gas Research Institute (GRI) for the year 2000. These surcharges were approved by the Commission in its order issued September 29, 1999, in which it also approved GRI's funding for its year 2000 research, development, and demonstration (RD&D) program and its 2000—2004 five-year RD&D plan. 88 FERC ¶61,293 (1999).

Any person desiring to be hard 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 a 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31843 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–86–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-sixth Revised Sheet No. 4. The proposed effective date of this revised tariff sheet is January 1, 2000.

Iroquois states that, pursuant to Part 154 of the Commission's regulations and section 12.1 of the General Terms and Conditions of its tariff, it is filing Twenty-sixth Revised Sheet No. 4 to reflect the GRI surcharge for calendar year 2000, which the Commission approved in an order issued on September 29, 1999 in Docket No. RP99–323.

Iroquois states that copies of its filing were served on all 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 section 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31844 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–105–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

December 3, 1999.

Take notice that on December 1, 1999, KN Interstate Gas Transmission (Co. (KNI) tendered for filing to become a part of its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, the following tariff sheet(s) to be effective January 1, 2000:

Third Revised Volume No. 1–A
Ninth Revised Sheet No. 4–D

First Revised Volume No. 1–C
Fourteenth Revised Sheet No. 4

KNI states that this filing is being submitted in compliance with the Commission Letter Order in Docket No. RP99–323–00 granting the new settlement GRI surcharge rates for year 2000.

KNI states that copies of this filing have been served upon all affected firm customers of KNI and applicable state 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 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31863 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–106–000]

KN Wattenberg Transmission LLC; Notice of Tariff Filing

December 3, 1999.

Take notice that on December 1, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing to become a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective January 1, 2000.

Second Revised Sheet No. 6

KNW states that this filing is being submitted in compliance with the Commission Letter Order in Docket No. RP99–323–000 granting the new settlement GRI surcharge rates for year 2000.

KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state 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 section 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 protestant 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 202–203–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31864 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Midwestern Gas Transmission Company; Notice of Tariff Filing

[Docket No. RP00–95–000]

December 3, 1999.

Take notice that on November 30, 1999, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 5. Midwestern requests an effective date of January 1, 2000.

Midwestern states that Eleventh Revised Sheet No. 5 is being filed in compliance with the March 10, 1998 Stipulation and agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998 (the GRI Settlement), and the Commission's ''Order Approving the Gas Research Institute's Year 2000 Research, Development and Demonstration Program and 2000–2004 Five-Year Plan'' issued on September 29, 1999 in Docket No. RP99–323. Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998); Gas Research Institute, 88 FERC ¶ 61,293 (1999). Midwestern further states that the revised tariff sheet revises the Gas Research Institute surcharges for 2000.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31853 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2012–000]

North American Electric Reliability Council; Notice of Filing

December 3, 1999.

Take notice that on December 1, 1999, North American Electric Reliability Council (NERC), tendered for filing its Final Report on the NERC Market Redispatch Pilot.

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 21, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31836 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–92–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2000:

Sixteenth Revised Sheet Number 156
Fifteenth Revised Sheet Number 157

Northern Border proposes to increase the Maximum Rate from 3.643 cents per 100 Dekatherm-Miles to 4.095 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 1.527 cents per 100 Dekatherm-Miles to 3.095 cents per 100 Dekatherm-Miles. The Maximum Rate reflects Northern Border's rate case at Docket No. RP99–322–000, which was suspended by the Commission in its order dated June 30, 1999 to become effective December 1, 1999. Thus, a portion of this Maximum Rate will be billed subject to refund. In accordance with the computational terms of Rate Schedule IT–1, the increase in the Minimum Revenue Credit (MRC) is due primarily to long term debt payments made during the last six months that were not incurred in the previous six month time-period. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers an interested state regulatory 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 section 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31850 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–4–000]

PG&E Gas Transmission Teco, Inc.; Notice of Petition for Rate Approval

December 3, 1999.

Take notice that on November 23, 1999, PG&E Gas Transmission Teco, Inc. (Teco) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve rates for interruptible parking and lending services pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Teco requests approval to charge a maximum rate for $0.2136 per MMBtu, which is equal to the existing maximum rate of interruptible transportation recently approved by a Commission order issued October 27, 1999, in Docket No. PR99–6. Teco proposes that the rate for parking and lending service be made effective December 1, 1999.

Pursuant to section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the proposed rate for parking and lending service will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before December 18, 1999. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31840 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4548–000]

PJM Interconnection L.L.C.; Notice of Filing

December 3, 1999.

Take notice that on November 30, 1999, PJM Interconnection, L.L.C. (PJM), pursuant to the Commission's letter order issued on October 28, 1999, tendered for filing a letter advising the Commission that the effective date of the Interconnection Service Agreement between PJM and Sithe Power Marketing, L.P., is the date service commences under aid Agreement.

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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31837 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–87–000]

Questar Pipeline Company; Notice of Tariff Filing

December 3, 1999.

Take notice that on November 30, 1999, Questar Pipeline Company tendered for filing of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective December 30, 1999:

Third Revised Sheet No. 5A.1
Eleventh Revised Sheet No. 40
Second Revised Sheet No. 97
Second Revised Sheet No. 114

Questar's tariff Sheet No. 5A.1 provides for Questar to recover certain take-or-pay buyout/buydown costs from Questar Gas Company, formerly Mountain Fuel Supply Company, under Account No. 191, in accordance with the provisions of FERC Order No. 528 and 18 CFR 2.104. Questar has recovered these costs and does not anticipate future take-or-pay buyout/buydown costs from Questar Gas Company. Therefore, this provision is proposed to be omitted from Questar's tariff. In addition, a correction has been made to accommodate the name change of Mountain Fuel Supply Company to Questar Gas Company.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31845 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–96–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets

December 3, 1999.

Take notice that on November 30, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff

sheets, to become effective January 1, 2000:

4th Revised Forty Eighth Revised Sheet No. 14
5th Revised Thirty Fourth Revised Sheet No. 14a
4th Revised Sixty Ninth Revised Sheet No. 15
5th Revised Fortieth Revised Sheet No. 15a
4th Revised Forty Eighth Revised Sheet No. 16
5th Revised Thirty Fourth Revised Sheet No. 16a
4th Revised Sixty Ninth Revised Sheet No. 17
5th Revised Fortieth Revised Sheet No. 17a
2nd Revised Thirty Fourth Revised Sheet No. 18
3rd Revised Sixteenth Revised Sheet No. 18a

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as inventory to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT–NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory.

Southern states that copies of the filing were served upon Southern'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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31854 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–97–000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

December 3, 1999.

Take notice that on November 30, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective January 1, 2000:

Fourth Revised Thirty-Fourth Revised Sheet No. 14A
Fourth Revised Fortieth Revised Sheet No. 15A
Fourth Revised Thirty-fourth Revised Sheet No. 16A
Fourth Revised Fortieth Revised Sheet No. 17A
Second Revised Sixteenth Revised Sheet No. 18A

Southern asserts that the purpose of this filing is to comply with the Commission's Order issued on September 29, 1995, which approved the Stipulation and Agreement (Settlement) filed by Southern on March 15, 1995 in Docket Nos. RP89–224–012, et al. In accordance with Article VII of the Settlement, Southern has made this filing to recover a GSR volumetric surcharge based on amounts not received during 1999.

Paragraph 17 of Article VII of the Settlement provides for Southern to file by December 1 of each year to collect unrecovered gas supply realignment (GSR) costs through its GSR volumetric surcharge, to be effective for the parties supporting the Settlement beginning January 1 of the following year. The proposed GSR volumetric surcharge of $.0004/Dth reflects an increase from the $.0002/Dth surcharge currently in effect.

Southern states that copies of the filing were served upon Southern's customers, intervening parties 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31855 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–98–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, Southern Natural Gas Company (Southern) tendered for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets:

Tariff Sheets Applicable to Contesting Parties

Second Revised Forty-eighth Revised Sheet No. 14
Second Revised Sixty-ninth Revised Sheet No. 15
Second Revised Forty-eighth Revised Sheet No. 16
Second Revised Sixty-ninth Revised Sheet No. 17
First Revised Thirty-fourth Revised Sheet No. 18

Tariff Sheets Applicable to Settling Parties

Second Revised Thirty-fourth Revised Sheet No. 14a
Second Revised Fortieth Revised Sheet No. 15a
Second Revised Thirty-fourth Revised Sheet No. 16a
Second Revised Fortieth Revised Sheet No. 17a
First Revised Sixteenth Revised Sheet No. 18a
First Revised Sixth Revised Sheet No. 22

Southern states that the proposed tariff sheets implement the Gas Research Institute's (GRI) revised surcharges for 2000. The 2000 GRI Funding Formula consists of surcharges (i) .72¢ per Dth applicable to the commodity/usage portion of firm service rates and to interruptible rates and (ii) either 20.0¢ per Dth for high load factor customers or 12.3¢ per Dth for low load factor customers on the demand/reservation component of firm service rates. The 2000 GRI Funding Formula provides for a surcharge of 1.6¢ per Dth on service

rates for small customers. The Commission authorized these surcharges in Docket No. RP99–323–000 to be effective January 1, 2000. Gas Research Institute, 88 FERC 61,293 (1999). Consistent with the Commission's order, Southern has proposed these tariff sheets to be effective January 1, 2000.

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. 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 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31856 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–99–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

December 3, 1999.

Take notice that on November 30, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 2000.

Third Revised Forty-Eighth Revised Sheet No. 14
Third Revised Thirty-Fourth Revised Sheet No. 14A
Third Revised Sixty-Ninth Revised Sheet No. 15
Third Revised Fortieth Revised Sheet No. 15A
Third Revised Forty-Eighth Revised Sheet No. 16
Third Revised Thirty-Fourth Revised Sheet No. 16A
Third Revised Sixty-Ninth Revised Sheet No. 17
Third Revised Fortieth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period August 1, 1999 through October 31, 1999. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern'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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31857 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–95–000]

Southwest Power Pool, Inc.; Notice of Filing

December 3, 1999.

Take notice that on November 29, 1999, Southwest Power Pool, Inc. filed a letter notifying the Commission that SPP seeks to withdraw its request to terminate its service agreements with UtiliCorp United, Inc. and Sunflower Electric Corporation (individually, UtiliCorp and Sunflower, and collectively Respondents), contained in Section VI of its Complaint submitted in this proceeding on September 30, 1999.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31835 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–104–000]

TCP Gathering Company; Notice of Tariff Filing

December 3, 1999.

Take notice that on December 1, 1999, TCP Gathering Company (TCP) tendered for filing to become a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective January 1, 2000.

Fourth Revised Sheet No. 6

TCP states that this filing is being submitted in compliance with the Commission Letter Order in Docket No. RP99–323–000 granting the new settlement GRI surcharge rates for year 2000.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31862 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–93–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 3, 1999.

Take notice that on November 30, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed on Appendix A to the filing. Tennessee requests an effective date of January, 1, 2000.

Tennessee states that the revised tariff sheets are being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, et al., and approved by the Commission on April 29, 1998 (the GRI Settlement), and the Commission's ''Order Approving the Gas Research Institute's Year 2000 Research, Development and Demonstration Program and 2000–2004 Five-Year Plan'' issued on September 29, 1999 in Docket No. RP99–323. Gas Research Institute, 83 FERC ¶61,093 (1998), order on reh'g, 83 FERC ¶61,331 (1998); Gas Research Institute, 88 FERC ¶61,293 (1999). Tennessee further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2000.

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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31851 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–100–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 3, 1999.

Take notice that on November 30, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its sixth annual cashout report for the September 1998 through August 1999 period.

Tennessee states that the cashout report is the first filed by Tennessee under the new cashout reconciliation methodology established pursuant to the March 25, 1999 cashout settlement on the Tennessee system. The cashout report reflects a net cashout loss during the period of $1,580,009. Pursuant to the cashout settlement, there is no cumulative loss carryforward from prior cashout operations.

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 on or before December 10, 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. 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31858 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–101–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1999.

Take notice that on November 30, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of January 1, 2000:

Fifteenth Revised Sheet No. 6A

Williams states that pursuant to Order Approving Settlement, issued April 29, 1998, in Docket No. RP97–391–002, et al. and Williams FERC Gas Tariff, Original Volume No. 1, Article 25, Williams is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services.

Williams states that a copy of its filing was served on all of Williams' 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31859 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–107–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariffs

December 3, 1999.

Take notice that on December 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 to become effective January 1, 2000.

Williston Basin states that the base tariff rates reflected on the proposed tariff sheets listed on Appendix A to the filing, are based on a cost of service for the twelve months ended July 31, 1999, as adjusted for changes which are known and measurable with reasonable accuracy during a nine month adjustment period ending April 30, 2000. Williston Basin further states that the proposed base tariff rates, when compared with the rates filed on November 12, 1999, in Docket Nos. RP92–236–000, *et al.*, are designed to produce an annual jurisdictional revenue increase of approximately $13.4 million.

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 section 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31865 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–383, North and South Carolina]

Duke Energy Corporation; Notice of Availability of Final Environmental Assessment

December 3, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has prepared a final environmental assessment (FEA) for a proposal to grant an easement to Sailview Properties, LLC to construct and use commercial/residential piers and a community marina with a total of 186 boat slips. The proposed action would be located at the existing Sailview Subdivision in Catawba Springs Township along the western shoreline of Lake Norman near the intersection of NC State Road 1377 and NC State Road 1376 in Lincoln County, North Carolina.

The FEA is attached to a Commission order issued on November 30, 1999 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. For further information, please contact the project manager, Brian Romanek at (202) 219–3076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31841 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; Requesting Reply Comments

December 3, 1999.

Take notice that the following hydroelectric application has been filed with the Commission. An Applicant-Prepared Environmental Assessment (APEA) for the Upper Menominee River Basin Projects, which includes the project below, has been filed with the Commission. Both documents are available for public inspection.

a. *Type of Application:* Surrender of License.

b. *Project No.:* 2471–005.

c. *Date filed:* October 1, 1999.

d. *Applicant:* Wisconsin Electric Power Company (Wisconsin Electric).

e. *Name of Project:* Sturgeon.

f. *Location:* The project is located on the Sturgeon River, a tributary of the Menominee River, in Dickinson County, Michigan. The project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ms. Rita L. Hayen, P.E., Project Manager, Hydro Licensing, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201–2046, (414) 221–2413, *rita.hayen@wepco. com* or David K. Porter, Senior Vice President, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201–2046, (414) 221–2500.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: Thomas. Papsidero@ferc.fed.us.

j. Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE, Washington, DC 20426. Please include the project number (2471–005) on any filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* On March 25, 1996, the Director, Office of Hydropower Licensing, approved Wisconsin Electric's use of the Alternative Licensing Process. Scoping, pursuant to the National Environmental Policy Act of 1969 as amended, for the project was conducted through scoping documents issued in July 1996 and January 1997, and in public scoping meetings on September 16 and 17, 1996. The draft license application and APEA were distributed by the applicant for comment on October 20, 1998.

The Commission staff has reviewed the license application and APEA and has determined that the application is acceptable for processing and no additional information or studies are needed to prepare the Commission's environmental assessment. Comments as indicated above, are being requested from interested parties. The applicant will have 45 days following the end of this period to respond to those comments, or may elect to seek a waiver of this deadline.

l. *Description of Project:* The project consists of the following: (1) a 217-foot-long, 53-foot-high concrete arch dam, a 14-foot-wide pen stock intake, and a 7.5 -foot-wide trash gate; (2) a reservoir of 248 acres; (3) a 240-foot-long, 7-foot-diameter tunnel which connects to a 48-foot-long, 7-foot-diameter penstock; (4) a 34-foot long by 21-foot-wide power house with an installed capacity of 800kW; (5) a transmission line connection; and (6) appurtenant facilities.

m. *Description of Action:* Wisconsin Electric requests to surrender the license for this constructed project for economic reasons and as an enhancement of river resources, as part of a negotiated settlement concerning resource management and power generation issues in the Upper Menominee River Basin. The licensee is also requesting an order directing the removal of the Sturgeon Project within seven years.

n. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

o. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application and APEA.

p. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

q. All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS;'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31838 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2928]

Merrimac Paper Company Inc.; Notice of Authorization for Continued Project Operation

December 3, 1999.

On September 29, 1997, Merrimac Paper Company Inc., licensee for the Merrimac Project No. 2928, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2928 is located along the South Canal on the Merrimack River within the City of Lawrence, Essex County, Massachusetts.

The license for Project No. 2928 was issued for a period ending November 30, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2928 is issued to Merrimac Paper Company Inc. for a period effective December 1, 1999, through November 30, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders other otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Merrimac Paper Company Inc. is authorized to continue operation of the Merrimac Project No. 2928 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31839 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 3, 1999.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP98–150–000 and CP98–151–000: 11/23/99, Jeff Shenot.
2. Project Nos. 2699 and 2019: 11/22/99, Don L. Klima.
3. Project No. 1962: 11/29/99, Robert J. Baiocchi.
4. CP99–94–000: 11/22/99, Carol Ann Reed.
5. CP98–150–000: 11/22/99, John Lacey.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–31866 Filed 12–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Applications for the 2005 Resource Pool Power Allocations, Central Valley Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Extension.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published a Call for 2005 Resource Pool Applications in the **Federal Register** pursuant to the 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region). This notice extends the filing date for applications for a percentage of the Sierra Nevada Region's 2005 Resource Pool by 30 days.

DATES: Entities interested in applying for an allocation of Western power must submit applications to Western's Sierra Nevada Customer Service Regional Office at the address below. Applications must be received by 4 p.m., PST, on January 19, 2000. Applicants are encouraged to hand-deliver or use certified mail to deliver applications. Applications will be accepted via regular mail through the United States Postal Service if

postmarked at least 3 days before January 19, 2000, and received no later than January 21, 2000. Western will not consider applications that are not received by the prescribed dates. Western will publish a Notice of Proposed Allocations in the **Federal Register** after evaluating all applications.

Application dates and procedures applicable to first preference customers/entities are provided in the Marketing Plan.

ADDRESSES: Applications must be submitted to the Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Howard Hirahara, Power Marketing Manager, at (916) 353–4421 or by electronic mail at hirahara@wapa.gov. Optional application forms are available.

SUPPLEMENTARY INFORMATION:

Authorities

The Marketing Plan for marketing power by the Sierra Nevada Region after 2004, published in the **Federal Register** (64 FR 34417) on June 25, 1999, including the subsequent Call for 2005 Resource Pool Applications, published in the **Federal Register** (64 FR 56343) on October 19, 1999, was established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved.

Background

This notice provides an extension of time to file an application for the 2005 Resource Pool from December 20, 1999, to January 19, 2000.

The Marketing Plan describes how the Sierra Nevada Region will market its power resources from the Central Valley Project, Washoe Project, and other sources beginning January 1, 2005, through December 31, 2024. The 2005 Resource Pool is available for new power allocations to qualified entities. Preference entities who wish to apply for a new allocation of power from Western's Sierra Nevada Region must submit formal applications conforming to the procedures in the Dates Section above. Eligibility and allocation criteria are defined in the Marketing Plan and the Call for 2005 Resource Pool Applications. Procedures for applying for power from the Sierra Nevada Region are also provided in the Call for 2005 Resource Pool Applications.

Existing customers' conditional resource extension percentages are listed in the Marketing Plan. Existing customers do not need to submit applications for resource extensions. However, if an existing customer wishes to apply for a new allocation of power in addition to its resource extension, it must meet the eligibility criteria and submit an application.

Dated: November 22, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–31948 Filed 12–8–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6504–7]

Notice of Availability of Letter from EPA to the State of Illinois Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of a letter written from Region 5 of the Environmental Protection Agency (EPA) to the State of Illinois finding that certain provisions adopted as part of the State's water quality standards and National Pollutant Discharge Elimination System (NPDES) permits programs are inconsistent with section 118(c) of the Clean Water Act (CWA) and 40 CFR part 132. EPA's findings are described in a letter dated November 12, 1999. EPA invites public comment on all aspects of this letter, particularly on the findings in the letter and on the course of action that EPA proposes to take if the State fails to adequately address EPA's findings.

DATES: Comments must be received in writing by January 24, 2000.

ADDRESSES: Written comments on EPA's findings as described in the November 12, 1999 letters may be submitted to Mery Jackson-Willis, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard., Chicago, Illinois, 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: jackson-willis.mery@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mery Jackson-Willis, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone her at (312) 886–3717.

Copies of the November 12, 1999 letter described above are available upon request by contacting Ms. Jackson-Willis. Those letters and materials submitted by the State in support of their submission that EPA relied upon in preparing this letter (i.e., the docket) are available for review by appointment at: EPA, Region 5, 77 W Jackson Boulevard, Chicago, Illinois (telephone 312–886–3717); the Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois (telephone 217–782–1654). To access the docket material in Chicago, call Ms. Mery Jackson-Willis at (312) 886–3717 between 8 a.m. and 4:30 p.m. (central time) (Monday-Friday); in Illinois, call Mr. Toby Frevert at (217) 782–1654 between 8:30 a.m. and 4:30 p.m. (central time).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 and 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission

and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

EPA reviewed the submittal from Illinois for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA determined that certain parts of Illinois' submittal are inconsistent with the requirements of the CWA or 40 CFR part 132 and will be subject to EPA disapproval if not corrected. On November 12, 1999, in a letter from EPA Region 5 to the Illinois Environmental Protection Agency, EPA described in detail those provisions determined to be inconsistent with the Guidance and subject to disapproval if not remedied by the State. The inconsistencies relate to the following components of the State's submittals in conformance with section 118(c) of the CWA and 40 CFR part 132: the equation for calculation of wildlife criteria, the procedures for implementing antidegradation, site-specific modifications to protect threatened and endangered species, variances, total maximum daily loads, chemical specific and whole-effluent toxicity reasonable potential, mixing zone demonstrations, intake pollutants, determination of reasonable potential using fish tissue data, water quality based limitations below quantification levels, and compliance schedules. Based on our review to date, EPA believes that with the above exceptions, the submission by the State of Illinois is consistent with the Guidance. Today, EPA is soliciting public comment regarding all aspects of this letter. In particular, EPA solicits comments on the provisions identified in the November 12, 1999 letter as being inconsistent with the CWA and the Guidance, on EPA's proposed course of action if a State fails to remedy those inconsistencies, and on EPA's belief that the remainder of the State's submissions are consistent with the Guidance.

During the next 90 days, EPA intends to continue working with Illinois to address the inconsistencies identified in the November 12, 1999 letter. If Illinois fails to remedy any of the inconsistencies identified in the letter, EPA will publish a notice in the **Federal Register** identifying the disapproved elements and the corresponding portions of Part 132 that will apply to waters within the Great Lakes Basin in Illinois.

Dated: November 24, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–31770 Filed 12–8–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, December 9, 1999, 10:00 a.m., meeting open to the public.

The following item was added to the agenda:

Future Meeting Dates

DATE AND TIME: Tuesday, December 14, 1999, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, December 15, 1999, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION:

Oral Hearing: Dole for President, Inc. (Primary Committee); Dole/Kemp '96, Inc. (General Committee).

DATE AND TIME: Thursday, December 16, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Advisory Opinion 1999–33: Media One PAC by its treasurer, Rahn Porter.

Advisory Opinion 1999–34: Representative, Michael Bilirakis.

Advisory Opinion 1999–35: Associated Builders and Contractors, Inc., the Associated Builders and Contractors Political Action Committee, and ABC North Texas and its Chapter nonfederal PAC, by counsel, Jan Witold Baran.

Notice of Proposed Rulemaking on political activities of U.S. Subsidiaries of Foreign Corporations.

Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–32054 Filed 12–7–99; 12:21 pm]

BILLING CODE 6715–01–M

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 part 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, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Arrow Worldwide Logistics, Inc., 137 Eucalyptus Drive, Suite #202, El Segundo, CA 90245, Officers: Sugyung Kim, President, (Qualifying Individual); Hakern J. Lee, Secretary

L.G. Diamond International Shipping, Inc., d/b/a Diamond International Shipping, 12619 Crenshaw Blvd., Hawthorne, CA 90250, Officer: Lester Gatewood, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Sea, Air & Truck Forwarding, 10262 Briar Forest Drive, Houston, TX 77042; Maria R. Bahena, Sole Proprietor

Dated: December 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–31824 Filed 12–8–99; 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 27, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Fredrick Children's Investments II, LTD., Irving, Texas; to retain voting shares of Irving National Bancshares, Inc., Irving, Texas, and thereby indirectly retain voting shares of Independent National Bank, Irving, Texas.

Board of Governors of the Federal Reserve System, December 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31974 Filed 12–8–99; 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 January 3, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Santander Central Hispano S.A., Madrid, Spain; to acquire shares and to control more than 5 percent but less than 10 percent of The Royal Bank of Scotland Group plc, Edinburgh, Scotland, and Citizens Financial Group, Providence, Rhode Island, and their banking and nonbanking subsidiaries including Citizens Bank of Connecticut, New London, Connecticut; Citizens Bank of Massachusetts, Boston, Massachusetts; Citizens Bank of New Hampshire, Manchester, New Hampshire; and Citizens Bank of Rhode Island, Providence, Rhode Island. Citizens Financial Group also has received approval to acquire US Trust, Boston, Massachusetts, and its banking and nonbanking subsidiaries, including United States Trust Company, Boston, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Harleysville Savings Financial Corporation, Harleysville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Harleysville Savings Bank, Harleysville, Pennsylvania.

Board of Governors of the Federal Reserve System, December 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31823 Filed 12–8–99; 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 January 3, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Maries County Bancorp, Inc., Vienna, Missouri; to acquire 9.33 percent of the voting shares of Branson Bancshares, Inc., Branson, Missouri (in organization), and thereby indirectly acquire voting shares of Branson Bank, Branson, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, December 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31975 Filed 12–8–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–143]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Analysis of Malpractice Premium Data;

Form No.: HCFA–R–143 (OMB# 0938–0575);

Use: This form is used for computing the Medicare physician fee schedule Malpractice Geographic Practice Cost Index (MGPCI) and the Medicare Economic Index (MEI). The data collected will be used to update the MGPCI and the new resource-based malpractice relative value units (MRVUs) component of the physician fee schedule. The malpractice data are critical to the accuracy of the Medicare physician fee schedule;

Frequency: Other: every 3 years;

Affected Public: State, Local or Tribal Gov., Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 50;

Total Annual Responses: 50;

Total Annual Hours: 150.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 1, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–31958 Filed 12–8–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Application for an Incidental Take Permit for the Globenet/Worldcom Parking Lot Expansion in Los Osos, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability.

SUMMARY: MFS Globenet, Incorporated/Worldcom Network Services, Incorporated (Globenet/Worldcom) has applied for an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Globenet/Worldcom requests a 5-year permit to allow the incidental take of the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) associated with construction of an expanded parking lot (0.4 acre) in the community of Los Osos, San Luis Obispo County, CA. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permit. All comments received will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before January 10, 2000.

ADDRESSES: Comments should be addressed to Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; facsimile (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Laura Hill or Heather Hollis, Fish and Wildlife Biologists, at (503) 231–6241.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the documents for review should immediately contact the office listed above. Documents also will be available for inspection, by appointment, during normal business hours at the above address.

Background

Under section 9 of the Endangered Species Act and its implementing regulations, taking of threatened and endangered wildlife species is prohibited. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found at 50 CFR 17.22 and 17.32.

Globenet/Worldcom needs an incidental take permit to expand a parking lot at its telecommunication building located at 10th and Los Olivos Avenue in the city of Los Osos. To obtain a Certificate of Occupancy for the building, Globenet/Worldcom must expand the parking lot for fire truck access. Globenet/Wordlcom proposes to expand the parking lot in areas of occupied snail habitat that were previously avoided during siting of the building. Globenet/Worldcom may be able to avoid impacts to the Morro shoulderband snail during future construction and operation of a fiber optic cable originating at the telecommunication facility. If take of the snail can not be avoided during construction and operation of the cable, Globenet/Worldcom will apply for a permit amendment.

The proposed construction of an expanded parking lot would result in the permanent loss of 0.4 acre of habitat that supports the endangered Morro shoulderband snail. The permit application includes a Habitat Conservation Plan (Plan) and an Implementation Agreement which define the responsibilities of all of the parties under the Plan. The Plan addresses impacts to the Morro shoulderband snail that are associated with the proposed parking lot expansion and the future cable project. The Plan provides for implementation of measures to minimize and mitigate adverse impacts to the Morro shoulderband snail.

To minimize the effects of the parking lot expansion, the boundaries of the work area will be clearly marked and enforced by a Service approved

biological monitor. To compensate for unavoidable habitat loss from the parking lot expansion, and for future impacts from fiber optic cable construction should a permit amendment be needed, Globenet/Worldcom proposes to provide funds to acquire, restore, monitor and manage in perpetuity 3.78 acres of high quality, Morro shoulderband snail habitat off-site and adjacent to Montana de Oro State Park. This land would be deeded to and managed by the California Department of Parks and Recreation or another land manager approved by the Service.

The Plan and the Environmental Assessment consider two alternatives to the proposed parking lot expansion project, as well as additional alternatives to the future cable project. Under the No Development Alternative, the parking lot would not be expanded, the telecommunications building would remain vacated, and the Service would not issue an incidental take permit. Non-native plants would recolonize the project site, human disturbances would likely continue, and off-site high quality snail habitat would not be protected. Under the Alternate Site Alternative, the existing telecommunications building would remain vacated. Globenet/Worldcom would construct another building at another site that does not support listed species. The Service would not issue an incidental take permit. This alternative would result in greater impacts to the environment than the other alternatives and would not provide a substantial benefit to the snail.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). In determining whether the application meets the requirements of law, the Service will evaluate the application, its associated documents, and comments submitted by the public. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the Morro shoulderband snail. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: December 1, 1999.

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–31746 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1320–05; NMNM 99144]

Notice of Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the tract described below in San Juan County, New Mexico, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et. seq.*)

DATES: The lease sale will be held at 10:00 a.m., Wednesday, January 12, 2000. Sealed bids must be submitted on or before 9 a.m., on January 12, 2000.

ADDRESSES: The lease sale will be held in the BLM Conference Room, located at 1474 Rodeo Rd., Santa Fe, NM 87502. Sealed bids must be submitted on or before 9 a.m. on January 12, 2000, to: Cashier, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502.

FOR FURTHER INFORMATION CONTACT: Ida T. Viarreal at (505) 438–7603.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder(s) submitting the highest cash offer provided that the high bids meet or exceed the fair market value of the tracts as determined by the authorized officer after the sale. Each bid should be clearly identified by tract number or serial number on the outside of the envelope containing the bid(s). No bid that is less than $100.00 per acre, or fraction thereof, will be considered. This $100.00 per acre is a regulatory minimum, and is not intended to reflect fair market value of the tracts.

Sealed bids clearly market ''Sealed Bid for NMNM 99144 Coal Sale—Not to be opened before 10 a.m. Wednesday, January 12, 2000.'' must be received on or before 9 a.m., Wednesday, January 12, 2000. Bids should be sent be certified mail, return receipt requested, or should be hand delivered. The cashier will issue a receipt for each hand delivered sealed bid. Bids received after 9 a.m., on January 12, 2000, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high sealed bids are received, the tying bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be within 15 minutes following the sale official's announcement at the sale that identical sealed bids have been received.

Coal Tract To Be Offered

The coal resources to be offered consist of all recoverable reserves in the following described lands located in San Juan County, New Mexico and are described as follows:

T. 30 N., R. 14 W., NMPM
Sec. 17, ALL;
Sec. 18, ALL;
Sec. 19, ALL;
Sec. 20, ALL;
Sec. 29, ALL;
Sec. 30, ALL;
Sec. 31, Lot 1–4, N½, N½, S½.

Containing 4,483.88 acres, more or less.

Rental and Royalty

The leases issued as a result of this lease offering will require payment of an annual rental of $3.00 per acre or fraction thereof, and a royalty payable to the United States of 12½ percent of the value of the coal removed by surface methods and 8 percent of the value of the coal removed by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Notice of Availability

Bidding instructions for the offered tracts are included in Detailed Statement of Coal Lease Sale. Copies of the Statement and the proposed coal lease are available upon request in person or by mail from the New Mexico State Office at the addresses shown above. The case files are available for inspection during normal business hours only at the Santa Fe, New Mexico, location.

Dated: December 2, 1999.

Richard A. Whitley,

Associate State Director.

[FR Doc. 99–31747 Filed 12–5–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Continental Divide/Wamsutter II Natural Gas Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and

implementing regulations, the Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for the proposed Continental Divide/Wamsutter II (CD/WII) Natural Gas Project located in Carbon and Sweetwater Counties, Wyoming. This FEIS analyzes the potential impacts from natural gas exploration and development proposed by Amoco Production Company, Union Pacific Resources Company, Yates Petroleum Corporation, Snyder Oil Corporation, and other natural gas operators within the CD/WII project area and alternatives to that proposed development. The BLM preferred alternative for this project is the Proposed Action, with additional mitigation measures which would reduce environmental impacts.

The Draft Environmental Impact Statement (DEIS) prepared for this project was made available to the public on April 30, 1999 (64 FR 23349). The FEIS contains corrected and new material which supplements the DEIS. The DEIS and this FEIS comprise the complete document. Please refer to the DEIS for more detailed analyses and descriptions of the proposed action and alternatives.

This FEIS is not a decision document. A Record of Decision will be prepared and made available to the public after the public comment period expires.

DATES: BLM will accept comments on the FEIS for a period of 30 days from the date the Environmental Protection Agency (EPA) publishes their Notice of Availability (NOA) of this FEIS in the **Federal Register**. We anticipate that EPA will publish its NOA on December 10, 1999.

ADDRESSES: Send written comments to: Clare Miller, Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Clare Miller, Team Leader, Telephone: 307–328–4245, or Teresa Deakins, Telephone: 307–352–0211. Copies of the FEIS may be obtained from the BLM Rawlins Field Office (307–324–4200), 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301 or from the BLM Rock Springs Field Office, (307–352–0256) 280 Highway 191 North, Rock Springs, WY 82901.

SUPPLEMENTARY INFORMATION: The FEIS contains corrected and new material which supplements the DEIS issued April 30, 1999. The DEIS air quality impact assessment was revised in order to address the following items: (a) The CD/WII near-field particulate matter emission assumptions and impact analyses were revised using Rock Springs, WY, meteorological data; (b) potential well blowdown emissions were included and the hazardous air pollutant (HAP) and ozone impact analyses were revised; (c) potential oxides of nitrogen (NO_X) emissions for the CD/WII wells were corrected; (d) potential NO_X and sulfur dioxide (SO_2) emissions from the Lost Cabin Gas Plant were corrected for seasonal operation; (e) potential particulate matter emissions from the Seneca Coal facility (Colorado Permit No. 82R0258F) were corrected; (f) potential particulate matter, NO_X and SO_2 emissions from the SF Phosphates facility (Wyoming Permit No. CT–550A4) were added to the emissions inventory; (g) several other Colorado emission sources were correctly analyzed as potential NO_X emissions, rather than as SO_2 emissions reported in the DEIS; and (h) hourly scaling factors were applied to several Wyoming portable emission sources. Based on these revisions, potential air quality impacts were reanalyzed and reported in both the FEIS and the Revised Technical Support Document text.

In addition to air quality updates, some revisions to the DEIS were made in sections of the document dealing with wildlife resources, mineral resources, and aesthetics and visual resources.

Upon recommendation of the U.S. Fish and Wildlife Service (USFWS), the BLM has initiated formal consultation and conferring with the USFWS on issues dealing with the listed Threatened and Endangered species of Black-footed Ferret and with the proposed listed species of Mountain Plover. Some additional mitigation measures to protect these species are expected from this process. The results of the consultation/conferring will be addressed in the Record of Decision for this EIS.

Comments, including names and street addresses of respondents, will be available for public review at the BLM offices listed above during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 3, 1999.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 99–31881 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–0777–XQ–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in January, 2000 in Durango, Colorado.

DATES: The meeting will be held on Thursday, January 20, 2000.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The January 20, 2000 meeting will be held at the Bureau of Land Management-U.S. Forest Service Public Lands Center, Sonoran Conference Room, 15 Burnett Court, Durango, Colorado. The meeting will begin at 9:00 a.m. and end no later than 4:30 p.m. The agenda will include an update on recreation guidelines, discussions on outdoor ethics in advertising, and identification of RAC workloads for 2000. General public comment is scheduled for 9:15 a.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: November 29, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–31830 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62765]

Public Land Order No. 7419; Withdrawal of Public Lands for the United States Air Force; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,252 acres of public lands from surface entry and mining, for a period of 20 years, for the United States Air Force to provide safety buffers from potentially hazardous areas, protect populated areas, and to comply with Department of Defense Directive No. 6055.9 regarding ammunition and explosive safety standards. The lands are adjacent to the Live Ordnance Loading Areas at the Nellis Air Force Base, Clark County, Nevada. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

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 lands are 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 United States Air Force to provide safety buffers from potentially hazardous areas, protect populated areas, and to comply with Department of Defense Directive No. 6055.9 regarding ammunition and explosive safety standards:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 25, NE¼ south of Las Vegas Boulevard;
Sec. 35, a portion of the S½NW¼, and a portion of the NW¼SE¼.
T. 19 S., R. 63 E.,
Sec. 27, NE¼SE¼ and W½SE¼;
Sec. 34, NE¼.
T. 20 S., R. 62 E.,
Sec. 1, lots 9, 10, and lots 13 to 20, inclusive;
Sec. 2, SE¼SW¼;
Sec. 10, E½SE¼;
Sec. 11, lots 1 to 8, inclusive, E½NW¼, and SW¼;
Sec. 12, lots 2 to 7, inclusive, and lots 12 and 13;
Sec. 15, NW¼NE¼ and W½SW¼NE½.
T. 20 S., R. 63 E.,
Sec. 3, SE¼.

The areas described aggregate approximately 2,252 acres in Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of 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 20 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. 99–31959 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–63066]

Notice of Realty Action: Direct Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct Sale of Reversionary Interest of Recreation & Public Purpose Patent, Number 27–68–0135.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, was patented to Clark County on January 19, 1998 under the Recreation & Public Purpose Act for a fire station (Fire Station 21). Clark County requests the purchase of the reversionary interest. The land has been examined and found suitable for sale under the provisions of the Federal Land Policy and Management Act (43 CFR 2711.3–3).

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.,
Sec. 29, SW¼NW¼NW¼NW¼.

Containing 2.5 acres, more or less, located at Tropicana Avenue and Valley View Boulevard.

The land is not required for any Federal purpose. The direct sale is consistent with current Bureau planning for this area and would be in the public interest. The patent will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the land will continue to be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All the mineral deposits in the lands patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law; and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (Pub. L. 105–263).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed direct sale to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a direct sale. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the application as to whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a direct sale. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: November 29, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–31883 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–60920]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Segregation terminated, recreation and public purpose lease/conveyance.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, were segregated for exchange purposes: N–56458 segregated on November 16, 1992, N–57773 segregated on April 18, 1994, N–60073 segregated on October 19, 1995, and N–61855 segregated on July 23, 1997. The exchange segregation on the subject lands will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 5, Lot 1 excepting 2.5 acres in SE¼SE¼.

Containing 37.5 acres, more or less, located at Lone Mountain Road and Durango Road.

The land is not required for any Federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

a. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

b. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for telephone purposes which have been granted to Sprint Central Telephone Nevada by right-of-way N–7353 under the Act of February 15, 1901 (43 U.S.C. 959).

3. Those rights for gas pipe line purposes which have been granted to Southwest Gas Corporation by right-of-way N–55952 under the Act of February 25, 1920 (30 U.S.C. 185 sec. 28).

4. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central Telephone by right-of-way N–59081 under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central Telephone by right-of-way N–60635 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for roadway purposes which have been granted to Clark County by right-of-way N–60727 under the Act of October 21, 1976 (43 U.S.C. 1761).

7. Those rights for roadway purposes which have been granted to Clark County by right-of-way N–61169 under the Act of October 21, 1976 (43 U.S.C. 1761).

8. Those rights for roadway purposes which have been granted to City of Las Vegas by right-of-way N–62866 under the Act of October 21, 1976 (43 U.S.C. 1761).

9. Those rights for power line purposes which have been granted to Nevada Power Company by right-of-way N–63037 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: December 2, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–31884 Filed 12–8–99; 8:45 am]

BILLING CODE 1430–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–00–1430–EU: G–0041]

Realty Action: Sale of Public Land in Harney County, Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of realty action, sale of public land.

SUMMARY: The following described public land in Harney County, Oregon, has been examined and found suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value. All parcels being offered are identified for disposal in the Three Rivers Resource Management Plan.

All of the land described is within the Willamette Meridian.

Parcel No.	Legal description	Acres	Minimum acceptable bid	Bidding procedures	Designated bidders
OR–53952	T.27S., R.33E., sec.1, SW¼NW¼, W½SW¼; sec. 2, S½NE¼, SE¼.	360	$52,200	Unsold Competitive	None.
OR–54923	T.21S., R.31E., sec. 29, lot 6	42.61	2,800	Competitive	None.
OR–54924	T.21S., R.31E., sec. 30, lots 19, 20; sec. 31, lots 5, 6, 11, 12, 13, 14, 19, 20.	399.19	26,000	Competitive	None.
OR–54926	T.26S., R.33E., sec. 27, SE¼	160	10,400	Competitive	None.
OR–54927	T.24S., R.33E., sec. 30, lots 1, 2, E½NW¼;	157	15,700	Competitive	None.
OR–54928	T.24S., R.33E., sec. 33, W½NE¼	80	8,000	Competitive	None.
OR–54929	T.22S., R.32E., sec. 12, N½NW¼, SW¼NW¼, NW¼SW¼.	160	10,400	Competitive	None.
OR–54930	T.22S., R.32½E., sec. 7, lots 2, 3, 4, SW¼NE¼, W½SE¼; sec. 18, lot 7.	246.88	16,000	Competitive	None.
OR–55277	T.22S., R.32½E., sec. 18, lot 10	10.3	400	Modified Competitive	Fort Harney Ranch Timothy K. Smith and Holly Swift.

The following rights, reservations, and conditions will be included on the patents conveying the land:

All Parcels—A reservation for a right-of-way for ditches and canals constructed thereon by the authority of the United States.

OR–54927, OR–54928—A reservation to the United States of all geothermal steam and associated geothermal resources.

OR–54927—A reservation to the United States of a right-of-way for administrative road access purposes.

OR–54923, OR–54927, OR–54928—A wetland restrictive covenant pursuant to Executive Order 11990. The patent will be subject to a covenant that the portions of the land containing wetland habitat must be managed to protect and maintain the wetland.

OR–54927—A floodplain restrictive covenant pursuant Executive Order 11988. The patent will be subject to a covenant that the land may be used only for agricultural purposes, livestock grazing or for park and nonintensive open space recreation purposes, but not for dwellings or buildings.

OR–53952—Patent will be subject to a right-of-way for road purposes granted to Tom Davies.

OR–53952, OR–54924, OR–54930—Patents will be subject to a right-of-way for electric power transmission and distribution purposes granted to Harney Electric Cooperative, Oregon Trail Electric Cooperative, Pacific Power and Light, and Utah Power and Light.

OR–54927, OR–54930—Patents will be subject to road rights-of-way in conjunction with the Harney County road system.

OR–54928—Patent will be subject to a geothermal lease held by Geo-Culture, Inc.

Access will not be guaranteed to any of the parcels being offered for sale, nor any warranty made as to the use of the property in violation of applicable land use laws and regulations. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses.

All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

All land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

Bidding Procedures

Competitive Procedures

The Federal Land Policy and Management Act and its implementing regulations (43 CFR 2710) provide that competitive bidding will be the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2:00 p.m. PST on Wednesday, March 8, 2000, at the Burns District Office, Bureau of Land Management, Hwy 20 West, Hines, Oregon. To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser.

If no bids are received, the parcel will be declared unsold and offered by unsold competitive procedures on a continuing basis until sold or withdrawn from sale.

Modified Competitive Procedures

Modified competitive procedures are allowed by the regulations (43 CFR 2710.0–6(c)(3)(ii) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid. The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. **The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration.** The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned.

The designated bidders will be notified by certified mail of the apparent high bid. Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the

parcel being offered to the apparent high bidder or declared unsold, if no bids were received in the initial round of bidding.

Unsold Competitive Procedures

Unsold competitive procedures will be used after a parcel has been unsuccessfully offered for sale by competitive or modified competitive procedures.

Unsold parcels will be offered competitively on a continuous basis until sold. Under competitive procedures for unsold parcels the highest valid bid received during the preceding month will be declared the purchaser. Sealed bids will be accepted and held until the second Wednesday of each month at 2:00 p.m. PST when they will be opened. Openings will take place every month until the parcels are sold or withdrawn from sale.

All sealed bids must be submitted to the Burns District Office, no later than 2:00 p.m. PST on Wednesday, March 8, 2000, the time of the bid opening and oral auction. The outside of bid envelopes must be clearly marked with ''BLM Land Sale,'' the parcel number and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

Federal law requires that public land may be sold only to either, (1) citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any state or the United States; (3) other entities such as associations and partnerships capable of holding land or interests therein under the laws of the state within which the land is located; or (4) states, state instrumentalities or political subdivisions authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of conveyance documents.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

A successful bid on a parcel constitutes an application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price, a nonrefundable fee of $50 will be required for the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land. Note that in the case of Parcels OR–54927 and OR–54928 only partial mineral interests are being offered. All minerals will be conveyed with the remainder of the parcels.

DATES: On or before January 24, 2000, interested persons may submit comments regarding the proposed sale to the Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Three Rivers Resource Area Field Manager, Bureau of Land Management, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available from Craig M. Hansen, Field Manager or Skip Renchler, Realty Specialist, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: November 30, 1999.

Craig M. Hansen,

Three Rivers Resource Area Field Manager.

[FR Doc. 99–31763 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1430–EQ; Designation Order MT–070–0001]

Off-Road Vehicle Designation, Butte Field Office, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-Road Vehicle Designation Decision.

SUMMARY: Final notice is hereby given that effective immediately all public lands in the Mount Belmont area, within the boundaries of the Great Divide Ski Area (895.91 acres) in:

Principal Meridian, Montana

T. 12 N., R. 6 W.,
Sec. 26, 27, 34, and 35, and
T. 11 N., R. 6 W.,
Sec. 2 and 3

are permanently closed to all yearlong motorized vehicle uses with the exception that a seasonal closure will be established on the Whippoorwill and Gloster Roads from December 2 through May 15. The area is located about 25 miles northwest of Helena, Montana. The purpose of this closure is to prevent soil erosion, inhibit the spread of noxious weeds, minimize visitor safety risks, and reduce user conflicts.

A public meeting and comment period were provided in conjunction with the Great Divide Ski Area expansion lease, and all responses received were considered prior to making this designation.

This decision is consistent with the Headwaters Resource Management Plan and is authorized in 43 CFR 8342. This designation will remain in effect until rescinded or modified by the authorized official. An appeal of this decision may be filed within 30 days of this notice with the Interior Board of Land Appeals.

FOR FURTHER INFORMATION CONTACT: Steve Hartmann, Assistant Field Manager, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: November 19, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–31829 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf: Operations (OCS), Annual List of Notices to Lessees and Operators (NTLs)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: This notice informs the public, industry, and other Government agencies of NTLs that are in effect as of December 9, 1999. It also officially rescinds several Letters to Lessees and Operators (LTLs).

ADDRESSES: You may obtain copies of NTLs through our website at ''www.mms.gov/eod/library.htm'' or by contacting the MMS National Office or the OCS Region that issued the NTL at the following addresses:

National Office: Minerals Management Service, Engineering and Operations Division, 381 Elden Street, Herndon, Virginia 20170–4817, Attention: Ms. Alexis London; Telephone (703) 787–1600.

Alaska OCS Region: Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4363, Attention: Ms. Christine Huffaker; Telephone (907) 271–6621.

Gulf of Mexico (GOM) OCS Region: Minerals Management Service, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123–2394, Attention: Mr. Michael Dorner; Telephone (504) 736–2599.

Pacific OCS Region: Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010–6064, Attention: Ms. Freddie Mason; Telephone (805) 389–7566.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division; Telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS is responsible for oil and gas or sulphur operations in the OCS to ensure operational safety and protection of the environment. In addition to our regulations, we issue NTLs to provide guidance and to further clarify, interpret, or describe regulatory requirements on a national or regional basis. In the past we have also issued LTLs for this purpose or to communicate information to OCS lessees and operators.

Recently issued final regulations have eliminated the need for certain NTLs and LTLs or have required changes in others. In the past 2 years, we have also updated and reissued most of our NTLs to reflect current technologies, correct regulatory citations, and include a statement on the Paperwork Reduction Act of 1995 as it pertains to the NTL. We are also in the process of reviewing the active LTLs. We have already rescinded many LTLs (see 63 FR 63071, 11/10/98; 64 FR 25364, 5/11/99) or have revised and reissued others as NTLs.

For your convenience, the following table lists the current active NTLs issued by the National Office and the OCS Regions. Therefore, if an NTL issued before December 9, 1999, is not listed, it is canceled and no longer in effect. Although not listed here, those LTLs that have not yet been superseded by NTLs or officially rescinded remain in effect until they are superseded or rescinded. To obtain a list or copies of currently active regional LTLs, please contact the OCS Region directly.

NTL No.	Effective date	Title/subject
Current Notices to Lessees and Operators Issued by the National Office		
96–7N*	12/10/96	Civil Penalties Program (*Modified by 97–5N).
97–2N	08/01/97	Well Naming and Numbering Standards.
97–3N	08/01/97	Annual Performance Review.
97–4N	09/01/97	Civil Penalties Program Annual Summary to be Published.
97–5N*	10/07/97	Civil Penalties Program Revised Assessment Matrix (*Modifies 96–7N).
98–1N	01/02/98	Interim Guidance for Applying Platform Design Criteria from American Petroleum Institute (API) Recommended Practice (RP) 2A, ''Planning, Designing, and Constructing Fixed Offshore Platforms,'' 19th Edition (8/1/91) and 20th Edition (7/1/93) and its Supplement 1 (2/1/97).
98–2N	01/23/98	Guidance Regarding API Specification 14A, ''Specification for Subsurface Safety Valve Equipment,'' Ninth Edition (7/1/94) and Supplement 1.
98–4N	03/04/98	Interim Guidance for Applying ''Simplified Fatigue Analysis'' Procedure from API RP 2A.
98–5N	04/01/98	Application and Audit Fees for Requests for Royalty Relief or Adjustment Under 30 CFR Part 203.
98–8N	06/01/98	Deepwater Operations Plans.
98–10N	07/01/98	Decentralization of the Lessee Training Program.
98–12N	07/01/98	Determination of Pollution Inspection Frequencies for Unmanned Facilities.
98–13N	07/01/98	Use of New or Alternative Technology and Procedures.
98–14N	07/01/98	Conservation Information.
98–16N	10/28/98	API Specification 6D (SPEC 6D), Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), 21st Edition (3/31/94), and Supplements 1 and 2.
98–18N	12/23/98	Supplemental Bond Procedures.
98–19N*	12/29/98	Year 2000 (Y2K) Readiness Disclosure Statement (*Rescission Date 1/3/2000).
99–N01	01/01/99	Guidelines for Oil Spill Financial Responsibility for Covered Facilities.
99–N03	03/01/99	Performance Measures for OCS Operators & Form MMS–131.
99–N04	03/05/99	Revised Guidelines for Royalty Relief Under 30 CFR Part 203.
99–N05*	05/21/99	Year 2000 (Y2K) and End of Week (EOW) Compliance of Global Positioning System (GPS) Receivers (*Rescission Date 1/31/2000).
99–N06*	05/13/99	Final Rule on MMS Appeals (*Rescission Date 6/30/2000).
99–N07*	11/23/99	1999 Industry Awards Program & Luncheon (*Rescission Date 4/15/2000).
Current Notices to Lessees and Operators Issued by the Alaska OCS Region		
There are no current NTLs issued by the Alaska OCS Region.		
Current Notices to Lessees and Operators Issued by the Gulf of Mexico OCS Region		
86–05	06/18/86	New Form for Designation of Operator.
93–04.	09/30/93	OCS Functional Responsibility of New Regulations.
96–08	11/25/96	Time Allowed for the Correction of Incidents of Noncompliance (INC's) and for the Return of Notification of INC Forms.
96–10	12/05/96	Air Emissions Information for Application for Accessory Platforms to Pipeline Rights-of-Way.
97–06	03/01/97	Timely Submittal of Drilling Well Records in Accordance with 30 CFR 250.66 [Redesignated 30 CFR 250.416].
97–07	03/01/97	Revised Conditions of Approval to Drill, Sidetrack and/or Complete for Oil and Gas Production.
97–16	08/01/97	Production Within 500 Feet of a Unit or Lease Line.
97–17	08/01/97	Containment Requirements for Bolted or Welded Stock Tanks.
97–18	08/18/97	Timely Submittal of Deepwater Royalty Relief Applications.

NTL No.	Effective date	Title/subject
98–04	06/08/98	Hurricane and Tropical Storm Evacuation and Production Curtailment Procedures.
98–05	07/01/98	Confirmation of Deepwater Royalty Relief for Leases Issued After November 28, 1995.
98–06	08/10/98	Archaeological Requirements.
98–09	08/10/98	Proposed and As-Built Pipeline Location Data.
98–10	08/10/98	Best Available Control Technology (Sulphur Dioxide).
98–11	08/10/98	Implementation of Measures to Detect and Protect Deep Water Chemosynthetic Communities.
98–12	08/10/98	Implementation of Consistent Biological Stipulation Measures in the Central and Western Gulf of Mexico.
98–13	08/10/98	Minimizing Oil and Gas Structures in the Gulf of Mexico.
98–15	08/10/98	Time Allowed Between Lease Holding Operations (30 CFR 250.13 [Redesignated 30 CFR 250.113]).
98–16	08/10/98	Hydrogen Sulfide (H_2S) Requirements.
98–18	09/01/98	Change of Address for the Submittal of Certain Drilling Records in Accordance with 30 CFR 250.416.
98–19	09/15/98	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs.
98–20	09/15/98	Shallow Hazards Requirements.
98–21	09/15/98	Environmental Information Guidelines for OCS Plans.
98–22	10/05/98	Reorganization of the Office of Field Operations to Activate the Lake Charles District, Realign the District Boundaries, and Establish District and Pipe Section Procedures for After-Hours, Weekend and Holiday Calls, and Related Submittals.
98–23	10/15/98	Interim Reporting Requirements for 30 CFR 250, Subpart K, Oil and Gas Production Rates.
98–24	10/15/98	Rate Control Section Address, Office Hours, and Telephone Procedures.
98–26	11/30/98	Minimum Interim Requirements for Site Clearance (and Verification) of Abandoned Oil and Gas Structures in the Gulf of Mexico.
98–27	12/01/98	Guidelines for Eliminating Trash and Debris Resulting from Gulf of Mexico OCS Operations.
98–28	12/01/98	Drilling Windows, Eastern Gulf of Mexico.
98–29	12/18/98	Announcement of Project to Clean Up Historical Well Data.
98–29 Addendum 1	03/15/99	Well Records for Information Corrected or Completed During Project to Clean Up Historical Well Data Exemption form Incidents of Non-compliance.
98–30	03/01/99	Regional Oil Spill Response Plans.
99–G01	02/12/99	Deepwater Emergency Well Control Operations.
99–G03*	03/12/99	Meteorological Data Collection and Reporting (Breton National Wildlife Refuge/Wilderness Area) (*Rescission Date 12/31/2000).
99–G04	03/12/99	Guidelines for General Lease Surety Bonds.
99–G05	04/26/99	Submittal of Documents for Platforms and Structures.
99–G06	05/01/99	Economic Assumptions for RSVP Deepwater Royalty Relief Model.
99–G07	05/03/99	U.S. Air Force Communication Towers.
99–G08	05/10/99	Removing Underwater Casing Stubs.
99–G09	05/10/99	Location of Choke and Kill Lines on BOP Stacks.
99–G10	05/11/99	Designated Safe Welding and Burning Areas on Rigs.
99–G11	06/07/99	Approval of Acidizing Operations.
99–G12	06/07/99	Increased Level II Underwater Structural Inspection Intervals.
99–G13*	06/30/99	Gas Volume Statement Requirements (*Rescission Date 12/31/99).
99–G14*	06/30/99	Production Activities Information Collection and Reporting (Breton National Wildlife Refuge/Wilderness Area) (*Rescission Date 1/31/2001).
99–G15*	06/30/99	Production Activities Information Collection and Reporting (Western Gulf of Mexico) (*Rescission Date 1/31/2001).
99–G16	07/08/99	Live-Bottom Surveys and Reports.
99–G17	07/08/99	North American Datum 83 Implementation Plan for the GOM.
99–G19	09/07/99	Downhole Commingling Policies.
99–G20	09/07/99	Downhole Commingling Applications.
99–G21	09/13/99	Platform Removal Applications.
99–G22	09/24/99	Guidelines for Subsea Disposal & Offshore Storage of Solid Wastes.
Current Notices to Lessees and Operators Issued by the Pacific OCS Region		
92–01	03/24/92	Warning Signs: Pipelines and Power Cables.
98–01	03/05/98	Santa Maria District Office Phone Call Procedures and Hours.
98–02	03/05/98	Camarillo District Office Phone Call Procedures and Hours.
98–04	07/01/98	Gas Volume Statement Requirements.
98–05	08/04/98	Archaeological Survey and Report Requirements.
98–06	08/04/98	Change of Ownership/Operatorship of Leases and Pipelines.
98–07	08/04/98	Helideck Closures.
98–08	08/04/98	Biological Survey Criteria.
98–09	08/11/98	Hydrogen Sulfide (H_2S) Requirements.
98–10	08/21/98	Liquid Royalty Measurement Facilities.
98–11	08/31/98	Submission of Digitized Well Log Data on Magnetic Tape.
98–12	08/11/98	Guidelines for Shallow Hazards and Report Requirements for Exploration Drilling.
98–13	08/11/98	Guidelines for Shallow Hazards and Report Requirements for OCS Development Operations.
98–14	11/04/98	Cooperative Drilling Rig.
99–P01	07/15/99	Oil Spill Response Plans.
99–P02*	08/05/99	Pipelines & Pipeline Rights-of-Way; Correction (*Rescission Date 10/1/2000).
99–P04	11/04/99	Flaring and Venting Gas.

You are advised that the Gulf of Mexico and Pacific OCS Regions are officially rescinding the following previously issued LTLs that are no longer current, have served their purpose, or because recently revised regulations and policies have eliminated the need for them. With one noted exception (*), the following LTLs are rescinded effective with the publication of this notice.

Gulf of Mexico OCS Region

- LTL dated May 30, 1989, Unannounced Oil Spill Drills—Announcement.
- LTL dated June 26, 1989, Unannounced Oil Spill Drills—Implementation.
- LTL dated August 30, 1990, Aircraft over National Wildlife Refuges & National Parks.
- LTL dated May 14, 1991, Establish Uniform Procedures for the Designation of Structures on OCS Leases (*This LTL will be rescinded on the same date that our revised final rule on 30 CFR 250, subpart A becomes effective.).
- LTL dated May 18, 1995, Sustained Casinghead Pressure (SCP) Policy.
- LTL dated June 6, 1995, Flower Garden Banks Sanctuary Manager Oil Spill Notification.

Pacific OCS Region

- LTL dated November 1, 1993, Office Name Change.

Dated: November 23, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–31831 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 9 a.m. to 4 p.m., Thursday and Friday, January 6 and 7, 2000, at Pago Plaza, Room 213, Pago Pago, American Samoa.

The agenda for the meeting will include:

Welcome and Introductions
Review of Advisory Commission Purpose and Goals
Selection of Officers
Development of Bylaws for the Commission
Review of Pub. L. 100–571, the Park's Enabling Legislation
Review of the Park's General Management Plan
Superintendent's Report
Discussion of Superintendent's Report
Public Comments

The meeting is open to the public and opportunity will be provided for public comments at specified times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082.

Dated: November 24, 1999.

Holly Bundorn,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–31751 Filed 12–6–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Revised Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project Improvement Act

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992, the Bureau of Reclamation (Reclamation) developed and published the Interim Guidelines for Implementation of Water Transfers Under Title XXXIV of Public Law 102–575 (Interim Guidelines) on February 25, 1993. On September 30, 1999, certain provisions of section 3405(a) of the CVPIA sunseted. Consequently, Reclamation has drafted revised Interim Guidelines to reflect these Congressionally mandated changes.

The Interim Guidelines were prepared pursuant to the provisions of section 3405(a) specifying the conditions and requirements for the transfer of Central Valley Project (Project) water. Section 3405(a)(3) states ''Transfers executed after September 30, 1999, shall only be governed by the provisions of subparagraphs 3405(a)(1)(A)–(C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.'' The interim guidelines have been changed to reflect this CVPIA provision. Reclamation has made a commitment to publish a notice of its revised Interim Guidelines in the **Federal Register** and to allow the public 30 days to comment.

DATES: All public comments must be received by January 10, 2000.

ADDRESSES: Please mail comments to Julie Spezia, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Julie Spezia at the address above, or by telephone at (916) 978–5295 (TDD 978–5608).

SUPPLEMENTARY INFORMATION:

Reclamation's objectives in developing Interim Guidelines for the implementation of section 3405(a) of Public Law 102–575, commonly referred to as the Central Valley Project Improvement Act (CVPIA), are to address all water transfers equitably, to provide for a more efficient and effective use of the water supply developed by the Project, and to provide greater flexibility to water users in transferring water developed by the Project. These revised Interim Guidelines will establish the conditions for transfer of Project water subsequent to September 30, 1999.

Section 3405(a) authorizes all individuals or districts who receive Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts to transfer, subject to certain conditions, all or a portion of their Project water to any California water user or water agency, State or Federal agency, Indian Tribe or private nonprofit organization for Project purposes or any purpose recognized as beneficial under State law.

The sections of the Interim Guidelines are listed as follows with a brief description of changes made:

I Objective: No substantive change.

II Authority: No substantive change.

III Applicability: No substantive change.

IV Implementation: No substantive change.

V Criteria for Transfers Authorized Under Section 3405(a): delete paragraphs (D), (F), (G) and (N).

Note: Even though CVPIA no longer prohibits water transfers with long-term impacts on ground water, any such impacts would need to be identified under the environmental compliance process; also water transfers need to comply with State and local ground-water law and ordinances, if any.

VI Transferor's Responsibility: delete paragraph (C).

VII Reclamation Responsibility: no substantive change.

VIII Appendix No. 1 Criteria Checklist for a Complete Written Water Transfer Proposal: delete requirements 18 and 19.

IX Appendix No. 2 Public Notice Requirements: change MP–440 to MP–410.

Public comment on Reclamation's revised Interim Guidelines is invited at this time. A copy of the revised Interim Guidelines will be available for review at Reclamation's MP Regional Office located in Sacramento, California. If you wish to review a copy of the revised Interim Guidelines, please contact Ms. Spezia, or access it on the Internet at www.mp.usbr.gov.

Dated: November 29, 1999.

Mary Johannis,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 99–31469 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Revisions to Existing System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to amend the existing system of records managed by the Bureau of Reclamation (Reclamation) entitled ''Concessions, WBR–7.''

The notice is published in its entirety below.

DATES: Persons wishing to comment on the proposed revisions must do so by January 10, 2000.

Effective date: The proposed revised system of records will become effective without further notice on January 18, 2000, unless comments received result in a contrary determination. Reclamation will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Reclamation Privacy Act Officer, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007 or comments may be sent by facsimile transmission to fax No. 1–800–822–7651. Comments will be available for inspection at the Bureau of Reclamation, Denver Federal Center, Sixth Avenue and Kipling Street, Building 67, Room 112, Denver, Colorado, from 7:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding ''Concessions, WBR–7'' contact Mr. Vernon Lovejoy, Office of Policy at (303) 445–2913. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list this system of records as Reclamation-7. When originally published in the **Federal Register** this system of records was identified as WBR–7. The content of the system of records is the same; the prefix on the system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on November 16, 1984 (49 FR 45493). This publication revises the system location, a purpose statement has been added which was not included in the original system of records notice, expands the categories of records in the system, and the system manager and address have been updated. All other changes proposed are editorial in nature.

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–7

SYSTEM NAME:

Concessions.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual concessionaires. Records in this system pertaining to individuals contain information concerning sole proprietorships, but may also reflect personal information. In addition, the system maintains records concerning corporations and other business entities. Only the records relating to individuals are covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Concession agreements, concession contracts, rental or lease agreements with individuals, corporations, or other legal business entities providing services or concessions at Reclamation projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Law of 1902, as amended, 43 U.S.C. 371, *et seq.*

PURPOSES:

To identify the person, persons, or business entities responsible for the management of a concession area, to determine their ability to manage a concession operation, and to determine or ensure compliance with the terms of the concession agreement, contract, lease, or rental agreement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Bureau of Reclamation is the primary user of the system and the primary use of the records is to give Reclamation information needed for administrative control over concessions operating at Reclamation facilities. Disclosures outside the Department of the Interior may be made: (1) To State or local government agencies for taxation purposes; (2) to the Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (4) from the record of an individual in response to an inquiry from a congressional office made at the request of that individual; (5) to non-Federal auditors under contract with the Departments of Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual form in file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

The records are maintained for 6 years and 3 months after close of fiscal year, unless involved in litigation. Disposal is in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of a record(s) should be addressed to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be addressed to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained.

[FR Doc. 99–31749 Filed 12–8–99; 8:45 am]

BILLING CODE 4310–94–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Privacy Act of 1974; New System of Records

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of proposed Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Overseas Private Investment Corporation (OPIC) is providing notice of the establishment of a new system of records for Contacts and Mailing Lists.

DATES: The proposed new system will be effective without further notice on January 18, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Written comments on the new systems of records may be addressed and mailed or hand-delivered to Jean Strasser, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527. Faxes may be sent to Jean Strasser at (202) 842–8413. Submit electronic comments to jstra@opic.gov.

FOR FURTHER INFORMATION CONTACT: Jean Strasser, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527, telephone (202) 336–8670.

SUPPLEMENTARY INFORMATION:

OPIC–21

SYSTEM NAME:

Contacts and Mailing Lists.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested that they be kept informed of OPIC activities or whose names are placed on a contact or mailing list by OPIC staff, including current and former members of the OPIC Board of Directors, former employees, officials of all branches of government and international governments, representatives of the press, corporations, and other organizations. Individuals who have requested publications or information from OPIC in writing, in person, by phone, fax, email, or via the Corporation's web site. Individuals identified by other government agencies as having an interest in an OPIC-sponsored program and/or activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, business title, company or organization, mailing address, email address, phone and fax numbers, organization type, and industrial sector, if applicable, of individuals covered by the system. The list also includes information on the types of information individuals are interested in (e.g., regional interest).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, Records Management by Agency Heads.

PURPOSE(S):

These records are used by OPIC for the mailing and electronic distribution of OPIC information, publications and announcements regarding OPIC-sponsored events. They may be used by other organizations affiliated with OPIC for the distribution of announcements regarding events in which OPIC is a co-sponsor or participant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Used (i) to distribute publications (e.g., press releases, newsletters, and annual reports) and other general information developed by OPIC either by mail or electronically to individuals' email addresses; (ii) to distribute information regarding OPIC-hosted conferences and events; (iii) by other organizations affiliated with OPIC (e.g., other Federal agencies, corporate or non-profit co-sponsors) to distribute announcements regarding events in which OPIC is a co-sponsor; (iv) by OPIC management to conduct surveys or gather statistical data to analyze usage of or improve OPIC services; and (v) by members of Congress in response to their request.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in an electronic database accessible by authorized OPIC employees. Hard copies may be printed and stored in file cabinets in secure OPIC offices.

RETRIEVABILITY:

Records are indexed by name, region, zip code, sector, or area of interest.

SAFEGUARDS:

Records are kept in a secured electronic database, with access limited to authorized marketing personnel; access to information in computer files is limited to personnel having an authorized computer password. Hard copy records are stored in secure staff offices accessible to OPIC staff only.

RETENTION AND DISPOSAL:

Records are maintained on an ongoing basis, updated by request of individuals covered by the system, and retained indefinitely or until the individual requests removal from the list.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President for Investment Development, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be submitted in writing, addressed to the system manager above. The request must comply with the requirements of 22 CFR 707.21(b).

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Requests by individuals to amend their record must be submitted in writing, addressed to the system manager above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22.

RECORD SOURCE CATEGORIES:

Information is collected via OPIC's web site or via hard-copy forms (*e.g.*, OPIC Reply Card) and labels, directly from individuals on whom the records are maintained (*i.e.*, the individuals requesting information). Information may be collected from attendees of OPIC-sponsored conferences and events, and OPIC staff who attend non-OPIC sponsored functions/events and receive business cards from individuals. Information may also be collected from third party contacts such as other government agencies or organizations that co-sponsor events with OPIC.

Exemptions claimed for the system: None.

Signature Date: November 17, 1999.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs Overseas Private Investment Corporation.

[FR Doc. 99–31704 Filed 12–8–99; 8:45 am]

BILLING CODE 3210–01–p

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Notice

TIME AND DATE: December 13, 1999 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–860 (Preliminary)(Tin- and Chromium-Coated Steel Sheet from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on December 13, 1999.)
5. Outstanding action jackets:

(1) Document No. GC–99–105: Regarding Inv. No. 337–TA–409 (Certain CD–ROM Controllers and Products Containing Same-II).

(2) Document No. ID–99–021: Approval of transition report and proposal for a study focus on ''Integration of Manufacturing in North America and Selected Regions.''

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 6, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–32082 Filed 12–7–99; 1:46 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management of 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, OHSA, 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 the **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 to other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Agreement and Undertaking.

OMB Number: 1215-0034.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Estimated Time Per respondent: 15 minutes.

Total Burden Hours: 75.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The OWCP–1 is a joint use form (Longshore and Black Lung Programs) completed by employers to provide the Secretary of Labor with authorization to sell securities or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31925 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 2, 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, OHSA, 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 the **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: Employment Standards Administration.

Title: application for Authority for an Institution of Higher Education to Employ its Full-Time Students at Subminimum Wages Under Regulations Part 519.

OMB Number: 1215–0080.

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 15.

Estimated Time per Respondent: 15 to 30 minutes.

Total Burden Hours: 5.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 14(b) of the Fair Labor Standards Act, in part, authorizes the employment of full-time students in higher education at subminimum wages under certain conditions. The WH–201 application form provides the information necessary to ascertain whether the requirements of section 14(b) have been met.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–31926 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2952]

Carhartt, Inc., McKenzie, Tennessee; Negative Determination on Application for Reconsideration

By letter of May 6, 1999, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the McKenzie, Tennessee plant of Carhartt, Inc. The negative determination was signed on April 12, 1999 and published in the **Federal Register** on May 11, 1999 (64 FR 25373). Company officials have now indicated that it was their intention to also request reconsideration of the Department's negative determination eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) applicable to workers and former workers of Carhartt, Inc., McKenzie, Tennessee (NAFTA–2952). That negative determination was also signed on April 12, 1999 and published in the **Federal Register** on May 11, 1999.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner states that the Carhartt McKenzie sewing facility produced bib overalls. When the plan permanently closed on July 30, 1999, production was transferred to the Carhartt Camden, Tennessee facility.

The NAFTA–TAA petition, filed on behalf of workers of Carhartt, Inc., McKenzie, Tennessee, was denied based on the finding that criteria (3) and (4) of the worker group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. There were no company or customer imports from Mexico or Canada of products like or directly competitive with the bib overalls produced by workers at McKenzie. The company did not shift production from McKenzie to Mexico or Canada. The Department cannot consider the domestic shift of production of bib overalls from McKenzie, Tennessee to Camden, Tennessee as a basis for worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31937 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03115]

D & E Wood Products, Incorporated Including Temporary Workers of Mid-Oregon Temporary Workers of Mid-Oregon Labor Contractors, Prineville, Oregon; Amended Certification Regarding Eligibility To Apply for NAFTA- Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 5, 1999, applicable to workers of D & E Wood Products, Incorporated, Prineville, Oregon. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55752).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of D & E Wood Products, Incorporated were temporary workers of Mid-Oregon Labor Contractors employed to produce finger joint wood block and cut stock at the Prineville, Oregon facility.

Based on these findings, the Department is amending the certification to include temporary workers of Mid-Oregon Labor Contractors who were engaged in the production of finger joint wood block and cut stock at D & E Wood Products, Incorporated, Prineville, Oregon.

The intent of the Department's certification is to include all workers of D & E Wood Products, Incorporated adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03115 is hereby issued as follows:

''All workers of D & E Wood Products, Incorporated, Prineville, Oregon and temporary workers of Mid-Oregon Labor Contractors, Prineville, Oregon engaged in employment related to the production of finger joint wood block and cut stock for D & E Wood Products, Incorporated, Prineville, Oregon who became totally or partially separated from employment on or after April 20, 1999 through October 5, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31932 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03553]

Kimberly-Clark Corporation, Munising Mill, Munising, Michigan; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 193–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 24, 1999, in response to a petition filed on behalf of workers at Kimberly-Clark Corporation, Munising Mill, Munising, Michigan.

In a statement dated October 26, 1999, the company official submitting the petition requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31941 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03183 et al.]

Russell Corporation; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 8, 1999, applicable to workers at Russell Corp., Sylcaugua, Alabama. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35186).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama locations of Russell Corporation. The workers are engaged in the production fleece wear and/or T-shirts.

The intent of the Department's certification is to include all workers of Russell Corp. adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to cover the workers of Russell Corporation, Dadeville, New #1 Mill and 755 Lee Street Plants, Alexander City, 8416 Hwy 231 North, Wetumpka and Brundidge, Alabama.

The amended notice applicable to NAFTA–03183 is hereby issued as follows:

''All workers of Russell Corp., Sylcaugua, Alabama (NAFTA–03183), Dadeville, Alabama (NAFTA–03183D), New #1 Mill and 755 Lee Street Plants, Alexander City, Alabama (NAFTA–03183E), 8416 8416 Hwy 231 North, Wetumpka, Alabama (NAFTA–03183F) and Brundidge, Alabama (NAFTA–03183G) who became totally or partially separated from employment on or after May 5, 1998 through June 8, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31931 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3533]

Walls Industries, Inc., Cutting Department, Sweetwater, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an Investigation was initiated on October 17, 1999, in response to a worker petition which was filed on behalf of workers at Walls Industries, Inc., Cutting Department, Sweetwater, Texas.

An active certification (amended) covering the petitioning group of workers at the subject firm remains in effect (NAFTA–3298C). Consequently, further investigation in this case would serve to purpose, and the investigation has been terminated.

Signed in Washington, DC this 2nd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31936 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 138, 138A, and 138B]

ABB Vetco Gray, Inc., Houston, Texas, Bryan, Texas, Odessa, Texas' Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 14, 1999, applicable to workers of ABB Vetco Gray, Inc., Houston, Texas. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43724).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Bryan and Odessa, Texas locations of ABB Vetco Gray, Inc. The Bryan and Odessa, Texas locations provide administrative support function services for ABB Vetco's production facility located in Houston, Texas. The workers were engaged in activities related to the production of oil well drilling equipment.

The intent of the Department's certification is to include all workers of ABB Vetco Gray, Inc. who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of ABB Vetco Gray, Inc., Bryan and Odessa, Texas.

The amended notice applicable to TA–W–36,138 is hereby issued as follows:

''All workers of ABB Vetco Gray, Inc., Houston, Texas (TA–W–36,138) Bryan, Texas (TA–W–36,138A) and Odessa, Texas (TA–W–36,138B) who became totally or partially separated from employment on or after April 20, 1998 through July 14, 2001 are eligible to apply for adjustment assistance under Section 233 of the Trade Act of 1974.''

Signed at Washington, DC this 19th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31947 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of OTAA not later than December 20, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than December 20, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 30th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Acordis Cellulosic Fibers (Co.)	Axisi, AL	11/02/1999	NAFTA–3,544	Apparel textiles.
Wabash Technologies (Co.)	Huntington, IN	11/02/1999	NAFTA–3,545	Automotive sensors.
Case Corporation (UAW)	Racine, WI	11/03/1999	NAFTA–3,546	Agricultural equipment.
Outboard Marine (USWA)	Milwaukee, WI	11/03/1999	NAFTA–3,547	Engine parts.
Tenneco Automotive (Co.)	Culver, IN	11/03/1999	NAFTA–3,548	Catalytic converters and mufflers.
Competitive Edgo Sportswear (UNITE)	Falls River, MA	11/01/1999	NAFTA–3,549	Ladies skirts, slacks and shorts.
American Medical Response (Wkrs)	Natick, MA	11/04/1999	NAFTA–3,550	Medical transportation services.
Joy Mining Machinery (IAMAW)	Franklin, PA	11/08/1999	NAFTA–3,551	Mining machinery.
Dura Automotive (UAW)	Manchester, MI	10/06/1999	NAFTA–3,552	Hood hinges.
Kimberly Clark (PACE)	Munising, MI	09/24/1999	NAFTA–3,553	Coated and saturated paper backers.
Marathon Ashland Pipeline (PACE)	Martinsville, IL	11/09/1999	NAFTA–3,554	Crude oil.
Everest and Jennings (IAMAW)	Earth City, MO	11/10/1999	NAFTA–3,555	Wheel chairs.
Appleton Paper (PACE)	Newton Falls, NY	11/08/1999	NAFTA–3,556	Coated paper.
Royal Oak Enterprises (Wkrs)	Meta, MO	11/10/1999	NAFTA–3,557	Briquettes.
Atlanta Attachment (Co.)	Lawrenceville, GA	10/25/1999	NAFTA–3,558	Automotive and labor saving device.
Pent Plastics (Co.)	Afton, IA	10/13/1999	NAFTA–3,559	Plastic injection molded parts.
Schuylkill Haven Bleach and Dye Works (Wkrs).	Schuylkill Haven, PA	11/10/1999	NAFTA–3,560	Knitted goods.
Sony Magnetic Products (Co.)	Dothan, AL	11/12/1999	NAFTA–3,561	VHS video tapes.
Steeltech (Wkrs)	Milwaukee, Wi	11/04/1999	NAFTA–3,562	Fabricated metal products.
Framatome Connectors Interlock (Co.)	Boyne City, MI	09/23/1999	NAFTA–3,563	Insert molded parts and wire harness.
Duckhead Apparel (Wkrs)	Winder, GA	11/08/1999	NAFTA–3,564	Garments.
Irwin (Co.)	Fitzgerald, GA	11/15/1999	NAFTA–3,565	Infants sleepwear and crib bedding.
Morgan Adhesive—Mactac (IBT)	Stow, OH	11/12/1999	NAFTA–3,566	Adhesive.
D.M.i. Furniture (Co.)	Ferdinand, IN	11/15/1999	NAFTA–3,567	Office furniture.
David Stevens (UNITE)	Blackwood, NJ	11/12/1999	NAFTA–3,568	Women's apparel.
Kim Michaels (UNITE)	Hammonton, NJ	11/12/1999	NAFTA–2,569	Women's apparel.
William Carter (The) (Wkrs)	Harlingen, TX	11/18/1999	NAFTA–3,570	Children's clothing.
Ilsco (Co.)	Mt. Sterling, KY	11/18/1999	NAFTA–3,571	Electrical connectors.
VF Workwear—Red Kap Industries (Co.)	Cookeville, TN	11/18/1999	NAFTA–3,572	Garments.
Hempfield Foundries (USWA)	Greensburg, PA	11/16/1999	NAFTA–3,573	Pipe fittings.
Bestform Intimates (UNITE)	Johnstown, PA	11/16/1999	NAFTA–3,574	Women's & children's underwear.
Asarco (Co.)	Leadville, CO	11/17/1999	NAFTA–3,575	Zinc, silver, gold, lead.
Champion Laboratories—Fuel Filter Tech (Co.).	Shelby Twnshp, MI	11/05/1999	NAFTA–3,576	Stainless steel fuel filters.
Industrial Motor and Control (Wkrs)	El Paso, TX	11/18/1999	NAFTA–3,577	Copper.
Court Metal Finishing (Wkrs)	Flint, MI	11/05/1999	NAFTA–3,578	Valves.
Carbill—North Star Steel (Wkrs)	Calvert City, KY	11/03/1999	NAFTA–3,579	Structural steel.
Summit Sportswear (Wkrs)	Minor Hill, TN	11/19/1999	NAFTA–3,580	Sportswear.
Dana Corporation (USWA)	Reading, PA	11/19/1999	NAFTA–3,581	Heavy truck side rails.
Wiser Lock—Masco (Co.)	Tucson, AZ	11/19/1999	NAFTA–3,582	Residential door hardware and security.
Crown, Cork and Seal Packaging (GMP)	S. Connellsville, PA	11/22/1999	NAFTA–3,583	Metal, paper lined closures.
International Paper—Masonite Corp. (Wkrs).	Piolt Rock, OR	11/22/1999	NAFTA–3,584	Forest residues.
Allied Signal (Co.)	Smethport, PA	11/22/1999	NAFTA–3,585	Petroleum bulk waxes.
Neles Automation (Co.)	Shrewsburg, MA	11/18/1999	NAFTA–3,586	Values.
Chevron Chemical (Wkrs)	Orange, TX	11/23/1999	NAFTA–3,587	Polyethylene production.
Williams Cutting Service (Co.)	Brownsville, TX	11/23/1999	NAFTA–3,588	Children's clothes.
Bombardier Transportation (Wkrs)	Bensalem, PA	11/23/1999	NAFTA–3,589	Railway spare parts.
U.S. Forest Industries (Wkrs)	White City, OR	11/23/1999	NAFTA–3,590	Wood products.
Vincent Dress (Wkrs)	Jermynn, PA	11/23/1999	NAFTA–3,591	Dresses.
Knitwaves (Co.)	New York, NY	11/08/1999	NAFTA–3,592	Children's clothes.
Sensor Devices (Wkrs)	Waukesha, WI	11/22/1999	NAFTA–3,593	Diagnostic and monitoring equipment.
Crystal Art (Wkrs)	Maspeth, NY	11/08/1999	NAFTA–3,594	Picture frames.
M.S. Chambers and Son (Co.)	Baltic, CT	11/29/1999	NAFTA–3,595	Print cylinders.
Elinco (Co.)	Waterbury, CT	11/23/1999	NAFTA–3,596	Electric motors.
Spartan Mills (Wkrs)	Spartanburg, SC	11/29/1999	NAFTA–3,597	Yarn.

[FR Doc. 99–31927 Filed 12–8–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,209; TA–W–36,209A]

Acorn Products Co., Inc.; Hampden, Maine; Lewiston, Maine; Including Leased Workers of Manpower Temporary Services and Olsten Staffing Services, Hampden & Lewiston, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 23, 1999, applicable to workers of Acorn Products Co., Inc., Hampden and Lewiston, Maine. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43724).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Acorn Products Co., Inc. were leased from Manpower Temporary Services and Olsten Staffing Services to produce selected socks and footware products at the Hampden and Lewiston, Maine facilities. Worker separations occurred at Manpower Temporary Services and Olsten Staffing Services as a result of worker separations at Acorn Products Co., Inc., Hampden and Lewiston, Maine.

Based on these findings, the Department is amending the certification to include workers of Manpower Temporary Services, and Olsten Staffing Services, Hampden and Lewiston, Maine leased to Acorn Products Co., Inc., Hampden and Lewiston, Maine.

The intent of the Department's certification is to include all workers of Acorn Prroducts Co., Inc. adversely affected by imports.

The amended notice applicable to TA–W–36,209 is hereby issued as follows:

All workers of Acorn Products Co., Inc., Hampden and Lewiston, Maine and leased workers of Manpower Temporary Services and Olsten Staffing Services, Hampden and Lewiston, Maine engaged in employment related to the production of selected socks and footware products for Acorn Products Co., Inc., Hampden and Lewiston, Maine who became totally or partially separated from employment on or after May 3, 1998 through July 23, 2001 and eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31944 Filed 12–8–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,983]

Arrow Ace Die Cutting Co., Inc., Bronx, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 25, 1999, in response to a worker petition which was filed on behalf of workers at Arrow Ace Die Cutting Co., Inc.

A negative determination applicable to the petitioning group of workers was issued on January 26, 1999 (TA–W–35,222). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31933 Filed 12–8–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210.

Signed at Washington, DC, this 8th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 11/08/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,026	Brunswick Bicycles (Co.)	Olney, IL	10/18/1999	Bicycles.
37,027	Fluid Process Systems (Co.)	El Paso, TX	10/22/1999	Water Treatment Equipment.
37,028	Perma Cote Industries (Wkrs)	Uniontown, PA	10/20/1999	Plastic Coated Electrical Conduits.
37,029	Weatherford International (Wkrs)	Kenay, AK	10/27/1999	Downhole Fishing Service.
37,030	Stuffed Shirt, Inc (Wkrs)	New York, NY	10/02/1999	Women's Clothing.
37,031	Nantucket Industries (Co.)	Cartersville, GA	10/20/1999	Men's Undergarments.

APPENDIX—PETITIONS INSTITUTED ON 11/08/1999—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,032	FAG Bearings Corp (Co.)	Joplin, MO	10/21/1999	Roller Bearings.
37,033	United Technologies (Wkrs)	Zanesville, OH	10/18/1999	Automotive Electrical Systems.
37,034	Moltech Power Systems (Co.)	Gainesville, FL	10/22/1999	Rechargeable Batteries.
37,035	Court Metal Finishing (Wkrs)	Flint, MI	10/15/1999	Engine Valves.
37,036	Stupp Corporation (USWA)	Baton Rouge, LA	10/14/1999	Steel Line Pipe.
37,037	Falk Corporation (Wkrs)	Milwaukee, WI	10/27/1999	Gearings for Mining.
37,038	Williams Advanced Materia (Co.)	Buffalo, NY	10/25/1999	Reclaim Precious Metal.
37,039	Tillotson Healthcare (Wkrs)	North Rochester, NH	10/28/1999	Rubber Latex Examination Gloves.
37,040	David Stevens, Inc (UNITE)	Blackwood, NJ	10/25/1999	Women's Clothing for Alfred Dunner.
37,041	Knitwaves (Co.)	New York, NY	10/25/1999	Children's Clothing.
37,042	Wilson Sporting Goods (Wkrs)	Sparta, TN	10/22/1999	Sport Team Uniforms.
37,043	Acordis Cellulosic Fibers (Wkrs)	Axis, AL	10/12/1999	Rayon Staple Fiber.
37,044	West Chester Holdings (Wkrs)	Monroe, OH	10/25/1999	Protective Clothing.
37,045	Atlas Tubular, Inc (Co.)	Robstown, TX	10/12/1999	Oil Tubular Goods.
37,046	Mobius, Inc (Wkrs)	Eugene, OR	10/26/1999	Branding, Imagry, and Fit for Levi Strauss.
37,047	Marathon Ashland Pipeline (Wkrs)	Martinsville, IL	10/23/1999	Oil Pipeline.
37,048	Jackpot Owl Club (Wkrs)	Battle Mtn., NV	10/25/1999	Casino, Restaurant and Motel.
37,049	Sand Creek Chemical (Co.)	Commerce City, CO	10/25/1999	Mathanol.
37,050	Gambro Renal Care Product (Co.)	Lakewood, CO	11/01/1999	Kidney Dialysis Machines.
37,051	G.L. Trucking and Rental (Co.)	Williston, ND	10/27/1999	Hauling Oilfield Drilling Equipment.

[FR Doc. 99–31929 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,129]

D & E Wood Products, Incorporated, Including Temporary Workers of Mid-Oregon Labor Contractors, Prineville, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 5, 1999, applicable to workers of D & E Wood Products, Incorporated, located in Prineville, Oregon. The notice was published in the **Federal Register** on November 4, 1999 (64 FR 60231).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of D & E Wood Products, Incorporated, were temporary workers of Mid-Oregon Labor Contractors employed to produce finger joint wood block and cut stock at the Prineville, Oregon facility.

Based on these findings, the Department is amending the certification to include temporary workers of Mid-Oregon Labor Contractors who were engaged in the production of finger joint wood block and cut stock at D & E Wood products, Incorporated, Prineville, Oregon.

The intent of the Department's certification is to include all workers of D & E Wood Products, Inc. adversely affected by imports.

The amended notice applicable to TA–W–36,129 is hereby issued as follows:

All workers of D & E Wood Products, incorporated, Prineville, Oregon and temporary workers of Mid-Oregon Labor Contractors, Prineville, Oregon engaged in employment related to the production of finger joint wood block and cut stock for D & E Wood Products, Incorporated, Prineville, Oregon who became totally or partially separated from employment on or after April 20, 1998 through October 5, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31943 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,869]

Grand Rapids Die Cast, Grand Rapids, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1999 in response to a worker petition which was filed on September 13, 1999 on behalf of workers at Grand Rapids Die Cast, Grand Rapids, Michigan.

An active certification covering the petitioning group of workers remains in effect (TA–W–36,814). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31935 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,796]

Keepshapes, Incorporated, Bronx, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 7, 1999 in response to a worker petition which was filed on behalf of former workers at Keepshapes, Incorporated, located in Bronx, New York (TA–W–36,796).

The Department of Labor has determined that the petitioners are covered under an existing certification, as amended (TA–W–35,990). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31940 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,918]

Kimberly-Clark Corporation, Munising Mill, Munising, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 12, 1999, in response to a worker petition which was filed on behalf of workers at Kimberly-Clark Corporation, Munising Mill, Munising, Michigan.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31934 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,094]

Lear Corp., Formerly Known as United Technologies Automotive, Zanesville, Ohio; Notice of Termination of Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated in response to a petition received on November 22, 1999 and filed on behalf of workers at Lear Corp., Zanesville, Ohio.

The investigation revealed that the petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–37,033). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31938 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,990]

Majestic Shapes, Inc., Including Keepshapes, Inc., Bronx, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 4, 1999, applicable to workers of Majestic Shapes, Bronx, New York. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35185).

On its own motion, the U.S. Department of Labor reviewed the certification for workers of the subject firm. The workers were engaged in the production of shoulder pads for the apparel industry. New information shows that worker separations occurred at Keepshapes, Incorporated. Keepshapes, Incorporated, and its affiliate Majestic Shapes, Incorporated, closed in early 1999 and were housed at the same location. The workers of Keepshapes, Incorporated were not included in the original certification.

The intent of the Department's certification is to include all workers of Majestic Shapes adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of Keepshapes, Incorporated, Bronx, New York.

The amended notice applicable to TA–W–35,990 is hereby issued as follows:

All workers of Majestic Shapes, Incorporated and Keepshapes, Incorporated, Bronx, New York who became totally or partially separated from employment on or after March 11, 1998 through June 4, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31946 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 15th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 11/15/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,052	Metric Products, Inc (Wrks)	Culver City, CA	10/12/1999	Cup Mould for Bathing Suites.
37,053	Long Airdox Co (Wrks)	Pulaski, VA	11/01/1999	Heavy Mining Equipment.
37,054	Kearfott Guidance (Wrks)	Wayne, NJ	10/28/1999	Guidance and Navigation.
37,055	Cross Supply (Wrks)	Olney, IL	10/29/1999	Oilfield Supply Services.
37,056	Aluminum Co of America (Wrks)	Alcoa Center, PA	10/01/1999	Extrusions.
37,057	Chromalloy T.A.D. (Wrks)	Harrisburg, PA	11/01/1999	Turbine Airfoils.
37,058	Tultext Corp (Comp)	Bastain, VA	10/04/1999	Fleece Activewear.
37,059	Allied Signal Aerospace (UAW)	Boyne City, MI	10/27/1999	Pressure and Position Transmitters.
37,060	Liz Claiborne, Inc (UNITE)	North Bergen, NJ	10/27/1999	Women's Sportswear.
37,061	Big "B" Valve, Inc (Comp)	Laurel, MS	11/01/1999	Wellhead Equipment.
37,062	Robett Manufacturing (Wrks)	Riceville, TN	10/21/1999	Men's and Boys' Camouflage and Fatigues.
37,063	Kellogg Co. (BCTGM)	Battle Creek, MI	10/29/1999	Cereals.
37,064	Val Originals, Inc (Wrks)	Providence, RI	10/30/1999	Costume Jewelry.
37,065	Svedala Industries, Inc (GMP)	Greenville, PA	11/01/1999	Grey & Ductile Iron Castings.
37,066	Tenneco Automotive (Comp)	Culver, IN	11/03/1999	Automotive Catalytic Converters.
37,067	Tenneco Corp (UAW)	South Brunswick, NJ	10/27/1999	Packaging.
37,068	W.S.W. Co. of Sharon (Comp)	Atwood, TN	11/01/1999	Children's Sleepwear.
37,069	Con Agra Grocery Products (UFCW)	Perrysburg, OH	11/03/1999	Ketchup, BBQ Sauce and Spaghetti Sauce.
37,070	Arachnid, Inc (Wrks)	Rockford, IL	10/29/1999	Electronic Chart Boards.
37,071	Technistar Corp. (Comp)	Longmont, CO	10/27/1999	Robotic Automation Equiptment.
37,072	Jim Strickland Production (Wrks)	Tyler, TX	11/03/1999	Oil and Gas.
37,073	Fedders North America (Wrks)	Effingham, IL	11/01/1999	Window Air Conditioners.
37,074	American Pharmaceutical (Wrks)	Fairfield, NJ	10/29/1999	Chemical Pills.
37,075	Steeltech (Wrks)	Milwaukee, WI	10/19/1999	E-Coating, Metal Painting, Fabrication.
37,076	Appleton Papers, Inc (PACE)	Newton Falls, NY	11/02/1999	Coated Freesheet.
37,077	Hutchinson Technology (Wrks)	Hutchinson, MN	10/27/1999	Computer Components.
37,078	Unocal Domestic Geotherma (Wrks)	Cloverdale, CA	10/04/1999	Oil, Gas and Steam for Electricity.
37,079	Sterling Diagnostic (Co.)	Brevard, NC	11/03/1999	Medical X-Ray Films.
37,080	Prat and Whitney (IAMAW)	Rocky Hill, CT	11/04/1999	Jet Engine Parts.
37,081	Joy Mining Machinery (IAMAW)	Franklin, PA	11/03/1999	Underground Mining Machines.
37,082	Outboard Marine Corp (USWA)	Milwaukee, WI	11/03/1999	Outboard Motors and Parts.

[FR Doc. 99–31928 Filed 12–8–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,525; TA–W–36,525A]

Ponder Industries, Inc.; Ponder Fishing Tools; Healdton, Oklahoma; El Reno, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 30, 1999, applicable to workers of Ponder Industries, Inc., Ponder Fishing Tools located in Healdton, Oklahoma. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52540).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New company information shows that all workers were separated at Ponder Fishing Tools, El Reno, Oklahoma facility of Ponder Industries, Inc. when it closed in June, 1999. The workers provided oilfield services related to the exploration and production of crude oil and natural gas for oil and gas producers.

Accordingly, the Department is amending the certification to cover the workers of Ponder Industries, Inc., Ponder Fishing Tools, El Reno, Oklahoma.

The intent of the Department's certification is to include all workers of Ponder Industries, Inc., Ponder Fishing Tools who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,525 is hereby issued as follows:

All workers of Ponder Industries, Inc., Ponder Fishing Tools, Healdton, Oklahoma (TA–W–36,525) and Ponder Fishing Tools, El Reno, Oklahoma (TA–W–36,525A) who became totally or partially separated from employment on or after June 25, 1998 through July 30, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31945 Filed 12–8–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,582 & TA–W–36,582A]

Portland General Electric Company Nuclear Division Personnel Rainier, Oregon and Corporate Support Personnel Portland, Oregon; Dismissal of Appliction for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Portland General Electric Company, Nuclear Division Personnel, Rainer, Oregon and the Corporate Support Personnel, Portland, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,582; Portland General Electric Company, Nuclear Division Personnel, Rainier, Oregon and
TA–W–36,582A; Corporate Support Personnel, Portland, Oregon (November 23, 1999)

Signed at Washington, DC this 29th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31942 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,009]

Ref-Chem Corporation; Odessa, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 1999 in response to a worker petition which was filed on October 18, 1999 on behalf of workers at Ref-Chem Corporation, Odessa, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31930 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,079]

Sterling Diagnostic Imaging, Brevard, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 15, 1999 in response to a worker petition which was filed on behalf of workers at Sterling Diagnostic Imaging, Brevard, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 24th day of November 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–31939 Filed 12–8–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–150)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, John H. Glenn Research Center at Lewis Field, Mail Stop 500–118, Cleveland, Ohio 44135–3191; telephone (216) 433–8855.

NASA Case No. LEW 16,519–2 Gas Sensing Diode and Method of Manufacturing; NASA Case No. LEW 16,384–3 Aromatic Diamines and Polyimides based on 4-4′ Bis (4-Aminophennoxy).

Dated: December 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31826 Filed 12–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–151]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Chief Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; Tel. 301–286–7351.

NASA Case No. GSC 13,869–1: Holographic Circle-to-Point Converter;

NASA Case No. GSC 13,906–1: CCD System Technology for Extremely Low Background Observations;

NASA Case No. GSC 13,947–1: A Self-Acting Negative Air Bearing Head for Contact Recording on Flexible Media;

NASA Case No. GSC 13,963–1: Method and Apparatus for High Data Rate Demodulation;

NASA Case No. GSC 13,988–3: Shaft Position Optical Sensor;

NASA Case No. GSC 13,988–4: Low Loss Pole Configuration for Multi-Pole Homopolar Magnetic Bearings;

NASA Case No. GSC 13,991–1: Spaceborne Global Positioning System for Spacecraft;

NASA Case No. GSC 13,991–2: Global Positioning System Satellite Selection Method;

NASA Case No. GSC 14,240–1: Shared Aperture Multiplexed (SAM) Holographic Scanning Telescopes;

NASA Case No. GSC 14,302–1: Extension of the Empirical Mode Decomposition Method to a Time Series of 2–Dimensional Grid Maps.

Dated: December 2, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31827 Filed 12–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–154]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: December 9, 1999.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; Tel. (650) 604–5104, Fax (650) 604–1592.

NASA Case No. ARC–14246–1SB: Doping Method of Semiconducting Atomic Chains;

NASA Case No. ARC–14280–1LE: Advanced Sensor Systems for Biotelemetry;

NASA Case No. ARC–14418–1GE: Conflict-Free Planning for En Route Spacing: A Concept for Integrating Conflict Probe and Miles-In-Trail;

NASA Case No. ARC–14281–1GE: Method and System for Design Optimization Using Composite Response Surfaces;

NASA Case No. ARC–14446–1LE: Modular Sensor Signal System;

NASA Case No. ARC–14269–1LE: Method and Apparatus for Representing and Visually Displaying Surfaces of Three-Dimensional Objects at High-Resolution;

NASA Case No. ARC–14287–1LE: Virtual Cutting Tool for Use with High-Resolution Three-Dimensional Medical Imaging System;

NASA Case No. ARC–14441–1NP: Method and Apparatus for Virtual Interactive Medical Imaging by Multiple Remotely-Located Users.

Dated: December 3, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31924 Filed 12–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–153]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Eric Aparnieks (doing business as ADVISORS INTERNATIONAL) of New Berlin, Wisconsin, has applied for an exclusive license to practice the invention disclosed in NASA Case No. MSC–22738–1, entitled ''Non-Intrusive Pressure/Multipurpose Sensor and Method,'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the proposed grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, Texas 77058–3696, telephone (281) 483–1003.

Dated: December 3, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31923 Filed 12–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–152]

Notice of prospective patent license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Associated Technical Management Corporation of Texarkana, TX, has applied for an exclusive license to practice the invention described and claimed in a PCT Application Serial No. PCT/US99/03922, entitled ''Plant Chlorophyll Content Imager,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Patent Counsel, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Diana M. Cox, Patent Counsel, John F. Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: December 3, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31922 Filed 12–8–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Regulatory Co. Palisades Plant; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 189 to Facility Operating License No. DPR–20, issued to the Consumers Energy Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

The amendment is effective as of the date of issuance and shall be implemented on or before October 21, 2000. The implementation of the amendment includes one license condition that is being added to Section 2.C of the operating license as part of the amendment.

The amendment replaces, in its entirety, the current Technical Specifications (TSs) with a set of improved TSs based on (1) NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' Revision 1, dated April 1995, including subsequent approved changes to the standard TSs, (2) guidance provided in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), and (3) 10 CFR 50.36, ''Technical Specifications,'' as amended July 19, 1995 (60 FR 36953). In addition, the amendment added one license condition to Section 2.C of the operating license that provides the schedule for the first performance of surveillance requirements that are new or revised in the amendment.

The application for the amendment, as supplemented, 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 1.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 21, 1999 (64 FR 51147). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement related to the operation of the Palisades Nuclear Generating Plant dated June 1972, and in the addendum to the Final Environmental Statement dated February 1978. The Environmental Assessment as published in the **Federal Register** on October 22, 1999 (64 FR 57156).

For further details with respect to the action, see (1) the application for amendment dated January 26, 1998, as supplemented by letters dated April 30, September 14, October 12, and November 9, 1998, and March 1, March 22, March 30, April 7, May 3, June 4, June 11, June 17, July 19, July 30, September 17, September 30, October 22, and November 5, 1999, (2) Amendment No. 189 to License No. DPR–20, (3) the Commission's related Safety Evaluation, and (4) the

Commission's Environmental Assessment. 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 are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland, this 30th day of November 1999.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31917 Filed 12–8–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607]

McClellan Nuclear Radiation Center Department of the Air Force; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. R–130 for the McClellan Nuclear Radiation Center (MNRC) currently held by the Department of the Air Force, as owner and licensed operator of the MNRC. The transfer would be to the Regents of the University of California. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by the Department of the Air Force and the Regents of the University of California, the Regents of the University of California would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of the MNRC. No physical changes to the MNRC facility or operational changes are being proposed in the application.

The proposed amendment would replace references to the Department of the Air Force in the license with references to the Regents of the University of California to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By December 29, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Colonel Robert Gibson, SM–ALC/JA, 5219 Arnold Avenue, McClellan AFB, Sacramento, California 95652–1085, and Kevin M. Smith, Vice Chancellor for Research, Office of the Vice Chancellor for Research, Mark Hall, University of California, One Shields Avenue, Davis, California 95616, attorneys for the licensees; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 10, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated April 13, 1999, as supplemented on July 19 and August 4, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 2nd day of December 1999.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications and Non-Power Reactor Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31921 Filed 12–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear, Inc., et al., Three Mile Island Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear, Inc. (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, PA.

Environmental Assessment

Identification of the Proposed Action

The proposed action would clarify the authority under the TMI–1 license to possess radioactive materials and components at both Unit 1 and Unit 2. Following the expected transfer of the TMI–1 operating license to AmerGen, certain radioactive materials and components would still be able to be moved between the TMI–1 and TMI–2 units as is currently authorized. The TMI–2 license would remain with GPU. This amendment does not authorize the receipt or possession of radioactive waste from other sites.

The proposed action is in accordance with the licensee's application for amendment dated June 29, 1999, as supplemented by letters dated August 27, October 29, and November 3, 1999.

The Need for the Proposed Action

The proposed action is needed because TMI Units 1 and 2 have adjoining fuel handling buildings and both units share the same loading/unloading bay. Since the two units are currently operated or maintained by the same licensee, GPU Nuclear, Inc., each unit has similar license conditions (2b(3) and 2b(4) for Unit 1 and 2B(4) and 2B(5) for Unit 2) which effectively permit the possession and movement of radioactive materials between the units and common facilities, including the staging of contaminated apparatus used at either unit and temporary staging of radioactive material generated by the units. In anticipation of the forthcoming license transfer of the TMI–1 operating license to Amergen, the licensee has requested that TMI–1 License Conditions 2b(3) and 2b(4) be amended to clarify the authority to possess certain radioactive materials and components at both units so that it is clear that the new licensee for Unit 1 may continue to possess and move these materials and components between both units under its license. The licensee has also proposed to modify the Unit 2 license in a separate parallel license amendment request which would take into account the Unit 1 amendment request.

Environmental Impacts of the Proposed

The NRC has completed its evaluation of the proposed action and concluded that the proposed action places appropriate limits on the types, amounts and duration of storage of radioactive materials, waste and components that may be possessed by the TMI–1 licensee at either unit and further has determined that the source term from any accident involving radioactive material, waste or components would be within that assumed in the Updated Final Safety Analysis Report for Unit 1 and the Post Defueling Monitored Storage Safety Analysis Report for Unit 2.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application could require the building of separate handling facilities for each unit and/or different methods for conducting outage activities including staging of contaminated scaffolding. This alternative would involve building new handling capacity for the processing of contaminated protective clothing, processing of liquid radwaste, and temporary staging areas. This alternative would be disruptive to plant operations and may give cause for increased radiation safety concerns. Therefore, this alternative is not considered to be an option.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on November 29, 1999, the staff consulted with the Pennsylvania State official, Stan Maingi of the Pennsylvania Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 29, 1999, as supplemented by letters dated August 27, October 29, and November 3, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 6th day of December 1999.

For the Nuclear Regulatory Commission,

Timothy G. Colburn, Sr.,

Project Manager, Section 1 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31918 Filed 12–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Instructions for Completing Nuclear Material Transfer Reports (DOE/NRC Forms-741, 741A and 740M), Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Revision 4 of NUREG/BR–0006, ''Instructions for Completing Nuclear Material Transfer Reports'' dated September 1999.

ADDRESSES: Copies of NUREG/BR–0006 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying, for a fee, in the NRC Public Document Room, 2120 L. Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION, CONTACT: Dr. Lidia Roche, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7830.

SUPPLEMENTARY INFORMATION:

NRC is announcing the availability of Revision 4 of NUREG/BR–0006, ''Instructions for Completing Nuclear Material Transfer Reports.'' This revision of NUREG/BR–0006 incorporates a variety of reporting instructions that has been previously issued by NRC regulations. This revision also incorporates instructions to be followed by the operating gaseous diffusion plants that are now under NRC oversight. NRC expects to issue a minor revision to this NUREG to fully address reporting instructions for enrichment plants.

Electronic Access

NUREG/BR–0006 Revision 4 is also available on NRC's Home Page at: http:www.nrc.gov/NRC/NUREGS/BR0006/R4/index.html.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

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

For the Nuclear Regulatory Commission,

Theodore S. Sherr,

Chief Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–31919 Filed 12–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Instructions for the Preparation and Distribution of Material Status Reports (DOE/NRC Forms-742 and 742–C); Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Revision 3 of NUREG/BR–0007, ''Instructions for the Preparation and Distribution of Material Status Reports'' dated September 1999.

ADDRESSES: Copies of NUREG/BR–0007 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying, for a fee, in the NRC Public Document Room, 2120 L. Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION, CONTACT: Dr. Lidia Roche, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7830.

SUPPLEMENTARY INFORMATION:

NRC is announcing the availability of Revision 3 of NUREG/BR–0007, ''Instructions for Completing Nuclear Material Transfer Reports.'' This revision of NUREG/BR–0006 incorporates a variety of reporting instructions that has been previously issued by NRC regulations. This revision also incorporates instructions to be followed by the operating gaseous diffusion plants that are now under NRC oversight. NRC expects to issue a minor revision to this NUREG to fully address reporting instructions for enrichment plants.

Electronic Access

NUREG/BR–0006 Revision 4 is also available on NRC's Home Page at: http:www.nrc.gov/NRC/NUREGS/BR0006/R4/index.html.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 15 day of September, 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–31920 Filed 12–8–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24182; File No. 812–11710]

Jackson National Life Insurance Company, et al.; Notice of Application

December 2, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'') granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and rule 22c–1 thereunder, to permit the recapture of contract enhancements applied to premium payments made under certain deferred variable annuity contracts.

Summary of application: Applicants seek an order under section 6(c) of the Act to permit, under specified circumstances, the recapture of contract enhancements applied to premiums made under deferred variable annuity contracts (the ''Contracts'') that Jackson National Life Insurance Company (''Jackson National'') will issue through Jackson National Separate Account V (''Separate Account V''), as well as other contracts that Jackson National may issue through any other separate account established in the future by Jackson National (''Future Accounts'') to support contracts that are substantially similar in all material respects to the Contracts (the ''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through Separate Account V or any Future Account (''Jackson National Broker-Dealer(s)'').

Applicants: Jackson National Life Insurance Company, Jackson National Separate Account V, any other separate account established by Jackson National in the future to support certain deferred variable annuity contracts issued by Jackson National, and Jackson National Life Distributors, Inc. (''JNLD'') (collectively, ''applicants'').

Filing date: The application was filed on July 29, 1999, and amended and restated on October 27, 1999 and December 1, 1999.

Hearing or notification of hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 27, 1999, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Joseph Emanuel, Esq., Jackson National Life Insurance Company, 5901 Executive Drive, Lansing, Michigan 48911–5389.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTAL INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the State of Michigan. Separate Account V was established on September 25, 1998. Jackson National serves as depositor of Separate Account V. Jackson National may in the future establish one or more Future Accounts for which it will serve as depositor.

2. Separate Account V is a segregated asset account of Jackson National, and is registered with the Commission as a unit investment trust investment company under the Act. Separate Account V filed a Form N–8A Notification of Registration under the Act on January 15, 1999. The Separate Account funds the variable benefits available under the Contracts funded through it. Units of interest in Separate Account V will be registered under the Securities Act of 1933 (the ''1933 Act''). In that regard, Separate Account V filed a Form N–4 Registration Statement on January 15, 1999 under the 1933 Act relating to the Contracts and filed Pre-Effective Amendment No. 1 to Form N–4 on August 13, 1999. Jackson National may in the future issue Future Contracts through Separate Account V or through Future Accounts. That portion of the assets of Separate Account V that is equal to the reserves and other Contract liabilities with respect to Separate Account V is not chargeable with liabilities arising out of any other business of Jackson National. Any income, gains or losses, realized or unrealized, from assets allocated to Separate Account V is, in accordance with Separate Account V's Contracts, credited to or charged against Separate Account V, without regard to other income, gains or losses of Jackson National.

3. JNLD is a wholly-owned subsidiary of Jackson National and will be the principal underwriter of Separate Account V and distributor of the Contracts funded through Separate Account V. JNLD is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Contracts will be offered through unaffiliated broker-dealers who have entered into agreements with JNLD. JNLD, or any successor entity, may act as principal underwriter for any Future Accounts and distributor for any Future Contracts issued by Jackson National. A successor entity also may act as principal underwriter for Separate Account V.

4. The Contract is a part of Jackson National's line of annuity products. The Contract is an individual deferred variable and fixed annuity contract. The Contract may be issued under a qualified plan, specially sponsored program or an individual retirement annuity or as a non-qualified contract. The Contract is designed to provide for the accumulation of assets and income during an accumulation phase. Premium payments may be made at any time during the accumulation phase. The minimum initial premium is $5,000 under most circumstances and $2,000 for a qualified plan contract. Additional premiums of at least $500 can be made ($50 under the automatic investment plan).

5. The Contracts permit premiums to be allocated to guaranteed accounts of Jackson National (''Guaranteed Accounts''). The Guaranteed Accounts are not registered with the Commission.

6. Separate Account V currently is divided into 19 sub-accounts, each of which will be available under the Contracts. The sub-accounts are referred to as ''Investment Portfolios.'' Each Investment Portfolio will invest in a series of JNL Series Trust (''Trust'') or JNL Variable Fund V LLC (''Fund''). The Investment Portfolios and the Guaranteed Accounts will comprise the initial ''Investment Options'' under the Contract. The Trust and the Fund are open-end management investment companies registered under the 1940 Act, whose shares are registered under the 1933 Act.

7. Jackson National Financial Services, LLC (''JNFS'') serves as the investment adviser for all of the series of the Trust and the Fund. JNFS has retained subadvisers for each series. Jackson National, at a later date, may determine to create additional Investment Portfolios of Separate Account V to invest in any additional series, or other such underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Portfolio(s) of Separate Account V may be combined or eliminated from time to time.

8. The Contract provides for transfer privileges among Investment Portfolios, dollar cost averaging, rebalancing, and other features. The following charges are assessed under the Contract: (i) Annual asset-based charges as follows: 1.35% for mortality and expense risks, 0.15% for administration expenses, and 0.15% if a Contract Owner chooses the optional enhanced death benefit; (ii) a withdrawal charge which starts at 8.5% in the first year, and declines 1% per year thereafter to 0% after nine years with a 10% free withdrawal option; (iii) a $35 contract maintenance charge during the accumulation phase; and (iv) a transfer fee of $25 for each transfer in excess of 15 in a Contract year. The Trust and the Fund also impose management and administrative fees which vary depending upon which series is selected.

9. The Contract offers a selection of death benefits. A Contract Owner can select the standard death benefit or the optional enhanced death benefit. The standard death benefit is equal to the greater of: (1) The Contract value at the end of the business day on which due proof of death and an election of the type of payment to the beneficiaries is

received by Jackson National; or (2) the minimum death benefit, which is the total of premiums paid prior to the death of the Owner, minus any withdrawals and any withdrawal charges or other fees previously assessed and premium taxes incurred. The optional enhanced death benefit is equal to the greatest of: (1) The standard death benefit; (2) the total premiums paid prior to the death of the Owner, minus any withdrawals and any withdrawal charges or other fees previously assessed and premium taxes incurred, compounded at 5% (4% if the Owner is over age 70 at the date of Contract issue); or (3) the Contract value at the end of the seventh Contract year, plus all premiums paid since the seventh year (less withdrawals, withdrawal charges previously assessed, and any applicable charges, fees and premium taxes incurred since the seventh year) compounded at 5% (4% if the Owner is over age 70 at the date of Contract issue). The optional enhanced death benefit under (2) or (3) will never exceed 250% of premiums paid, less withdrawals and any charges, fees, withdrawal charges previously assessed and premium taxes incurred.

10. Each time a Contract Owner makes a premium payment, Jackson National will add an additional amount to the Contract (''Contract Enhancement''). The Contract Enhancement will equal 4% of the premium payment. Jackson National will fund the Contract Enhancement form its general account assets. Jackson National will allocate the Contract Enhancement to the Guaranteed Accounts and/or Investment Portfolios in the same proportion as the premium payment. Jackson National will recapture Contract Enhancements only under the following circumstances: (i) If the Contract Owner exercises the right to return the Contract under the free-look provision of the Contract, the amount refunded will be reduced by any Contract Enhancement applied; (ii) if a death benefit is payable under either the standard death benefit or optional enhanced death benefit, any Contract Enhancement based on any premium payment received within 12 months prior to the date of death of the Contract Owner or annuitant (when the owner is a non-natural person) will be returned to Jackson National to the extent that the death benefit payable is greater than the minimum death benefit (but in no event will the Contract Owner receive less than the minimum death benefit); (iii) for withdrawals or distributions, including partial withdrawals, any Contract Enhancement resulting from premium paid 12 months prior to the receipt of the request for the withdrawal or distribution will be deducted from the Contract value prior to determining the amount available for withdrawal or distribution; and (iv) for benefits provided by certain riders or endorsements (as described below), any Contract Enhancement resulting from premium paid 12 months prior to the receipt of the request for the payment of the benefit will be deducted from the Contract value prior to determining the amount available.

11. In states where permitted, Jackson National will issue riders or endorsements which provide: (a) a waiver of the withdrawal charge for a terminal illness of the Owner under certain circumstances; and (b) a waiver of the withdrawal charge if the owner is diagnosed with a condition specified in the endorsement (*e.g.,* heart attack, stroke, coronary artery surgery, life threatening cancer, renal failure). Applicants represent that these are the only riders referred to in circumstance (iv) described in paragraph 10 above.

12. Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Jackson National to issue Contracts and Future Contracts that provide for the recapture of an amount equal to any Contract Enhancement under the circumstances described in paragraph 10 above.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by Separate Account V or any Future Account (''Separate Accounts''), that are issued by Jackson National and underwritten or distributed by JNLD or Jackson National Broker-Dealers. Applicants state that Future Contracts funded by a Separate Account will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are 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.

2. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in a Separate Account after the Contract Enhancement is applied. Accordingly, the asset-based charges applicable to a Separate Account will be assessed against the entire amounts held in the Separate Account, including the Contract Enhancement amount during the free-look period and the 12-month period following a premium payment preceding certain events (*i.e.,* payment of a death benefit, withdrawals or distributions, and payment of benefits provided by certain Contract riders or endorsements). As a result, during such periods, the aggregate asset-based charges assessed against an owner's Contract value will be higher than those that would be charged if the owner's Contract value did not include the Contract Enhancement.

3. Subsection (i) of section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) of the Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Contract Enhancement recapture provisions of the Contract would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state than an owner's interest in the amount of any Contract Enhancement allocated upon receipt of premium payments made during the 12-month period before a death benefit is payable, a withdrawal or distribution is made, or a benefit is

payable under certain Contract riders or endorsements also is not vested. Until or unless the amount of any Contract Enhancement is vested, Applicants submit that Jackson National retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when Jackson National recaptures any Contract Enhancement it is simply retrieving its own assets, and because an owner's interest in the Contract Enhancement is not vested, the owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.,* a share of the applicable Separate Account's assets proportionate to the owner's Contract value (including the Contract Enhancement).

5. In addition, with respect to Contract Enhancement recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Jackson National could not recapture the Contract Enhancement, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Contract Enhancements relating to premiums made within twelve months of the payment of a death benefit, a withdrawal or distribution or the payment of a benefit under certain Contract riders or endorsements is designed to provide Jackson National with a measure of protection. Applicants state that the risk is that, rather than spreading premiums over a number of years, an owner will make very large premiums shortly before certain events, thereby leaving Jackson National less time to recover the cost of the Contract Enhancements applied, to its financial detriment. Again, the amounts recaptured equal the Contract Enhancements provided by Jackson National from its own general account assets, and any gain would remain as part of the Contract's value at annuitization.

7. Applicants represent that the Contract Enhancement will be attractive to and in the interest of investors because it will permit owners to put 104% of their premiums to work for them in the selected Investment Options. Also, any earnings attributable to the Contract Enhancement will be retained by the owner, and the principal amount of the Contract Enhancement will be retained if the contingencies set forth in the application are satisfied.

8. Applicants state that Jackson National's right to recapture Contract Enhancements applied to premiums made within twelve months of the payment of a death benefit, a withdrawal or distribution, or the payment of a benefit under certain Contract riders or endorsements protects it against the risk that owners will contribute larger amounts as they approach certain events (if foreseeable) to obtain the Contract Enhancement, while avoiding Contract charges over the long term. With respect to refunds paid upon the return of Contracts within the ''free-look'' period, the amount payable to Jackson National must be reduced by the allocated Contract Enhancement. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Contract Enhancement under the Contracts do not, and any such Future Contract provisions will not, violate section 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described herein with respect to the Contract and any Future Contracts, without the loss of the relief from section 27 provided by section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of security for redemption or of an order to purchase or sell such security.

11. Arguably, Jackson National's recapture of the Contract Enhancement might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of Separate Account V. Applicants contend, however, that recapture of the Contract Enhancement is not violative of section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. *See* Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in an owner's Contract value at a price determined on the basis of current net asset value of Separate Account V. The amount recaptured will equal the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Contract Enhancement, the amount of such gain will be determined on the basis of the current net asset value of Separate Account V. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts and Future Contracts.

Conclusion

Appicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue

that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31961 Filed 12–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–28; File No. S7–27–99]

Privacy Act of 1974: Notice of Modifications to a System of Records and the Establishment of a New System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intended modifications to an existing system of records and the establishment of a new system of records.

SUMMARY: The Securities and Exchange Commission proposes to modify an existing system of records by excluding records submitted by broker-dealers and to add a new system of records consisting of these broker-dealer records. This proposal reflects the assumption of certain registration functions, including maintenance of broker-dealer registration records in the new Internet-based Central Registration Depository (CRD), by the National Association of Securities Dealers, Inc. (NASD).

Also, the Commission is proposing to make major changes in its ''Pay and Leave System (SEC–15).'' The changes are designed to reflect the transfer of some of its payroll functions to the National Business Center of the U.S. Department of the Interior (DOI). As a result of the transfer, certain SEC–15 records would become a part of DOI's integrated, automated payroll system.

DATES: Comments must be received by January 10, 2000. The proposed changes and the new system of records will take effect January 18, 2000, unless the SEC receives comments that would require a different determination.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also send your comments electronically to the following electronic address: rule-comments@sec.gov. All comments should refer to File No. S7–27–99 and, if sent electronically, should include this file number on the subject line. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. If sent electronically, comment letters will also be available on our Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Betty A. Lopez, Privacy Act Officer, (202) 942–4320, Office of Filings and Information Services, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

SUPPLEMENTARY INFORMATION: The Commission gives notice of major changes to ''Applications for Registration/Exemption under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940 (SEC–2),'' which results in the establishment of a new system—''Broker-Dealer Records (SEC–49).'' It also gives notice of major changes to ''Pay and Leave System (SEC–15).''

SEC–2

Currently, the Commission treats paper and microfiche copies of applications for registration by broker-dealers (Form BD) and investment advisers (Form ADV) and their related amendments, withdrawal notices, and other forms as agency records subject to the Privacy Act. Accordingly, the Commission has published and periodically updated a system of records notice for these records, designated as SEC–2. These records contain names of individuals and information about those individuals, such as disciplinary information. However, the current Privacy Act notice does not address the electronic filing of such forms and new ways of maintaining and retrieving them through any SEC or non-SEC system. The Commission is therefore proposing to transfer broker-dealer records, whether in paper, microfiche, or electronic format, from SEC–2 to the ''Broker-Dealer Records'' (SEC–49), a new Privacy Act records system. In addition, the Commission is proposing to restate the routine uses in plain English and to delete outdated or redundant uses.[1]

SEC–15

Moreover, the Commission gives notice of major changes to its ''Pay and Leave System (SEC–15).'' On June 20, 1999, the Commission transferred some of its payroll functions to DOI. This transfer required the integration of its notices of personnel action and other pay-related records with the DOI's automated payroll and personnel system. The Commission, however, would continue to maintain its electronic payroll files, official personnel files, time and attendance reports, and service history files pertaining to SEC employees. To reflect this development and restate the routine uses of SEC–15 records in plain English, the Commission is proposing major changes to SEC–15.

SEC–49

On April 30, 1999, the Commission adopted amendments to Form BDW and Rules 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 under the Securities Exchange Act of 1934 (Exchange Act).[2] On July 2, 1999, the Commission adopted amendments to Form BD and Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act.[3] These amendments require broker-dealers to submit all Form BD amendments and Form BDW withdrawal requests electronically to Web CRD. As a result of these amendments, the NASD, which is responsible for the operation and maintenance of Web CRD, will be the custodian of broker-dealer registration records filed on or after August 16, 1999. As custodian, the NASD must maintain the records in accordance with federal record-keeping requirements.[4] Under 5 U.S.C. 552a(m), the NASD has entered into a Memorandum of Understanding with

[1] *See* 5 U.S.C. 552a(b), Conditions of Disclosure.

[2] Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25143 (May 10, 1999).

[3] Securities Exchange Act Release No. 41394 (July 2, 1999), 64 FR 37586 (July 12, 1999).

[4] 36 CFR 1220, Federal Records—General, 36 CFR 1222, Creation and Maintenance of Federal Records, and 36 CFR 1234, Electronic Records Management.

the Commission, under which the NASD also assumes, among other things, all responsibilities for compliance with the Privacy Act with respect to those records.

All broker-dealer records on paper and microfiche, received by the Commission before August 16, 1999, will remain in its custody and control and their routine uses are unchanged by the development of the Web CRD.

As 5 U.S.C. 552a(r) requires, the Commission has submitted its reports of the new and the altered systems of records to the Congress and the Office of Management and Budget. This complies with Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' as amended on February 20, 1996.[5]

Accordingly, the Commission proposes to amend SEC–2 and SEC–15 and establish SEC–49, to read as follows:

SEC–2

SYSTEM NAME:

Applications for Registration or Exemption under the Investment Advisers Act of 1940 and the Investment Company Act of 1940.

SYSTEM LOCATION:

SEC, 450 Fifth Street, NW, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, directors, and other individuals related to investment advisers or investment companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, address, telephone numbers, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77f, 77g, 77h, 77j, 78l, 78m, 78n, 78o(d), 78p, 79e, 80a–6, 80a–8, 80b–3, and 80b–6a.

PURPOSES:

To help the SEC staff process applications for registration or exemption and related forms under the Investment Advisers Act of 1940 and the Investment Company Act of 1940 and implement the Federal securities laws and rules.

[5] 61 FR 6428, 6435–39.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities self-regulatory organization that is investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper, microfiche, or electronic format.

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and 24-hour security guards. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

These records are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f. Permanent files are sent to the National Archives and Records Administration after a specified storage time at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Records Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should write the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Applications for Registration or Exemption and related forms filed with the SEC under the Investment Advisers Act of 1940 and the Investment Company Act of 1940.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–15

SYSTEM NAME:

Pay and Leave System.

SYSTEM LOCATIONS:

(1) Payroll files, official personnel files, time and attendance reports, and service history files: SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413;

(2) Notices of personnel action and other pay-related records: Department of the Interior, National Business Center, Payroll Operations Division, Mail Stop D–260, 7301 West Mansfield Avenue, Lakewood, CO 80235–2230; and

(3) Retired personnel files: National Archives and Records Administration, National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present SEC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll files, time and attendance reports, official personnel files, and service history files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 21–89.

PURPOSE(S):

To locate SEC employees and determine such matters as their period of service, type of leave, qualifications, benefits, and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) The National Business Center of the U.S. Department of the Interior;

(2) Any Federal, state, or local government compiling tax withholding, retirement contributions, or allotments to charities, labor unions, and other authorized recipients;

(3) Any Federal governmental authority or its agents investigating (a) a violation or potential violation of a statute, rule, regulation, or order, or (b) an employee's grievance or complaint;

(4) Any member of the public for employment verification at an employee's written request;

(5) Any judgment creditor for the purpose of garnishment;

(6) Any arbitrator under a negotiated labor agreement;

(7) The General Accounting Office, the Office of Management and Budget, and other Federal agencies to support payments of salaries and benefits to SEC employees; and

(8) The Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the Federal Parent Locator System and the Federal Tax Offset System to (a) locate individuals, (b) identify income sources, (c) establish paternity, (d) verify social security numbers or employment, (e) issue, modify, or enforce orders of support, or (f) administer the Federal Earned Income Tax Credit Program.

STORAGE:

Payroll files, official personnel files, and time and attendance reports are kept in paper or electronic format.

RETRIEVABILITY:

Official personnel files and payroll files are retrievable by an employee's name or social security number.

SAFEGUARDS:

Only authorized employees of the SEC and other Federal government agencies may access these records.

RETENTION AND DISPOSAL:

These records are maintained and disposed of under General Records Schedule Nos. 2 and 20 of the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Administrative and Personnel Management, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should write the Privacy Act Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures, above.

RECORD SOURCE CATEGORIES:

Notices of personnel action, electronic time and attendance records, withholding certificates, and other pay-related records prepared by employees or the Office of Administrative and Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–49

SYSTEM NAME:

Broker-Dealer Records.

SYSTEM LOCATION:

Records filed before August 16, 1999: SEC, 450 Fifth Street, NW, Washington, DC 20549; and

Records filed on or after August 16, 1999: NASD, 1390 Piccard Drive, Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants and officers, directors, principal shareholders, or other individuals related to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78o.

PURPOSE(S):

To help the SEC staff process applications for registration or exemption and related forms under the Securities Exchange Act of 1934 and implement the Federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities self-regulatory organization that is investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records filed before August 16, 1999 in the SEC's custody are maintained in paper, microfiche, or electronic formats. Records filed on or after August 16, 1999 in the NASD's custody are maintained in paper or electronic format (Web CRD).

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records in the SEC's custody are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and a 24-hour security guard. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

The records in the SEC's custody are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f. Permanent files are sent to the National Archives and Records Administration after a specified storage time at the Federal Records Center. Nine years from their receipt by the NASD, the records in the NASD's custody are transferred to the SEC for proper disposition.

SYSTEM MANAGERS AND ADDRESSES:

Records filed before August 16, 1999—Records Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

Records filed on or after August 16, 1999—NASD, 1390 Piccard Drive, Rockville, MD 20850.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should write the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Applications for registration or exemption and related forms filed with the SEC under the Securities Exchange Act of 1934.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31778 Filed 12–8–99; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42192; File No. SR–DTC–99–23]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Tax Services

December 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 8, 1999, the Depository Trust Company (''DTC'') 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 DTC. 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 revises the fee structure and clarifies the features of DTC's TaxInfo℠ service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC TaxInfo℠ (formerly TAXI) was developed to provide information on withholding tax relief opportunities for DTC-eligible securities for various foreign countries of investment from the point of view of four countries of the investor: U.S., Canada, U.K., and Japan.[3] TaxInfo is currently available on DTC's Participant Terminal System (''PTS'') and currently contains information on ten countries of investment from a U.S. investor's perspective. TaxInfo was originally made available to participants in March of 1997 in support of DTC's foreign withholding tax relief service available via the Elective Dividend Service or EDS (which has been renamed TaxRelief℠[4] function on PTS with withholding tax information relative to France and the United Kingdom.[5] Additional country documents have been added and updated in 1999, and more will be added over time. The information contained in TaxInfo on PTS is provided to participants so that they may be able to make informed elections on TaxInfo.℠[6]

TaxInfo advises participants of the opportunities, risks, and legal conditions for using TaxRelief and provides information on filing tax reclaims. Additional, TaxInfo provides information on tax withholding rates for various investor types (*e.g.,* individuals, mutual funds, pension plans, and charities) as well as information on tax treaties, tax relief processing procedures, and documentation requirements. TaxInfo also provides tax relief information for cross-border portfolio investments and simplifies and expedites tax-withholding research for DTC-eligible securities.

DTC proposes to offer DTC TaxInfo to DTC Participants over DTC's closed website.[7] TaxInfo via the Internet may be used in conjunction with TaxRelief or by itself as a withholding tax information resource. According to DTC, Internet delivery opens up the availability of TaxInfo to a much wider audience for participants because its contents may be accessed via any computer with Internet access rather than requiring a specialized PTS terminal. For example, this increased audience may include participants' internal tax advisory staff and other non-operational areas. Members of DTC's foreign taxes legal working group, who often need to advise their operations staff on DTC related tax matters, have expressed to DTC a need to have a way to access TaxInfo which is more accessible than PTS.

TaxInfo provided via PTS will only relate to countries where DTC has in place a DTC TaxRelief mechanism. The charge for this service will continue to be $.09 per inquiry.

TaxInfo provided via the Internet will include the same information provided on PTS as well as information on other countries and security types that are not supported by TaxRelief. Additionally, TaxInfo via the Internet will have increased functionality, including the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] In September 1999, DTC introduced TaxVantage—a new family of tax products. The TaxVantage family includes the following products: TaxReclaim, TaxInfo, and TaxRelief. For a complete description of TaxVantage, refer to DTC's website at http://www.dtc.org.

[4] TaxRelief℠ allows DTC participants to electronically certify shares of record date positions at DTC that are eligible for tax relief opportunities.

[5] Securities Exchange Act Release No. 32171 (April 19, 1993), 58 FR 22003.

[6] The following disclaimer relates to DTC TaxInfo℠: DTC does not represent or warrant the accuracy, adequacy, timeliness, completeness, or fitness for any particular purpose for the information contained in DTC TaxInfo, which is based in part on information obtained from third parties and not independently verified by DTC and which is provided as is. The information contained in DTC TaxInfo is not intended to be a substitute for obtaining tax advice from an appropriate professional advisor. In providing this service, DTC shall not be liable for (1) any loss resulting directly or indirectly from mistakes, errors, omissions, interruptions, delays, or defects in such service, unless caused directly by gross negligence or willful misconduct on the part of DTC, and (2) any special, consequential, exemplary, incidental, or punitive damages.

[7] DTC's website is located at http://www.dtc.org.

ability to hyperlink to related websites (containing for example, the text of tax treaties), internal hyperlinks, a search capability, and better means of navigation within each document, which PTS is not able to accommodate. The proposed fee for TaxInfo via the Internet is $2,400 annually per subscribing participant (with automatic annual renewals).

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to DTC because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[9] of the Act and Rule 19b–4(f)(2)[10] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–23 and should be submitted by December 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31962 Filed 12–8–99 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 10, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Borrower's Progress Certification.

Form No: 1366.

Frequency: On Occasion.

Description of Respondents: Recipients of Disaster Loans.

Annual Responses: 30,020.

Annual Burden: 15,010.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–31886 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0244]

Access Technology Investors, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 15, 1998, an application was filed by Access Technology Investors, L.P. at 300 Rodd Street, Suite 201, Midland, Michigan 48640–0648 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/75–0244 on September 29, 1999 to Access Technology Investors, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31897 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0595]

ACI Capital America Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 24, 1999, an application was filed by ACI Capital America Fund, L.P. at 707 Westchester Avenue, 4th Floor,

White Plains, New York 10604 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 02/02–0595 on September 29, 1999, to ACI Capital America Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No.59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31913 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0420]

Aspen Ventures, III, L.P.; Notice of Issuance of a Small Business Investment Company License

On January 21, 1999, an application was filed by Aspen Ventures, III, L.P. at 1000 Fremont Avenue, Suite 200, Los Altos, California 94024 with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0420 on September 29, 1999 to Aspen Ventures, III, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31914 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0248]

BancAmerica Capital Investors SBIC II, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 14, 1999, an application was filed by BancAmerica Capital Investors SBIC II, L.P. at 231 South LaSalle Street, Seventh Floor, Chicago, Illinois 60697 with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0248 on September 29, 1999 to BancAmerica Capital Investors SBIC II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31915 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0423]

Bay Partners L.S. Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 7, 1999, an application was filed by Bay Partners L.S. Fund, L.P. at 10600 N. DeAnna Boulevard, Suite 100, Cupertino, California 95014 with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0423 on September 29, 1999 to Bay Partners L.S. Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31911 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0590]

BNY Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 10, 1998, an application was filed by BNY Capital Partners, L.P. at One Wall Street, New York, New York 10286 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0590 on June 25, 1999 to BNY Capital Partners L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31910 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0245]

CIVC SBIC Fund, L.L.C.; Notice of Issuance of a Small Business Investment Company License

On April 12, 1999, an application was filed by CIVC SBIC Fund, L.L.C. at 231 South LaSalle Street, Seventh Floor, Chicago, Illinois 60697 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0245 on July 29, 1999 to CIVC SBIC Fund, L.L.C. to

operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31904 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0246]

Convergent Capital Partners I, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 24, 1999, an application was filed by Convergent Capital Partners I, L.P., at 5353 Wayzata Blvd., Suite 205, Minneapolis, Minnesota 55416 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0246 on July 29, 1999 to Convergent Capital Partners I, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31901 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Dotcom Ventures L.P.

[License No. 09/79–0422]

Notice of Issuance of a Small Business Investment Company License

On December 18, 1997, an application was filed by Dotcom Ventures, L.P. at 3495 Freedom Circle, Suite 740, Santa Clara, California 95054 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0422 on September 29, 1999 to Dotcom Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31903 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0242]

Facilitator Capital Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 13, 1998, an application was filed by Facilitator Capital Fund, L.P., at 5133 West Terrace Drive, Suite 204, Madison, Wisconsin 53718 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA isssued License No. 05/75–0242 on June 25, 1999, to Facilitator Capital Fund, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31909 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0421]

Inglewood Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 14, 1998, an application was filed by Inglewood Ventures, L.P., at 12526 High Bluff Drive, Suite 300, San Diego, California 92130 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0421 on September 29, 1999, to Inglewood Ventures, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31888 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Inglewood Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

[License No. 09/79–0421]

On September 14, 1998, an application was filed by Inglewood Ventures, L.P., at 12526 High Bluff Drive, Suite 300, San Diego, California 92130 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0421 on September 29, 1999 to Inglewood Ventures, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31894 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0594]

LibertyView Equity Partners SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On October 15, 1998, an application was filed by LibertyView Equity

Partners SBIC, L.P. at 101 Hudson Street, Suite 3700, Jersey City, New Jersey 07302 with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0594 on August 25, 1999 to LibertyView Equity Partners SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31895 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0592]

Madison Investment Partners II, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 7, 1998, an application was filed by Madison Investment Partners II, L.P. at 660 Hudson Street, Suite 3700, Jersey City, New Jersey 07302 with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0592 on July 15, 1999 to Madison Investment Partners II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31896 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0376]

The Megunticook Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On March 29, 1998, an application was filed by The Megunticook Fund, L.P. at 11 Newbury Street, Suite 400, Boston, Massachusetts 02116 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0376 on September 29, 1999 to The Megunticook Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31891 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0593]

Needham Capital SBIC II, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 15, 1998, an application was filed by Needham Capital SBIC II, L.P. at 445 Park Avenue, New York, New York 10022 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0593 on July 29, 1999 to Needham Capital SBIC II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31892 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0374]

NHBDC Venture Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 17, 1999, an application was filed by NHBDC Venture Partners, L.P. at 1001 Elm Street, Machester, New Hampshire 03101 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0374 on July 14, 1999 to NHBDC Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31916 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0247]

Norwest Equity Partners VII, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 10, 1999, an application was filed by Norwest Equity Partners VII, L.P. at 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0247 on September 16, 1999 to Norwest Equity

Partners VII, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31899 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0243]

Piper Jaffray Healthcare Fund III, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 10, 1998, an application was filed by Piper Jaffray Healthcare Fund III, L.P. at 222 South 9th Street, Minneapolis, Minnesota 55402 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0243 on June 25, 1999 to Piper Jaffray Healthcare Fund III, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31900 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0419]

Red Rock Ventures II, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 24, 1999, an application was filed by Red Rock Ventures II, L.P. at 525 University Avenue, Suite 600, Palo Alto, California 94301 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0419 on July 30, 1999 to Red Rock Ventures II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31893 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0369]

RFE VI SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that RFE VI SBIC, L.P. (''RFE VI SBIC''), 36 Grove Street, New Canaan, CT 06840, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)).

An exemption may not be granted by SBA until Notices of this transaction have been published. RFE VI SBIC proposes to provide equity financing to TradeSource, Inc., 75 Holly Hill Lane, Greenwich, CT, 06830. The financing is contemplated to fund an acquisition and to provide a capital base for continued growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because RFE Investment Partners V, L.P., an Associate of RFE VI SBIC, owns greater than 10 percent of TradeSource, Inc. and therefore TradeSource, Inc. is considered an Associate of RFE VI SBIC as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730(g), in the Greewich Times, in Greenwich, Connecticut by RFE VI SBIC.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31890 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–p

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0375]

Saugatuck Capital Company Limited Partnership IV, SBIC; Notice of Issuance of a Small Business Investment Company License

On May 3, 1999, an application was filed by Saugatuck Capital Company Limited Partnership IV, SBIC at One Canterbury Green, Stamford, Connecticut 06901 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0375 on September 29, 1999 to Saugatuck Capital Company Limited Partnership IV, SBIC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31912 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0241]

U.S. Bancorp Capital Corporation; Notice of Issuance of a Small Business Investment Company License

On October 5, 1998, an application was filed by U.S. Bancorp Capital Corporation at 601 Second Avenue, South, Minneapolis, Minnesota 55402–4302 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment

companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0241 on June 4, 1999 to U.S. Bancorp Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31898 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wolf Venture Fund III, L.P.

[License No. 08/78–0157]

Notice of Issuance of a Small Business Investment Company License

On April 13, 1999, an application was filed by Wolf Venture Fund III, L.P. at 50 South Steele Street, Suite 77, Denver, Colorado 80209 with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/78–0157 on September 16, 1999 to Wolf Venture Fund III, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 30, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31902 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing to Evergreen Solar, Inc., 211 Second Avenue, Waltham, MA 02451. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., an Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Evergreen Solar, Inc. and therefore Evergreen Solar, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

A copy of this Notice shall be published, in accordance with section 107.730(g), in the Boston Herald, Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 1, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–31889 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3229]

U.S. Virgin Islands

As a result of the President's major disaster declaration on November 23, 1999, and amendments thereto, I find that St. Croix, St. John, St. Thomas, and Water Islands in the U. S. Virgin Islands constitute a disaster area due to damages caused by Hurricane Lenny beginning on November 16, 1999 and continuing through November 20, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 22, 2000, and for loans for economic injury until the close of business on August 23, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.500
Homeowners without credit available elsewhere	3.750
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 322908 for physical damage and 9F8300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 30, 1999.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–31887 Filed 12–8–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3169]

Bureau of Educational and Cultural Affairs; Partners in Education Program

NOTICE: Request for proposals.

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs of the

U.S. Department of State announces an open competition for the Partners in Education (PiE) program assistance award, not to exceed $1,420,000. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer a six-week professional internship program for approximately 115 English-language proficient secondary school teachers, administrators, and teacher trainers from Russia, Ukraine, Uzbekistan and Kyrgyzstan, as well as a three-week program designed for 22 non-English-speaking NIS school directors. The exchange should involve at least 45 Russian, 40 Ukrainian, 20 Kyrgyzstani, and 10 Uzbekistani teachers and administrators, and 12 Russian and 10 Ukrainian school directors. Selection of participants is merit-based with a fair representation of large and small oblasts. The U.S. grantee will also be responsible for the consecutive exchange of 24 U.S. educators who have hosted the NIS teachers, trainers, and administrators during their stay in the United States for a two-week program to consult on best practices and implement linkage activities designed to strengthen the partnership between the U.S. and NIS schools.

The six-week internship program and three-week school director programs should provide the NIS educators with thorough exposure to civic education and the social sciences at the secondary school level. Proposals relating to the teaching of English or English as a foreign language (EFL) are not eligible. The program should encourage participants to establish contacts in the U.S. that will foster ongoing school and community partnerships upon their return to the NIS.

The proposed program will span three academic semesters, starting in the spring of 2001. The contracted organization (grantee) will be expected to recruit in Russia, Ukraine, Kyrgyzstan, and Uzbekistan in consultation with the Bureau of Educational and Cultural Affairs and the Office of Public Affairs within U.S. embassies in the NIS countries.

The goal of the teacher/administrator component of the PiE program is to provide NIS participants with opportunities to learn about secondary-level curriculum development and civic education and social science teaching methodologies in the U.S. After an academically-focused orientation in Washington, DC, NIS grantees will be placed in small groups at various school districts in the U.S. and provided with internships at local high schools. The proposed internship activities for the 115 teachers and administrators would include: observing social science classrooms, civic education curriculum development, and computer-based and other teaching methods; participating in at least five days of professional development seminars that incorporate computer-based teaching, designed by the host schools or by the local/regional schools of education; delivering presentations to students and faculty at the host schools and communities on NIS educational systems and cultures, either alone or together with their NIS colleagues; reviewing and collecting teaching materials for possible use in their home schools; and collaborating with U.S. school administrators or faculty of education to gain an understanding of the U.S. educational system and local control of education in the U.S. Teachers and administrators should also come to understand the relationship between the community and the educational system. The teachers and administrators would also engage in site visits to other local schools, deliver presentations at those schools as well as to local civic and community groups, and attend PTA and school board meetings.

The school director program should include 22 Russian and Ukrainian non-English-speaking directors who will participate in a three-week program that integrates the core civic education and social science curriculum of the PiE teachers, as well as specific seminars and workshops in community-based school governance. The school directors' program may begin at the same time as the teachers', trainers', and administrators' programs, or they may be programmed separately. To maximize impact, the school directors should be recruited from existing lists of NIS schools that have participated or from schools that are about to participate in the PiE teacher/administrator program. The applicant is encouraged to submit a proposal that provides a detailed explanation of how the non-English-speaking participants and their NIS schools will fully benefit from the U.S. exchange.

Program Information

Overview

The goal of the PiE program is to expose NIS educators to U.S. teaching methodologies and curriculum development processes, and establish professional partnerships with U.S. teachers and teacher-trainers in schools, universities, and communities. The rationale of the program is to promote democratic relations among members of NIS school communities and build upon the Bureau's previous and existing linkages with NIS secondary schools.

For the PiE teacher, administrator, teacher-trainer program, the grantee should recruit English-speaking social science and civic education teachers, faculty, and administrators from secondary schools and pedagogical institutions, including educators who incorporate civic education principles as part of a social science curriculum. These educational leaders will be placed in clusters around the United States, hosted by schools, school-university partnerships, or private-sector institutions to experience U.S. educational communities and related democratic institutions. The Bureau is interested in the grantee soliciting U.S. host proposals that are academically oriented and foster long-term linkages between U.S. high schools and comparable schools in Russia, Ukraine, and other NIS countries. Where possible, U.S. host proposals should include institutions that have provided superior programming for other NIS secondary-level teacher training programs (lists are available from the program office).

For the secondary school director program, the grantee should develop a comprehensive, academically oriented program that will engage the NIS school directors in democratic school reform issues and community-school relations, as well as exposing the participants to the teaching methodologies for civic education and the social sciences. The school directors should travel in one or more groups and should be provided with simultaneous translation. The Bureau will consider a school director component that exposes the participants to up to two U.S. communities or school districts during the three-week program.

The grantee will also be responsible for facilitating the exchange of 24 U.S. teachers, preferably two U.S. host teachers from each host site who were involved in the PiE teacher/administrator six-week program. The U.S. educators will travel to the NIS community(ies) from which the NIS teachers came, and will engage in a substantive two-week program to be designed by the NIS participants in collaboration with the grantee. The goal of the U.S. participants' program in the NIS is to strengthen the partnerships established during the U.S.-based program, build long-term linkages, and provide opportunities for the U.S. educators to engage the educational communities of their NIS colleagues. There is no commensurate NIS-based program for the U.S. hosts of the school director component of the PiE program.

Guidelines

Program Planning and Implementation

The grant should begin on or around June 5, 2000 and the grantee should complete all exchange activities by December, 2002. The recipient organization will be responsible for activities related to recruitment, screening, orientation coordination, monitoring in the U.S., program evaluation, and alumni activities. The grantee organization will also be responsible for the competitive recruitment of up to 12 U.S. host school districts for participation in the PiE teacher/administrator program, as well as up to two sites for the school director program. The recipient organization will maintain overall oversight for the program. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document.

Budget Guidelines:

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive line-item budget for the entire program based on the specific guidance in the Solicitation Package. Awards may not exceed $1,420,000 for program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed program administrative budgets should be accompanied by a narrative which provides a brief rationale for each line item. Administrative costs should be kept low; this will be an important factor in grant competition.

Allowable costs for the program include the following:

I. Teacher/Administrator/Trainer Participant Costs: Total $6,700 (per participant) × 115 participants: $770,500

II. U.S. Teachers Participant Costs: Total $3,000 (per participant) × 24 participants: $72,000

III. NIS School Directors Participant Costs: Total $6,900 (per participant) × 22 participants: $186,300

IV. General Program Costs: Total: $68,000

This includes sub-contracts with U.S. host sites, fees for one program curriculum advisor, costs for recruitment and advertising, and alumni activities.

The per participant costs include administrative costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. The Bureau reserves the right to reduce, revise, or increase proposed budget in accordance with the needs of the program.

Announcement Title and Number: All correspondence with the Department of State, Bureau of Educational and Cultural Affairs concerning this RFP should reference the above title and the number ECA/A/S/X–00–02.

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, S.A. 44, 301 4th Street, S.W., Washington, D.C. 20547, tel. 202–619–4556 and fax 202–401–1433, dghebreab@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Office of Global Educational Programs, Program Officer Dehab Ghebreab, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the U.S. Department of State, Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Monday, February 28, 2000. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–00–02, Program Management Staff, ECA/EX/PM, Room 336, S.A. 44 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the appropriate public affairs offices at U.S. embassies for their review, with the goal of reducing the time it takes to get posts' comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Department of State's Office of the Senior Coordinator for the Newly Independent States and the public affairs offices of U.S. embassies overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Department of State, Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive experience in the social sciences and civic education.

2. Program planning and ability to achieve program objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . . to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (Freedom Support Act).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Department of State procedures.

Dated: December 1, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 99–31967 Filed 12–8–99; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Damage Tolerance for High Energy Turbine Engine Rotors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of draft Advisory Circular (AC), No. 33.14–1, Damage Tolerance for High Energy Turbine engine Rotors.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7114, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Comments must identify the subject of the AC, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This advisory circular (AC) provides guidance and information on acceptable methods, but not the only methods of compliance with § 33.14 of the Federal Aviation Regulations, title 14 of the Code of Federal Regulations. Section 33.14 contains requirements of life management requirements applicable to the design and life management of titanium alloy high energy rotating parts of aircraft engines. Although this AC does refer to regulatory requirements that are mandatory, this AC is not, in itself, mandatory. This AC neither changes any regulatory requirements nor authorizes changes in or deviations from the regulatory requirements.

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704 and would provide guidance for the requirements in 14 CFR part 33.

Issued in Burlington, Massachusetts, on December 2, 1999.

Ronald L. Vavruska,

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

[FR Doc. 99–31981 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming imported vehicles.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Fiscal Year 1999 (October 1, 1998 through September 30, 1999) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that have been decided by NHTSA to be substantially similar to vehicles imported into the United States that were not originally manufactured to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are obligated to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (i.e., ''recall'') campaign, 49 U.S.C. 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Fiscal Year 1999, which ran from October 1, 1998 through September 30, 1999. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR part 573. After September 30, 2000, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current fiscal year.

Authority: 49 U.S.C. 30147(a)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 6, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

ANNEX A.—FISCAL YEAR 99 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Year	Recall No.
ACURA	CL	1997	99V06900
ACURA	INTEGRA	1999	99V20300
ACURA	TL	1996	99V06900
ACURA	TL	1999	99V20300
AUDI	100	1993	98V33200
AUDI	100	1994	98V33200
AUDI	A4	1997	99V13100
BLUE BIRD	TC2000	1990	99V01800
BLUE BIRD	TC2000	1990	99V01800
BMW	3231	1999	99V06300
BMW	3231	1999	99V10000
BMW	K120ORS	1998	98V25800
BUICK	CENTURY	1999	99V17000
BUICK	PARK AVENUE	1999	99V23800
BUICK	REGAL	1995	98V30600
BUICK	REGAL	1999	99V17000
CADILLAC	ESCALADE	1999	99V14100
CADILLAC	SEVILLE	1998	99V07000
CADILLAC	SEVILLE	1999	99V07000
CHEVROLET	ASTRO	1992	99I00600
CHEVROLET	ASTRO	1993	99I00600
CHEVROLET	ASTRO	1994	99I00600
CHEVROLET	ASTRO	1995	99I00600
CHEVROLET	BLAZER	1991	99V19300
CHEVROLET	BLAZER	1992	99V19300
CHEVROLET	BLAZER	1993	99I00600
CHEVROLET	BLAZER	1993	99V19300
CHEVROLET	BLAZER	1994	99I00600
CHEVROLET	BLAZER	1994	99V19300
CHEVROLET	BLAZER	1995	99I00600
CHEVROLET	BLAZER	1995	99V19300
CHEVROLET	BLAZER	1996	99I00600
CHEVROLET	BLAZER	1996	99V19300
CHEVROLET	C10	1992	99V13000
CHEVROLET	C20	1992	99V13000
CHEVROLET	CAMARO	1999	99V23900
CHEVROLET	CAVALIER	1996	98V31900
CHEVROLET	CAVALIER	1997	98V31900
CHEVROLET	CAVALIER	1998	99V18000
CHEVROLET	CAVALIER	1999	99V21800
CHEVROLET	G20	1993	99I00600
CHEVROLET	G20	1994	99I00600
CHEVROLET	G20	1995	99I00600
CHEVROLET	G20	1995	99V12600
CHEVROLET	K10	1992	99V13000
CHEVROLET	K20	1992	99V13000
CHEVROLET	LUMINA	1995	98V30600
CHEVROLET	S10	1991	99V19300
CHEVROLET	S10	1992	99V19300
CHEVROLET	S10	1993	99V19300
CHEVROLET	S10	1994	99I00600
CHEVROLET	S10	1994	99V19300
CHEVROLET	S10	1995	99I00600
CHEVROLET	S10	1995	99V19300
CHEVROLET	S10	1996	99I00600
CHEVROLET	S10	1996	99V19300
CHEVROLET	VENTURE	1999	99V07100
CHRYSLER	CIRRUS	1998	99V24400
CHRYSLER	CONCORDE	1993	99V21500
CHRYSLER	CONCORDE	1994	99V21500
CHRYSLER	CONCORDE	1995	99V21500
CHRYSLER	LHS	1994	99V21500
CHRYSLER	LHS	1995	99V21500
CHRYSLER	SEBRING	1995	99V06600
CHRYSLER	SEBRING	1996	99V06600
CHRYSLER	TOWN AND COUNTRY	1996	99V21600
DODGE	AVENGER	1995	99V06600
DODGE	AVENGER	1996	99V06600
DODGE	CARAVAN	1991	99V18900
DODGE	CARAVAN	1992	99V18900
DODGE	CARAVAN	1993	99V11300
DODGE	CARAVAN	1993	99V18900

ANNEX A.—FISCAL YEAR 99 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
DODGE	CARAVAN	1994	99V11300
DODGE	CARAVAN	1995	99V11300
DODGE	CARAVAN	1996	99V21600
DODGE	CARAVAN	1999	99V11600
DODGE	GRAND CARAVAN	1991	99V18900
DODGE	GRAND CARAVAN	1992	99V18900
DODGE	GRAND CARAVAN	1993	99V11300
DODGE	GRAND CARAVAN	1993	99V18900
DODGE	GRAND CARAVAN	1994	99V11300
DODGE	GRAND CARAVAN	1995	99V11300
DODGE	GRAND CARAVAN	1996	99V21600
DODGE	GRAND CARAVAN	1999	99V11600
DODGE	INTREPID	1993	99V21500
DODGE	INTREPID	1994	99V21500
DODGE	INTREPID	1995	99V21500
DODGE	NEON	1998	99V00100
DODGE	RAM	1994	99V11500
DODGE	RAM	1994	99V21400
DODGE	RAM	1995	99V11500
DODGE	RAM	1995	99V21400
DODGE	RAM	1996	99V11500
DODGE	RAM	1997	99V11500
DODGE	RAM	1998	99V11500
DODGE	RAM	1999	99V11500
DODGE	RAM	1999	99V19000
DODGE	SHADOW	1992	99V21200
DODGE	SHADOW	1993	99V21200
DODGE	SHADOW	1994	99V21200
DODGE	STRATUS	1998	99V24400
DODGE	STRATUS	1999	99V24400
EAGLE	TALON	1995	99V06600
EAGLE	VISION	1993	99V21500
EAGLE	VISION	1994	99V21500
EAGLE	VISION	1995	99V21500
FERRARI	550	1997	98V26800
FERRARI	550	1997	99V16600
FORD	AEROSTAR	1992	99V09400
FORD	CONTOUR	1996	99V10300
FORD	CONTOUR	1996	99V24700
FORD	CONTOUR	1997	99V10300
FORD	CONTOUR	1998	98V27000
FORD	CONTOUR	1998	98V27000
FORD	CONTOUR	1998	99V10300
FORD	CONTOUR	1998	99V19400
FORD	CONTOUR	1998	99V24300
FORD	CONTOUR	1999	98V27000
FORD	CONTOUR	1999	98V27000
FORD	CONTOUR	1999	99V06000
FORD	CROWN VICTORIA	1990	98V32200
FORD	CROWN VICTORIA	1991	98V32200
FORD	CROWN VICTORIA	1992	98V32200
FORD	CROWN VICTORIA	1992	99V12400
FORD	CROWN VICTORIA	1993	98V32200
FORD	CROWN VICTORIA	1993	99V12400
FORD	CROWN VICTORIA	1994	98V32200
FORD	CROWN VICTORIA	1995	98V32200
FORD	CROWN VICTORIA	1996	98V32200
FORD	CROWN VICTORIA	1997	98V32200
FORD	CROWN VICTORIA	1998	98V32200
FORD	EXPEDITION	1999	99V09900
FORD	EXPLORER	1998	99V16400
FORD	EXPLORER	1999	99V12300
FORD	EXPLORER	1999	99V16400
FORD	F250	1999	99V09300
FORD	F250	1999	99V21900
FORD	F350	1999	99V09300
FORD	F350	1999	99V21900
FORD	MUSTANG	1998	99V06200
FORD	MUSTANG	1998	99V06200
FORD	MUSTANG	1999	99V25000
FORD	RANGER	1998	99V20400
FORD	RANGER	1999	99V20400

ANNEX A.—FISCAL YEAR 99 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
FORD	TAURUS	1988	98V32300
FORD	TAURUS	1990	98V32300
FORD	TAURUS	1991	98V32300
FORD	TAURUS	1992	98V32300
FORD	TAURUS	1993	98V32300
FORD	TAURUS	1994	98V32300
FORD	TAURUS	1995	98V32300
FORD	TAURUS	1999	98V28800
FORD	TAURUS	1999	99V25000
FORD	WINDSTAR	1996	99V14700
FORD	WINDSTAR	1997	99V14700
FORD	WINDSTAR	1998	99V14700
FORD	WINDSTAR	1999	99V14700
FREIGHTLINER	CENTURY	1997	98V32600
GMC	C3500	1994	99V02500
GMC	G20	1995	99V12600
GMC	JIMMY	1991	99V19300
GMC	JIMMY	1992	99V19300
GMC	JIMMY	1993	99I00600
GMC	JIMMY	1993	99V19300
GMC	JIMMY	1994	99I00600
GMC	JIMMY	1994	99V19300
GMC	JIMMY	1995	99I00600
GMC	JIMMY	1995	99V19300
GMC	JIMMY	1996	99I00600
GMC	JIMMY	1996	99V19300
GMC	SAFARI	1992	99I00600
GMC	SAFARI	1993	99I00600
GMC	SAFARI	1994	99I00600
GMC	SAFARI	1995	99I00600
GMC	SAFARI	1996	99V00900
GMC	SAFARI	1997	99V00900
GMC	SAFARI	1998	99V00900
GMC	SIERRA	1999	98V24200
GMC	SONOMA	1991	99V19300
GMC	SONOMA	1992	99V19300
GMC	SONOMA	1993	99V19300
GMC	SONOMA	1994	99I00600
GMC	SONOMA	1994	99V19300
GMC	SONOMA	1995	99I00600
GMC	SONOMA	1995	99V19300
GMC	SONOMA	1996	99I00600
GMC	SONOMA	1996	99V19300
GMC	SUBURBAN	1994	99V02500
HARLEY DAVIDSON	FLHR	1999	99V00300
HARLEY DAVIDSON	FLHRCI	1999	99V00300
HARLEY DAVIDSON	FLHT	1999	99V00300
HARLEY DAVIDSON	FLHTCUI	1999	99V00300
HARLEY DAVIDSON	FLSTC	1999	99V20000
HARLEY DAVIDSON	FLSTF	1999	99V20000
HARLEY DAVIDSON	FLSTS	1999	99V20000
HARLEY DAVIDSON	FLTRI	1999	99V00300
HARLEY DAVIDSON	FXD	1999	99V00300
HARLEY DAVIDSON	FXD	1999	99V20000
HARLEY DAVIDSON	FXDL	1999	99V20000
HARLEY DAVIDSON	FXDWG	1999	99V00300
HARLEY DAVIDSON	FXDWG	1999	99V20000
HARLEY DAVIDSON	FXDX	1999	99V00300
HARLEY DAVIDSON	FXDX	1999	99V20000
HARLEY DAVIDSON	FXST	1999	99V20000
HARLEY DAVIDSON	FXSTB	1999	99V20000
HARLEY DAVIDSON	FXSTC	1999	99V20000
HARLEY DAVIDSON	FXSTS	1999	99V20000
HARLEY DAVIDSON	SOFTAIL	1999	99V20000
HONDA	ACCORD	1997	99V06900
HONDA	ACCORD	1998	99V06900
HONDA	ACCORD	1999	99V20300
HONDA	CIVIC	1996	99E01500
HONDA	CIVIC	1997	99E01500
HONDA	CIVIC	1998	99E01500
HONDA	CIVIC	1999	99V20300
HONDA	ODYSSEY	1997	99V06900

ANNEX A.—FISCAL YEAR 99 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
HONDA	ODYSSEY	1998	99V06900
HONDA	ODYSSEY	1999	99V15700
HONDA	ODYSSEY	1999	99V15800
HONDA	ODYSSEY	1999	99V15900
HONDA	PRELUDE	1996	99V06900
HONDA	PRELUDE	1997	99V06900
HONDA	PRELUDE	1998	99V06900
HONDA	PRELUDE	1999	99V20300
HYUNDAI	ACCENT	1995	98V24500
JAGUAR	XJ12	1994	98V27100
JEEP	GRAND CHEROKEE	1999	98V27600
JEEP	WRANGLER	1999	99V11700
KENWORTH	T800	1998	99V18100
KENWORTH	T800	1999	99V18100
KENWORTH	W900	1998	99V18100
LAND ROVER	RANGE ROVER	1995	99V00700
LAND ROVER	RANGE ROVER	1996	99V00700
LAND ROVER	RANGE ROVER	1997	99V00700
LEXUS	RX300	1999	99V01100
LEXUS	RX300	1999	99V01200
LINCOLN	CONTINENTAL	1990	98V32300
LINCOLN	CONTINENTAL	1992	98V32300
LINCOLN	CONTINENTAL	1993	98V32300
LINCOLN	CONTINENTAL	1994	98V32300
LINCOLN	NAVIGATOR	1999	99V09900
LINCOLN	TOWN CAR	1990	98V32200
LINCOLN	TOWN CAR	1991	98V32200
LINCOLN	TOWN CAR	1992	98V32200
LINCOLN	TOWN CAR	1992	99V12400
LINCOLN	TOWN CAR	1993	98V32200
LINCOLN	TOWN CAR	1993	99V12400
LINCOLN	TOWN CAR	1994	98V32200
LINCOLN	TOWN CAR	1995	98V32200
LINCOLN	TOWN CAR	1996	98V32200
LINCOLN	TOWN CAR	1997	98V32200
LINCOLN	TOWN CAR	1998	98V32200
MACK	DM	1998	99V01400
MAZDA	626	1995	98V24900
MAZDA	626	1996	98V24900
MAZDA	626	1997	98V24900
MAZDA	626	1998	98V24300
MAZDA	MPV	2000	99V17100
MAZDA	MPV	2000	99V19100
MAZDA	MX6	1996	98V24900
MERCURY	COUGAR	1999	99V22600
MERCURY	GRAND MARQUIS	1992	99V12400
MERCURY	GRAND MARQUIS	1993	99V12400
MERCURY	MYSTIQUE	1996	99V10300
MERCURY	MYSTIQUE	1996	99V24700
MERCURY	MYSTIQUE	1997	99V10300
MERCURY	MYSTIQUE	1998	98V27000
MERCURY	MYSTIQUE	1998	98V27000
MERCURY	MYSTIQUE	1998	99V10300
MERCURY	MYSTIQUE	1998	99V19400
MERCURY	MYSTIQUE	1998	99V24300
MERCURY	SABLE	1986	98V32300
MERCURY	SABLE	1988	98V32300
MERCURY	SABLE	1989	98V32300
MERCURY	SABLE	1990	98V32300
MERCURY	SABLE	1992	98V32300
MERCURY	SABLE	1993	98V32300
MERCURY	SABLE	1994	98V32300
MERCURY	SABLE	1995	98V32300
MERCURY	SABLE	1999	99V25000
NAVISTAR	4700	1996	99V03300
NAVISTAR	4900	1997	99V03300
OLDSMOBILE	CUTLASS	1995	98V30600
PETERBILT	357	1998	99V18100
PETERBILT	357	1999	99V18100
PETERBILT	378	1998	99V18100
PETERBILT	379	1998	99VI8100
PETERBILT	379	1999	99V18100

ANNEX A.—FISCAL YEAR 99 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
PLYMOUTH	BREEZE	1998	99V24400
PLYMOUTH	BREEZE	1999	99V24400
PLYMOUTH	GRAND VOYAGER	1991	99V18900
PLYMOUTH	GRAND VOYAGER	1992	99V18900
PLYMOUTH	GRAND VOYAGER	1993	99V11300
PLYMOUTH	GRAND VOYAGER	1993	99V18900
PLYMOUTH	GRAND VOYAGER	1994	99V11300
PLYMOUTH	GRAND VOYAGER	1995	99V11300
PLYMOUTH	GRAND VOYAGER	1996	99V21600
PLYMOUTH	GRAND VOYAGER	1999	99V11600
PLYMOUTH	NEON	1998	99V00100
PLYMOUTH	PROWLER	1999	99V24500
PLYMOUTH	SUNDANCE	1992	99V21200
PLYMOUTH	SUNDANCE	1993	99V21200
PLYMOUTH	SUNDANCE	1994	99V21200
PLYMOUTH	VOYAGER	1991	99V18900
PLYMOUTH	VOYAGER	1992	99V18900
PLYMOUTH	VOYAGER	1993	99V11300
PLYMOUTH	VOYAGER	1993	99V18900
PLYMOUTH	VOYAGER	1994	99V11300
PLYMOUTH	VOYAGER	1995	99V11300
PLYMOUTH	VOYAGER	1996	99V21600
PLYMOUTH	VOYAGER	1999	99V11600
PONTIAC	BONNEVILLE	1999	99V07200
PONTIAC	BONNEVILLE	1999	99V08900
PONTIAC	FIREBIRD	1999	99V23900
PONTIAC	GRAND AM	1999	98V32000
PONTIAC	GRAND PRIX	1995	98V30600
PONTIAC	MONTANA	1999	99V07100
PONTIAC	SUNFIRE	1996	98V31900
PONTIAC	SUNFIRE	1997	98V31900
PONTIAC	SUNFIRE	1999	99V21800
PREVOST	H3–45	1999	98V23900
PREVOST	H3–45	1999	99V09200
SAAB	9000	1994	99V10900
SUBARU	LEGACY	1998	99V04000
SUBARU	LEGACY	1999	99V04000
VOLKSWAGEN	JETTA	1999	99V02200
VOLKSWAGEN	JETTA	1999	99V25100
VOLKSWAGEN	PASSAT	1998	99V13100
VOLKSWAGEN	PASSAT	1998	99V24800
VOLKSWAGEN	PASSAT	1999	99V13100
VOLKSWAGEN	PASSAT	1999	99V24800
VOLVO	850	1997	99V23500
VOLVO	AUTOCAR	1998	99V07800
VOLVO	S70	1998	99V23500
VOLVO	S70	1998	99V23600
VOLVO	V70	1998	98V25400
VOLVO	V70	1998	99V23500
VOLVO	V70	1998	99V23600

[FR Doc. 99–31971 Filed 12–8–99; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6525]

Notice of Receipt of Petition for Decision that Nonconforming 1994 Saab 9000 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Saab 9000 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Saab 9000 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 10, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle

Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether a 1994 Saab 9000 passenger car is eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1994 Saab 9000 passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Saab 9000 to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Saab 9000, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Saab 9000 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the vehicle conforms to the Bumper Standard found at 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer to show distance in miles and speed in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button at the front outboard seating positions, with combination lap and shoulder restraints that release by means of a single push button at the rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

The petitioner also states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR Part 541 and modified if necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 6, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–31972 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6009; Notice 2]

W.F. Mickey Body Company, Inc., Grant of Application for Decision of Inconsequential Noncompliance

W.F. Mickey Body Company, Inc. (Mickey Body), a manufacturer of trailers (beverage bodies, van bodies, and vending bodies), is a corporation organized under the laws of the State of North Carolina with its principal place of business located in High Point, North Carolina. Mickey Body has determined that its tire and rim label information, on some units, is not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Mickey Body has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on August 16, 1999, in the **Federal Register** (64 FR 44575). NHTSA received no comments on this application during the 30-day comment period.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified on the tire information level in both English and metric units. The standard also shows an example of the prescribed format.

After the requirement went into effect on March 14, 1996, from that date to March 1999, Mickey Body manufactured approximately 2,464 beverage trailers, 4,222 beverage bodies, 5,822 van bodies, and 472 vending bodies that do not meet the requirements stated in the standard. The certification label affixed to these Mickey Body's units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Mickey Body did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120. The use of metric measurements is required by FMVSS No. 120, pursuant to Federal Motor Vehicle Safety Standards: Metric Conversion, 50 FR 13639, published on March 14, 1995, and effective on March 14, 1996.

Mickey Body supports its application for inconsequential noncompliance with the following relevant statements:

1. NHTSA has previously granted an exemption for inconsequential noncompliance [to Dorsey Trailers, Inc.] under circumstances virtually identical to [Mickey Body's] present case.

2. The omission of the metric data from Mickey Body's certification label is highly unlikely to have any effect whatsoever on motor vehicle safety.

3. Mickey Body currently includes a certification label that expresses the GVWR and GAWR in both English and metric units.

4. Mickey Body is not aware of any accident that was allegedly caused by the omission of metric measurements from a certification label.

The purpose of labeling requirements in S5.3, Label Information, of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating, and rims of appropriate size and type designation. Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) makes it the United States policy that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the **Federal Register** (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996.

Paragraph S5.3.2 states that each vehicle shall show the appropriate GVWR, GAWR, and the recommended cold inflation pressure in metric and English units. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format.

The agency agrees with Mickey Body that the label on these trailers is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information without the metric conversion in the prescribed location. First, all the correct English unit information required by FMVSS No. 120 is provided on the certification label. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: December 6, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–31973 Filed 12–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 99–18]

Operating Subsidiary Notice

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for public comment on an operating subsidiary application.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests public comment concerning an application filed by First Tennessee Bank, N.A., Memphis, Tennessee (First Tennessee Bank) to expand the activities of its operating subsidiary, First Tennessee Securities Corporation (FTSC), to underwrite and deal in, to a limited extent, all types of debt and equity securities (other than ownership interests in open-end investment companies).

DATES: Comments should be submitted by January 10, 2000.

ADDRESSES: Written comments regarding the application should be submitted to the Office of the Comptroller of the Currency, Communications Division, Docket No. 99–18, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to fax number (202) 874–5274 or by internet mail to regs.comments@occ.treas.gov. A copy of the application and comments received will be available for inspection and copying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219. Appointments to inspect the application and review any comments received can be made by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Senior Attorney, Securities and Corporate Practices Division, (202) 874–5210, or Stephen Lybarger, NBE—

Licensing Expert, Bank Organization and Structure, (202) 874–5060.

SUPPLEMENTARY INFORMATION: First Tennessee Bank has applied to the OCC, pursuant to 12 CFR 5.34(f), to expand the activities of its operating subsidiary, FTSC, to underwrite and deal in, on a limited basis, all types of debt and equity securities (other than ownership interests in open-end investment companies).

FTSC currently is authorized to underwrite and deal in, to a limited extent, municipal revenue bonds and to engage in certain bank permissible activities, including the following:

(1) Arranging commercial mortgage loans for First Tennessee Bank and outside customers, including long-term, fixed rate commercial real estate loans extended by life insurance companies and securitizing such loans;

(2) Engaging in private placements of corporate debt securities, trust preferred securities, and leases, including structuring, documenting, and placing fixed rate secured and unsecured term debt, fixed rate subordinated debt, and fixed rate mezzanine debt for commercial customers, as well as engaging in large lease transactions and loan syndications and participations;

(3) Providing advisory services in connection with mergers and acquisitions activities, including valuations, acquisitions, and sales such as the acquisition or marketing of branches for financial institutions;

(4) Buying and selling all types of securities on an agency or ''riskless principal'' basis;

(5) Engaging as principal in investing and trading activities in bank eligible securities;

(6) Advising, structuring, arranging and executing transactions, as agent or principal, with respect to derivative instruments;

(7) Underwriting, dealing, trading, investing and public finance activities in bank eligible securities, including securities of states and political subdivisions thereof which meet the definition of general obligation securities as defined by the OCC; and

(8) Securitizing and selling pools of consumer-receivable loans, including credit card loans, auto loans, home equity lines of credit, and 1–4 family residential mortgages, and buying and selling securitized assets.

Decision of the Comptroller of the Currency on the Application of First Tennessee Bank, N.A., Memphis, TN To Establish an Operating Subsidiary (April 12, 1999), OCC Conditional Approval No. 309, Interpretations and Actions, May 1999, Vol. 12, No. 5 (''First Tennessee Decision'')

Under 12 CFR 5.34(f), the OCC may permit a national bank to conduct an activity through its operating subsidiary that is different from that permissible for the parent national bank, subject to the additional requirements specified in 12 CFR 5.34(f), if the OCC concludes that the activity is part of or incidental to the business of banking or is permitted under other statutory authority.

In considering the proposed activity, the OCC will consider the particular activity at issue and will weigh:

(1) The form and specificity of the restriction applicable to the parent bank;

(2) Why the restriction applies to the parent bank; and

(3) Whether it would frustrate the purpose underlying the restriction on the parent bank to permit a subsidiary of the bank to engage in the particular activity.

The OCC's evaluation of these factors will also take into account the safety and soundness implications of the activity for the operating subsidiary and the parent national bank, the regulatory safeguards that apply to the operating subsidiary and to the activity itself, any conditions that may be imposed in conjunction with an application approval, and any additional undertakings by the bank or the operating subsidiary that address the foregoing factors.

For activities not previously approved by the OCC, the OCC provides public notice and opportunity for comment on the application by publishing notice of the application in the **Federal Register**. In publishing notice of the application, the OCC does not take a position on issues raised by the proposal. Notice is published solely to seek the views of interested persons on the issues presented and does not represent a determination by the OCC that the proposal meets, or is likely to meet, the criteria outlined above. Interested parties are invited to comment on any aspect of the application.[1]

Dated: November 17, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–31960 Filed 12–8–99; 8:45 am]

BILLING CODE 4810–33–P

[1] The OCC notes that the Bank's proposal will be permissible under the standards of the recently enacted Gramm-Leach-Bliley Act (''G–L–B Act''). The Bank meets (and where applicable, all its insured depository institution affiliates meet) the standards set forth in section 121 of the G–L–B Act for a national bank to have a ''financial subsidiary'' engaged in the types of activities that include those proposed by the Bank. Section 121 of the Act will become effective March 11, 2000.

Corrections

Federal Register

Vol. 64, No. 236

Thursday, December 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 99–31548 beginning on page 68100, in the issue of Monday, December 6, 1999, make the following correction:

On page 68100, in the third column, in the paragraph designated *Comments:*, in the fourth line, ''[insert date 30 days after date of publication in the **Federal Register**]'' should read ''January 5, 2000''.

[FR Doc. C9–31548 Filed 12–8–99; 8:45 am]

BILLING CODE 1505–01–D

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

Correction

In notice document 99–31310 beginning on page 67323 in the issue of Wednesday, December 1, 1999, make the following correction:

On page 67323, in the third column, in the third paragraph, in the first line, ''[Insert date of publication in the **Federal Register**],'' should read ''December 1, 1999''.

[FR Doc. C9–31310 Filed 12–8–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

Release Nos. 33-7739, 34-41874, 35-27074, 39-2375, IC-24007, IA-1826, File No. S7-20-99

Regulatory Flexibility Agenda

Correction

In the Semi-annual Regulatory Agenda, proposed rule document 99–24751, appearing on page 65504, in the issue of Monday, November 22, 1999, make the following correction:

On page 65504, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C9–24751 Filed 12–8–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
December 9, 1999

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 40

Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–99–6578]

RIN 2105–AC49

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to revise its drug and alcohol testing procedures regulation. The purposes of the revision are to make the organization and language of the regulation clearer, to incorporate guidance and interpretations of the rule into its text, and to update the rule to include new provisions responding to changes in technology, the testing industry, and the Department's program.

DATES: Comments should be received by April 7, 2000. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–99–6578, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9:00 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: http://dms.dot.gov/submit/.. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: http://dms.dot.gov/search/.

FOR FURTHER INFORMATION CONTACT: Mary Bernstein, Director, Office of Drug and Alcohol Policy and Compliance (ODAPC), 400 7th Street, SW., Room 10403, Washington DC, 20590, 202–366–3784 (voice), 202–366–3897 (fax), or *mary.bernstein@ost.dot.gov* (e-mail); Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590, 202–366–9306 (voice), 202–366–9313 (fax), or *bob.ashby@ost.dot.gov* (e-mail); or Jim L. Swart, Drug and Alcohol Policy Advisor, Office of Drug and Alcohol Policy and Compliance (ODAPC), 400 7th Street, SW., Room 10403, Washington DC, 20590, 202–366–3784 (voice), 202–366–3897 (fax), or *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation first published its drug testing procedures regulation (49 CFR Part 40) on November 21, 1988 (53 FR 47002), as an interim final rule. The rule was based on the Department of Health and Human Services (HHS) guidelines for Federal agency employee drug testing, with some adaptations for the transportation workplace drug testing program. The Department published a final rule responding to comments on the interim rule a year later (54 FR 49854; December 1, 1989).

The Department added alcohol testing procedures to Part 40 in a February 15, 1994, final rule (59 FR 7340). This rule also modified drug testing procedures pertaining to split samples. Since that time, the Department has amended specific provisions of Part 40 on various occasions (e.g., with respect to non-evidential alcohol screening devices, ''shy bladder'' procedures).

In the 10 years since Part 40 was first published, the Department has issued a large volume of guidance and over 100 written interpretations, as well as a significant amount of informal advice. Most of this material has not been incorporated into the regulatory text. There have been changes in testing technology, the structure of the drug and alcohol testing business, and the functioning of the Department's drug and alcohol testing programs, making it desirable to update some regulatory provisions. Because the rule was originally based on that of another agency, there are some provisions that never were a close fit for the Department's programs. Moreover, the rule's organization and language do not meet the objectives of the Clinton Administration's current ''Plain Language'' policies. Under section 610 of the Regulatory Flexibility Act, agencies are directed to review existing rules from time to time with an eye to their effects on small businesses and other small entities.

For all these reasons, the Department decided to review Part 40. As a first step, we issued an advance notice of proposed rulemaking (ANPRM) on April 29, 1996 (61 FR 18713), asking for suggestions for change in the rule. We received 30 comments in response to this ANPRM.

Organization of Draft

Perhaps the first thing readers will notice about this proposal is that Part 40 has been thoroughly restructured, with subparts organized by subject matter area. Compared to the present rule, the text is divided into many more sections, with fewer paragraphs each on average, to make it easier to find regulatory provisions. The proposal uses a question-answer format, with language specifically directing particular parties to take particular actions (*e.g.,* ''As an MRO, you must . . .''). We have also tried to express the (admittedly sometimes technical) requirements of the rule in plain language. The Department seeks comment on the clarity, format, and style of the NPRM and solicits suggestions for improving it.

Noteworthy Substantive Changes Proposed

The following section of the preamble lists the NPRM's most noteworthy proposed substantive changes from the existing rule and briefly states the reasons for them.

Interpretations/Exemptions

To avoid confusion and the possibility of overlapping or contradictory guidance, § 40.5 spells out specifically the sources and dates of authoritative guidance of the proposed rule. Guidance would come from the Office of the Secretary (OST), either ODAPC or General Counsel's office. It could later be incorporated in written guidance issued by the DOT agencies, though it would be identified as ODAPC/General Counsel's office guidance. Since this proposal is intended to lead to a revised regulation, the language states that only post-issuance guidance or interpretations are valid, since earlier material pertains to the old version of the rule. ODAPC intends to follow a practice of putting new Part 40 interpretations and guidance on the DOT Web site for users' convenience.

This is an OST rule. Therefore, anyone wanting an exemption from it would use the procedures and standards of 49 CFR Part 5, OST's rulemaking procedures. These procedures, rather than those of any of the DOT agencies, would apply to such a request. The proposed section spells out the long-standing procedures of Part 5 for granting an exemption. These standards are intended to preclude ''rulemaking by exemption,'' which is contrary to good rulemaking practice and the Administrative Procedure Act.

Service Agent Assurance

Proposed § 40.11 includes new provisions that call for both regulated employers and their service agents to sign a contract provision committing them to compliance with Part 40 provisions. ''Service agent'' is a new term, intended to encompass participants in the testing process other than employers themselves (*e.g.,* medical review officers (MROs), substance abuse professionals (SAPs), collectors, laboratories, third-party administrators). The Department is using ''service agent'' as a working term for this collection of participants who provide testing-regulated services to employers. The Department invites suggestions for other terms for this group of service providers.

NRC Procedures

In response to a comment from the Nuclear Regulatory Commission (NRC), the proposed rule would permit an entity which has employees covered by both DOT and NRC testing requirements to use either agency's procedural requirements.

Prohibition of Additional Testing

This section places a number of long-standing DOT interpretations into the regulatory text. It proposes to say that there must be a firewall between DOT and non-DOT tests, which extends to the use of Federal forms for non-DOT tests. Tests not expressly authorized by DOT rules on ''DOT specimens'' are forbidden (*e.g.,* tests for additional drugs, DNA tests). Nor can anyone take into account an unauthorized test (*e.g.,* in a situation in which an employee with a positive test obtains a test result from his own doctor that he attempts to use in a grievance proceeding).

The rule text omits current language permitting testing of additional drugs with DOT and HHS regulatory consent. HHS has never authorized any additional drugs. If additional drugs are authorized, the Department can amend the rule at that time.

Collector Training

While current Part 40 has specific training requirements for screening test technicians (STTs) and breath alcohol technicians (BATs) in the alcohol testing program, it does not have analogous requirements for drug testing collectors. The Department is also aware that mistakes in the collection process are generally regarded as being a common cause of problems in the drug testing process. Consequently, the Department proposes in § 40.33 that collectors read and understand DOT rules and guidance concerning collections, demonstrate proficiency by completing three consecutive error-free trial collections, and receive retraining as needed. The Department seeks comment on whether self-instruction is adequate for this purpose or whether more formal training should be required (*e.g.,* a specified course with a certification requirement, as is the case for STTs and BATs).

In this and several other contexts, we propose to require individuals who are training or evaluating participants in the testing process to be ''sufficiently knowledgeable'' about testing requirements and procedures. We recognize that this term does not precisely define the experience and information the individual must possess. Our aim in using this language is to ensure that people involved in the training process know what they need to know to judge fairly whether a collector, BAT, etc. has grasped the essentials of the function. It is not our intent, however, to require formal instruction or a standard curriculum for trainers. Doing so could increase costs and make the program unnecessarily rigid. We seek comment on whether a different term or other requirements would be appropriate in this area.

Drug Testing Forms and Materials

The NPRM proposes (§§ 40.47 and 40.49) that no one can use a DOT drug testing form for a non-DOT test or vice-versa. However, because obtaining a test result is the more important factor, use of a non-DOT form for a DOT test is, in cases where a look-alike form is used, a correctable error in the testing process. Collectors also must use a testing kit conforming to DOT requirements (see Appendix A for additional information on the kit). This proposal is based on our experience and a thorough review of testing kits by DOT staff. The Department also seeks comment on what, if any, additional security measures would be appropriate for testing materials and supplies. The proposal (§ 40.45(e)) also would continue existing policy that foreign employers can use foreign-language versions of the forms (*e.g.,* Spanish in Mexico, French in Canada). Should U.S. employers also be permitted to use these or other foreign-language versions of the forms? If this is allowed, additional questions may arise (*e.g.,* should a foreign-language form be used only when both collector and employee understand the language?).

HHS is presently revising that form and has published it for public comment in a Notice of Proposed Revision in the **Federal Register** [November 15, 1999 (Volume 64, Number 219)]. We will not publish, in this NPRM, copies of the HHS-proposed Federal Drug Testing Custody and Control Form (CCF) or the CCF currently in use. (Nor will we publish the Breath Alcohol Testing Form (BATF) currently in use.)

Electronic Records and Signatures

From time to time, interested parties have raised, and the Department has sought comment about, the potential use of electronic records and signatures in the DOT drug and alcohol testing program. The regulatory text of this NPRM does not make any new proposals in this area. However, the Department is willing to consider ideas that would, to a greater degree than is currently the case, permit the use of electronic records and signatures in the program.

We are also aware that other Federal agencies have taken steps to encourage greater use of electronic records and signatures. For example, the Food and Drug Administration (FDA) issued rules to this effect (62 FR 13430; March 20, 1997). The FDA rules authorize electronic signatures in many documents submitted to the agency, with a number of safeguards designed to ensure the reliability and trustworthiness of the signatures.

The Department again seeks comment on the potential applications, advantages, risks, and safeguards for the use of electronic signatures and the greater use of electronic records in the DOT drug and alcohol testing program. For example, are there electronic ''stamping'' mechanisms we should permit for use with the CCF?

Collection Process

Section 40.61 incorporates a number of provisions that are new or based on existing interpretations (*e.g.,* collections are to begin without delay, it is improper to attempt to collect urine from unconscious employees, collectors can inspect boots for adulterants). Sections 40.63–65 provide a step-by-step process for collectors for the initial stages of the collection process. Collection steps concerning completion of the CCF are written in this NPRM based upon the collector's use of the current Federal form. When HHS approves use of a new form, the Department will modify Part 40 collection steps (as well as laboratory and MRO responsibilities for completion of the CCF) accordingly.

The proposed rule would stipulate that in the event an employee, after presenting an insufficient amount of urine, refuses to drink fluids as directed by the collector, the collector is to stop

the collection proceedings. A failure to drink as directed would constitute a refusal to test (§§ 40.191(a)(5) and 40.193(b)(2)). The Department seeks comment on this proposal. Should the collection be curtailed at this point and the refusal to test be the final result? Or, should the employee have up to three hours to present a complete specimen, with the ''shy bladder'' procedures taking place if the employee subsequently fails to provide the required amount of urine?

Directly Observed and Monitored Collections

In §§ 40.67 and 40.69, the NPRM consolidates in one place the requirements concerning directly observed and monitored collections, respectively. The language states that an immediate collection under direct observation would be called for in some situations involving unsuitable specimens or when a previous test has been canceled because of the unavailability of a split specimen. The Department seeks comment on whether we should also require an immediate recollection under direct observation if an employee's specimen is dilute. We also seek comment on whether employers should be permitted the ability to reject a negative test result when a specimen is reported negative but dilute by the MRO. Currently, the rules permit an employer to have the employee's next test to be collected under direct observation, but this opportunity may not occur for months.

The proposal notes that a refusal to permit a directly observed or monitored collection has the same effect as any other refusal to test. The NPRM clearly distinguishes between the activities of an observer (*e.g.,* who actually watches the urination) and a monitor (who stands by and listens but does not watch).

Laboratories

Some laboratory-related material (*e.g.,* present § 40.27, concerning personnel) would be deleted, as unnecessarily duplicative of the HHS guidelines. The NPRM would make laboratories subject to public interest exclusions if they failed to comply with DOT rules, even if their HHS certification remained intact (§ 40.81(c), (d)). The Department asks for comment on whether, in the case of an amphetamine positive, the laboratory should perform a d-and l-separation in all cases.

For the first time, laboratories would be required to test for nitrites, pH, creatinine and, in certain circumstances, specific gravity (§ 40.91). This so-called ''adulteration panel'' would increase the ability of the testing process to catch attempts to cheat. We note that, under HHS guidance for the Federal agency personnel testing program, these tests are discretionary. We seek comment on the advantages, disadvantages, costs, and benefits of mandatory adulterant testing. In addition, the NPRM contains largely new procedures for dealing with unsuitable specimens and situations in which a split specimen does not reconfirm the result of the primary specimen (§§ 40.151 and 40.177).

The rule text, like that of the present rule, is silent on the issue of who selects a laboratory for testing. From the Department's point of view, any HHS-certified laboratory will do. The selection of the laboratory can be made by the employer, or it could be made as a matter of collective bargaining where applicable. In any case, the laboratory must be suitable to the employer.

To reduce paperwork and save time in the process, laboratories would no longer have to routinely send original copies of certain copies of the drug testing form to the MRO. The MRO would request original copies if, for example, faxed copies were unclear.

The proposed rules (§§ 40.83 and 40.155) would also clarify under what circumstances a laboratory may reject a specimen for testing and one circumstance that they must reject a specimen for testing. The Department seeks comment on the length of time laboratories should maintain rejected specimens. In addition, the rules delineate the laboratory reporting requirements as well as the role of the MRO in ruling out collector error as being the causative factor. MRO reporting requirements are highlighted. DOT seeks comments on the viability of having the employee return for a second collection if collector error results in a laboratory's rejecting a specimen for testing.

In its implementation of the existing rule, the Department has identified a number of situations that potentially present conflicts of interest or their appearance. In a number of cases, the Department has provided guidance to employers and service agents that these practices are inappropriate. Examples of such practices are: the laboratory employs the MRO; the laboratory has a contract or retainer with the MRO; the laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or refers the employer to or recommends certain MROs; the laboratory gives the employer a discount or other incentive to use a particular MRO; the laboratory has its place of business co-located with that of the MRO; the laboratory derives a financial or other benefit from having an employer use a particular MRO; and the laboratory permits an MRO, or an MRO's organization, to have a significant financial interest in the laboratory. It should be noted that problems of this kind arise when a laboratory has a relationship with an MRO who reviews the laboratory's DOT test results.

The Department seeks comment on whether the text of the final rule should, in order to provide clear notice to affected parties, provide a specific list of prohibited practices. If so, should the items above be part of such a list? Should items be added or deleted? We are also interested in your comments on what limitations, if any, should be placed on laboratories and MROs serving as third-party administrators or collection sites, and what conflict of interest issues these relationships may raise.

The NPRM would require each laboratory to sign a certification that there exists no conflict of interest or the appearance of conflict of interest between the laboratory and any MRO to whom they transmit DOT test results. In the absence of regulatory specification of the nature of such conflicts, is this proposed requirement meaningful or enforceable? For enforcement purposes, would it be useful for a laboratory to maintain a list of the MROs to whom this certification applies?

Laboratory Reports

49 CFR Part 40, published December 1, 1989, contained the same requirements for the laboratory summary report (monthly at that time) as the requirements contained in the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (*i.e.,* the number of specimens received, screened positive, and the number that subsequently confirmed positive, by type of drug).

An amendment to Part 40, published August 19, 1994, changed the original requirement for monthly reports to quarterly, clarified authority for laboratories to provide these reports to consortia, and changed the type of information that should be included by deleting the requirement for screening results. One of the Department's concerns underlying this change was to avoid the potential for identifying individuals who may have been positive, but whose results were subsequently ''downgraded'' based on medical use. This issue is important in that if laboratories report confirmed laboratory positive results by type of test (*e.g.,* pre-employment, reasonable suspicion), the potential exists to

identify individuals, even if there are more than five tests results listed on the report.

The following chart compares current DOT and HHS laboratory report requirements:

DOT	HHS
Initial Testing: 1. Number of samples received for testing.	Initial Testing: 1. Number of samples received. 2. Number of samples reported out. 3. Number screened positive for: A. marijuana metabolites. B. cocaine metabolite. C. opiate metabolites. D. phencyclidine. E. amphetamines.
Confirmatory Testing: 2. Number confirmed positive for: A. marijuana metabolites B. cocaine metabolite C. opiate metabolites D. phencyclidine. E. amphetamines 3. Number for which test was not performed.	Confirmatory Testing: 1. Number received for confirmation. 2. Number confirmed positive for: A. marijuana metabolites. B. cocaine metabolite. C. opiate metabolites. D. phencyclidine. E. amphetamines. F. methamphetamines.

DOT and HHS agree that the laboratory summary reports required by each agency should be the same. This would minimize additional paperwork that laboratories would be subjected to in providing two different reports. Additionally, deleting the HHS requirement to report screened results would lower the laboratory workload and shorten the report.

Currently, there is no requirement for laboratories to report to employers the number of tests received by the laboratory by type of test (pre-employment, random, etc.). However, it appears that many employers want this information, thinking that it could be used as a check on their own statistical data. Large employers and service agents generally maintain appropriate statistical data for their programs and the Department is interested in hearing from the industry if this type of additional information from the laboratories is truly helpful.

The Department would also like to know if information identifying the number of specimens that must be canceled and/or are adulterated would be useful to employers, service agents, or in the overall enforcement process. Please note that the requirements would be for submission of the report on a monthly basis under HHS regulations and semi-annually under the proposed DOT rules, with more frequent reporting as required by the Federal agency with regulatory authority over the employer.

The Department also seeks comment on record retention requirements for laboratories (see § 40.109). Are the proposed record retention periods appropriate? Should any of the periods be lengthened or shortened?

Blind Specimens

Current rules require employers to send ''blind'' urine specimens to laboratories for drug testing. These samples are unannounced and are made to look like normal samples. Whether they are negative or positive (and for which drugs) is known in advance only by the senders. These specimens are used to test the accuracy of the laboratory testing system. Together with other quality control procedures, blind specimens are an important means of keeping the testing program legitimate in the eyes of the courts, congress, and employee groups.

Currently, all employers must send these samples to the respective laboratories they use. The NPRM, in the interest of reducing burdens on regulated parties, would reduce blind specimen requirements from current levels (§ 40.103). Parties with fewer than 2000 DOT covered employees would no longer have to provide blind specimens (§ 40.103(a)). For other parties, blind specimens would only have to be provided at a one percent rate, up to a cap of fifty blind specimens per calendar quarter. This change is intended to be helpful to small businesses. In addition, since consortiums that send in large numbers of specimens collected from a variety of employers will continue to have to submit blind specimens, we do not expect that this change will adversely affect the accuracy of the laboratory testing process.

The Department seeks comment on whether the blind specimen requirement should be eliminated entirely or modified in a different way from the NPRM proposal. The proposed language provides examples of how the blind specimen requirements would work. Section 40.105 would specify what happens if there is a laboratory error on any specimen, to include a blind specimen. In addition, we ask whether testing blind specimens for adulterants is warranted.

MRO Training and Responsibilities

MROs would have to take a training course every two years or certify that they have reviewed and understand Part 40 and applicable DOT agency regulations and guidance. The NPRM also sets out a list of MRO responsibilities, including acting as an independent ''gatekeeper'' for the accuracy and integrity of the testing process and correcting and reporting problems when they are found (§ 40.123). It is particularly important that MROs not be involved in relationships with laboratories that could create a conflict of interest or the appearance of such a conflict. There are proposed conflict of interest requirements for MROs parallel to those for laboratories (§ 40.125).

The Department wishes to emphasize its view that the MRO is a very important player in the testing process, who more than any other person is responsible for maintaining the integrity of that process. It is the MRO's responsibility to advocate for and defend the accuracy of the process. This part of the MRO's role makes a conflict

of interest especially sensitive. These issues are not necessarily limited to MRO/laboratory relationships. Given the MRO's role as an evaluator of the testing process, does the MRO's ownership or administration of a collection site create the appearance or reality of a conflict of interest?

The rule, at various points, sets time frames for certain actions by MROs (*e.g.,* 14 days for verifying a ''non-contact positive'' in § 40.133(a)(2)). Should such time frames be expressed in ''business days'' (*i.e.,* excluding weekends and holidays) rather than calendar days?

It is common for MROs to conduct their functions across state lines. An MRO located in one state may perform functions concerning drug tests and employees located in many other states. Recently, we have learned of some concerns that some state medical licensing agencies may believe that out-of-state MROs who are not licensed to practice in the state may not be authorized to perform MRO functions with respect to employees located in the state. The Department is interested in learning whether this is a significant issue, and if so whether the issue poses a serious obstacle to the performance of MRO functions in a national safety program. If there is such a problem, should the Department take regulatory action to address it? If so, what action would be appropriate?

MRO Reviews of Test Results

The Department believes that it is important to draw a clear distinction between the roles of the MRO, on one hand, and the MRO's staff, on the other. MROs are responsible for supervising their staffs (see for instance § 40.127(a)). When MRO staff review test result documents, MROs would personally have to oversee their work, including direct re-review of a portion of the documents they have reviewed. Staff members can handle administrative contacts with employees and remind them to have medical information ready for their MRO interviews, but actually gathering medical information and drawing conclusions from the information would be the personal responsibility of the MRO (see for instance § 40.131(b)).

The ways a MRO makes use of a designated employer representative (DER) to contact a difficult-to-find employee are also spelled out in greater detail than in the present rule. In response to a number of requests, the proposal would define a reasonable time for a DER to contact an employee as two attempts over a 24-hour period. The rule (§ 40.133(a)(2)) would also authorize MROs to verify a test positive if neither the MRO nor the DER had been able to contact the employee within 14 days of the MRO's receipt of the confirmed positive test result. The Department seeks comment on whether this time period is appropriate, or a longer or shorter period should be used.

The MRO provisions of the NPRM contain proposed language consistent with the Department's discussion of the ''stand-down'' issue (see ''Employer Actions'' below). The MRO provisions in the proposed regulatory text would prohibit MROs from telling or, in the alternative, permit MROs to tell, the employer for whom the MRO is working that the MRO has received a laboratory confirmed positive test result, pending the completion of the MRO verification process (§ 40.129(d)). The rule text will contain both options.

MRO Verification Process

Section 40.135 lists explicitly what MROs would have to tell employees at the beginning of the verification interview, including warnings about the effect of the refusal to provide information for a medical evaluation (see § 40.135(c)) and that the MRO may provide medical information to employers or others under some circumstances.

Sections 40.137 and 40.139 distinguish between the burdens of proof applicable to opiates and to all other drug types. The MRO bears the burden of showing unauthorized use of opiates, while the employee bears the burden of showing that there was a legitimate medical explanation for the presence of other drugs. The MRO would have to offer the employee the chance to provide a legitimate medical explanation. The Department seeks comment on whether an exception to this rule should be made in the case of PCP, for which there are no known legitimate medical applications.

In making a verification of the unauthorized use of opiates, the MRO may consider such factors as needle tracks, behavioral or psychological signs of acute addiction, clinical history of unauthorized use (including admissions by employees), or use of foreign medication without substantiation that the medication was obtained and used legally. It should be emphasized that the MRO is intended to exercise good professional judgment on a case-by-case basis; the rule does not mandate a finding of positive or negative on the basis of any particular piece of evidence (aside from a laboratory finding of the presence of 6–AM).

In the case of opiate verifications, the Department seeks comment on whether it would be appropriate to shift the burden of proof in cases of very high opiate levels. That is, if the quantity of opiates in a specimen is very high (i.e., at or above 15,000 ng/mL), making an innocent-ingestion explanation (e.g., poppy seed bagels) very unlikely, then the employee would have the burden of proving that there was a legitimate medical explanation (e.g., a prescription medication) for the laboratory positive. In such a situation, the verification process for high levels of opiates would work like the verification process for other drugs. The proposed rule text incorporates this approach. In reaching this decision, the Department reviewed a number of scientific studies of food products containing poppy seeds. While most studies found concentrations of 5,000 ng/mL or below, in only one study (C. M. Selavka. ''Poppy seed ingestion as a contributing factor to opiate-positive urinalysis results: the Pacific perspective.'' Journal of Forensic Sciences, 1991;36(3):685–696.), did a product show concentration above 5000, this one at 11,571 ng/mL. Is our level of 15,000 ng/mL (which is approximately thirty percent above any known concentration attributable to poppy seed ingestion) too high or too low?

MROs are cautioned against considering evidence from unauthorized sources (e.g., non-DOT urine tests, blood tests, hair tests, DNA tests) and evidence outside the test documentation (e.g., an employee's assertion that the documents do not accurately reflect what happened at the collection site). MROs are also cautioned against considering ''innocent ingestion'' defenses (e.g., ''Someone slipped the drug into my drink at the party;'' ''I ate a hemp product;'' ''I was hanging out with people who were smoking funny-looking cigarettes'') that, even if true, do not constitute a legitimate medical explanation for the presence of a drug in an employee's specimen (§ 40.143). This is also true of statements by an employee that he or she has used marijuana for medical purposes in a state that has a so-called ''medical marijuana'' law. Use of marijuana on the basis of a doctor's prescription or recommendation does not constitute a legitimate medical explanation that is sufficient to permit an MRO to verify a test as negative. Use of a hemp product is not a legitimate medical explanation, either.

In the context of pre-employment testing, the NPRM states that a person with a permanent or long-term disability preventing him or her from providing a sufficient specimen may be regarded as testing negative. In such a case, the individual must undergo a medical examination to determine if the individual is free of signs or symptoms

of illegal drug use. The Department seeks comment on whether a similar provision should be created to apply to other types of testing. For example, if an individual has this type of permanent or long-term disability, should the individual undergo a medical examination to determine if he or she is free of signs or symptoms of drug abuse in lieu of a futile attempt to complete a random drug test in the usual way? This would avoid the necessity of going through the ''shy bladder'' procedure repeatedly, while providing a surrogate for the drug test that could accomplish the safety goal of testing.

One of the most common misunderstandings of the current rule is that an employee who makes a timely request for the test of a split specimen (where such testing is mandated by statute) may be denied such a test if he or she does not pay for it up front from his or her own funds. To avoid this problem in the future, § 40.145 specifies that an MRO must explicitly inform the employee that, if he or she has a verified positive test and asks for a test of the split specimen in a timely manner, the test will be performed, regardless of whether the employee complies with a request from a laboratory, employer, or other party to pay for it in advance. While the rule is intentionally silent on who ultimately pays for a test, the employer is responsible for ensuring the test occurs. (See also §§ 40.171 and 40.173.)

The text also proposes that MROs can conduct the verification process and report results if the MRO has received legible copies of the MRO and laboratory copies of the CCF. The text also delineates an MRO's responsibility in pre-employment testing situations when the employee has a disability preventing the submission of a urine specimen.

Adulterated, Substituted, and Dilute Tests

This NPRM proposes to mandate testing for adulterated and substituted specimens (''validity testing''), which will likely increase the number of situations in which laboratories determine that a specimen has been adulterated or substituted. This proposal is based on the concern that adulteration and substitution are real and possibly increasing threats to the integrity of the Department's drug testing program, with the potential for increased safety risks if drug users succeed in frustrating the testing process.

The proposed rule (§ 40.93) sets forth standards and a process for determining when a specimen is adulterated, substituted, or dilute. For substituted and adulterated specimens, the proposed rule, consistent with HHS guidance, requires laboratories to test two different aliquots of the primary specimen. In many cases, the laboratory must use different procedures, at least one of which is quantitative, for each of the aliquots. Only then does the laboratory determine that the specimen is substituted or adulterated. The requirement to test two different aliquots is designed to ensure that the laboratory makes such a determination only on the basis of a reproducible result. This is an important safeguard for the accuracy of the process.

DOT policy provides that an individual who has been found to have adulterated or substituted a specimen is viewed as having refused to test. Such a refusal is a violation of DOT agency regulations, with consequences similar to those of a positive test. That is, an employee who refuses to test is prohibited from performing safety-sensitive functions unless and until he or she completes the return-to-duty process. Under some DOT agency regulations (*e.g.,* the FRA), the consequences of a refusal to test can be more stringent than those of a positive test. There are also some employer policies that treat refusals more strictly than positive tests.

The increased prominence of testing for adulteration and substitution of specimens, combined with the seriousness of consequences for refusing to test, has resulted in increased interest in safeguards for employees. In particular, some unions and other parties have suggested that the Department should apply split specimen testing procedures to specimens that have been found to be adulterated or substituted.

This suggestion grows out of a requirement in the Federal Motor Carrier Safety Administration (FMCSA) [prior to January 1, 2000, the Federal Highway Administration], the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Federal Aviation Administration (FAA) testing rules that employees who test positive for drugs are entitled to ask for a test of a second, or ''split,'' specimen at a second laboratory to confirm the presence of the drug. This requirement is mandated by provisions of the Omnibus Transportation Employee Testing Act of 1991. In the Research and Special Programs Administration (RSPA) and United States Coast Guard (USCG) programs, which are not covered by the Omnibus Act, split specimens are optional with employers.

The Department is seeking comment on three options concerning this issue. The first option is to do nothing beyond the procedure set forth in the regulatory text, in which there would be two separate tests of the primary specimen before a finding of substitution or adulteration is made. The Department is confident that this option is legally defensible. It also is less costly and less prone to the possibility of administrative error than a system involving testing of the split specimen.

Split specimen testing, even in the context of positive drug test results, is not constitutionally mandated. The Department's drug testing rules, prior to the 1994 amendments implementing the Omnibus Act, left split specimen testing to the discretion of employers. The Department's drug testing requirements and procedures were upheld as constitutional by the courts before those amendments were made. It is not reasonable to assert that the Department is constitutionally required to expand the application of a procedure which is not constitutionally required to be used in the first place.

Nor is split specimen testing required by the statutes and regulations governing the Department drug testing programs. The split specimen provision of the FMCSA, FTA, FRA, and FAA rules results from a requirement of the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. § 5331(d)(5)). This section provides that:

> . . . each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that *if the individual's confirmation test results are positive* the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test. [emphasis added]

This provision is implemented in the Department's current drug testing procedural regulations:

> . . . the MRO shall notify each employee *who has a confirmed positive test* that the employee has 72 hours in which to request a test of the split specimen, *if the test is verified as positive*. . . . If the [second laboratory's] analysis fails to reconfirm the presence of *the drug(s) or drug metabolite(s)* found in the primary specimen, . . . the MRO shall cancel the test. . . . [49 CFR § 40.33(f); emphasis added]

In the first instance, both the statutory and regulatory language create a right to a test of the split specimen only in situations where there is a confirmed

positive test. A confirmed positive test occurs only when the laboratory confirmation test detects sufficient quantities of the specified drug(s) or drug metabolite(s). In a case where the laboratory has found an adulterant in the specimen or has determined it to be substituted, the laboratory does not report a confirmed positive test to the MRO. The condition precedent to the right to a second confirmation test has not occurred, since there has never been a confirmed positive test for a drug reported to the MRO in the first place.

The current regulation, in spelling out the procedure for requesting a test of a split specimen, provides that a request must be made within 72 hours of a *verified* positive test. (The MRO verifies a confirmed laboratory test as positive if the MRO cannot determine that there is a legitimate medical explanation for a laboratory confirmed positive test result.) In the absence of a confirmed positive test, there can never be a verified positive test, which is the trigger for the employee's opportunity to request a test of the split specimen.

The current regulation further provides that if the test of the split specimen fails ''to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen,'' the test must be canceled. In a case involving a finding of adulteration or substitution, there has never been a reported finding that drug(s) or drug metabolite(s) are present in the employee's specimen. One cannot ''reconfirm'' a finding that has never been made. The regulation requires cancellation of a test only if the presence of drug(s) or drug metabolite(s) is not reconfirmed in the split specimen.

In addition to the use of split specimen testing in adulteration or substitution cases not being legally required, the first option is supported by three policy considerations. First, the Department is very concerned that present adulterants and other interfering substances may degrade over time. That is, when an adulterant is present in the primary specimen but degrades chemically to the point where it cannot be detected or changes to another chemical state in the split specimen (e.g., HHS has recently identified one adulterant that appears to degrade in a matter of hours), our making split specimen testing available for adulterants could help drug users ''beat the test.'' In addition, manufacturers of commercial products intended to defeat drug testing—who engage in a well-publicized ''arms race'' to find new means of defeating drug tests—may well be able to develop, in the future, adulterants that degrade even faster.

Second, the Department's experience is that the overwhelming majority of test cancellations related to split specimens result from collection or logistical problems (*e.g.,* collector fails to collect the split specimen, a split specimen is lost or leaks in transit). The Department has been reluctant to expand the application of split specimen testing to areas where it is not required by statute, which could have the result of canceling otherwise valid tests and allowing drug users to continue to perform safety-sensitive functions.

Third, the Department has viewed an adulterated or substituted specimen as more closely analogous to a refusal to test than to a positive test. Employee A flatly tells the collector that he will not provide a specimen, or simply does not show up for the test. Employee B shows up, provides a specimen, signs the statement on the custody and control form certifying that he or she has not tampered with the specimen, but nevertheless puts a substance into the specimen that prevents the laboratory from testing it. The actions of Employee A and Employee B are equivalent. Having a second opportunity to defeat the testing process is no more appropriate for Employee B than for Employee A.

The second and third options would both add a further element to the language in the proposed regulatory text. The Department seeks comment on all three options, as well as any other suggestions commenters may have on this subject.

The second option would be to treat an adulterated or substituted test result the same as a verified positive and allow the employee to request a split specimen test by a second laboratory. For example, suppose a laboratory makes an adulteration or substitution finding. Within 72 hours of being informed of the finding, the employee would have the opportunity to request a test of the split specimen by the second laboratory to see if the adulteration or substitution finding could be reconfirmed. If it were not reconfirmed, the test would be canceled, just as in the case where a split specimen fails to reconfirm the presence of a drug or metabolite found in a positive primary specimen. This option would ensure that employees who face similar or more severe employment consequences compared to employees with positive tests for drugs have an equal ability to challenge a laboratory's primary specimen determination. The argument in favor of this approach is basically one of fairness.

This additional safeguard for the fairness of the process could provide reassurance to the vast majority of employees who fully and honestly cooperate in drug testing programs. It could also discourage frivolous challenges to drug test results by employees who know they have submitted adulterated samples.

In addition, more research needs to be done in the area of adulterants degrading over time. There are technical questions that need to be resolved about the protocols and standards to be applied in split specimen reconfirmation in adulteration and substitution situations. The Department is working with HHS to ensure that this information is available in time for the final rule. Meanwhile, we invite comment on the technical and scientific issues concerning adulteration and substitution testing and reconfirmation.

The Department seeks comment on whether, if a provision for split specimen testing for adulterated and substituted specimens is included in the final rule, it should be required or optional. That is, should we require employers to make split specimen testing available in these circumstances, or should employers (or employers and unions, where collective bargaining agreements apply to drug testing issues) have the choice of whether to make split specimen testing available?

In addition, we seek comment on whether Part 40 should also be amended to require employer submissions of adulterated and substituted specimens as part of the external quality control (''blind specimen'') program. If so, how should selection of adulterants be made? How many adulterated specimens should be included within the minimum number of blind specimens submitted? To what extent have such specimens been included in existing blind testing programs? What practical issues could arise with regard to administration of such a program?

A third option occupies a middle ground between the first two options. When a laboratory finds that a primary specimen has been adulterated or substituted, it would immediately test a third aliquot of the same specimen to see if the same result was obtained (two aliquots would already have been tested before the original finding of adulteration or substitution had been made). If the retest did not confirm the original finding, the test would be canceled. The Department seeks comment on what the standards should be for this additional test. For example, should we set a standard that to be regarded as confirming the presence of an adulterant, the additional test result should be within +/− 20 percent of the

original result (while still satisfying the initial reporting criteria)?

This approach would add a safeguard for employees, by adding another level of assurance that the laboratory was relying on a reproducible result. Reproducibility is a key component of the validity of any scientific process, and this approach would ensure that no one would suffer adverse consequences on the basis of a result that could not be reproduced.

Since the retest would occur immediately, degradation of most adulterants would not be a major problem. In addition, because it would take place in the same laboratory and would not involve the split specimen, collection or transmission errors affecting the split specimen would not result in the cancellation of an otherwise valid adulteration or substitution result.

Finally, the proposed rule text includes material adapted from the DOT and HHS guidance concerning other types of ''problem tests'' (§§ 40.147 through 40.153). As current DOT guidance states, a retest under direct observation is required in situations of some ''unsuitable'' specimens. The Department seeks comment on whether a retest under direct observation should also be required in cases of dilute specimens. The Department also seeks comment on a frequently-asked question about dilute specimens: should an employer have the discretion to disregard a dilute result? For example, if an employer in a pre-employment test situation receives a test result that is negative and dilute, should the employer be able to require that the applicant take another test and get a negative result from an undiluted specimen before beginning to work in a safety-sensitive position?

Employer Actions

Section 40.159 addresses the so-called ''stand-down'' issue. Some employers have expressed a preference for standing-down employees—taking them temporarily out of service based on a report from the MRO that the employee has a confirmed positive test, pending completion of the verification process. Some employers who have an in-house MRO appear particularly attracted to this approach. The proponents of this approach assert that it enhances safety and that it can include safeguards for employee privacy.

In the program for regulated industries, the Department's current rules and interpretations have prohibited stand-down. The reason for this approach is that such policies may result in the stigmatization of employees as drug users in cases when positive laboratory results are downgraded as a result of the MRO verification process. The Department's rules have always striven to provide a balance between safety objectives and the protection of legitimate employee privacy interests. In addition, the Department is not aware of any evidence that, in the millions of tests conducted in compliance with the Department's rules since the program began in 1988, the existing prohibition on stand-downs has ever had adverse safety consequences.

However, the Department's internal drug testing program for DOT employees, which applies to air traffic controllers and other safety-sensitive employees, has used a stand-down procedure for many years. Consequently, the Department's overall approach to this issue has been inconsistent.

Given this situation, the Department has decided to seek comment on both approaches. The proposed regulatory text includes language, in the alternative, relating to both. Alternative 1 is the present approach, which prohibits stand-down. Alternative 2 would permit stand-down, with requirements for maintaining confidentiality of information concerning the confirmed positive test result of the employee. We seek comment on which alternative is preferable for the final rule. If the final rule permits employers to implement stand-down policies, the Department seeks comment on several associated issues.

For example, should the rule specify that an employee who is stood down may continue to perform non-safety sensitive duties? What should be the pay status of an individual being stood-down? What additional privacy provisions, if any, are needed to limit dissemination of information about the employee's stand-down status based upon the existence of a laboratory positive test? Difficulties in maintaining confidentiality may be particularly acute in smaller companies (*e.g.,* a trucking company with 10 or fewer drivers). Are there any special provisions we should include for small employers? Finally, how would a stand-down policy apply to owner-operators? It seems implausible that owner-operators would stand themselves down after being informed of laboratory positive tests by MROs.

We also point out that, in addition to the proposed alternative language in §§ 40.129 and 40.159, there may be a need for conforming changes to other sections of the regulation in the event we choose Alternative 2. We seek comment on what, if any, such additional changes to the rule would be needed.

Finally, the proposed regulation would make other employer responsibilities clear. When an employer receives a report from the MRO that there is a substituted or adulterated specimen, the employer must remove the affected employee immediately from safety-sensitive functions. When the MRO informs the employer of an unsuitable specimen, the employer must direct the employee involved to immediately submit a new specimen under direct observation. Likewise, when the employer receives a report from the BAT that there is a result 0.02 or above, the employer must remove the affected employee immediately from safety-sensitive functions.

Split Specimens

Section 40.173 again underlines that, where split specimen testing is required by DOT regulations, employers must make sure that a test of the split occurs every time that an employee makes a timely request. Payment or agreement by the employee to pay the cost of the test is not a prerequisite for conducting a test of the split specimen, though the employer may seek to recover the cost of the test. Laboratories conducting tests of split specimens must refer a specimen to a third laboratory for additional testing when necessary (§ 40.177(d)). The Department also seeks comment on whether (as proposed at § 40.183(d)(4)) there should be a retest under direct observation when a split specimen is unavailable for testing.

Split specimen tests are statutorily mandated only in FMCSA, FTA, FRA, and FAA. They are currently optional with employers in RSPA and USCG. The Department is interested in determining if continuing use of single specimen collections by RSPA and USCG causes confusion for collectors, employers, laboratories, and MROs in light of the fact that FMCSA, FTA, FRA, and FAA are required by the Omnibus Act to use split specimen collection methodology. Will there be fewer errors in the collection process if all DOT urine specimens are collected using split specimen procedures? Will employers covered under multiple rules (*e.g.,* RSPA and FMCSA) be less likely to order the wrong collection if all of DOT's OAs require split specimen procedures (e.g., a situation in which a pipeline repair person also drives a truck)? Is it sound policy to keep the current bifurcated specimen collection system that requires split specimen collection within some transportation

industries and permits single specimen collections for others?

''Problem'' Drug Tests

The NPRM would spell out the circumstances in which an employee's actions are considered to be a refusal to test (§ 40.191). The NPRM also includes a list of testing problems that must or may result in cancellation of a test, including instructions on how to correct problems that would otherwise result in cancellation (§ 40.201). This portion of the proposed rule also notes the effect of a canceled test (§ 40.205) and introduces the concept of a mistake in the process which must be documented when discovered but which does not result in cancellation of the test (§ 40.207). We also request information on whether there are other common mistakes that we should mention in this section.

In connection with the ''shy bladder'' provisions, the rule provides that a physician ''acceptable'' to the employer shall evaluate the employee (the same provision applies to inability to provide sufficient breath for an alcohol test). We understand that, in some cases, employers apparently do not check to determine the suitability of a physician to perform this evaluation. Should the language simply require the employer to ''select'' the physician? Should the rule establish criteria for this selection (*e.g.,* expertise in urology)?

The proposed rule also would incorporate 1998 DOT guidance concerning individuals whose tests are canceled on a pre-employment test because of a serious, long-term disability. These individuals could perform safety-sensitive functions after ''passing'' a physician's evaluation for signs or symptoms of drug abuse, which could include a blood test. Because pre-employment alcohol tests are no longer mandatory, is it necessary to include a similar provision in ''insufficient breath'' situations? The Department seeks comment on this question.

Alcohol Test Administration

Alcohol testing requirements are not proposed to be changed as much as the older drug testing requirements. Some of the changes proposed include mandatory retraining for BATs and STTs who make a mistake resulting in the cancellation of a test (§ 40.213(a)(3), new requirements for test site security (§ 40.223(a)), authorization for foreign-language testing forms (*e.g.,* in Spanish for use in Mexico), more specific instructions on the steps for beginning alcohol tests (§ 40.241) and clarifications concerning the timing of confirmation tests (§ 40.251). There are updated sections on ''fatal flaws'' and ''correctable flaws,'' and how to correct the latter (§ 40.271).

Section 40.233 requires quality assurance plans for evidential breath testing devices. Are these plans necessary or useful? Should the requirement be retained, changed, or eliminated? Can it be improved or modified? The Department also seeks comment on how well the current alcohol testing form is working for collection and other concerned personnel. Are there improvements we should make? We also seek comment on whether the provisions of the rule concerning the use of saliva devices (§ 40.245) adequately describe how these devices work, or whether we should modify this language.

Substance Abuse Professionals

The Department issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** [June 3, 1999 (Volume 64, Number 106)] concerning the inclusion of additional groups of certified drug and alcohol addiction counselors in the definition of a SAP. The NPRM incorporates material from this ANPRM and the comments we received. An overwhelming number of respondents supported the Department's desire to streamline the process for reviewing certification groups' application materials and for evaluating the quality of those groups' certification testing processes. While some commenters favored maintaining the current review process and one favored individual certification for every SAP, the vast majority favored the Department's proposal to require National Commission for Certifying Agencies (NCCA) accreditation for certification agencies wishing to have their certified counselors included in the SAP definition. Because two counselor organizations—the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) and the International Certification Reciprocity Consortium / Alcohol & Other Drug Abuse (ICRC)—have been through the current rigorous DOT evaluation process, the Department believes that NAADAC and ICRC will not need NCCA accreditation to have their certified counselors remain in the SAP definition.

The NPRM would add training requirements for SAPs (§ 40.281(c)). The NPRM also clarifies the role of the employer, employee, and SAP in the return-to-duty process (§§ 40.283 through 40.291), including a strengthened prohibition on waivers of liability. The NPRM would also incorporate into the rule text a number of existing interpretations concerning the SAP's role (*e.g.,* a SAP assessment must be face-to-face, an employer or employee cannot ''shop around'' for a favorable SAP evaluation, no one may modify or change a SAP's assessment of an employee (§§ 40.295 and 40.297); the SAP is to make a recommendation for a return to work agreement). The rule would also specify that recommendations for follow-up tests and post-return-to-duty follow-up treatment would be included in the SAP's recommendation, and that the employer must follow these recommendations (§§ 40.307 and 40.309). Finally, the NPRM lists the items that must be included in SAP reports on employee evaluations (§ 40.311).

Some SAPs have asked to receive reports of the quantity of drugs in an employee's system, to help them determine what sort of treatment might be appropriate. They do not receive quantitations in the normal course of business. Should SAPs be able to obtain this information from laboratories, much as MROs now can?

The NPRM, like the current rule, requires at least six follow-up tests over the period of one year following an individual's return to safety-sensitive duties after a rule violation (*e.g.,* positive drug test). From rehabilitation and safety viewpoints, is this minimum requirement adequate? For example, would it be better if there were a minimum requirement of twelve follow-up tests during the year? The Department seeks comment on this matter.

Finally, because of the Department's growing concern that no adverse consequences exist for most applicants for DOT safety-sensitive positions who test positive on or refuse to take a pre-employment drug test, we propose to prohibit those individuals from performance of any and all DOT safety-sensitive duties until and unless the person completes the SAP evaluation, referral, and treatment process. DOT agency regulations would be modified accordingly.

Confidentiality and Release of Information

The basic confidentiality provision of the existing part 40 would continue in effect: Information about an employee's drug or alcohol tests can be released to third parties only with the written consent of the employee. The NPRM specifies that this consent must be specific to the information in question, not a ''blanket'' release (§ 40.321(b)). However, a service agent (*e.g.,* an MRO)

can transfer their records to a successor without obtaining such consent, as long as no disclosure to outside parties occurs (§ 40.325(a)). MROs can, with employee consent, contact a prescribing physician to determine if an alternative medication not having side effects that adversely affect safety can be substituted (§ 40.327(c)).

The NPRM specifies that MROs would be required to report drug test information directly, and only, to actual employers. They could not report results via an intermediary, such as a consortium or third-party administrator. Use of intermediaries has the potential to delay the transmission of results and increase the likelihood of administrative error. There is one exception to this requirement: DOT agencies could have a regulatory provision authorizing the provision of results through an intermediary. At the present time, only the Coast Guard has such a provision. No other DOT agency authorizes this practice.

The proposed approach is based on the Department's 1995 guidance on the role of consortia and third-party administrators. As that guidance suggests, reporting through an intermediary might be appropriate in certain specific situations (*e.g.,* when use of a third party is the only practicable way to direct an owner-operator to cease performing safety-sensitive functions or to report a violation to a DOT agency for purposes of taking licence or certification action following a violation). The Department is reluctant to extend these provisions any wider. What are the advantages versus the disadvantages of the current system?

To resolve a dilemma that some MROs have faced, § 40.329 would authorize MROs who work for more than one DOT employer to inform Employer B that an employee has had a positive test or a refusal to test in his capacity as an employee of Employer A. This proposed exception to the employee consent rule has a number of protections to ensure that it is not abused or used too broadly. Should this provision be broadened (*e.g.,* so that the MRO could provide the information to an employer whom the MRO does not serve)? If so, how should a broadened provision be drafted in order to avoid an open-ended license to share information (*e.g.,* within an organization with many MROs and/or a large data base)? One purpose of part 40 is to maintain an appropriate balance between safety and privacy considerations, and we seek comment on how best to strike this balance in this situation.

The existing rule requires laboratories to provide certain information to employees about, among other things, their HHS certifications. Despite this requirement, laboratories have sometimes refused to provide the information. Section 40.331 specifies the scope of this requirement in greater detail and emphasizes the laboratories' obligation to comply. It should be noted that refusal by a laboratory to provide required information could subject the laboratory to public interest exclusion proceedings under subpart R.

The NPRM currently authorizes the provision of information about a post-accident drug or alcohol test to the National Transportation Safety Board (NTSB), in connection with an NTSB investigation of an accident to which the post-accident test pertained. The Department seeks comment on whether this provision should be broadened to apply to other types of tests (*e.g.,* pre-employment, random, follow-up) in the individual employee's past. Should the provision apply to the employee's urine specimens collected for the post-accident test (on which NTSB might want to conduct additional testing)? The issue involves how best to balance the potential relevance of the additional information to NTSB's investigation of the accident with the additional effects of broader dissemination of the information on the individual's privacy. If we do broaden the availability of such information to the NTSB, should the rule place conditions limiting further disclosure (*e.g.,* in the text of NTSB reports)?

Finally, in some situations a service agent may be aware that an individual is continuing to perform safety-sensitive functions despite having violated a DOT agency regulation. For example, a third-party administrator may learn that a truck driver is continuing to drive a commercial motor vehicle after having tested positive for drug use. There is no present requirement for the service agent to report such a situation to the DOT agency involved. In the interest of safety, should there be such a requirement?

Service Agent Roles and Responsibilities

Subpart Q of the rule is based in part on existing DOT guidance concerning the roles and responsibilities of service agents, such as third-party administrators and consortia. There is also new material, such as an explicit statement that service agents cannot impose requirements not authorized by DOT rulemaking, a reference to the subpart R public interest exclusion process and its consequences, and expanded provisions on the relationship between service agents and MROs.

The Department is concerned about any potential for conflicts of interest with all service agents and welcomes comments in this area. The Department has a long-standing prohibition against the laboratory and the MRO having an affiliation or financial arrangement with one another that may be construed as a conflict of interest. Should this prohibition be strengthened? If so, how? We are also interested in your comments on what limitations, if any, should be placed upon laboratories and MROs serving as third-party administrators. How can we ensure that there exists no conflict of interest in a laboratory-based third-party administrator's selection of an MRO? Or, in an MRO-based third-party administrator's selection of a laboratory?

Public Interest Exclusions (PIEs)

The Department of Transportation requires hundreds of thousands of transportation employers to conduct drug and alcohol tests on millions of employees performing safety-sensitive functions. As part of this program, the Department requires the employers to comply with the specific and detailed testing procedures in part 40. These procedures ensure the accuracy, integrity, and privacy of the testing process, and they contain significant safeguards for employers and employees alike. Employers who do not comply with these procedures are subject to sanctions, such as civil penalties or withdrawal of Federal funding.

Most DOT-regulated employers today do not use their own personnel to provide drug and alcohol testing services. Rather, they rely on a series of ''service agents'' (*e.g.,* collectors, BATs, laboratories, MROs, substance abuse professionals, testing consortia, third-party administrators), with whom they contract to provide these services. When service agents fail or refuse to carry out part 40 requirements, employers who engage their services in good faith are placed at risk of being found in noncompliance and subjected to DOT sanctions. The employers—especially the many small businesses involved—do not have the expertise or resources to determine whether the service agents are providing services in a way that meets part 40 requirements.

Relying on employer penalties alone to ensure service agent compliance does not adequately address the problem. For example, imposing a $1000 civil penalty on a small trucking company that has used a service agent that is not performing its functions properly does little to correct the service agent's

malfeasance. The service agent can go right on performing badly for the many other DOT employers with which it contracts. Attempting to address the problem through employer-by-employer sanctions is also a very inefficient use of the Department's resources. If a DOT agency must conduct separate civil penalty actions against 30 different employers to address the effects of a single service agent's malfeasance, its use of resources is much less efficient than if there is one DOT action focused on the service agent itself. Nor are educational efforts likely to be sufficient: existing DOT agency and private training efforts, while useful, have not prevented some recurring problems about which we know.

Noncompliance by service agents with part 40 requirements can have serious consequences that go beyond the possibility of DOT sanctions on employers. For example, if an MRO is unqualified, does not conduct verification interviews, or disregards DOT rules and guidance for making verification decisions, individuals who apparently have tested positive for drugs can have their test results invalidated and be put back to work in safety-sensitive positions, endangering transportation safety, or individuals can be unfairly identified as drug users. If a collector or BAT does not conduct the collection process as part 40 provides, then valid tests can be overturned, tests will have to be repeated, and hiring actions may be delayed (in the case of pre-employment tests), creating potential safety and cost problems. If a laboratory or MRO breaches confidentiality requirements, employees' privacy rights can be compromised, upsetting the program's carefully constructed balance between the government's interest in safety and the employee's interest in privacy.

To address these concerns, the Department is proposing a new subpart that would create a ''public interest exclusion'' mechanism. A public interest exclusion (PIE) would be a directive from the Department to its regulated employers to not use a service agent that fails or refuses to provide its services as part 40 requires. While a PIE obviously has adverse business consequences for the service agent involved, its imposition is not for the purpose of punishment. Its purpose is to serve the public interest by making it easier for employers to comply with our rules and to protect them from noncompliance with DOT regulations. We also believe it is important to protect employees from the consequences of services that do not meet DOT requirements. The proposed process would work as follows:

- When a DOT agency, ODAPC, or the Inspector General's office becomes aware of a problem with service agent performance, through an inspection or complaint, the office in question would first decide whether to pursue the matter through this process. This would be a ''prosecutorial discretion'' decision by the office, made in view of the seriousness of the problem and would, of course, be subject to the availability of DOT resources. We contemplate the use of this process only in cases having considerable significance, not for minor mistakes. In addition, in most cases, DOT offices would resort to this process only after having unsuccessfully tried other means of resolving the problem.
- Because the primary purpose of the process is compliance, the initiating office would first send a correction notice to the service agent, spelling out the problem and asking the service agent to fix it.
- If the service agent corrected its problem(s) within 60 days, no further proceedings would be necessary.
- If the problem(s) was not corrected, the initiating office would notify the service agent in writing that the Department was proposing to issue a PIE.
- To ensure that the service agent had administrative due process, it would have the opportunity to contest the issuance of a proposed PIE. This would include the opportunity to submit information and arguments in writing and to meet with the ODAPC Director in situations where there were material facts in dispute. (To ensure separation of functions, the ODAPC Director, as the decisionmaker, would not participate in the decision to initiate the proceeding, and there would be a firewall between the Director and other ODAPC, DOT agency, or IG staff concerning the case.)
- The Director would notify the service agent of the decision and the reasons for it in writing and issue a **Federal Register** notice to inform employers when a PIE was issued.
- The PIE would stay in effect for a period of from one to five years, depending on the seriousness of the problem. However, it could be lifted earlier if the service agent was able to show that the problem(s) resulting in the order had been corrected.

This process is analogous to the procedure for imposing suspension and debarment in nonprocurement situations (see 49 CFR part 29). It should be noted that this proposed provision is not a sweeping new assertion of regulatory authority over entities who were previously untouched by DOT regulations. Provisions of both part 40 and DOT agency drug and alcohol testing regulations already govern in detail the activities conducted by laboratories, MROs, collectors, substance abuse professionals, and other service agents. The proposed provision adds no new substantive requirements. Rather, it uses the Department's existing regulatory authority over transportation employers to direct the employers, in the public interest and in the interest of their own compliance with our regulations, not to use service agents whose conduct violates part 40. The General Counsel of the Department of Transportation has determined that the Department has sufficient legal authority to implement these proposed requirements.

The Department also seeks comment on three alternative methods to achieve the objective of this provision. We believe that all these alternative approaches could use due process procedures like those outlined above:

(1) The process would work as described above, but instead of issuing a PIE, the Department would issue an advisory notice to employers telling them that the service agent was not providing services as required by part 40, placing employers using the agent at peril of enforcement action.

(2) As a condition of participation, all service agents would be required to self-certify that they provide all services as required by Part 40. Instead of issuing a PIE, the Department would decertify service agents that failed to carry out requirements properly.

(3) A contract provision in all agreements between service agents and regulated employers (see § 40.11(d)) would bind service agents to providing services in compliance with Part 40. Noncompliance would breach this provision, leading to termination of the contract.

The Department seeks comment on all the alternatives, combinations of them, or other means to accomplish the purpose of the proposed Subpart R, as well as on the general concept of a mechanism to protect employers and employees from noncomplying service agents.

Table of Sources

As noted earlier in the preamble, this proposed rule would significantly change the organization of Part 40. To help readers follow the origin of the proposed provisions, we have created a table that lists a provision of the current Part 40 or other sources of each provision. The following are examples of some of the most common types of source notations:

• ''§ 40.33(b)''—The material in the proposed rule originated in § 40.33(b) of the existing rule. This does not mean that the proposed section is the same as the existing section, but simply that the proposed section addresses the same subject matter as the existing provision. Often, the language of the proposing and exiting provisions will be different.

• ''Interp.''—The material in the proposed rule text comes from an interpretation issued by the Department under the present Part 40.

• ''9/98 guidance''—The material in the proposed rule text comes from a guidance memorandum issued by the Department in September 1998.

• ''Modal regulation''—The material in the proposed rule text comes from a DOT agency regulation (*e.g.,* the FRA drug testing rule).

• ''New''—The material in the proposed rule would add material not found in the present Part 40 or in written interpretations or guidance.

• ''HHS''—The material in the proposed rule would incorporate material from the Department of Health and Human Services drug testing guidelines or HHS guidance interpreting those guidelines.

• ''Comment''—The material in the proposed rule responds to a comment on the ANPRM.

• ''Alcohol (or Drug) parallel''—The proposed rule text concerning drug testing procedures would be parallel to language on a similar provision in the alcohol testing procedures, or vice-versa.

Using the table, readers should be able to readily identify the source of a given provision and where the proposed rule differs from the present Part 40. This should help commenters determine whether they support proposed changes, support existing language, or whether they wish to recommend alternatives to the proposals. In a version of the NPRM on the Department's web site, we have placed these source notes in brackets after each section, for greater convenience to the reader (**Federal Register** format does not permit this placement in the published version of the document). The table follows:

Section of NPRM	Source
40.1	40.1
40.3	40.3, HHS, except ''alcohol test,'' ''designated employer representative,'' ''dilute specimen,'' ''notice,'' ''service agents,'' and ''substituted specimen,'' which are new.
40.5	New
40.7	49 CFR part 5, interp.
40.11	New
40.13(a)	New
(b)	Comment
40.15 (a), (b), (d), (e), (f)	Interp.
(c)	40.21(c)
40.17(a)	Guidance
(b), (c)	New
40.19	Interp.
40.21	New
40.31 (a), (b)	New
(c)	40.23(d)(3), interp.
(d)	40.23(d)(3)
40.33 (a)(1)	New
(a)(2)(i)	40.23(d)(2)
(a)(2)(iii)	40.23(d)(1)
(a)(3)–(5)	New
(b)	New
40.35	New
40.37	New
40.41 (a), (b)	New
(c)	40.25(a)(1)
(d)(1), (3)	40.25(a)(2)
(d)(2)	New
(e)	40.25(a)(2), HHS
(f), (g)	40.25(a)(1)
40.43(a)	40.25(b)
(b)(1)–(6)	40.25(b)(1)–(2)
(b)(7)–(8)	New
(c)	40.25(b)(2)
(d)(1)	40.25(d)
(d)(2)	40.25(g)
(d)(3)	40.25(d)
(d)(4)	40.25(f)(25)(ii)
(d)(5)	40.25(f)(25)(i)
(e)	40.25(d)
(e)(1)–(4)	New
40.45(a)	40.23(a)(1)(i)
(b)(1)	40.23(a)(1)(ii)
(b)(2)–(5)	Comments
(c)	40.23(a)(1)(ii)
(d)	40.23(a)(1)(iii)
(e)	New
40.47(a)	Interp.
(b)	Interp., new
40.49	New
40.51	Interp., new

Section of NPRM	Source
40.61(a)	40.25(f)(3), new
(b)	Interp.
(b)(1)	New
(b)(2)	40.25(j)
(b)(3)	Interp.
(c)	40.25(f)(2), HHS
(d)	40.25(f)(2), new
(e)	Alcohol parallel
(f)(1)–(2)	40.25(f)(4)
(f)(3)	Interp., HHS
(f)(4)–(6)	New
(g)	40.25(f)(22)(ii)
40.63 (a)	Alcohol parallel
(b)	40.25(f)(5)–(6), (11)
(c)	40.25(f)(7), HHS, interp.
(d)	40.25(f)(10), new
(e)	40.25(f)(8), new
40.65	Checklist format new
(a)	New, interp.
(b) (1)–(5)	40.25(e)(2)
(b)(6)	Interp.
(b)(7)	Interp., new
(c)	New, interp.
40.67(a)(1)	HHS
(a)(2)	New
(b)(1)	40.25(e)(2)(iv)
(b)(2)	9/98 guidance
(c)(1)	New
(c)(2)	40.25(e)(2)(iii); new
(c)(3)	40.25(e)(2)(i)
(c)(4)	40.25(e)(2)(iii)
(d)	HHS
(e)	New
(f)	40.25(f)(16), interp., HHS
(g)	New
(h)	Interp.
(i)	Interp., HHS
(j)	HHS
(k)	Interp.
40.69(a)	40.25(f)(9)
(b)–(c)	New
(d)–(h)	40.25(f)(9), Interp.
(i)	HHS
(j)	Interp.
40.71(a)	40.25(f)(10)(iii)
(b)	New
(c)	40.25(f)(19), HHS
(d)	40.25(f)(10)(iii), 40.25(f)(17)
(e)	40.25(f)(20)
(f)	New
40.73 (a)–(b)	40.25(f)(19)(ii)(B)(1), new
(c)	New
(d)	40.25(f)(19), HHS
(e)	40.25(f)(10)(iii), 40.25(f)(17)
(f)	40.25(f)(20)
40.75(a)(1)	40.25(f)(22)(i), HHS
(a)(2)	40.25(f)(23), HHS
(a)(3)–(4)	HHS
(a)(5)	New
(a)(6)–(7)	HHS
(a)(8)–(10)	New
(a)(11)	HHS
(b)	40.25(c), (h), (k)
(c)	New
40.81(a)	40.39(a)
(b)	40.39(b)
(c)–(d)	New
40.83(a)–(c)	40.25(k), 40.29(a)(2)
(d)	HHS, new
(e)	Interp.
(f)	Interp., new
(g)	New
40.85	40.21(a)
40.87(a)	40.29(e)(1), new

Section of NPRM	Source
(b)	40.29(f)
40.89(a)	40.29(e)(1) and (f)(1)
(b)–(c)	40.29(g)(2)
40.91 (a)–(b)	New, HHS
(c)	9/98 guidance
(d)	HHS
40.93	New, HHS
40.95(a)	40.29(g)(1)
(b)–(e)	HHS, new
40.97(a)	40.29(g)(4), new
(b)(1)	HHS, new
(b)(2)	40.29(g)(4), new
(c)	40.29(g)(4)
(d)–(e)	New
40.99(a)(1)	40.29(b)(2), HHS
(a)(2)	40.29(h), HHS
(b)	40.29(h)
(c)–(e)	New
40.101(a)	40.29(n)(6), new
(b)	New
40.103(a)	40.31(d)(1)–(2), new
(b)	40.31(d)(5), new
(c)	40.31(d)(3)
(c)(1)	HHS
(c)(2)	New
(d)	HHS, new
40.105(a)	40.31(d)(7)–(8), new
(b)	40.31(d)(8)
(c)	40.31(d)(7), new
(d)	40.31(d)(8), new
40.107	40.29(1)
40.109(a)–(b)	New
(c)	40.29(g)(6), 40.29(m)
(d)	40.29(m), new
(e)	HHS, new
40.111	40.29(g)(6), HHS, new
40.113	New
40.121(a)	40.33(b)(1)
(b)	40.33(a)
(c)–(f)	New
40.123	New
40.125	40.33(b)(2), new
40.127(a)	40.33(a)(2), new
(b)	Interp., new
(c)–(d)	New
(e)	9/98 guidance, new
40.129(a)(1)	40.33(a), interp.
(a)(2)	New
(a)(3)	40.33(c)(1)–(2)
(a)(4)	40.33(a)(2)
(a)(5)	New
(b)	Interp., new
(c)	9/98 guidance
(d)	Interp., new
40.131(a)–(c)	40.33(c)(2), new
(d)	40.33(c)(3)–(4), new
40.133(a)	40.33(c)(3), (c)(5)
(b)	New
(c)	40.33(c)(6)
40.135 (a)–(c)	New
(d)	40.33(i)(2)
40.137(a)–(b)	40.33(a), (b)(3), (c)
(c)–(d)	Interp.
40.139(a)	40.33(d)
(b)	New
(c)	40.33(d), new
(c)(1)–(4)	Interp., new, MRO training materials
40.141	New
(a)	40.33(a), (b)(3), new
(b)	40.33(b)(3), new
(c)	40.33(e)
40.143(a)	40.33(b)(3), interp.
(b)	New
(c)	Interp.

Section of NPRM	Source
(d)	Interp., MRO training materials
(e)	Interp.
(f)	Guidance
40.145(a)	New
(b)	40.33(e)–(f)
(c)	New
(d)	New, interp.
(e)	40.33(e)–(f)
(f)	Interp.
40.147(a)–(b)	9/98 guidance, new
(c)	Interp., new
40.149(a)–(b)	9/98 guidance, new
(c)	Interp., new
40.151(a)	9/98 guidance
(b)–(c)	Interp., new
40.153(a)	9/98 guidance, new
(b)	Interp., new
40.155	New
40.157 (a)–(b)	Alcohol parallel—40.65(i)
(c)	FMCSA regulation—49 CFR 382.407(a)(1)
(d)	New
40.159(a)	40.33(a)(1),interp., new
(b)	New
(c)–(f)	9/98 guidance, new
(g)	New
40.161(a)	Interp.
(b)	New
40.163	New
40.171(a)	40.33(f)
(b)	40.33(g)
(c)	Interp.
(d)	40.25(f)(10)(E)
40.173	Interp.
40.175(a)	40.129(b)(2), new
(b)	New
(c)	40.29(c)
(c)(1)–(2)	40.29(b)(2), new
(d)	40.25(f)(10)(F)
(e)	40.33(f)
(f)	Interp.
(g)	New
40.177(a)	HHS
(b)	40.29 (b)(3)
(c)–(d)	HHS
(e)	Interp.
40.179	New
40.181	HHS
40.183	9/98 guidance, new
40.185	New
40.187	New
40.191(a)(1)	Interp., comment
(a)(2)	Modal regulations
(a)(3)	Interp.
(a)(4)	40.25(f)(10)(iv)(2), 40.69(d)(2)(ii)
(a)(5)–(6)	Interp.
(a)(7)	40.67(a)
(b)	9/98 guidance
(c)	Modal regulations
(d)	40.67(a), interp.
(e)	Comment
40.193 (a)–(f), (h)–(i)	40.25(f)(10)(iv)
(g)	Guidance, new
40.195	Guidance, new
40.197	DOT and HHS guidance, interp.
40.199	Guidance, new
40.201	DOT and HHS guidance, interp., new
40.203(a)	40.67(b), new
(b)	New, interp.
40.205	Interp.
40.207	Interp., new
40.211(a)–(c)	40.51, 40.93
(d)	40.51(b), new
40.213(a)(1)	40.51(a)(1)
(a)(1)(i)	40.51(a)(2)

Section of NPRM	Source
(a)(1)(ii)	40.51(a)(3)
(a)(1)(iii)	Interp.
(a)(1)(iv)	Drug parallel
(a)(2)	40.93(c)
(a)(3)	New
(b)(1)	40.51(a)(1)
(b)(1)(i)	40.51(a)(2)
(b)(1)(ii)	40.51(a)(3)
(b)(1)(iii)	New
(b)(1)(iv)	Drug parallel
(b)(3)	New
(c)	Interp.
(d)	40.51(c)
(e)–(g)	New
40.215	New
40.217	New
40.221(a)–(b)	New
(c)–(d)	40.57(a)
(e)	40.57(e)
(f)	40.57(b)
40.223(a)	40.57, new
(b)	40.55(c)
(c)	40.57(c)
(d)	40.57(e), 40.99(b)
(d)(1)	New
(d)(2)	Interp.
(d)(3)	40.57(e), 40.99(b)
40.225(a)	40.59(a)
(b)(1)	Drug parallel–40.23(a)(1)(i) and CCF
(b)(2)	40.59(a)
(b)(3)–(6)	Comment
(c)	New
40.227(a)	Interp.
(b)	New
40.229	40.53, 40.91
40.231(a)	40.53(a), 40.91
(b)	40.53(b)
40.233(a)	40.55(a)
(a)(1)	40.55(a)(1)–(3)
(a)(2)	40.55(a)(4)
(b)	40.55(b), (b)(1), new
(c)	40.55(a)(1)
(d)	40.55(b)(2)
(e)	40.55(b)(4)
(f)	40.55(b)(3)
40.235(a)	40.95 (a), (a)(1)
(b)	40.95(b), (c)
(c)	New
(d)	40.55(a)(2)
40.241(a)	New
(b)(1)	New, Drug parallel—40.25(f)(3)
(b)(2), (b)(2)(i)	New
(b)(2)(ii)	Drug parallel—40.25(j)
(b)(3)	Drug parallel—40.25(f)(2)
(b)(4)	Drug parallel—40.25((f)(2), new
(b)(5)	40.61(b), 40.101(d)(1)
(b)(6)–(7)	40.63(a), 40.101(b)
40.243(a)	Drug parallel—40.25(f)(7), HHS, interp.
(b)	40.63(b)
(c)	40.63(c)
(d)	40.63(d)(2)(i), (d)(3), (d)(4)
(e)	New
(f)	40.63(d)(3)
(g)	40.63(d)(2)(i)
40.245(a)	40.101(d)(2)
(b)	40.101(d)(3)
(c)	New
(d)	40.101(d)(5)
(e)	40.101(d)(6)
(f)	40.101(d)(7)
(g)	40.101(d)(8)
(h)	40.101(d)(9)
(i)	40.101(d)(10)
40.247(a)	40.101(e)

Section of NPRM	Source
(b)(1)	40.63(e)(1), 40.101(e)
(b)(2)	40.62(e)(i)(3)
(b)(3)	40.63(e)(2)
(c)(1)	40.63(f)
(c)(2)	40.63(g), 40.101(e)
(c)(3)(i)–(iv)	40.63(h)(1)
(c)(3)(v)–(vii)	40.63(h)(2)
(c)(3)(viii)	New
(c)(3)(ix)	40.63(h)(3)
(d)	40.63(e)(4)
40.251(a)–(b)	40.65(b), new
(c)	40.63(a), 40.101(b)
(d)	40.65(b), new
40.253(a)	40.65(d)
(b)	40.63(b), 40.65(c)(2)
(c)	40.65(e)
(d)	40.63(b), 40.65(c)(2)
(e)–(f)	40.65(g)(1)–(2)
(g)	40.65(g)(1)
40.255(a)(1)	40.65(h)(1)
(a)(2)	40.65(h)(1)–(2)
(a)(3)	40.65(h)(3)
(a)(4)	40.65(i)(1)
(a)(4)(i)	40.65(i)(1)–(2)
(a)(4)(ii)	40.65(i)(4)
(b)(1)	40.65(i)(3)
(b)(2)	40.65(i)(4)
40.257	New, drug parallel
40.261(a)(1)	Interp., comment
(a)(2)	Modal regulations
(a)(3)	40.63(e)(3)
(a)(4)	40.69(d)(2)(ii), drug parallel–40.25(f)(10)(iv)(2)
(a)(5)	Interp.
(a)(6)	40.67(a), interp.
(b)	Modal regulations
(c)	40.67(a), interp.
40.263	40.105
40.265	40.69, 40.105
40.267(a)(1)	40.107(a)(1)
(a)(2)	40.107(a)(2)
(a)(3)	40.107(a)(3)
(b)	40.79(a)(7), 40.107(b)
(c)(1)	40.79(a)(2)
(c)(2)–(3)	40.79(a)(3)
(c)(4)	40.79(a)(6)
(c)(5)	40.79(a)(1)
40.269(a)	40.79(a)(4)
(b)	40.79(a)(5), 40.107(b)
(c)	40.107(a)(4)
(d)	New
40.271(a)	40.67(b), new
(b)	New, interp.
40.273	Interp.
40.275	New, interp.
40.277	Interp.
40.281	Interp., new, 40.3
40.283	Modal regulations, new
40.285	Modal regulations, new
40.287(a)	Modal regulations, interp.
(b)	Modal regulations, new
(c)–(e)	Interp.
40.289	Modal regulations, SAP guidelines
40.291	Interp.
40.293	Interp., SAP guidelines, modal regulations
40.295	Interp.
40.297	Interp., SAP guidelines
40.299(a)	SAP guidelines
(b)	SAP guidelines, modal regulations
(c)	Modal regulations, examples new
(d)	New
40.301	Interp., SAP guidelines, modal regulations
40.303	New
40.305	Interp., SAP guidelines
40.307	Modal regulations, interp., SAP guidelines

Section of NPRM	Source
40.309	Modal regulations, interp., SAP guidelines
40.311 all except	Interp., SAP guidelines
(e)(10), (f)	New
40.313	New
40.321	40.3(i), 40.35, 40.81(b), (g), (i)
(a)	New
(b)	Interp.
40.323	40.35, 40.81(H)
40.325	New
40.327 (a)	40.33(i)(1)—(2), new
(b)	40.33(i)(1)(ii)—(iii)
(c)	New
40.329	New
40.331(a)	40.37, 40.81(c)
(b)—(c)	Interp.
40.333 (a)	40.81(g), (i)
(b)(1)	40.81(d)
(b)(2)	40.81(e), new
(c)(1)	40.81(d)
(c)(2)	40.81(e), new
(d)	40.81(f)
(e)	New
40.335	40.81, 382.401
40.341—40.353	Consortium/third party administrator guidance
40.361—40.385	New

Regulatory Analyses and Notices

This rule is a significant rule for purposes of Executive Order 12866. It is significant because of its policy importance and its impact upon sizeable industries. It is not, however, an economically significant regulation. It is a reworking of existing requirements, imposing few new mandates, and should not have significant incremental costs. Because of its multimodal impact and policy interest to regulated parties and service agents, it is a significant rule for purposes of the DOT Regulatory Policies and Procedures. Throughout this regulation, we have attempted to balance the costs of new requirements with the cost savings accrued through the elimination of some current requirements.

There are two features of the proposed regulation that would add new requirements that may have some economic impacts. The first is the requirement that laboratories test for dilute, substituted, and adulterated specimens. Existing regulations were devised before the widespread use of ''designer'' adulterants that some employees are putting into their urine to mask the results of positive drug tests. The DOT has worked with HHS and laboratory scientists to develop a set of appropriate forensic testing protocols for identifying these masking agents.

The revision expands existing regulations and guidance concerning these difficult testing situations by making mandatory laboratories' use of additional protocols for discovering adulteration, as well as for detecting situations in which an employee has substituted something other than normal human urine for the required urine specimen. As the result of work by HHS and the laboratories, these protocols are already in place and are being used by most laboratories, so we expect the incremental costs of this requirement to be modest. The Department believes that public safety is well-served by these steps to identify and hold accountable employees in safety-sensitive positions who attempt to cheat the testing process.

Second, the Department is proposing additional training requirements for some service agents. Errors in the testing process resulting from lack of training can lead to increased employer program costs and increased paperwork required to document the errors and repeat the testing process. The NPRM would upgrade requirements for urine collectors and other personnel. This additional training requirement can be met without formalized instruction to minimize the cost impact.

Also, MROs and SAPs would either attend a training session every two years to keep current on developments in the field or would be permitted to self-certify they have re-reviewed and understand the regulations in lieu of training. These training courses already exist and are widely attended. Again, we anticipate that overall net costs of these new training requirements and options would be quite modest because the requirement may be met without formalized instruction.

At the same time, the Department anticipates cost savings from some provisions of the regulation, such as the reductions in blind specimen requirements and mitigation of some reporting requirements. The additional training requirements discussed in the previous paragraphs will help to reduce costs from errors in the system. For example, every time a better-trained collector conducts a collection properly instead of making a mistake, the costs of developing memorandums for correction, preparing laboratory litigation packages, arbitration or court proceedings, and reversing personnel actions are avoided.

The Department has made some preliminary estimates of the cost increases and decreases that could be expected if the proposed rule's provisions are made final. It is important to understand that this is a big program, touching some 8.34 million employees working for about 673,413 employers. Around 30,000 individuals and organizations work as service agents.

In terms of new costs, the Department estimates an annual cost of about $902,000 for adulterant testing plus about $25,322 for training documentation. We believe there will not be any measurable additional costs for actual SAP and MRO training, because most SAPs and MROs already undergo such training as part of professional continuing education requirements. The option also exists for MROs and SAPs to self-administer training through study of DOT rules and guidance. In addition, we estimate that there will be one-time costs for a variety

of administrative requirements in the first year of implementation of approximately $1.93 million.

On the other hand, we anticipate saving at least $5.4 million annually from the proposed reduction in blind specimen testing (the savings will probably be somewhat greater, because fewer organizations will be required to submit blind specimens). By changing the current quarterly laboratory report requirement to require a semiannual report, we anticipate saving another $1.69 million annually. By permitting positive test results to be faxed rather than sent by overnight express, we project an annual $3.1 million saving. These annual savings are greater than the additional annual costs we anticipate for the proposed rule.

This NPRM does not have sufficient Federalism impacts to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the Department certifies that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities, so a Regulatory Flexibility analysis has not been prepared. While this rule affects a large number of small entities, we do not expect the rule to have a significant economic impact on anyone.

This rulemaking involves a ''610 Review'' under the Small Business Regulatory Enforcement Fairness Act. We have reviewed the existing program to identify areas in which the rule can be improved with the effect of assisting small businesses to comply in a rational and cost-effective manner. In addition to the general clarification of the program this rule provides, we have identified some specific areas (e.g., blind specimen requirements, the addition of the public interest exclusion provision) that should be particularly helpful to small regulated employers. We seek comment on any changes that commenters might suggest to further assist small businesses who are affected by this rule.

Part 40 is one portion of a ''ONE-DOT'' drug and alcohol testing program that also involves regulations from six DOT agencies. The costs and impacts of Part 40 are intertwined with the costs and impacts of the DOT agency regulations. In connection with the 610 review, we are seeking comments on the effects of the entire program, including all its regulatory components, on small entities and on ways of improving the program from this point of view.

This proposed rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), the Department has submitted these requirements to the Office of Information and Regulatory Affairs of the Office of Management and Budget for review, as required under the Paperwork Reduction Act.

As noted elsewhere in this preamble, this proposed rule would amend 49 CFR Part 40 to clarify and update the Department's alcohol and drug testing procedures. In the course of so doing, the proposal would increase some information collection requirements and decrease others, resulting in what we estimate to be a modest net reduction in information collection burdens, compared to the present regulation. The information collections involve such subjects as drug and alcohol specimen collection, quality control, and the reporting and retention of drug and alcohol testing information.

The regulated parties to whom these requirements apply are transportation employers and participants in the drug and alcohol testing industry, the numbers of which are summarized above. As summarized above, the Department anticipates that there will be new costs of $2.86 million and new savings of about $10.9 million, most of which represent costs involved with information collection. In terms of burden hours, we anticipate new collections amounting to 65,000 hours and savings on collections amounting to 168,888 hours, resulting in a net reduction of 103,888 hours compared to the present regulation.

The Department is soliciting comments to (1) evaluate whether the proposed collections are necessary for the functioning of the drug and alcohol testing program, including whether the information will have practical utility; (2) evaluate the accuracy of the Department's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of information collection for regulated parties, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques or other forms of information technology (for example, permitting electronic submission of reports).

Individuals and organizations may submit comments on the information collection elements of this NPRM by April 7, 2000 and should direct them to the DOT docket specified at the beginning of the NPRM. According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after it is approved by OMB.

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this NPRM, and we believe that the proposed rule does not directly affect the matters that the Executive Orders cover.

We have prepared this rulemaking in accordance with the Presidential Directive on Plain Language.

List of Subjects in 49 CFR Part 40

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 29th day of November, 1999, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to revise part 40 of Title 49, Code of Federal Regulations, to read as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

Subpart A—Administrative Provisions

Sec.
40.1 Whom does this regulation cover?
40.3 What do the terms used in this regulation mean?
40.5 Who issues authoritative interpretations of this regulation?
40.7 How are exemptions granted from this regulation?

Subpart B—Participant Responsibilities

40.11 What are the basic responsibilities of employers under this regulation?
40.13 If an employer has employees subject to testing under both DOT and the Nuclear Regulatory Commission (NRC) regulations, what procedures does it follow?

40.15 If an employer conducts non-DOT testing, under its own authority, as well as DOT testing, what Federal restrictions apply for the two tests?
40.17 Can an employer use a service agent to meet DOT drug and alcohol testing requirements?
40.19 May service agents impose requirements on employers that DOT agency regulations do not specifically authorize?
40.21 Do service agents have to comply with DOT drug and alcohol testing requirements?

Subpart C—Urine Collection Personnel

40.31 Who collects urine specimens for DOT drug testing?
40.33 What requirements must a collector meet?
40.35 What requirements must organizations employing collectors meet?
40.37 Where is other information on the role of collectors found in this regulation?

Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

40.41 Where does a urine collection for a DOT drug test take place?
40.43 What steps must collection sites take to protect the security and integrity of urine collections?
40.45 What form is used to document a DOT urine collection?
40.47 May employers use the CCF for non-DOT collections or non-Federal forms for DOT collections?
40.49 What materials are used to collect urine drug specimens?
40.51 What materials are used to send urine specimens to the laboratory?

Subpart E—Drug Test Collections

40.61 What are the preliminary steps in the collection process?
40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?
40.65 What does the collector check for when the employee presents a specimen?
40.67 When and how is a directly observed collection conducted?
40.69 When and how is a monitored collection conducted?
40.71 How does the collector process a single specimen collection?
40.73 How does the collector process a split specimen collection?
40.75 How is the collection process completed?

Subpart F—Drug Testing Laboratories

40.81 What laboratories may be used for DOT drug testing?
40.83 How do laboratories process incoming specimens?
40.85 What drugs do laboratories test for?
40.87 What methods do laboratories use for screening and confirmation tests?
40.89 What are the cutoff concentrations for screening and confirmation tests?
40.91 What additional testing must be done by laboratories on primary specimens?
40.93 What methods and criteria do laboratories use for validity testing?
40.95 What do laboratories need to report to MROs regarding primary specimen results?
40.97 Through what methods and to whom must a laboratory transmit results?
40.99 How long does the laboratory retain specimens after testing?
40.101 What relationship may a laboratory have with an MRO?
40.103 What blind specimens must be sent to a laboratory?
40.105 What happens if there is a laboratory error on any test?
40.107 Who may inspect laboratories?
40.109 What documentation must the laboratory keep, and for how long?
40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?
40.113 Where is other information concerning laboratories found in this regulation?

Subpart G—Medical Review Officers (MROs)

40.121 Who is qualified to act as an MRO?
40.123 What are the MRO's responsibilities in the DOT drug testing program?
40.125 What relationship may an MRO have with a laboratory?
40.127 What are the MRO's functions in reviewing negative test results?
40.129 What are the MRO's functions in reviewing laboratory confirmed positive drug test results?
40.131 How is the employee notified of the verification process after a confirmed positive test result?
40.133 Under what circumstances may the MRO verify a test as positive without interviewing the employee?
40.135 What does the MRO tell the employee at the beginning of the verification interview?
40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, and PCP?
40.139 On what basis does the MRO verify test results involving opiates?
40.141 How does the MRO obtain information for the verification decision?
40.143 What are MROs prohibited from doing as part of the verification process?
40.145 How does the MRO notify employees of their right to a test of the split specimen or to a retest of a single specimen?
40.147 What happens when a negative or positive test result is also dilute?
40.149 What happens when a test is not performed because of a fatal or uncorrected flaw?
40.151 What happens when a drug test specimen is unsuitable for testing?
40.153 What happens when a drug test specimen is substituted or adulterated?
40.155 What happens when a drug test specimen is rejected for testing?
40.157 How does the MRO report test results to the employer?
40.159 When MROs send reports of positive, dilute, unsuitable, substituted, or adulterated test results to employers, what is an employer to do?
40.161 May the employer or MRO change a verified drug test result?
40.163 Where is other information concerning the role of MROs found in this regulation?

Subpart H—Split Specimen Tests and Retests

40.171 How does an employee request a test of a split specimen?
40.173 Who is responsible for paying for the test of a split specimen?
40.175 What steps does the first laboratory take with a split specimen?
40.177 What does the second laboratory do with the split specimen?
40.179 Through what methods and to whom must a laboratory transmit split specimen results?
40.181 What information do laboratories need to report to MROs regarding split specimen results?
40.183 What does the MRO do with the split specimen laboratory results?
40.185 Are employees' requests for reanalysis of the specimen from a single specimen collection handled the same way as requests for the test of the split specimen?
40.187 Where is other information concerning split specimens found in this regulation?

Subpart I—Problems in Drug Tests

40.191 What is a refusal to take a DOT drug test, and what are the consequences?
40.193 What happens when an employee is unable to provide a sufficient amount of urine for a drug test?
40.195 What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment drug test because of a permanent or long-term disability?
40.197 What problems will always result in a drug test being canceled?
40.199 What problems will always result in a drug test being canceled and may result in a requirement for another collection?
40.201 What problems will result in the drug test being canceled unless they are corrected?
40.203 How are drug test problems corrected?
40.205 What is the effect of a canceled drug test?
40.207 What is the effect of procedural problems that are not sufficient to cancel a drug test?

Subpart J—Alcohol Testing Personnel

40.211 Who conducts DOT alcohol tests?
40.213 What requirements must STTs and BATs meet?
40.215 What requirements must organizations employing STTs and/or BATs meet?
40.217 Where is other information on the role of STTs and BATs found in this regulation?

Subpart K—Testing Sites, Forms, Equipment and Supplies Used In Alcohol Testing

40.221 Where does an alcohol test take place?

40.223 What steps must be taken to protect the security of alcohol testing sites?
40.225 What form is used for an alcohol test?
40.227 May employers use the BATF for non-DOT tests, and vice-versa?
40.229 What devices are used to conduct alcohol screening tests?
40.231 What devices are used to conduct alcohol confirmation tests?
40.233 What are the requirements for proper use and care of EBTs?
40.235 What are the requirements for proper use and care of ASDs?

Subpart L—Alcohol Screening Tests

40.241 What are the first steps in any alcohol screening test?
40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?
40.245 What is the procedure for an alcohol screening test using a saliva ASD?
40.247 What happens next after the alcohol screening test result?

Subpart M—Alcohol Confirmation Tests

40.251 What are the first steps in an alcohol confirmation test?
40.253 What are the procedures for conducting an alcohol confirmation test?
40.255 What happens next after the alcohol confirmation test result?
40.257 When BATs report test results of 0.02 or greater to employers, what is an employer to do?

Subpart N—Problems in Alcohol Testing

40.261 What is a refusal to take an alcohol test, and what are its consequences?
40.263 What happens when an employee is unable to provide an adequate amount of saliva for an alcohol screening test?
40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?
40.267 What problems always cause an alcohol test to be canceled?
40.269 What problems cause an alcohol test to be canceled unless they are corrected?
40.271 How are alcohol testing problems corrected?
40.273 What is the effect of a canceled alcohol test?
40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?
40.277 Are alcohol tests other than saliva or breath for screening and breath for confirmation permitted under these regulations?

Subpart O—Return-to-Duty Process and Role of Substance Abuse Professionals (SAPs)

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Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

Subpart A—Administrative Provisions

§ 40.1 Whom does this regulation cover?

(a) This part tells all parties required to conduct drug and alcohol tests by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.

(b) This part covers transportation employers, safety-sensitive transportation employees (including self-employed individuals and volunteers), and everyone who provides drug or alcohol testing services to them, including, but not limited to, consortia, third-party administrators, medical review officers (MROs), substance abuse professionals (SAPs), urine collectors, breath alcohol technicians (BATs), screening test technicians (STTs), and laboratories.

§ 40.3 What do the terms used in this regulation mean?

When the terms listed in this section occur in this part, they have the following meanings:

Adulterated specimen. A urine specimen into which the employee has introduced a foreign substance.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of shared interest among family members, shared facilities or equipment, common use of employees, or a business entity organization following the issuance of a public interest exclusion which has the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect.

Air blank. A reading by an evidential breath testing device of ambient air containing no alcohol. (In evidential breath testing devices using gas chromatography technology, a reading of the device's internal standard.)

Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol screening device (ASD). A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

Alcohol use. The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Blind specimen or blind performance test specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Breath Alcohol Technician (BAT). A trained and certified individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device.

Canceled test. In drug testing, a drug test that has been declared invalid by an MRO. A canceled test is neither a positive nor a negative test. For purposes of this part, a specimen that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test that is deemed to have a problem identified which cannot be or has not been corrected.

Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Collection container. An authorized container into which the employee urinates to provide the specimen for a drug test.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and/or a breath or saliva specimen for an alcohol test.

Collector. A trained individual who instructs and assists employees at a collection site, who receives and makes an initial inspection of the urine specimen provided by those employees, and who initiates and completes the CCF.

Confirmation (or confirmatory) test. In drug testing: the test conducted by gas chromatography/mass spectrometry (GC/MS) to confirm the presence of drug(s) or drug metabolite(s) detected by the screening test at concentrations at or above cutoff concentrations established by the Department of Health and Human Services. In alcohol testing: a second test using an evidential breath testing device, following a screening test with a result of 0.02 or greater, that provides quantitative data of the alcohol concentration.

Confirmed drug test. A confirmation test result received by an MRO from a laboratory.

Designated employer representative (DER). An employer or individual(s) identified by the employer as able to receive communications and test results directly from medical review officers, BATs, screening test technicians, collectors, and substance abuse professionals, and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. Service agents cannot serve as DERs, except where a DOT agency has issued regulations permitting them to do so.

Dilute specimen. A urine specimen whose creatinine and specific gravity values are diminished by the employee through the introduction of fluid (usually water) into the specimen either directly or through excessive consumption of fluids.

DOT. Department of Transportation or any designee of the Secretary, Department of Transportation.

DOT agency. Any agency of the Department of Transportation administering regulations related to drug or alcohol testing, including but not limited to the United States Coast Guard (for drug testing purposes only), the Federal Aviation Administration, the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary. This term includes a designee of the DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, Phencyclidine (PCP), and opiates.

Employee. An individual who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently occupying safety-sensitive positions designated in DOT agency regulations and applicants for employment subject to pre-employment testing.

Employer. An entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. The term, as used in this document, references the entity responsible for overall implementation of DOT drug and alcohol program

requirements, as well as those individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not regarded as employers, except where a DOT agency has issued regulations so designating them.

Evidential Breath Testing Device (EBT). A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath, placed on NHTSA's Conforming Products List (CPL) for ''Evidential Breath Measurement Devices'' and identified on the CPL as conforming with the model specifications available from NHTSA, Office of Traffic Injury Control Programs.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Laboratory. Any laboratory which meets the minimum standards to engage in urine drug testing, as set forth in Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs. To participate in the DOT drug testing program, laboratories must be certified by HHS under the National Laboratory Certification Program or, in the case of foreign laboratories, be approved for participation by DOT. (The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs is available at *www.health.org/workpl.htm.* and at Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20856.)

Medical Review Officer (MRO). A licensed physician (doctor of medicine or osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate training to interpret and evaluate an individual's confirmed positive or ''unsuitable'' drug test results together with his or her medical history and any other relevant biomedical information. The MRO is also required to have a working knowledge of this part and the DOT agency regulations applicable to the employer(s) for which he or she evaluates drug test results.

Notice. In the context of a public interest exclusion proceeding, a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a service agent, its identified counsel, or agent for the service of process, or any partner, officer, director, owner, or joint venturer of the service agent. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the Department.

Primary specimen. In drug testing: the urine specimen that is opened and tested by a first laboratory to determine whether the employee has drug(s) or drug metabolite(s) in his or her system. The primary specimen is distinguished from the split specimen, defined in this section.

Screening test (or initial test). In drug testing: an immunoassay screen to eliminate ''negative'' urine specimens from further analysis. In alcohol testing: an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Screening Test Technician (STT). A trained individual who instructs and assists individuals in the alcohol testing process and operates an alcohol screening device.

Secretary. The Secretary of Transportation or the Secretary's designee.

Service agents. All parties who provide services to employers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collection site personnel, BATs and STTs, laboratories, MROs, substance abuse professionals, consortia, and third-party administrators.

Shipping container. A container that is used for transporting and protecting one or more urine specimen bottle(s) and associated documents from the collection site to the laboratory.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.

Split specimen. A part of the urine specimen that is sent to the first laboratory and retained unopened, and which will be transported to a second laboratory in the event that the employee requests it be tested following a verified positive test of the primary specimen.

Substance Abuse Professional (SAP). A licensed physician (doctor of medicine or osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium / Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. The SAP is also required to have a working knowledge of this part and the DOT agency regulation applicable to the employer(s) for which he or she evaluates employees who have engaged in a DOT drug and alcohol regulation violation.

Substituted specimen. A specimen, not consistent with human urine, that has been submitted by the employee in place of his or her own urine.

Verified drug test. A certified laboratory drug test result that has undergone review and final determination by the MRO.

§ 40.5 Who issues authoritative interpretations of this regulation?

The Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC) and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. Such interpretations are the only official and authoritative interpretations of DOT concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they transmit to parties they regulate. Only Part 40 interpretations issued after [effective date of the final regulation] shall be considered valid and binding.

§ 40.7 How are exemptions granted from this regulation?

(a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR part 5. The address to send requests for an exemption is the following: Department of Transportation, Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington, DC 20590.

(b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.

(c) As the party granted the exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.

(d) We will issue written responses to all exemption requests.

(e) When the Office of the Secretary grants or denies an exemption request, the decision is implemented as to

regulated employers through the DOT agency regulations that incorporate this part.

Subpart B—Participant Responsibilities

§ 40.11 What are the basic responsibilities of employers under this regulation?

(a) As an employer, you are responsible for making sure that everything required by this part occurs.

(b) You must conduct DOT tests of your employees in accordance with this part. This responsibility includes ensuring that all service agents you use comply with all requirements in this part.

(c) You are responsible for all actions of your officials, representatives, and agents in carrying out the requirements of the DOT agency regulations.

(d) You must include in each contract or agreement you enter into, renew, or modify with a service agent, the following statement:

Compliance With 49 CFR Part 40

[Name of service agent] agrees to provide all services concerning drug and/or alcohol tests required by Department of Transportation regulations in full compliance with the provisions of 49 CFR Part 40. Compliance with Part 40 is a mandatory term of this agreement. If the Department of Transportation determines that [name of service agent] is in noncompliance with Part 40 with respect to DOT regulated drug and alcohol programs, this agreement will be terminated for cause by the employer unless the noncompliance is corrected.

(e) If there is not a written agreement, you must ensure that the statement in paragraph (d) of this section is stipulated to in writing and signed by the service agent.

(f) The statement in paragraph (d) of this section shall be signed by the service agent.

§ 40.13 If an employer has employees subject to testing under both DOT and the Nuclear Regulatory Commission (NRC) regulations, what procedures does it follow?

(a) As an employer who has employees subject to both DOT agency drug and alcohol testing regulations and the NRC's drug and alcohol testing regulations, you may use either procedures in this part or procedures in NRC regulations to conduct DOT-required tests of those employees. For example, suppose you are a nuclear power plant that employs technicians subject to NRC testing. Some of these technicians are also truck drivers who are subject to testing under FMCSA regulations. You can follow either this part or NRC procedural regulations to test these double-covered employees, and DOT will regard you as complying with its testing procedure requirements.

(b) As an employer who has employees subject to both DOT agency drug and alcohol testing regulations and the NRC's drug and alcohol testing regulations, you are required to collect and maintain all drug and alcohol testing information, in accordance with either DOT or NRC regulations, and make arrangements for that information to be available for inspection or submission to representatives of either agency upon request.

§ 40.15 If an employer conducts non-DOT testing, under its own authority, as well as DOT testing, what Federal restrictions apply for the two tests?

(a) Non-DOT tests must be completely separate from DOT tests in all respects.

(b) The DOT tests must take priority and must be conducted and completed before a concurrent non-DOT test is begun.

(c) No tests may be performed on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory may not make a DOT urine specimen available for a DNA test or other types of specimen identity testing.

(d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination on any urine remaining in the collection container after the drug test urine specimen has been sealed into the specimen bottles.

(e) No one may change or disregard the results of DOT tests based on the results of non-DOT tests. For example, an employer may not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.

(f) Employers are prohibited from using the Federal Drug Testing Custody and Control Form (CCF) and the DOT Breath Alcohol Testing Form (BATF) in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out.

§ 40.17 Can an employer use a service agent to meet DOT drug and alcohol testing requirements?

(a) As an employer, you are held fully responsible for compliance with this part and DOT agency drug and alcohol testing regulations. However, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations.

(b) As an employer, you must ensure that the service agent you use performs these tasks in accordance with DOT agency regulations.

(c) If a service agent fails to comply with DOT agency regulations, a DOT agency can subject you and/or the service agent to sanctions for the noncompliance of a service agent who works for you.

§ 40.19 May service agents impose requirements on employers that DOT agency regulations do not specifically authorize?

No. As a service agent, you must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a consortium or third-party administrator serving employers in the pipeline or motor carrier industry, you may not require employers to have provisions in their DOT plans that RSPA or FMCSA regulations do not require.

§ 40.21 Do service agents have to comply with DOT drug and alcohol testing requirements?

(a) As a service agent, you must comply with this part and the DOT agency drug and alcohol testing regulations that apply to the transportation employer for whom you are providing services.

(b) If you do not comply, DOT may make you ineligible to participate in DOT drug and alcohol testing. DOT will use the procedures in Subpart R of this part to make decisions in eligibility cases.

Subpart C—Urine Collection Personnel

§ 40.31 Who collects urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A collector must be trained to proficiency in correctly carrying out the urine collection requirements of this part.

(c) As the direct supervisor of a particular employee, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency regulations.

(d) You may not act as the collector for a particular employee if you work for a HHS-certified laboratory (*e.g.,* as a technician or accessioner) and could

link the employee with a urine specimen, drug testing result, or laboratory report.

§ 40.33 What requirements must a collector meet?

(a) To be a collector, you must do the following:

(1) Read the drug testing procedures in this part and the current ''DOT Urine Specimen Collection Procedures Guidelines'' and attest in writing to your understanding of them. (The ''DOT Urine Specimen Collection Procedures Guidelines'' is available at ODAPC, Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590.)

(2) Be trained to proficiency on collection procedures in this part by another person(s) sufficiently knowledgeable in the applicable collection procedures of this part to be able to evaluate the collector's performance.

(i) The person providing the instruction must provide written documentation that you have demonstrated proficiency in collections under this part by your completing five consecutive error-free trial collections.

(A) The five trial collections must include both uneventful and problematic examples.

(B) In addition to two uneventful collection scenarios, one must address insufficient quantity of urine, one the temperature out of range, and one in which the employee refuses to sign the CCF.

(ii) The person providing the instruction will monitor, evaluate, and attest whether or not the trial collections are ''error-free.''

(iii) The person providing the instruction must emphasize that you are responsible for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(3) Meet the requirements of paragraph (b)(2) of this section by [date six months from the effective date of the final regulation], if you were a collector prior to [effective date of the final regulation]. Meet the requirements of paragraph (b)(2) of this section prior to your first collection, if you become a collector after [effective date of the final regulation].

(4) Receive additional training, as needed, to ensure proficiency as the technology you use changes.

(5) Be retrained to proficiency if you make a mistake in the collection process that has caused a test to be canceled.

(i) This retraining must be provided and your proficiency documented in writing by a person sufficiently knowledgeable in the applicable collection procedures of this part.

(ii) The instruction need only be in the general area of your deficiency that caused the test to be canceled.

(iii) As part of the retraining, you will have to demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free trial collections before you conduct another DOT collection of a safety-sensitive employee.

(iv) The person providing the instruction will monitor, evaluate, and attest whether or not the trial collections are ''error-free.''

(b) As a collector, you must be retrained in the elements of paragraph (a) of this section by [date one year from the effective date of the final regulation], or two years from the date you became a collector, whichever is later, and once every two years, thereafter.

(c) As a collector, you must maintain all documentation of training/retraining as long as you serve as a collector.

§ 40.35 What requirements must organizations employing collectors meet?

This section becomes effective [date six months from the effective date of the final regulation].

(a) As an organization employing the collector (*e.g.,* a transportation employer, third-party administrator, occupational health clinic), you must maintain in your files the following information:

(1) A signed statement by the collector that he or she has read and understood the drug testing procedures in this part and the current ''DOT Urine Specimen Collection Procedures Guidelines'; and (2) A signed statement by an official of the organization that the collector has received training/retraining and has demonstrated proficiency as required by this part.

(b) You must retain these signed statements as long as the person performs collector functions for the organization and for 2 years after the person ceases to perform these functions for the organization.

(c) You must provide to collectors the name and telephone number of a designated employer representative (DER) to contact about any problems or issues that may arise during the collection process.

§ 40.37 Where is other information on the role of collectors found in this regulation?

You can find other information on the role and functions of collectors in the following sections of this part:

§ 40.1—coverage.
§ 40.3—definition.
§ 40.43—steps to prepare and secure collection site.
§§ 40.45–40.47—use of CCF.
§§ 40.61–40.63—preliminary steps in collections.
§ 40.65—role in checking specimens.
§ 40.67—role in directly observed collections.
§ 40.69—role in monitored collections.
§ 40.71—role in single specimen collections.
§ 40.73—role in split specimen collections.
§ 40.75—chain of custody completion and finishing the collection process.
§ 40.191—action in case of refusals to take test.
§ 40.193—action in ''shy bladder'' situations.
§ 40.197–40.199—collector errors in tests, effects, and means of correction.

Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

§ 40.41 Where does a urine collection for a DOT drug test take place?

(a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.

(b) If you are operating a collection site, you must make sure that it meets the security requirements of § 40.43.

(c) If you are operating a collection site, you must have all needed personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

(d) Your collection site must include a closed room within which urination can occur.

(1) The room must provide visual and aural privacy to the employee and a toilet for completion of urination (unless a single-use collection container with sufficient capacity to contain the complete void is used).

(2) Whenever available, the closed room must be a single-toilet room with a full-length privacy door.

(3) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.

(e) If you are operating a collection site, you must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If a water source is not available, you may meet this requirement by providing moist towelettes outside the closed room.

(f) If a collection site fully meeting all the visual and aural privacy requirements and security requirements of paragraph (d) of this section is not readily available, the collection may take place at a site that partially meets these requirements.

(1) Such a site is one that provides substantial visual privacy but not aural privacy (*e.g.,* a toilet stall with a partial-length door in a multi-stall restroom) and meets all other requirements of this section.

(2) If you use a multi-stall restroom, you must secure all water sources and place bluing agent in all toilets or secure the toilets to prevent access.

(3) Such a site may be used only for monitored collections (see § 40.69). In this case, the site must afford aural privacy to the employee to the greatest extent practicable.

(g) A collection site can be in a medical facility, a mobile facility (*e.g.,* a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.43 What steps must collection sites take to protect the security and integrity of urine collections?

(a) Collectors and collection sites must take the steps listed in this section to prevent unauthorized access which could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection:

(1) Secure any water sources or otherwise make them unavailable to employees (*e.g.*, turn off water inlet, tape handles to prevent opening faucets);

(2) Make sure that the water in the toilet is blue;

(3) Make sure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;

(4) Inspect the site to make sure that no foreign or unauthorized substances are present;

(5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;

(6) Make sure that undetected access (*e.g.,* through a door not in your view) is not possible;

(7) Secure areas and items (*e.g.,* ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and

(8) Recheck items in paragraphs (b) (1) through (7) of this section following each collection to ensure the site's continued integrity.

(c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also make sure before the collection that:

(1) Access to collection materials and specimens is effectively restricted; and

(2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collection site person and limited-access signs are posted.

(d) As a collector, you must take the following additional steps to ensure security during the collection process:

(1) To avoid distraction that could compromise security, make sure you have only one employee under your supervision at any time.

(2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee before and after the employee has urinated.

(3) Make sure you are the only person in addition to the employee who handles specimens before they are secured in the shipping container.

(4) In the time between when the employee gives you the specimen and the time you seal the specimen, remain within the collection site.

(5) Maintain personal control over each specimen and CCF throughout the collection process.

(e) If you are operating a collection site, you must prevent unauthorized personnel from entering any part of the site.

(1) The only people you are to treat as authorized persons are employees being tested, collectors and other collection site workers, DERs, employee representatives authorized by the employer (*e.g.,* employer policy; labor-management agreement), and representatives of DOT.

(2) You must make sure that all authorized persons are under the supervision of a collector at all times when permitted into the site.

(3) You may remove any person who obstructs, interferes with, or causes a delay in the collection process.

(4) You must make sure that no one except the employee, collector, and monitor or direct observer enters the room in which urination occurs.

(f) If you are operating a collection site, you must minimize the number of persons handling specimens.

§ 40.45 What form is used to document a DOT urine collection?

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. The CCF must be a seven-part carbonless manifold form. (The CCF is available at U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.)

(b) As a participant in the DOT drug testing program, you may not modify or revise the CCF except as follows:

(1) You may include other information needed for billing or other purposes necessary to the collection process.

(2) The CCF must include the employer's name, address and telephone number, which may be preprinted, typed, or handwritten. In addition, a consortium's or third-party administrator's name, address, and telephone number may be included.

(3) Instead of printing the entire pages of the CCF in the colors specified by HHS, you may use white pages with clearly discernible borders in the specified color for each page.

(4) As an employer, you may add, in the ''Remarks'' section of the CCF, the name of the DOT agency under whose authority the test occurred.

(5) As a collector, you may use a CCF with your name, address, and telephone number preprinted but under no circumstances are any signatures to be added before the collection event.

(c) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number or other employee identification number) to a laboratory.

(d) As the collector, you must make sure that medical information about the employee (*e.g.*, medications the employee has taken) appears only on the copy of the CCF given to the employee.

(e) As an employer outside the United States, you may use a foreign-language (equivalent) version of the CCF approved by ODAPC (*e.g.,* in French for use in Canada or Spanish for use in Mexico).

§ 40.47 May employers use the CCF for non-DOT collections or non-Federal forms for DOT collections?

(a) No. As an employer, you are prohibited from using the CCF for non-DOT urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.

(b) In the rare case where the collector, either by mistake, or as the only means to conduct a test under difficult circumstances (*e.g.,* post-accident test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal forms does not, in and of itself, present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result. However, if the laboratory discovers use of the incorrect form, they must obtain a signed statement from the collector stating the reason why the CCF was not used for the DOT collection. The MRO must accomplish this if use of the wrong

form was not discovered by the laboratory.

§ 40.49 What materials are used to collect urine drug specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

§ 40.51 What materials are used to send urine specimens to the laboratory?

(a) A shipping container (*e.g.,* standard courier cardboard box, small cardboard box) must be used that adequately protects the specimen bottles from shipment damage in the transport of specimens from collection site to the laboratory.

(b) A shipping container box is not necessary if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

Subpart E—Drug Test Collections

§ 40.61 What are the preliminary steps in the collection process?

As the collector, you must take the following steps before actually beginning a collection:

(a) If an employee does not show up at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the employer has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee is a ''no show.''

(b) Make sure that, when the employee enters the collection site, you begin the testing process without delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, you must make sure that the alcohol test is completed before the urine collection process begins.

(2) If the employee needs medical attention (*e.g.,* an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

(3) You may not collect (*e.g.,* by means of catheterization) urine from an unconscious employee for purposes drug test under this part.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer or a Federal, state, or local government agency for this purpose. You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide identification to the employee. Your identification must include your name and your employer's name, address, and telephone number but does not have to include your picture, address, or telephone number.

(e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

(f) Direct the employee to remove outer clothing (*e.g.,* coveralls, jacket, coat, hat) and to leave these garments and any briefcase, purse, or other personal belongings with you.

(1) If the employee asks for a receipt for any belongings left with you, you must provide one.

(2) You must allow the employee to keep his or her wallet.

(3) You must not ask the employee to remove other clothing (*e.g.,* shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).

(4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into the pockets. The employee must allow you to make this observation.

(5) You must require an employee who is wearing boots (*e.g.,* work boots or cowboy boots) to remove the boots and allow you to look into the boots to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can put the boots back on. The employee must allow you to make this observation.

(6) If, in your duties under paragraphs (f)(4) and (5) of this section, you find a material or materials that could be used to alter a specimen, you must:

(i) If the material appears to be brought to the collection site with the intent to alter the specimen, conduct a directly observed collection using direct observation procedures (see § 40.67); or

(ii) If the material appears to be inadvertently brought to the collection site, secure and maintain it until the collection process is completed and conduct a normal (*i.e.,* unobserved) collection.

(g) You must not require the employee to sign a consent, release, or waiver of liability, or indemnification agreement with respect to any part of the collection or testing process.

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

(a) Complete Step 1 of the CCF.

(b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to the collector. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.

(c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal at this time on any specimen bottle. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.

(d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL (split specimen collections) or 30 mL (single specimen collections), not flush the toilet, and return to you with the specimen as soon as the employee has completed the void. Except in the case of an observed or a monitored collection (see §§ 40.67 and 40.69), neither you nor anyone else may go into the room with the employee.

(e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to substitute or adulterate a specimen (*e.g.*, substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute.). If you detect such conduct, you must direct that a collection take place immediately under direct observation (see § 40.67) and note the conduct and the fact that the collection was observed in the ''Remarks'' section of the CCF. You must also, as soon as possible, inform the DER and collection site supervisor that the collection took place under direct observation and the reason for doing so.

§ 40.65 What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

(a) *Sufficiency of specimen.* You must check to make sure that the specimen contains a sufficient amount of urine (45 mL for a split specimen collection; 30 mL for a single specimen collection).

(1) If it does not, you must follow ''shy bladder'' procedures (see § 40.193).

(2) When you follow ''shy bladder'' procedures, you must discard the original specimen, unless another problem (*i.e.*, temperature out of range, apparent adulteration) also exists.

(3) You are never permitted to combine urine collected from separate voids to create a specimen.

(b) *Temperature.* You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.

(1) The acceptable temperature range is 32–38°C/90–100°F.

(2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.

(3) If the specimen temperature is within the acceptable range, you must mark the ''Yes'' box on the CCF.

(4) If the specimen temperature is outside the acceptable range, you must mark the ''No'' box on the CCF.

(5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using the direct observation procedures (see § 40.67).

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send them to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range.

(7) In a case where the employee refuses to provide another specimen (see § 40.191(a)(3)) or does not provide the requisite amount of urine (see § 40.193(b)(4)) under direct observation, you must notify the DER. As soon as you have notified the DER, you may discard the previous specimen.

(c) *Signs of adulteration or substitution.* You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of adulteration (*e.g.*, if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has adulterated or substituted the specimen (*e.g.*, blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures (see § 40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of adulteration or substitution, you must process both the original specimen and the specimen collected using direct observation and send them to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of adulteration or substitution.

(3) In a case where the employee refuses to provide another specimen (see § 40.191(a)(3)) or does not provide the requisite amount of urine (see § 40.193(b)(4)) under direct observation, you must notify the DER. As soon as you have notified the DER, you may discard the previous specimen.

§ 40.67 When and how is a directly observed collection conducted?

(a) As an employer you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported a specimen as unsuitable for testing, and the MRO reported to you that there was not an adequate medical explanation for the unsuitability; or

(2) The MRO reported to you that the original positive test result had to be canceled because the test of the split specimen was not performed.

(b) As an employer you may direct a collection under direct observation of an employee if:

(1) The drug test is a return-to-duty test or a follow-up test; or

(2) The MRO reports that the employee's immediately prior drug test result was dilute.

(c) As a collector, you must conduct a collection under direct observation under the following circumstances if:

(1) You are directed by the DER to do so (see paragraphs (a) and (b) of this section); or

(2) You observed materials brought to the collection site or employee conduct clearly indicating an attempt to adulterate or substitute a specimen (see §§ 40.61(f)(6)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (see § 40.65(b)(5)); or

(4) The original specimen appeared to have been adulterated or substituted (see § 40.65(c)(1)).

(d) As the collector, you must complete a new CCF for the directly observed collection. You must enter the reason (*e.g.*, suspected adulteration, prior specimen dilute) for conducting the directly observed collection in the ''Remarks'' section of the CCF.

(e) In a case where two specimens (or sets of specimens, where the split specimen method of collection is used) are being sent to the laboratory because of suspected adulteration or substitution at the collection site, enter in the ''Remarks'' section of the CCF for each specimen a notation to this effect (*e.g.*, collection 1 of 2, or 2 of 2.).

(f) As the collector, you must make sure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.

(g) As the collector, if someone else is to observe the collection, you must verbally instruct that person to follow procedures at paragraphs (h) and (i) of this section. If you, the collector, are the observer, you too must follow these procedures.

(h) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.

(i) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.

(j) As the collector, when someone else has acted as the observer (*e.g.*, in order to ensure a same gender observer), you must include the observer's name in the remarks section of the CCF.

(k) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

§ 40.69 When and how is a monitored collection conducted?

(a) As a collector, you are permitted to conduct a monitored collection only if these conditions are met:

(1) A collection site fully meeting all the visual and aural privacy requirements and security requirements of § 40.41(d) is not readily available; and

(2) The available collection site does offer substantial visual privacy but not aural privacy (*e.g.*, a toilet stall with a partial-length door in a multi-stall restroom) and meets the other requirements of § 40.41.

(b) No one is permitted to conduct a monitored collection under any other circumstances.

(c) As the collector, you must enter the reasons for conducting the monitored collection in the ''Remarks'' section of the CCF.

(d)(1) As the collector, you must secure the room being used for the

monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.

(2) You must also put bluing agent into the toilet's water before the collection takes place and direct the employee not to flush the toilet until after giving the specimen to the collector.

(e) As the collector, you must make sure that the monitor is the same gender as the employee. You may permit an opposite gender person to act as the monitor only if that person is a medical professional (*e.g.*, nurse, doctor, physician's assistant). The monitor can be a different person from the collector and need not be a qualified collector.

(f) As the collector, if someone else is to monitor the collection, you must verbally instruct that person to follow procedures at paragraph (g) of this section. If you, the collector, are the monitor, you too must follow these procedures.

(g) As the monitor, you must not watch the employee urinate into the collection container. However, you must stand near the enclosure in which the collection is taking place and listen for any sounds that could indicate an attempt to substitute or adulterate a specimen (e.g., opening of a plastic package or tube, an object dropping to the floor). If you hear such sounds or make other observations indicating an attempt to substitute a specimen, there must be an additional collection under direct observation (see §§ 40.63(e) and 40.67(c)).

(h) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon has the employee has exited the enclosure.

(i) As the collector, when someone else has acted as the monitor (e.g., in order to ensure a same gender monitor), you must include the name of the monitor in the remarks section of the CCF.

(j) As the employee, if you decline to permit a collection required or permitted to be monitored under this section to be monitored, this is a refusal to test.

§ 40.71 How does the collector process a single specimen collection?

As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you:

(a) You, not the employee, must—in the employee's presence—pour at least 30mL of urine from the collection container into the specimen bottle.

(b) You, not the employee, must place and secure (i.e., tighten or snap) the lid/cap on the bottle.

(c) You, not the employee, must write the date on the tamper-evident bottle seal.

(d) You, not the employee, must seal the bottle by placing the tamper-evident bottle seal over the bottle cap/lid and down the sides of the bottle.

(e) You must then make sure that the employee initials the tamper-evident bottle seal for the purpose of certifying that the bottle contains the specimen he or she provided.

(f) You must dispose of the extra tamper-evident bottle seal if it was included in the collection kit or on the CCF.

§ 40.73 How does the collector process a split specimen collection?

As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you:

(a) You, not the employee, must—in the presence of the employee—first pour 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.

(b) You, not the employee, must—in the presence of the employee—then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.

(c) You, not the employee, must place and secure (i.e., tighten or snap) the lids/caps on the bottles.

(d) You, not the employee, must write the date on the tamper-evident bottle seals.

(e) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.

(f) You must then make sure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided.

§ 40.75 How is the collection process completed?

(a) As the collector, you must do the following things to complete the collection process:

(1) Direct the employee to read and sign the certification statement on Copy 4 of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF, you must note this in the ''Remarks'' section of the CCF.

(2) Complete the collector certification section of the CCF (Step 5) by printing the name, address, and telephone number of the collection site (Note: You may pre-print this information); checking the box indicating whether this was a split specimen collection; printing your name; recording the time and date of the collection; and signing the certification statement.

(3) Sign the first line of the chain of custody block of the CCF (Step 6), indicating that you received the specimen from the employee, and print your name and the date.

(4) Complete the second line of the chain of custody by printing and signing your name in the ''Specimen Released By'' block and completing the ''Specimen Received By'' block by printing the specific name of the courier or shipping service and the date. You must also complete the ''Purpose of Change'' block to indicate the reason for transfer (e.g., ''shipment to lab'').

(5) Ensure that all copies of the CCF are legible and complete.

(6) Remove Copy 5 of the CCF, give it to the employee.

(7) Place the specimen bottle(s) and Copies 1 and 2 (plus Copy 3 in the case of a split specimen collection) of the CCF in the appropriate pouches of the plastic bag.

(8) Using the tamper-evident seal for the plastic bag, secure both pouches of the plastic bag, initial the seal and enter the collection date.

(9) Advise the employee that he or she may leave the collection site.

(10) To prepare the sealed plastic bag containing the specimens and CCFs for shipment you must:

(i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)

(ii) Seal the container as appropriate.

(iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier process.

(11) Send Copy 4 of the CCF to the MRO and Copy 7 to the DER. Keep Copy 6 for the period of time specified by applicable DOT agency regulations.

(b) Each time a specimen is handled or transferred, the date and purpose of the action, as well as the individual taking the action, must be documented on the CCF. The following are exceptions to this general rule:

(1) The activity of couriers, express carriers, postal service personnel, and other persons who are involved only with the transportation of the specimen

to a laboratory is not required to be documented on the CCF.

(2) When a specimen already in the sealed plastic bag is put into or taken out of secure storage before transportation personnel pick it up, documentation on the CCF is not required.

(c) As a collector or collection site, you must make sure that each specimen you collect is shipped to a laboratory as expeditiously as possible, the same day preferably. You must also make sure that all copies of the CCF are sent to the persons designated on the bottom of the CCF as soon as the specimen is sent to the laboratory.

Subpart F—Drug Testing Laboratories

§ 40.81 What laboratories may be used for DOT drug testing?

(a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP).

(b) As a drug testing laboratory located outside of the U.S. which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:

(1) The DOT, based on a written recommendation from HHS, has certified your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards; or

(2) The DOT, based on a written recommendation from HHS, has recognized a foreign certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the foreign certifying organization has certified your laboratory under those equivalent standards and procedures.

(c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.

(d) If DOT determines that you are in noncompliance with this part, you will be ineligible to participate in the DOT drug testing program, and employers covered by DOT agency regulations will be prohibited from using your services for DOT drug testing. You will be ineligible to participate under these circumstances even if you continue to meet the requirements of paragraph (a) or (b) of this section.

§ 40.83 How do laboratories process incoming specimens?

As the laboratory, you must do the following when you receive a DOT specimen:

(a) Use the chain of custody on the CCF and an internal chain of custody document(s) to maintain control and accountability of the specimen from the time you receive it until you ultimately dispose of it. The provisions of § 40.75(b) apply to your use of chain of custody documentation.

(b) Inspect each specimen and CCF for the following ''fatal flaws'' and take the appropriate reporting actions outlined in § 40.95(d)(4):

(1) The specimen ID numbers on the specimen bottle and the CCF do not match;

(2) There is no specimen ID number on the specimen bottle;

(3) The specimen bottle seal is broken or shows evidence of tampering (unless a split specimen can be redesignated, see paragraph (f) of this section); and

(4) There is insufficient amount of urine in the primary or single specimen bottle for analysis and any necessary reanalysis for quality control (unless the specimens can be redesignated, see paragraph (f) of this section) and, in the case of a single specimen, reconfirmation of results.

(c) Inspect each specimen and CCF for the following ''correctable flaws'' and take the appropriate actions as noted in § 40.203(b):

(1) The collector's signature is omitted on the certification statement on the CCF.

(2) The chain of custody block on the CCF is incomplete.

(3) The employee's social security number or ID number is omitted from the CCF, unless the employee's refusal to provide the information is noted in the ''Remarks'' section.

(d) Inspect each specimen for integrity and consistency (e.g., foreign material or color differences between the primary and the split specimens).

(1) If, as a result of your receipt-inspection protocol, you note that the primary specimen contains a visible foreign material and you are unable to test the specimen, take appropriate reporting actions outlined in § 40.95(d)(3) and (4)(viii).

(2) If, as a result of your receipt-inspection protocol, you note that the primary specimen shows a marked color difference (e.g., light vs. dark, blue vs. yellow) from the split specimen, do not test the specimen but take appropriate reporting actions outlined in § 40.95(d)(3) and (4)(viii).

(e) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, follow appropriate procedures outlined in § 40.175(b) regarding the unavailability of the split specimen for testing.

(f)(1) The primary specimen and the split specimen can be redesignated (i.e., Bottle B is redesignated as Bottle A, and vice versa) if:

(i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount urine exists in the split specimen to conduct all appropriate primary laboratory testing; or

(ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

(iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or

(iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing. You must also follow appropriate procedures outlined in § 40.175(b) regarding the unavailability of the split specimen for testing.

(2) In situations outlined in paragraph (f)(1) of this section, the laboratory shall mark through the ''A'' and write ''B,'' then initial and date the change. A corresponding change shall be made to the other bottle by marking through the ''B'' and writing ''A,'' and initialing and dating the change. A notation shall be made on the original CCF (Copy 1) and on the split specimen copy (Copy 3).

(g) Comply with all applicable provisions of the HHS Guidelines concerning accessioning and processing of urine drug specimens.

§ 40.85 What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test ''DOT specimens'' for any other drugs.

(a) Marijuana metabolites.

(b) Cocaine metabolites.

(c) Amphetamines.

(d) Opiate metabolites.

(e) Phencyclidine (PCP).

§ 40.87 What methods do laboratories use for screening and confirmation tests?

As a laboratory, you must use the following methods for a DOT drug test.

You may not use any other testing methods.

(a) For the screening test, you must use an immunoassay test that meets Food and Drug Administration requirements for commercial distribution, and has had its application in the laboratory approved by HHS inspection criteria or validation.

(b) For the confirmation test, you must use gas chromatography/mass spectrometry (GC/MS) and perform a quantitative analysis.

§ 40.89 What are the cutoff concentrations for screening and confirmation tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following chart for screening and confirmation tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The chart follows:

Type of drug	Screening test	Confirmation test
(1) Marijuana metabolites	50	
(i) Delta-9-Tretrahydrocannabinol-9-carbolic acid (THC)		15
(2) Cocaine metabolites	300	
(i) Benzoylecgonine		150
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	1000	
(i) Amphetamine		500
(ii) Methamphetamine		500 (Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/mL.)
(5) Opiate metabolites	2000	
(i) Codeine		2000
(ii) Morphine		2000 (Test for 6-acetylmorphine (6–AM) in the specimen)
(iii) 6-acetylmorphine (6–AM)		10 (Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)

(b) On a screening test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

§ 40.91 What additional testing must be done by laboratories on primary specimens?

(a) As a laboratory, you must subject each primary specimen to specimen validity testing. Specimen validity testing is the evaluation to determine if the specimen is consistent with normal human urine. Specifically, you will determine if certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(1) Each primary specimen must be tested for creatinine, pH, and nitrite concentration. You must also determine the specific gravity of the primary specimen if you find that the creatinine level is <20 mg/dL.

(2) Each primary specimen may also be tested for, but not limited to, pyridine, glutaraldehyde, bleach, and soap.

(3) When you suspect the presence of an interfering substance/adulterant (e.g., glutaraldehyde, surfactant, bleach) that could make a specimen unsuitable for testing, you may, using scientifically suitable validity tests, conduct tests to identify the interfering substance/adulterant. If you are unable to identify it, you may send the specimen to another HHS certified laboratory that has the capability of doing so. Such specimen transfers must be documented with appropriate chains of custody.

(b) Specimen validity must be conducted on the split specimen if the split specimen fails to reconfirm the presence of the drug/analyte that was determined to be present in the primary specimen.

(c) You must not use the split specimen to verify the primary specimen results for a substituted or adulterated result.

(d) You must make every effort to conserve the specimen volume for possible future testing.

§ 40.93 What methods and criteria do laboratories use for validity testing?

(a) Specimen validity can be determined by establishing parameters that are consistent with normal human urine and/or by testing for the presence of an abnormal or foreign substance in the urine.

(b) For dilute specimens, at a minimum, creatinine and specific gravity must be measured by quantitative procedures at a cutoff of 20 mg/dL and 1.003, respectively.

(1) As a laboratory you must consider the primary specimen to be dilute if the creatinine is <20 mg/dL *and* the specific gravity is <1.003, unless the criteria for a substituted specimen are met.

(2) [Reserved]

(c) For substituted specimens, at a minimum, creatinine must be measured by at least one quantitative procedure on two different aliquots both utilizing the specified cutoff of 5 mg/dL. At a minimum, specific gravity must be performed on one of these aliquots utilizing the specified cutoffs of 1.001 or 1.020.

(1) As a laboratory you must consider the primary specimen to be *substituted* (*i.e.,* the specimen does not exhibit the clinical signs or characteristics associated with normal human urine) if the creatinine concentration is ≤5 mg/dL and the specific gravity is ≤1.001 or ≤1.020.

(2) [Reserved]

(d) For adulterated specimens, concerning pH and nitrites, at a minimum, two procedures must be performed for pH and nitrites. One procedure must be quantitative and utilize the specified cutoff. The second procedure may be qualitative, must be at least as sensitive as the quantitative procedure, and must be performed on a separate aliquot.

(1) As a laboratory you must consider the primary specimen to be *adulterated* if the nitrite concentration is ≤500 μg/mL.; or if the pH is ≤3 or ≤11; or if an exogenous substance (i.e., a substance which is not a normal constituent of urine) or an endogenous substance at a higher concentration than normal physiological concentration is present in the specimen.

(2) [Reserved]

(e) For adulterant analytes without a specified cutoff (e.g., glutaraldehyde, bleach, soap), at least one procedure must be performed on two separate aliquots.

(f) All specimen validity testing methods must be characterized by demonstrating precision and accuracy. Where cutoffs are specified, the limit of quantitation (LOQ) and linearity must be determined. The limit of detection (LOD) must be experimentally determined for qualitative methods.

(g) All specimen validity tests must be performed using methods that are validated by the laboratory. All methods used to characterize and validate these tests must be documented in the laboratory's SOP.

§ 40.95 What do laboratories need to report to MROs regarding primary specimen results?

As a laboratory, the following applies to your reports of individual primary specimen drug test results:

(a) Before reporting a result, you must ensure that it has been reviewed and certified as accurate by the certifying scientist.

(b) You will report drug test results as either Negative, Positive (for a specific drug), or Test Not Performed.

(c) Additionally, you must include an appropriate comment on the ''Remarks'' line in Step 7 on the CCF when the specimen is dilute, adulterated, substituted, or not tested for drugs (e.g., presence of a fatal flaw or uncorrected flaw). If the additional comments cannot be fully described on the ''Remarks'' line, you may attach a separate sheet describing the problem, and reference the attachment on the ''Remarks'' line.

(d) When a specimen is reported as Negative, Positive, or Test Not Performed:

(1) *Negative.* Check the ''Negative'' box in Step 7 on the CCF when a negative drug test result is obtained on the initial test or on the confirmatory test. If the specimen is also dilute, include the statement, ''Dilute Specimen'' on the ''Remarks'' line.

(2) *Positive.* Check the ''Positive'' and the specific drug(s)/drug metabolite(s) boxes in Step 7 on the CCF when a positive drug test result is obtained on an initial test and a confirmatory test. If the specimen is also dilute, include the statement, ''Dilute Specimen'' on the ''Remarks'' line.

(3) *Test Not Performed.* Check the ''Test Not Performed'' box in Step 7 on the CCF if the specimen is not tested because of a fatal flaw (*e.g.,* broken seal; specimen ID numbers do not match); not tested because of an uncorrected flaw (*e.g.,* a collector's signature was omitted and a signed statement is not received to correct the error); rejected for testing (*e.g.,* significant color difference between the primary and split specimens); unsuitable for testing or contains an unidentified interfering substance and a valid drug test result cannot be obtained; adulterated; or substituted.

(e) If the ''Test Not Performed'' box in Step 7 on the CCF is checked, include one of the following statements (as appropriate) on the ''Remarks'' line:

(1) ''Fatal Flaw'' (with the flaw stated).

(2) ''Uncorrected Flaw'' (with the flaw stated).

(3) ''Specimen Unsuitable: Cannot obtain valid drug test result''.

(4) ''Specimen Adulterated: Nitrite is too high''.

(5) ''Specimen Adulterated: pH is too high (or too low)''.

(6) ''Specimen Adulterated: Presence of (specify) detected''.

(7) ''Specimen Substituted: Not consistent with normal human urine''.

(8) ''Specimen Rejected for Testing'' (with reason stated).

(f) You may not routinely report the quantitative results for validity tests (*e.g.,* nitrite concentration, creatinine concentration, actual specific gravity, or actual pH) to the MRO, but may do so upon MRO request on a case-by-case basis.

§ 40.97 Through what methods and to whom must a laboratory transmit results?

(a) As a laboratory, you must transmit laboratory results directly, and only, to the MRO at his or her place of business (not to the MRO through a consortium or third-party administrator). You must not transmit results to or through the DER or another service agent (*e.g.,* consortia, third-party administrators).

(b) In transmitting these laboratory results:

(1) You must fax, courier, or mail a copy of the original and fully-completed (as outlined in § 40.95) Copy 2 of the CCF, which has been signed by the individual responsible for day-to-day management of your laboratory or the individual responsible for attesting to the validity of test results.

(2) In addition, you may elect to forward a results report that includes only the test result, remarks line items, the specimen number as it appears on the CCF, and the laboratory specimen identification number (accession number), and the cutoff concentrations for screening and confirmation tests. This report can be transmitted through any means that ensures accuracy and confidentiality (*e.g.,* courier, mail, fax, computer link), but never verbally by telephone.

(c) In transmitting these laboratory results to the MRO, you, the MRO, and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval system.

(d) In the case of a negative test, you must transmit the laboratory result so that it reaches the MRO within 72 hours from the time of the result.

(e) In the case of a positive test, a test not performed, or a negative test that is dilute, you must transmit the laboratory result so that it reaches the MRO within 24 hours from the time of the result.

§ 40.99 How long does the laboratory retain specimens after testing?

(a) As a laboratory, you must keep positive urine specimens in long-term frozen storage ($-20°C$ or less) for at least one year.

(1) Where there is a split specimen, you must keep it as well as the positive primary specimen for the one-year period.

(2) You must keep these specimens in their original specimen bottles.

(b) As a laboratory, you must keep a positive specimen indefinitely if you know that there is a pending legal proceeding (*e.g.,* unemployment or workers' compensation proceeding, unjust discharge or personal injury lawsuit) for which the specimen may be evidence. You must also keep a positive specimen beyond the one-year period if the employee (through the MRO), employer or a DOT agency asks you. Otherwise, you may discard the specimen at the end of the one-year period.

(c) When you determine that a specimen is unsuitable, adulterated, or substituted, you must keep it the same way you keep a positive specimen.

(d) Once you have reported a negative result, a rejected for testing result, a fatal flaw result, or an uncorrected flaw result on the primary specimen to the MRO, you may discard the primary specimen as well as the split specimen.

(e) As a laboratory testing the split specimen, you must keep a split specimen that does not reconfirm the primary specimen in the same way as you keep a positive specimen.

§ 40.101 What relationship may a laboratory have with an MRO?

(a) As a laboratory, you may not enter into any relationship with an employer's MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for that employer. You may not derive any financial benefit by having an employer use a specific MRO.

(b) As a laboratory, you must maintain a statement, signed by the responsible

person for laboratory management, for review by a DOT agency. The statement will certify that the laboratory has no apparent financial or potentially conflicting relationship with any MRO. The statement will remain in effect until its conditions change, at which time you must amend the statement to reflect current status.

§ 40.103 What blind specimens must be sent to a laboratory?

(a) As an employer, consortium, or third-party administrator with 2000 or more DOT-covered employees, you must send blind specimens to laboratories you use. If you have fewer than 2000 DOT-covered employees, you are not required to provide blind specimens.

(b) To each laboratory to which you send at least 100 specimens in a year, you must transmit a number of blind specimens equivalent to one percent of the specimens you send to that laboratory, up to a maximum of 50 blind specimens in each quarter (*i.e.,* January–March, April–June, July–September, October–December). As a consortium or third-party administrator, you must apply this percentage to the total number of DOT-covered employees for whom you provide services. Your blind specimen submissions must be evenly spread throughout the year. The following examples illustrate how this requirement works:

(1) *Example 1.* You send 1500 specimens to Lab X in Year 1. In this case, you would send 15 blind specimens to Lab X in Year 1. To meet the even distribution requirement, you would send 4 in each of three quarters and 3 in the other.

(2) *Example 2.* You send 1000 specimens to Lab X and 500 specimens to Lab Y in Year 1. In this case, you would send 10 blind specimens to Lab X and 5 to Lab Y in Year 1. The even distribution requirement would apply in a similar way to that described in Example 1.

(3) *Example 3.* Same as Example 2, except that you also send 10 specimens to Lab Z. In this case, while you would send blind specimens to Labs X and Y as in Example 2, you would not have to send any blind specimens to Lab Z, because you sent fewer than 100 specimens to Lab Z.

(4) *Example 4.* You are a consortium sending 1000 specimens to Lab X in Year 1. These 1000 specimens represent 150 small employers who have an average of 15 covered employees each. In this case you—not the individual employers—send 10 blind specimens to Lab X in Year 1, again ensuring even distribution. The individual employers you represent are not required to provide any blind specimens on their own.

(5) *Example 5.* You are a large third-party administrator that sends 40,000 specimens to Lab Y in Year 1. One percent of that figure is 400. However, the 50 blind specimen per quarter ''cap'' means that you need send only 50 blind specimens per quarter, rather than the 100 per quarter you would have to send to meet the one percent rate. Your annual total would be 200, rather than 400, blind specimens.

(c) Approximately 80 percent of the specimens you submit must be blank (*i.e.,* containing no drugs). The rest must be positive for one or more of the five drugs involved in DOT tests.

(1) The blind specimens that you submit must be certified by immunoassay and GC/MS and have stability data that verifies the materials' performance over time.

(2) You may not obtain blind specimens from the laboratory to which they are being sent, or knowingly, from any affiliate of that laboratory.

(d) You must make sure that each blind specimen is indistinguishable to the laboratory from a normal specimen.

(1) You must submit blind specimens to the laboratory through the same channels (*e.g.,* via a regular collection site) that employees' specimens are sent to the laboratory.

(2) You must make sure that the collector uses a CCF, placing fictional initials on the specimen bottle label/seal, indicating on Copy 4 that the specimen is a blind specimen, and discarding Copy 5.

(3) If you normally send split specimens to the laboratory, the blind specimens you send must be split specimens.

§ 40.105 What happens if there is a laboratory error on any test?

(a) If a laboratory error (either a false positive or false negative) occurs, the MRO or other party discovering the error must promptly notify ODAPC.

(b) When an error is brought to its attention, ODAPC will notify HHS. HHS will take any appropriate action under its Guidelines.

(c) If the error is determined to be the result of an administrative problem (*e.g.,* specimen mix-up, clerical mistake), the laboratory, at the direction of ODAPC and in consultation with HHS, must take corrective action. If there is reason to believe that the error could have been systematic, ODAPC may also require review and reanalysis of previous specimens.

(d) If the error is determined to be technical or methodological in origin, the laboratory, at the direction of ODAPC and in consultation with HHS, must submit all quality control and subject data from the batch of specimens that included the error.

(1) The laboratory, at the direction of ODAPC and in consultation with HHS, may be required to retest all specimens for the drug(s)/drug metabolite(s) involved in the error from the time the error is resolved back to the time of the last satisfactory performance test cycle.

(2) The individual responsible for day-to-day management of the laboratory's drug testing program must document this retesting through a signed statement.

(3) ODAPC may require an unannounced on-site review of the laboratory.

§ 40.107 Who may inspect laboratories?

As a laboratory, you must permit an inspection, with or without prior notice, by ODAPC or a DOT agency.

§ 40.109 What documentation must the laboratory keep, and for how long?

(a) As a laboratory, you must keep for at least one year all records pertaining to each DOT urine specimen for which you obtain a negative test result or did not test because of a fatal flaw or an uncorrected flaw.

(b) As a laboratory, you must keep for at least five years all records pertaining to each DOT urine specimen for which you obtain a positive test result, determine that the specimen is unsuitable, or determine that the specimen is substituted or adulterated.

(c) As a laboratory, you must keep for two years employer-specific data required in § 40.111.

(d) As a laboratory, you must keep for two years personnel files on individuals with access to specimens; quality assurance and quality control records; procedure manuals; performance records on performance testing; and results of certification inspections. You must maintain these longer if asked to do so in writing by a DOT agency.

(e) As a laboratory, you must keep documents for any specimen known to be under legal challenge for an indefinite period.

§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

(a) As a laboratory, you must transmit an aggregate statistical summary of the data listed in Appendix B of this part to the employer on a semi-annual basis.

(1) The summary must not reveal the identity of any employee.

(2) In order to avoid sending data from which it is reasonably likely that information about a employee's test

result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.

(3) When the condition in paragraph (a)(2) of this section exists, you must send the employer a report indicating that insufficient testing was conducted to warrant a summary.

(4) The summary must be sent by January 15 of each year for the last 6 months (*i.e.,* July 1 through December 31) of the prior year.

(5) The summary must be sent by June 15 of each year for the last 6 months (*i.e.,* January 1 through June 30) of the current year.

(b) You must also provide the summary when the employer needs it in response to an inspection, audit, or review by a DOT agency.

(c) You must also release information to appropriate parties as provided in §§ 40.331 and 40.333.

§ 40.113 Where is other information concerning laboratories found in this regulation?

You can find more information concerning laboratories in several sections of this part:

§ 40.3—definition.
§ 40.15—prohibition on making specimens available for other purposes.
§ 40.31—conflicts of interest concerning collectors.
§ 40.47—laboratory rejections of test for improper form.
§ 40.125—conflicts of interest concerning MROs.
§ 40.175—role of first laboratory in split specimen tests.
§ 40.177—role of second laboratory in split specimen tests.
§ 40.179—40.181—transmission of split specimen test results to MRO.
§ 40.199—40.203—role in correcting errors.
§ 40.331—provision of records to interested parties.
§ 40.333—limits on release of information.
§ 40.351—role with respect to other service agents.

Subpart G—Medical Review Officers (MROs)

§ 40.121 Who is qualified to act as an MRO?

You are qualified to act as an MRO in the DOT drug testing program only if you meet each of the following criteria:

(a) You are a licensed physician (Doctor of Medicine or Osteopathy).

(b) You have knowledge of and clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed positive drug tests.

(c) You have working knowledge of laboratory results relating to adulterated and substituted specimens as well as the possible medical causes of specimens being unsuitable for testing.

(d) You have a working knowledge of this part, the DOT MRO Guidelines, and the DOT agency regulation applicable to the employers for which you evaluate drug test results.

(e) You participate in and document training (*e.g.*, a course) at least once every two years that relates directly to the MRO responsibilities of the DOT program, or self-certify that you have re-reviewed and understand this part and the applicable DOT guidelines. You must retain these records for two years.

(f) If you were an MRO prior to the date these regulations are published, you must meet the requirements of paragraph (e) of this section by [date six months from the effective date of the final regulation]. If you become an MRO after [effective date of the final regulation], you must meet the requirements of paragraph (e) of this section prior to acting as an MRO.

§ 40.123 What are the MRO's responsibilities in the DOT drug testing program?

As an MRO, you have the following basic responsibilities:

(a) You must act as an independent and impartial ''gatekeeper'' for the accuracy and integrity of the drug testing process.

(b) You must provide a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:

(1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be canceled (see §§ 40.197 and 40.201);

(2) Providing feedback to collection sites and laboratories regarding performance issues where necessary; and

(3) Reporting to the ODAPC or a relevant DOT agency any program issue for which you need assistance in resolving.

(c) You must determine whether there is a legitimate medical explanation for confirmed positive drug tests results from the laboratory.

(d) You must act to investigate and correct problems where possible, or notify appropriate parties (*e.g.,* HHS/DWP, DOT/ODAPC, employers, service agents) where assistance is needed, (*e.g.,* canceled or problematic tests, incorrect results, problems with blind specimens).

(e) You must ensure the timely flow of test results and other information to employers.

(f) You must protect the confidentiality of the testing process.

(g) You must perform all your functions in compliance with this part and other DOT agency regulations.

§ 40.125 What relationship may an MRO have with a laboratory?

(a) As an MRO, you may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities for that employer. You may not derive any financial benefit by having an employer use a specific laboratory.

(b) As an MRO, you must maintain a statement for review by a DOT agency. The statement will certify that you do not have any financial or potentially conflicting relationship with any laboratory. The statement will remain in effect until its conditions change, at which time you must amend the statement to reflect current status.

§ 40.127 What are the MRO's functions in reviewing negative test results?

As the MRO, you must do the following with respect to negative drug test results you receive from a laboratory, prior to verifying the result and releasing the result to the DER:

(a) Review Copy 4 of the CCF to determine if there are any errors in the chain of custody or elsewhere that may require you to cancel the test (see §§ 40.197, 40.199, and 40.201).

(1) Staff under your direct, personal supervision may conduct this administrative review for you (including the steps set forth in paragraphs (b) through (e) of this section), but only you can cancel a test.

(2) On specimen results that are reviewed by your staff, you are responsible for assuring the quality of their work.

(i) You are required to personally review at least 10 percent of the CCFs reviewed by your staff on a quarterly basis, and take corrective action as necessary to ensure compliance with this part.

(ii) You must attest to the quality assurance review by initialing the CCFs which you reviewed.

(iii) You must mark these CCFs to make them easily identifiable for review by DOT agencies.

(b) You may report a negative test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF, or you are in possession of the laboratory results report that conveys the negative laboratory test result. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

(c) If the copy of the documentation provided to you by the laboratory appears unclear or erroneous, you must request that the laboratory send you an original or certified true copy.

(d) On Copy 4 of the CCF, place a check mark in the ''Negative'' box in Step 8 and sign, initial, or stamp and date the verification statement.

(e) Report the result directly to the DER in a confidential manner.

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed positive drug test results?

(a) As the MRO, you must do the following with respect to confirmed positive drug tests you receive from a laboratory, prior to verifying the result and releasing the result to the DER:

(1) Review the CCF to determine if there are any errors in the chain of custody or elsewhere that may require you to cancel the test (see §§ 40.197. 40.199, and 40.201). Staff under your direct, personal supervision may conduct this administrative review for you, but only you may cancel a test.

(2) If the copy of the documentation provided to you by the laboratory appears unclear or possibly erroneous, you must request that the laboratory send you an original or certified true copy.

(3) Except in the circumstances spelled out in § 40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between you and the employee.

(4) Verify the test result as either positive or negative, or cancel the test, consistent with the requirements of §§ 40.135 through 40.139.

(5) Report verified positive drug test results directly to the DER in a confidential manner, consistent with the requirements of § 40.157.

(b) You may only report a positive test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

(c) Place a check mark in the ''Positive'' box in Step 8 on Copy 4 of the CCF, indicate the drug(s)/drug metabolite(s) detected on the ''Remarks'' line, sign and date the verification statement, and report the result directly to the DER.

Alternative 1 for Paragraph (d)

(d) As the MRO, you must never inform the employer that you have received an employee's laboratory confirmed positive test result. You are prohibited from reporting any information to the DER or other persons until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed positive test result, and you must structure the way in which this information is received and stored to make sure that other personnel of the company do not have access to it.

Alternative 2 for Paragraph (d)

(d)(1) As the MRO, except as provided in paragraph (d)(2) of this section, you must never inform the employer that you have received an employee's laboratory confirmed positive test result. You are prohibited from reporting any information to the DER or other persons until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed positive test result, and you must structure the way in which this information is received and stored to make sure that other personnel of the company do not have access to it.

(2) If an employer has a stand-down policy that meets the requirements of § 40.159(a), you may report to the DER that you have received an employee's laboratory confirmed positive laboratory test result.

§ 40.131 How is the employee notified of the verification process after a confirmed positive test result?

(a) When, as the MRO, you receive a confirmed positive test result from the laboratory, along with the appropriate collection documentation (see Appendix C of this part), you must contact the employee directly, on a confidential basis, and determine whether the employee wants to discuss the test result. In making this contact, you must explain to the employee that, if he or she declines to discuss the result, you will verify the test as positive.

(b) As the MRO, staff under your personal supervision may conduct this initial contact for you.

(1) This staff contact must be limited to explaining the consequences of the employee's declining to speak with you and scheduling the discussion between you and the employee.

(2) A staff person must not gather any medical information or information concerning possible explanations for the confirmed positive test result.

(3) A staff person may advise an employee to have medical information ready to present at the interview with the MRO.

(4) Since you are required to speak personally with the employee, your staff must not inquire if the employee wishes to speak with you.

(c) As the MRO, if you cannot reach the employee directly after making reasonable efforts (at a minimum, two attempts) to reach the employee at the day and/or evening telephone numbers listed on the CCF over a period of at least 24 hours, you must:

(1) Document the efforts you made to contact the employee, including dates and times.

(2) Contact the DER, instructing the DER to contact the employee.

(i) You must simply direct the DER to inform the employee to contact you.

(ii) You must not inform the DER that the employee has a confirmed positive test result.

(iii) You must document the dates and times of your attempts to contact the DER, and you must document the name of the DER you contacted and the date and time of the contact.

(d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you contact the employee, you must document the date and time of the contact, and inform the MRO.

(1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.

(2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave.

(i) Reasonable efforts include, as a minimum, two attempts to reach the employee at the day and/or evening telephone numbers listed on the CCF over a period of 24 hours. As the DER, you must document the dates and times of these efforts.

(ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (*e.g.*, voice mail, E-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

§ 40.133 Under what circumstances may the MRO verify a test as positive without interviewing the employee?

(a) As the MRO, you normally may verify a confirmed positive test result only after interviewing the employee as provided in §§ 40.135 through 40.143. However, there are three circumstances

in which you may verify a confirmed positive test result (regardless of which drugs are involved) without such an interview:

(1) You may verify a test result as positive if the employee expressly declines the opportunity to discuss the test with you. Complete documentation of this occurrence must be made, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the MRO.

(2) You may verify a test result as positive if neither you nor the DER, after making all reasonable efforts, has been able to contact the employee within 14 days of the date on which the MRO receives the confirmed positive test result from the laboratory.

(3) You may verify a test result as positive if you or the DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see § 40.131(c) and (d)), and more than 72 hours have passed since the time DER contacted the employee.

(b) As the MRO, when you verify a test result as positive under this section, you must document the date, time and reason.

(c) As the MRO, if you verify a test result as positive under this section, you must allow the employee to present information to you documenting that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided.

(1) On the basis of such information, you may reopen the verification, allowing the employee to present information concerning a legitimate medical explanation for the confirmed positive test result.

(2) If you conclude that there is a legitimate medical explanation for the positive test result, you must change the verified result to negative, and report the change directly to the DER.

§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?

As the MRO, you must provide the following information to the employee at the beginning of the verification interview:

(a) You must tell the employee that the laboratory has determined that the employee's test result was positive. You must also tell the employee of the drugs for which his or her specimen tested positive.

(b) You must explain the verification interview process to the employee, and that you will decide whether to verify the test result as positive based on information the employee provides in the interview.

(c) You must explain that, if further medical evaluation is needed for the verification process, the employee must comply with your request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the drug test result.

(d) You must tell the employee that you are authorized to provide to the employer, DOT, or another Federal safety agency any positive test result or medical information he or she provides during the interview under the circumstances stated in § 40.327. This may include providing information to employers concerning medication or medical conditions that could adversely affect the employee's safety-sensitive duties.

§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, and PCP?

(a) As the MRO, you must verify a confirmed positive test result for marijuana, cocaine, amphetamines, and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/drug metabolite(s) in his or her system.

(b) You must offer the employee an opportunity to present a legitimate medical explanation in all cases.

(c) The employee has the burden of presenting evidence that a legitimate medical explanation exists. If you determine that there is such an explanation, you must verify the test result as negative. Otherwise, you must verify the test result as positive.

(d) In determining whether a legitimate medical explanation exists, you may consider the employee's use of a medication from a foreign country where it can be substantiated that the medication was legally obtained and used.

§ 40.139 On what basis does the MRO verify test results involving opiates?

As the MRO, you must proceed as follows when you receive laboratory confirmed positive opiate results:

(a) If the laboratory detects the presence of 6-acetylmorphine (6–AM) in the specimen, you must verify the test result positive.

(b) In the absence of the 6–AM, if the laboratory detects the presence of either morphine or codeine at 15,000 ng/mL or above, you must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (*e.g.,* poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these levels.

(c) For all other opiate positive results, you must verify a confirmed positive test result for opiates only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (*i.e.,* morphine or codeine).

(1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:

(i) Recent needle tracks;

(ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;

(iii) Clinical history of unauthorized use, such as an admission by the employee that an opiate drug was ingested without legal authorization; or

(iv) Use of a medication from a foreign country where it cannot be substantiated that the medication was legally obtained and legally used.

(2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.

(i) Therefore, you, as the MRO, must conduct, or cause to be conducted, a face-to-face interview with the employee.

(ii) No face-to-face interview is needed in establishing the clinical evidence referenced in paragraphs (c)(1)(iii) and (iv) of this section.

(3) To be the basis of a verified positive result for opiates, the clinical evidence you find must concern a drug metabolite that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you do not have grounds for verifying the test positive. The admission must be for the substance that was found).

(4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (*e.g.*, there is not sufficient clinical evidence and the employee does not state that he or she used opiates), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

§ 40.141 How does the MRO obtain information for the verification decision?

As an MRO, you must do the following as you make the determinations needed for verification decision.

(a) You must conduct a medical interview. You may review the employee's medical history and any other relevant biomedical factors. You may direct the employee to undergo further medical evaluation by you or another physician.

(b) When the employee asserts that the presence of a drug(s)/drug metabolite(s) in his or her system results from taking prescription medication, you must review all medical records the employee provides. You may contact the employee's physician or other relevant medical personnel for further information.

(c) Before completing the verification process, and at your sole discretion, you may direct the laboratory to conduct a reanalysis of the primary specimen. (You may do so regardless of whether a single specimen or split specimen collection is involved.) You may choose the laboratory that tested the primary specimen or another HHS-certified laboratory for this reanalysis. The purpose of this reanalysis is to gather further information concerning any questions you have about the technical or scientific validity of the laboratory's test.

§ 40.143 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

(a) You must not consider any evidence from tests of urine samples or other body fluids or tissues (*e.g.*, blood or hair samples) that are not obtained or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his DOT specimen, you are required to ignore this test result.

(b) In reviewing the CCF, you must not consider evidence inessential to the documents in determining whether the test is valid. For example, you must review only what is on the face of the CCF for this purpose, not assertions by the employee that the CCF does not accurately reflect what happened at the collection site.

(c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified him as the subject of a random test, or directed him to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency regulation, you must inform the employee that you cannot play a role in deciding these issues.

(d) It is not your function to consider explanations of confirmed positive test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act (*e.g.*, under a state law that purports to authorize such recommendations, such as the ''medical marijuana'' laws that some states have adopted).

(f) You must never accept an assertion of consumption or other use of a hemp or other marijuana-related product as a basis for verifying a marijuana test negative. Consuming or using such a product is not a legitimate medical explanation.

§ 40.145 How does the MRO notify employees of their right to a test of the split specimen or to a retest of a single specimen?

(a) You must notify the employee of procedures for requesting a retest of the specimen (single specimen collections) or a test of the split specimen (split specimen collections). The purpose of these tests is to determine whether drug(s)/drug metabolite(s) are present in the specimen tested.

(b) You must inform the employee that he or she has 72 hours to make a timely request for the additional test.

(c) You must tell the employee how to contact you in order to make a timely request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (*e.g.,* by use of an answering machine with a time stamp feature when there is no one in your office to answer the phone).

(d) You must tell the employee that if he or she requests the additional test in a timely manner, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see § 40.173).

(e) You must tell the employee that, when the test resulted from a split specimen collection, a retest of the primary specimen is not authorized.

(f) You must tell the employee that additional tests of the specimen (*e.g.,* DNA tests) are not authorized.

§ 40.147 What happens when a negative or positive test result is also dilute?

(a) As the MRO, when the laboratory reports that the specimen was dilute, you must report directly to the DER that, in addition to the specimen being negative or positive, the specimen was dilute and that the next time the employee is selected for a drug test the employer may require the specimen to be collected under direct observation.

(b) You must note that the specimen is dilute on the ''Remarks'' line in Step 8 on Copy 4 of the CCF.

(c) You may only report a dilute test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

§ 40.149 What happens when a test is not performed because of a fatal or uncorrected flaw?

(a) As the MRO, when the laboratory reports that a specimen test must be canceled because of a fatal or uncorrected flaw, you must place check marks in the ''Test Not Performed'' and ''Test Canceled'' boxes in Step 8 Copy 4 of the CCF and enter, ''Fatal Flaw, _____'' (with the flaw stated) or ''Uncorrected Flaw, _____'' (with the flaw stated), as appropriate, on the ''Remarks'' line.

(b) Report directly to the DER that the test is canceled, the reason for cancellation, and that no further action is required unless a negative test result is required (*e.g.,* pre-employment, return-to-duty, follow-up).

(c) You may only report a fatal or uncorrected flaw test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

§ 40.151 What happens when a drug test specimen is unsuitable for testing?

(a) As the MRO, when the laboratory reports that the test result is ''Test Not Performed—Specimen Unsuitable: Cannot obtain valid drug test result,'' you must do the following:

(1) Discuss the laboratory results with the certifying scientist to obtain more specific information.

(2) Contact the employee and inform the employee that the specimen was not suitable for testing or contained an unexplained interferant.

(3) After explaining the limits of disclosure (see § 40.327), you should inquire as to medications the employee may have taken that may interfere with some immunoassay tests.

(4) If the employee gives an explanation that is acceptable, you must:

(i) Place check marks in the ''Test Not Performed'' and ''Test Canceled'' boxes in Step 8 on Copy 4 of the CCF and enter ''Specimen Unsuitable: Cannot obtain valid drug test result'' on the ''Remarks'' line.

(ii) Report directly to the DER that the test is canceled, the reason for cancellation, and that no further action is required unless a negative test result is required (*e.g.,* pre-employment, return-to-duty, follow-up).

(5) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:

(i) Place check marks in the ''Test Not Performed'' and ''Test Canceled'' boxes in Step 8 on Copy 4 of the CCF and enter ''Specimen Unsuitable: Cannot obtain valid drug test result'' on the ''Remarks'' line.

(ii) Report directly to the DER that the test is canceled, the reason for cancellation, and that a second collection must take place immediately under direct observation.

(b) You may only report an unsuitable for testing test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

(c) If the employee admits to having adulterated the specimen, you must follow procedures outlined in § 40.153.

§ 40.153 What happens when a drug test specimen is adulterated or substituted?

(a) As the MRO, when the laboratory reports that the test result is ''Test Not Performed—Specimen Adulterated/Substituted,'' you must do the following:

(1) Check the ''Test Not Performed'' box in Step 8 on Copy 4 of the CCF and enter ''Adulterated,'' or ''Substituted,'' and ''Refusal to test'' on the ''Remarks'' line.

(2) Report directly to the DER that the specimen was adulterated or substituted, either of which constitutes a refusal to test.

(3) Also, inform the DER that the employee has no right to have the split specimen tested (or to have a retest of a single specimen). You must not authorize a test of a split specimen or a retest of the primary specimen following an adulterated or substituted test result. The laboratory has already tested two aliquots of the primary specimen to confirm the accuracy of their result.

(b) You may only report an adulterated or substituted testing test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

§ 40.155 What happens when a drug test specimen is rejected for testing?

(a) As the MRO, when the laboratory reports that the test result is ''Test Not Performed—Specimen Rejected for Testing,'' you must do the following:

(1) Rule out collector error as the reason the specimen was rejected for testing. You may consult with the laboratory and must consult with the collection site in making this determination.

(2) If the rejection is a result of collector error, you must:

(i) Place check marks in the ''Test Not Performed'' and ''Test Canceled'' boxes in Step 8 on Copy 4 of the CCF and enter ''Specimen Rejected for Testing: Collection Error_____'' (with reason stated) on the ''Remarks'' line.

(ii) Report directly to the DER that the test is canceled, the reason for the cancellation, and that a second collection must take place immediately. This collection is not to be conducted under direct observation.

(3) If you determine that the rejection is not a result of collector error, you must:

(i) Place check marks in the ''Test Not Performed'' and ''Test Canceled'' boxes in Step 8 on Copy 4 of the CCF and enter ''Specimen Rejected for Testing: _____'' (with reason stated) on the ''Remarks'' line.

(ii) Report directly to the DER that the test is canceled, the reason for cancellation, and that a second collection must take place immediately under direct observation.

(b) You may only report a specimen rejected for testing test result when you are in possession of a copy of Copy 2 or the original Copy 2 of the CCF. In addition, you must have a copy of Copy 4 or the original Copy 4 of the CCF, or any copy of the CCF containing the employee's signature.

§ 40.157 How does the MRO report test results to the employer?

As the MRO, you must report all drug test results (*e.g.,* positive, negative, test not performed, canceled) directly to the DER in a confidential manner.

(a) You must make the reports and other communications concerning test results directly to the DER.

(b) You must as expeditiously as possible, the same day preferably, report directly to the DER verified positive test results, results requiring an immediate collection under direct observation, and adulterated or substituted specimen results.

(1) Direct telephone contact with the DER is the preferred method of immediate reporting.

(2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.

(3) Your report shall contain all of the information in paragraph (c) of this section.

(c) In all cases, verified test results must be provided directly to the DER in writing. The report must include the following information:

(1) A statement that the test was conducted in accordance with this part;

(2) The full name, as indicated on the CCF, of the employee tested;

(3) The type of test as indicated on the CCF (*e.g.,* random, post-accident);

(4) The date and location of the collection;

(5) The identities of the persons or entities performing the collection, analyzing the specimen, and serving as the MRO for the test;

(6) The result of the test (*e.g.,* positive, negative, test not performed, and canceled) and the date the result was verified; and (7) For verified positive tests, the substance for which the test was positive.

(d) Within three days of your verification of the result, you must provide the DER the signed, written report of the verified test result.

(1) For any result (positive, negative, test not performed, or canceled), you may use Copy 4 of the CCF or a legible photocopy of it. If you provide a written report to the employer using any means other than Copy 4, you must retain a signed (for positive, test not performed, or canceled tests) or stamped (for a negative test) Copy 4 in your records.

(2) For a negative test, if you do not use Copy 4 of the CCF or a legible photocopy of it, you may use such means as a letter listing negative results for a group of specimens, each identified by its specimen ID number, or an individual letter providing each test result.

(3) You must not use Copy 1 or Copy 2 to report negative drug test results. Your signature must be on the report; you may sign or rubber-stamp the report of the result (or a staff member can rubber-stamp it for you with your written authorization). You may not use electronic signatures for this purpose.

(4) For a positive test, you must make sure that your signature and the substance(s) for which the test was positive are legibly noted in Step 8 of the CCF. You must sign the report; rubber stamps are not acceptable. You may not use electronic signatures for this purpose.

(5) For a test not performed or for a canceled test, you must make sure that your signature and the required explanation(s) for the result are legibly noted in Step 8 of the CCF. You must sign the report; rubber stamps are not acceptable. You may not use electronic signatures for this purpose.

§ 40.159 When MROs send reports of positive, dilute, unsuitable, substituted, or adulterated test results to employers, what is an employer to do?

Alternative 1 for Paragraph (a)

(a) As an employer, you must never take any personnel or disciplinary action, permanent or temporary, related to a DOT drug test (including removing the employee from safety-sensitive functions) before receiving a verified positive test result from the MRO. Specifically, you are prohibited from standing-down an employee on the basis of information or belief that the employee has a laboratory confirmed positive drug test result. You may, however, temporarily medically disqualify an employee in the circumstances spelled out in § 40.131(d)(2).

Alternative 2 for Paragraph (a)

(a) As an employer, you must never take any permanent personnel or disciplinary action, related to a DOT drug test, before receiving a verified positive drug test result from the MRO.

(1) However, you may stand-down an employee (*i.e.,* temporarily remove the employee from the performance of safety-sensitive functions) after your DER is informed by the MRO that the individual has a laboratory confirmed positive drug test result, pending the completion of the MRO's verification process.

(2) If you choose to stand-down an employee, you must ensure that information about the laboratory confirmed positive test result or the reason for the employee's temporary removal from performance of safety-sensitive functions is not made available by the MRO or DER to any other employees of your organization or other persons.

(3) If the MRO reports to you that the test has been verified negative or has been canceled, you must immediately return the employee to the performance of safety-sensitive duties, without any adverse consequences to the employee and with no notation of the stand-down or the laboratory confirmed positive test result retained in any records pertaining to the employee. You may also temporarily medically disqualify an employee in the circumstances referenced in § 40.131(d)(2).

(b) As an employer who receives a verified positive test result from the MRO, you must immediately remove the employee involved from performing safety sensitive functions. You must take this action upon receiving the initial report from the MRO. Do not wait to receive the written report or the result of a split specimen test.

(c) As an employer who receives a test result from the MRO indicating that the employee's specimen was adulterated or substituted, you must consider this a refusal to test and immediately remove the employee involved from performing safety sensitive functions. You must take this action on receiving the initial report from the MRO. Do not wait to receive the written report.

(d) As an employer who receives a test result from the MRO indicating that the employee's specimen was dilute, the next time the employee is selected for a drug testing, you may require the specimen to be collected under direct observation.

(e) As an employer who receives a test result from the MRO indicating that the employee's specimen was unsuitable for testing or rejected for testing and that a second collection must take place under direct observation—

(1) You must immediately direct the employee to provide a new specimen under direct observation.

(2) You must not attach consequences to the finding of unsuitability other than collecting a new specimen under direct observation.

(3) You must not give any advance notice of this test requirement to the employee and can only notify the employee immediately before the collection.

(4) You must instruct the collector to note on the CCF the same reason (*e.g.* random test, post-accident test) as for the original collection.

(f) As an employer who receives a canceled test result when a negative result is required (*e.g.,* pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen.

(g) As an employer, you may also be required to take additional actions required by DOT agency regulations (*e.g.,* FAA requires some positive drug tests to be reported to the Federal Air Surgeon).

§ 40.161 May the employer or MRO change a verified drug test result?

(a) As the employer, you must not change a test result that you have received from the MRO.

(b) As the MRO, you may change a verified drug test result only in the following situations:

(1) When you have reopened a verification that was done without an interview with an employee, as in § 40.133(c).

(2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (*e.g.,* a paperwork mistake) or testing (*e.g.,* a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.

(3) If you receive, within 60 days of the original verification decision, information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/ drug metabolite(s) in the employee's specimen. For example, if the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/drug metabolite(s) in the employee's specimen. If you receive the information after the 60 day period, you must consult with ODAPC prior to changing the result.

(4) When you have made an administrative error and reported an incorrect result.

(c) As the MRO, in any case where you change a result, you must notify the DER of the changed result as provided in § 40.157.

§ 40.163 Where is other information concerning the role of MROs found in this regulation?

You can find more information concerning the role of MROs in several sections of this part:

§ 40.3—definition.
§ 40.67—role in direct observation and other atypical test situations.
§ 40.83—corrective actions in atypical test situations.
§ 40.95—receipt of laboratory reports.
§ 40.99—authorization of longer laboratory retention of specimens.
§ 40.101—relationship with laboratories; avoidance of conflicts of interest.
§ 40.107—notification of laboratory errors.
§ 40.171—request for test of split specimen.
§ 40.183—action concerning split specimen test results.
§ 40.191—role in ''shy bladder'' situations.
§ 40.193—role in canceling tests.
§§ 40.199–40.203—documenting errors in tests.
§ 40.325—transfer of records.
§ 40.327—confidentiality and release of information.
§ 40.329—providing information to other employers.
§ 40.351—relationships with service agents.

Subpart H—Split Specimen Tests And Retests

§ 40.171 How does an employee request a test of a split specimen?

(a) As an employee, when the MRO has notified you that you have a verified positive test, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen.

(b)(1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified positive test, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.

(2) As the MRO, when you conclude from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, you must direct that the test of the split take place, just as you would when there is a timely request.

(c) As an employer, you may authorize the MRO to act on a request for the test of a split specimen that an employee makes later than 72 hours from the time of notification.

(d) When the employee makes a valid request for a test of the split specimen under paragraphs (a) through (c) of this section, as the MRO, you must immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory and identifying the drug(s)/drug metabolite(s) to be tested for. You must also document the date and time of the employee's request.

§ 40.173 Who is responsible for paying for the test of a split specimen?

(a) As the employer, you are responsible for making sure that the MRO, first laboratory, and second laboratory perform the functions noted in §§ 40.175 and 40.177 in a timely manner, once the employee has made a timely request for a test of the split specimen.

(b) As the employer, you must not condition your compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must make sure that the test takes place in a timely manner, even though this means that you pay for it.

(c) As the employer, you may seek payment or reimbursement of all or part of the cost of the split specimen by the employee. This regulation takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required.

§ 40.175 What steps does the first laboratory take with a split specimen?

(a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen as well as the primary specimen is available for testing.

(b) If the split specimen is unavailable or appears insufficient, you must still test the primary specimen. You must then do the following:

(1) Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.

(2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing, and provide as much information as you can as to the cause of the unavailability.

(c) If the split specimen is available and appears sufficient, you must keep it in secure, short-term refrigerated storage (with temperatures not to exceed 6 °C) until you have completed the test of the primary specimen.

(1) If the test of the primary specimen is negative, you may discard the primary and split specimens.

(2) If the test of the primary specimen is a confirmed positive, or is adulterated or substituted, you must retain the primary and split specimens for one year unless you are requested to keep it longer.

(d) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances.

(e) When you receive written notice from the MRO that the employee has made a valid request (i.e., for a verified positive test result, not an adulterated or substituted test result) for a test of the split specimen, you must forward the following things to a second laboratory.

(1) The split specimen in its original specimen bottle, with the seal intact.

(2) A copy of the MRO's written request, which identifies the drug(s)/drug metabolite(s) to be tested for.

(3) The split specimen copy of the CCF with appropriate chain of custody entries.

(4) Your external chain of custody for specimen transfer.

(f) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not cause a fatal flaw.

(g) This subpart does not prescribe who gets to decide which laboratory is used to test the split specimen. That decision is left to the parties involved.

§ 40.177 What does the second laboratory do with the split specimen?

(a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.

(b) You must conduct this test, using GC/MS, at the level of detection without regard to the cutoff concentrations of § 40.89.

(c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that was reported positive in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/drug metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.91.

(d) If unable to conduct the validity tests, you must send the split specimen and Copy 3 of the CCF using chain of custody procedures to a third laboratory that has the capability to conduct the validity tests. If the validity tests conducted by the third laboratory do not determine the reason for being unable to reconfirm the presence of the drug(s)/drug metabolite(s) in the split specimen, the third laboratory must test the split specimen for the drug(s)/drug metabolite(s) found in the primary specimen by the first laboratory.

(e) You must not conduct tests of the split specimen for any purposes (*e.g.* for adulterants found in the primacy specimen) other than reconfirming the presence of the drug(s)/drug metabolite(s) detected in the primary specimen or conducting the validity tests in paragraphs (c) and (d) this section.

§ 40.179 Through what methods and to whom must a laboratory transmit split specimen results?

(a) As the laboratory testing the split specimen, you must transmit laboratory results directly, and only, to the MRO at his or her place of business (not to the MRO through a consortium or third-party administrator). You must not transmit results to or through the DER or another service agent (*e.g.,* consortia, third-party administrators).

(b) You must fax, courier, or mail a copy of the original and fully-completed Copy 3 of the CCF, which has been signed by the individual responsible for day-to-day management of your laboratory or the individual responsible for attesting to the validity of split specimen test results.

(c) You must transmit the laboratory result so that it reaches the MRO within 24 hours from the time of the split specimen test result.

§ 40.181 What information do laboratories need to report to MROs regarding split specimen results?

(a) As the laboratory responsible for testing the split specimen, you must report split specimen test results as either Reconfirmed [notating the specific drug in the appropriate drug(s)/drug metabolite(s) box(es)], Failed to Reconfirm, or Test Not Performed in Step 7 on Copy 3 of the CCF.

(b) Additionally, you must include an appropriate comment on the ''Remarks'' line if you find that the specimen is adulterated or substituted, or if the drug test was not performed.

(c) You must check the ''Failed to Reconfirm'' box in Step 7 on Copy 3 of the CCF if the drug(s)/drug metabolite(s) is not detected, the specimen is adulterated, or the specimen is substituted.

(d) If you check the ''Failed to Reconfirm'' box, one of the following statements must be included (as appropriate) on the ''Remarks'' line:

(1) ''Drug/Drug Metabolite Not Detected''.

(2) ''Specimen Adulterated: Nitrite is too high''.

(3) ''Specimen Adulterated: pH is too high (or too low)''.

(4) ''Specimen Adulterated: Presence of _____ (specify) Detected''.

(5) ''Specimen Substituted: Not consistent with normal human urine''.

(e) You must check the ''Test Not Performed'' box in Step 7 on Copy 3 of the CCF if the specimen is not tested or if the testing could not be completed successfully.

(f) If you check the ''Test Not Performed'' box one of the following statements must be included (as appropriate) on the ''Remarks'' line:

(1) ''Fatal Flaw, _____ (with the flaw stated)''.

(2) ''Uncorrected flaw, _____ (with the flaw stated)''.

(3) ''Specimen Unsuitable: Cannot obtain valid confirmatory test result''.

(4) ''Specimen Unsuitable: Insufficient specimen volume to complete testing''.

§ 40.183 What does the MRO do with the split specimen laboratory results?

As an MRO, you must take the following actions when a laboratory reports:

(a) *Reconfirmed.* (1) Check the ''Reconfirmed'' box in Step 8 on Copy 3 of the CCF.

(2) Indicate the specific drug/drug metabolite detected on the ''Remarks'' line.

(3) Report the reconfirmation directly to the DER and the employee.

(b) *Failed to Reconfirm: Drug/Drug Metabolite Not Detected.* (1) Check the ''Failed to reconfirm: Both tests canceled'' box in Step 8 on Copy 3 of the CCF.

(2) Report directly to the DER and the employee that both tests must be canceled.

(3) Using a format that includes the items in Appendix E, inform ODAPC of the failure to reconfirm.

(c) *Failed to Reconfirm: Specimen Adulterated/Substituted.* (1) Check the ''Failed to Reconfirm'' box.

(2) Line through the accompanying phrase, ''Both tests canceled.''

(3) Enter (as appropriate) ''Adulterated'' or ''Substituted,'' and ''Refusal to test'' on the ''Remarks'' line in Step 8 on Copy 3 of the CCF.

(4) Report directly to the DER and the employee that the specimen was adulterated or substituted, either of which constitutes a refusal to test. Therefore, ''refusal to test'' becomes the final, single result for both tests.

(d) *Test Not Performed.* (1) Check the ''Test not performed: Both tests canceled'' box in Step 8 on Copy 3 of the CCF.

(2) Provide the reason for the test not being performed on the ''Remarks'' line.

(3) Report directly to the DER and the employee that both tests must be canceled and the reason for cancellation.

(4) Order an immediate collection of another specimen from the employee under direct observation and inform the DER that no advance notice should be given to the employee of this collection requirement, until immediately before the collection.

(5) Using a format that includes the items in Appendix E of this part, inform ODAPC of the failure to reconfirm.

§ 40.185 Are employees' requests for reanalysis of the specimen from a single specimen collection handled the same way as requests for the test of the split specimen?

(a) Yes. When an employee makes a request for a reanalysis of the specimen from a single specimen collection, all the provisions of this subpart apply just as they do in the case of the request for a test of a split specimen.

(b) Such reanalysis may be conducted in the same laboratory that originally tested the specimen, or may be conducted in another HHS laboratory.

§ 40.187 Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

§ 40.3—definition.
§§ 40.63–40.65—quantity of split specimen.
§ 40.67—directly observed test when split specimen is unavailable.
§§ 40.73–40.75—collection process for split specimens.
§ 40.83—laboratory accessioning of split specimens.
§ 40.95—laboratory reports of unavailability.
§ 40.99—laboratory retention of split specimens.
§ 40.103—blind split specimens.
§ 40.145—MRO notice to employees on tests of split specimen.
§ 40.153—use for other purposes prohibited.
§ 40.157—employer actions.
§§ 40.193–40.205—MRO actions on insufficient or unavailable split specimens.
§ 40.329—MRO provision of information to other employers.

Subpart I—Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to show up for any test within a reasonable time after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a third-party administrator or consortium. (see § 40.61(a));

(2) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations;

(3) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§ 40.67(k) and 40.69(i));

(4) Fail to provide a sufficient amount of urine when directed, unless the physician has determined, through a required medical evaluation, that there was an adequate medical explanation for the failure (see § 40.193(d)(2));

(5) Fail to drink fluids as directed by the collector following a failure to provide a sufficient amount of urine (see § 40.193(b)(2));

(6) Fail to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the physician conducting the evaluation as part of the ''shy bladder'' procedures of this part; or

(7) Fail to cooperate (*e.g.,* leave the test site before the collection process is completed, refuse to empty pockets or boots) with any part of the testing process.

(b) As an employee, you are also considered to have refused to take a drug test if your specimen is found to have been adulterated or substituted.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(d) As a collector or an MRO, or as the physician evaluating a ''shy bladder'' condition, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (or in a separate document which you cause to be attached to the form), and notify the DER.

(e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT testing or consent form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

§ 40.193 What happens when an employee is unable to provide a sufficient amount of urine for a drug test?

(a) If an employee is unable to provide a sufficient amount of urine to permit a valid drug test (*i.e.,* 30 mL of urine for a single specimen collection or 45 mL of urine for a split specimen collection), the following steps must be taken.

(b) As the collector, you must do the following:

(1) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see § 40.65(b) and (c)).

(2) Direct the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a new sufficient amount of urine, whichever occurs first.

(3) If the employee refuses to drink fluids as directed or to provide a new urine specimen, you must discontinue the collection, note the fact in the ''Remarks'' section of the CCF, and immediately notify the DER. This is a refusal to test.

(4) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact in the ''Remarks'' section of the CCF, and immediately notify the DER.

(c) As the DER when the collector informs you that the employee has not provided a sufficient amount of urine (see paragraph (b)(4) of this section), you must direct the employee to obtain, within five working days, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide a sufficient amount of urine. This physician may, but need not, be the MRO. DOT agency regulations may specify a different time period within which this evaluation must take place.

(d) As the examining physician, you must make one of the following determinations, in your reasonable medical judgment:

(1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. In this case, the test is canceled.

(2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. This is a refusal to test.

(e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (*e.g.,* a urinary system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported assertions of ''situational anxiety'' or dehydration.

(f) As the examining physician, after making your determination, you must provide a written statement of your conclusions to the MRO. You must not include in this statement detailed information on the employee's medical condition.

(g) If, as the examining physician in the case of a pre-employment test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient volume of urine for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. Upon receiving such a report, the MRO must follow the requirements of § 40.195.

(h) As the MRO, you must report the examining physician's determination directly to the DER in writing as soon as you receive it.

(i) As the employer, when you receive a report from the MRO indicating that a test is canceled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. The employee remains in the random testing pool.

§ 40.195 What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment drug test because of a permanent or long-term disability?

(a) When it is determined, through the required medical evaluation outlined in § 40.193(d) that an individual has a medical condition that precluded him or her from providing the requisite amount of urine during a pre-employment test event and that the condition is documented as being permanent or long-term, as an MRO:

(1) You must determine if there is clinical evidence that would indicate the individual is an illicit drug user. You will accomplish this by personally conducting a medical examination and through consultation with the employee's physician and/or the physician who conducted the § 40.193(d) medical evaluation.

(2) If unable to personally conduct the medical examination, you must ensure that one is conducted by a licensed physician. This physician must be suitable to the employer.

(b) For purposes of this section, DOT will offer no objection if the MRO or examining physician believes a blood test to be one of the medically-appropriate procedures in determining clinical evidence of drug use.

(c) If the medical examination reveals no clinical evidence of drug use, as the MRO, you will report the result to the employer as a negative test with written notations regarding results of both the § 40.193(d) evaluation and the medical examination—one determining that a permanent or long-term medical condition exists making requisite urination impossible, the other determining that no signs and symptoms of drug use exist.

(d) If the medical examination reveals clinical evidence of drug use, as the MRO, you will report the result to the employer as a canceled test with written notations regarding results of both the § 40.193(d) evaluation and the medical examination—one determining that a permanent or long-term medical condition exists making requisite urination impossible, the other determining that signs and symptoms of drug use exist.

(e) For purposes of this section, permanent or long-term medical conditions are those physiologic, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.

(1) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; a severe psychiatric disorder focused on genito-urinary matters.

(2) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (e)(1) of this section.

§ 40.197 What problems will always result in a drug test being canceled?

As the MRO, you must cancel a drug test if any of the following problems occur. These are ''fatal flaws.'' You must inform the DER that the test was canceled and must be treated as if the test never occurred. These problems are:

(a) The specimen ID numbers on the specimen bottle and the CCF do not match;

(b) There is no specimen ID number on the specimen bottle;

(c) The specimen bottle seal is broken or shows evidence of tampering (unless a split specimen can be redesignated, see § 40.83(f)); or

(d) Because of leakage or other causes, there is insufficient amount of urine in the primary or single specimen bottle for analysis and any necessary reanalysis for quality control and, in the case of a single specimen, reconfirmation of results.

§ 40.199 What problems will always result in a drug test being canceled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test if any of the following problems occur. You must inform the DER that the test was canceled and must be treated as if the test never occurred. You must also direct the DER to ensure that an additional collection occurs, when required by the appropriate procedures specified in paragraphs (a) through (d) of this section.

(a) The laboratory reports result test as ''Test Not Performed: Specimen Unsuitable.'' You must follow appropriate procedures outlined at § 40.151.

(b) The laboratory reports the result as ''Test Not Performed: Specimen Rejected for Testing.'' You must follow appropriate procedures outlined at § 40.155.

(c) The laboratory's test of the primary specimen is positive and the split specimen is reported by the laboratory as either ''Failure to Reconfirm: Drug/Drug Metabolite Not Detected'' or ''Test Not Performed.'' You must follow appropriate procedures outlined at § 40.183(b) and (d).

(d) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine (see § 40.193(d)(1)).

§ 40.201 What problems will result in the drug test being canceled unless they are corrected?

As an MRO, you must cancel a drug test if any of the following problems occur, unless they are corrected. These are ''correctable flaws.'' If the problems are not corrected, you must inform the DER that the test was canceled and must be treated as if the test never occurred.

(a) The collector's signature is omitted on the certification statement on the CCF (see § 40.75(a)(2)).

(b) The chain of custody block on the CCF is incomplete. (To be complete, the block must include, as a minimum, two signed entries by the collector, both dated, and a shipping/storage entry (see § 40.75(a)(3)and (4)).

(c) The employee's signature is omitted from the certification statement, unless the employee's refusal to sign is noted in the ''Remarks'' section of the CCF (see § 40.75(a)(1)).

(d) The employee's social security number or ID number is omitted from the CCF, or is incorrect, unless the employee's refusal to provide the information is noted in the ''Remarks'' section of the CCF.

(e) The certifying scientist's signature is omitted on the laboratory copy of the CCF for a positive test result.

(f) The collector uses a non-DOT form for the test, provided that the testing process is conducted in a HHS-certified laboratory in accordance with DOT screening and confirmation test criteria (see §§ 40.45 and 40.47).

§ 40.203 How are drug test problems corrected?

(a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.

(1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (*e.g.,* a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.

(2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.

(b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that may be corrected (see § 40.201), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not canceled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply, in writing, the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation in the ''Remarks'' section of the CCF that the employee refused to sign the certification. You would, when the problem is called to your attention, supply a written statement that the employee refused to sign the certification, and you would certify, in writing, that your statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT test and does not contain information prohibited in DOT tests. You must also provide a written statement that the incorrect form was used inadvertently or out of

necessity, as the only means of conducting a test, in circumstances beyond your control and the steps you have taken to prevent future use of non-DOT forms for DOT tests. For this flaw to have been corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested using the testing protocol in this part.

(3) The written documentation of a correction must be maintained with the CCF.

§ 40.205 What is the effect of a canceled drug test?

(a) A canceled drug test is neither positive nor negative.

(1) As an employer, you must not attach to a canceled test the consequences of a positive test (*e.g.,* removal from a safety-sensitive position).

(2) As an employer, you must not use a canceled test for the purposes of a negative test (*e.g.,* in the case of a pre-employment, a return-to-duty, or a follow-up test, to authorize the employee to perform safety-sensitive functions).

(b) A canceled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

§ 40.207 What is the effect of procedural problems that are not sufficient to cancel a drug test?

(a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be canceled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test canceled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. For example, it is inconsistent with these regulations to cancel a test based on a minor administrative mistake (*e.g.,* the omission of the employee's middle initial) or an error that does not affect employee protections under this part (*e.g.,* the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee).

(c) As an employer, these errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations.

Subpart J—Alcohol Testing Personnel

§ 40.211 Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

(b) An STT or a BAT must be trained to proficiency in correctly carrying out the alcohol testing requirements of this part.

(c) An STT can only conduct alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.

(d) As the direct supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and you are permitted to do so under DOT agency regulations.

§ 40.213 What requirements must STTs and BATs meet?

(a) To be an STT, you must do the following:

(1) Be trained to proficiency on the alcohol testing procedures of this part and in the operation of the particular alcohol screening device(s) (ASD) you are using by an instructor(s) sufficiently knowledgeable in the DOT Model Course and in the use of the ASD(s) that you will be using to be able to evaluate STT performance. (The DOT Model Course is available at U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.)

(i) The training must be provided using the DOT Model Course for STTs or a course of instruction equivalent to it, as determined by ODAPC. On request, ODAPC will review STT instruction courses for equivalency.

(ii) The course of instruction must provide written documentation by the instructor that you have demonstrated proficiency on the specific ASD(s) you will use.

(iii) The demonstration of proficiency must be done in front of the instructor, in order that he or she can accurately determine if you are qualified to be an STT.

(iv) The instruction must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(2) Be able to discern changes, contrasts, or readings correctly if you are using an ASD that indicates readings by changes or contrasts, or other readings in color.

(3) Be retrained to proficiency if you have made a mistake in the testing process that has caused a test to be canceled.

(i) This retraining must be provided and your proficiency documented in writing by a person sufficiently knowledgeable in the applicable alcohol testing procedures of this part to be able to evaluate STT performance.

(ii) The instruction need only be in the general area of your deficiency that caused the test to be canceled.

(iii) As part of the retraining, you will have to demonstrate your proficiency in alcohol testing under this part by completing three consecutive error-free trial tests before you conduct another DOT alcohol test.

(iv) The person providing the instruction will monitor, evaluate, and attest whether or not the trial tests are ''error-free.''

(b) To be a BAT, you must do the following:

(1) Be trained to proficiency on the alcohol testing procedures of this part and in the operation of the particular evidential breath testing device(s) (EBTs) you are using, by an instructor(s) sufficiently knowledgeable in the DOT Model Course and in the use of the EBT(s) that you will be using to be able to evaluate BAT performance.

(i) The training must be provided using the DOT Model Course for BATs or a course of instruction equivalent to it, as determined by ODAPC. On request, ODAPC will review BAT instruction course for equivalency.

(ii) The course of instruction must provide written documentation by the instructor that you have demonstrated proficiency on the specific EBT(s) you will use.

(iii) The demonstration of proficiency must be done in front of the instructor, in order that he or she can accurately determine if you are qualified to be a BAT.

(iv) The instruction must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(2) Be retrained to proficiency if you have made a mistake in the testing process that has caused a test to be canceled.

(i) This retraining must be provided and your proficiency documented in writing by a person sufficiently

knowledgeable in the applicable alcohol testing procedures of this part to be able to evaluate BAT performance.

(ii) The instruction need only be in the general area of your deficiency that caused the test to be canceled.

(iii) As part of the retraining, you will have to demonstrate your proficiency in alcohol testing under this part by completing three consecutive error-free trial tests before you conduct another DOT alcohol test.

(iv) The person providing the instruction will monitor, evaluate, and attest whether or not the trial test collections are ''error-free.''

(c) Anyone meeting the requirements of § 40.213 to be a BAT may act as an STT, provided that the individual has demonstrated proficiency in the operation of the ASD that he or she is using.

(d) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

(e) As an STT or BAT, you must receive additional training, as needed, to ensure proficiency on new or additional devices or changes in technology that you will use.

(f) As an STT or BAT, you must read the alcohol testing procedures in this part and the current DOT Model Course, as applicable, and attest in writing to your understanding of them. You will have to demonstrate your proficiency in alcohol testing of this part by completing three consecutive error-free trial tests in front of a person sufficiently knowledgeable in the applicable alcohol testing procedures of this part to be able to evaluate STT or BAT performance. That person will monitor, evaluate, and attest whether or not the trial tests are ''error-free.'' You must complete the requirements of this paragraph by [date one year from the effective date of the final regulation], or two years from the date you became an STT or BAT, whichever is later, and once every two years, thereafter.

(g) As an STT or BAT, you must maintain all documentation of training/retraining as long as you serve as an STT and/or BAT.

§ 40.215 What requirements must organizations employing STTs and/or BATs meet?

This section becomes effective [date one year from the effective date of the final regulation].

(a) As an organization employing the STT and/or BAT (*e.g.,* a transportation employer, third-party administrator, occupational health clinic), you must maintain in your files documentation, signed by the person providing the training or retraining, that the STT and/or BAT has demonstrated proficiency as required by this subpart.

(b) You must retain this documentation as long as the person performs STT and/or BAT functions for the organization and for two years after the person ceases to perform these functions for the organization.

(c) You must provide to the STTs and BATs the name and telephone number of the appropriate DER to contact about any problems or issues that may arise during the testing process.

§ 40.217 Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

§ 40.1—application of rule to STTs and BATs.
§ 40.3—definitions.
§ 40.223—responsibility for supervising employees being tested.
§§ 40.225–40.227—use of the alcohol testing form.
§§ 40.241–40.243—screening test procedures.
§ 40.243—use of ASDs.
§ § 40.251–40.255—confirmation test procedures.
§ 40.261—refusals to test.
§§ 40.263–40.265—insufficient saliva or breath.
§ 40.267—problems requiring cancellation of tests.
§§ 40.267–40.271—correcting problems in tests.

Subpart K—Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

§ 40.221 Where does an alcohol test take place?

(a) A DOT alcohol test is required to take place at an alcohol testing site meeting the requirements of this section.

(b) If you are operating an alcohol testing site, you must make sure that it meets the security requirements of § 40.223.

(c) If you are operating an alcohol testing site, you must make sure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(d) If you are operating an alcohol testing site, you must make sure that it has all needed personnel, materials, equipment, facilities, and supervision to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

(e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) of this section is not readily available, this regulation allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

(f) An alcohol testing site can be in a medical facility, a mobile facility (*e.g.,* a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.223 What steps must be taken to protect the security of alcohol testing sites?

(a) If you are operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing location.

(1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol site workers, DERs, employee representatives authorized by the employer (*e.g.,* on the basis of employer policy or labor-management agreement), and DOT agency representatives.

(2) You must make sure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.

(3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.

(b) If you are operating an alcohol testing site, you must make sure that when an EBT is not being used for testing, you store it in a secure place.

(c) If you are operating an alcohol testing site, you must make sure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.

(d) As a BAT or STT, to avoid distraction that could compromise security, you may have only one employee under your direct supervision at any time.

(1) When an EBT screening test on an employee indicates a result at the 0.02 concentration or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a screening test on another employee before completing the confirmation test on the first employee.

(2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.

(3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress.

§ 40.225 What form is used for an alcohol test?

(a) The DOT Breath Alcohol Testing Form (BATF must be used for every DOT alcohol test. The BATF must be a three-part carbonless manifold form. (The BATF is available at U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.)

(b) As an employer in the DOT alcohol testing program, you may not modify or revise the BATF except as follows:

(1) You may include other information needed for billing or other purposes necessary to the collection process.

(2) You may use a BATF directly generated by an EBT which omits the space for affixing a separate printed result to the BATF, provided the EBT prints the result directly on the BATF.

(3) You may use a BATF that has the employer's name, address, and telephone number preprinted.

(4) Instead of printing the entire pages of the BATF in the colors specified by DOT, you may use white pages with clearly discernible borders in the specified color for each page.

(5) As a BAT or STT, you may add, in the ''Remarks'' section of the BATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use a BATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer outside the United States, you may use an equivalent foreign-language version of the BATF approved by ODAPC (e.g., in French for use in Canada or Spanish for use in Mexico).

§ 40.227 May employers use the BATF for non-DOT tests, and vice-versa?

(a) No. As an employer, you are prohibited from using the BATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.

(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the BATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT stating the reason why the BATF was not used for the DOT test.

§ 40.229 What devices are used to conduct alcohol screening tests?

EBTs and ASDs on the National Highway Traffic Safety Administration's (NHTSA) conforming products lists (CPL) for evidential and non-evidential devices are the only devices you are allowed to use to conduct alcohol screening tests under this part.

§ 40.231 What devices are used to conduct alcohol confirmation tests?

(a) EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.

(b) To conduct a confirmation test, you must use an EBT that has the following capabilities:

(1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;

(2) Assigns a unique, sequential number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;

(3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;

(4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;

(5) Tests an air blank; and

(6) Performs an external calibration check.

§ 40.233 What are the requirements for proper use and care of EBTs?

(a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before NHTSA places the EBT on the CPL.

(1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).

(2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.

(b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP. As an employer, you must follow these instructions, including performance of external calibration checks at the intervals the instructions specify.

(c) As an employer conducting external calibration checks, you must use calibration devices listed on NHTSA's CPL for ''Calibrating Units for Breath Alcohol Tests.''

(d) If an EBT fails an external check of calibration, as an employer you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

(e) As an employer, you must maintain records of the external calibration checks of EBTs as provided in § 40.335(a)(v).

(f) As an employer, you must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

§ 40.235 What are the requirements for proper use and care of ASDs?

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA places the ASD on the CPL. Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include, with each ASD, provided to an employer, instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, the time within which the device must be read, and the manner in which the reading is made.

(c) As the employer, you must follow the QAP instructions.

(d) As an employer, you are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.

Subpart L—Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

(a) This section lists the procedures used to begin any alcohol screening test, no matter whether an ASD or EBT is being used.

(b) As the BAT you will take the following steps:

(1) If an employee does not show up at the testing site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee is a ''no show.''

(2) Make sure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.

(i) If the employee is also going to provide a urine specimen, you must complete the alcohol test before the urine collection process begins.

(ii) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

(3) Require the employee to provide positive identification. You must see a photo ID issued by the employer or a Federal, state, or local government agency for this purpose. You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(4) If the employee asks, provide identification to the employee. Your identification must include your name, your employer's name, address, and telephone number but does not have to include your picture, address, or telephone number.

(5) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the BATF.

(6) Complete Step 1 of the BATF.

(7) Direct the employee to complete Step 2 on the BATF and sign the certification.

(i) If the employee refuses to sign this certification, you must document this refusal in the remarks section and immediately notify the DER.

(ii) The employer must treat the event described in paragraph (b)(7)(i) of this section as a refusal to test on the part of the employee.

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

(a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.

(b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) Instruct the employee to blow steadily, and forcefully, into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(d) Show the employee the displayed test result.

(e) If the device is one that prints the test number, testing device name and serial number, time and result directly onto the BATF, you must check to ensure that the information has been printed correctly onto the BATF.

(f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the BATF, you must affix the printout of the information to the designated space on the back of the BATF with tamper-evident tape.

(g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the BATF.

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD?

As the STT, you must take the following steps:

(a) Check the expiration date on the device and show it to the employee. You may not use the device after its expiration date.

(b) Open an individually wrapped or sealed package containing the device in the presence of the employee.

(c) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.

(d) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (g) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(e) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(f)(1) If you were unable to successfully (e.g., the device breaks, you drop the device on the floor) follow the procedures of paragraphs (c) through (e) of this section, you must discard the device and conduct a new test using a new device.

(2) The new device you use must be one that has been under your control or that of the employer before the test.

(3) You must note in the ''Remarks'' section of the BATF the reason for the new test. (Note: You may continue using the same BATF with which you began the test.)

(4) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.

(5) If you are unable to successfully follow the procedures of paragraphs (c) through (e) of this section on the new test, you must end the collection and put an explanation in the ''Remarks'' section of the BATF.

(6) You must then direct the employee to take a new test, using an EBT for the screening test.

(g) If you are able to successfully follow the procedures of paragraphs (c) through (e) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (f) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(h) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the BATF.

(i) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

§ 40.247 What happens next after the alcohol screening test result?

After the ASD or EBT has displayed or printed a result on an alcohol screening test, you must, as the STT or BAT, take the following additional steps:

(a) In the case of a screening test using an ASD, you must write in the ''Remarks'' section of the BATF whether you used a saliva device or a non-evidential breath device.

(b) If the test result is an alcohol concentration of less than 0.02, you must do the following:

(1) Sign and date Step 3 of the BATF;

(2) Instruct the employee to sign and date Step 4 of the BATF. If the employee does not do so, you must note this in the ''Remarks'' section of the BATF. You must not treat the employee's failure to sign Step 4 as a refusal to test; and

(3) Transmit the result directly to the DER in a confidential manner, as provided in § 40.255.

(c) If the test result is an alcohol concentration of 0.02 or higher, you must do the following:

(1) Direct the employee to take a confirmation test and conduct the test using procedures beginning at § 40.251; or

(2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the BATF, and give the employee Copy 2 of the BATF; and

(3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:

(i) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

(ii) Tell the employee the reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;

(iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;

(v) Note in the remarks section of the BATF that the waiting period instructions were provided;

(vi) Advise the employee not to drive, operate heavy equipment, or perform safety-sensitive functions, and show the employee the warning to this effect in Step 4 of the BATF;

(vii) Instruct the employee to sign and date Step 4 of the BATF. If the employee does not do so, you must note this in the ''Remarks'' section of the BATF. You must not treat the employee's failure to sign Step 4 as a refusal to test;

(viii) Instruct the employee to carry a copy of the BATF to the BAT who will perform the confirmation test; and

(ix) Make sure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site.

(d) If the screening test is invalid, you must tell the employee the test is canceled and note the problem in the ''Remarks'' section of the BATF. If practicable, conduct a re-test (see § 40.271).

Subpart M—Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:

(1) You must ensure that the waiting period lasts at least 15 minutes, but not more than 30 minutes, starting with the completion of the screening test.

(i) If the confirmation test is taking place at a different location from the screening test (see § 40.247(c)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.

(ii) If you cannot verify, through review of the BATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.

(2) Concerning the waiting period, you must tell the employee:

(i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

(ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) That following the instructions concerning the waiting period is to the employee's benefit; and

(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

(3) If you become aware that the employee has not followed the instructions, you must note this in the ''Remarks'' section of the BATF.

(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new BATF. You must note in the ''Remarks'' section of the BATF that a different BAT or STT conducted the screening test.

(c) Complete Step 1 of the BATF.

(1) Direct the employee to complete Step 2 on the BATF and sign the certification.

(2) If the employee refuses to sign this certification, you must document this refusal in the remarks section and immediately notify the DER. This is considered a refusal to test.

(d) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in § 40.253, not another screening test.

(1) You must note in the ''Remarks'' section of the BATF the time that elapsed between the two events and the reason why the confirmation test could not begin within 30 minutes of the screening test.

(2) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but may constitute a regulation violation subject to DOT agency sanction.

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

(a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.

(1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.

(2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.

(3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.

(4) You must proceed with the test of the employee using another EBT, if one is available.

(b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) You must make sure that you and the employee read the sequential test number displayed on the EBT.

(d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(e) You must show the employee the result displayed on the EBT.

(f) You must show the employee the result and sequential test number that the EBT prints out either directly onto the BATF or onto a separate printout.

(g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the back of the BATF, using tamper-evident tape.

§ 40.255 What happens next after the alcohol confirmation test result?

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:

(1) Sign and date Step 3 of the BATF.

(2) Direct the employee to sign and date Step 4 of the BATF. If the employee does not do so, you must note this in the ''Remarks'' section of the BATF. You must not treat the employee's failure to sign Step 4 as a refusal to test.

(3) If the test is invalid, tell the employee the test is canceled and note the problem in the ''Remarks'' section of the BATF. If practicable, conduct a re-test. (see § 40.271).

(4) Transmit the result directly to the DER in a confidential and immediate manner.

(i) You may transmit the results in writing (using Copy 1 of the BATF), in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure facsimile machine) that ensures the result is immediately received by the DER.

(ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the BATF.

(b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:

(1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.

(2) You must store all test result information in a way that protects confidentiality (as outlined in subpart P of this part).

§ 40.257 When BATs report test results of 0.02 or greater to employers, what is an employer to do?

(a) As an employer who receives a test result of 0.04 or greater from the BAT, you must immediately remove the employee involved from performing safety sensitive functions. You must take this action upon receiving the initial notification from the BAT. Do not wait to receive a written report.

(b) As an employer who receives a test result of 0.02 through 0.039 from the BAT, you must immediately remove the employee involved from performing safety sensitive functions under the conditions stipulated by the appropriate DOT agency regulation. You must take this action upon receiving the initial notification from the BAT. Do not wait to receive a written report.

Subpart N—Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are its consequences?

(a) As an employee, you are considered to have refused to take an alcohol test if you:

(1) Fail to show up for any test within a reasonable time after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a third-party administrator or consortium. (see § 40.241(b)(1));

(2) Fail to provide a saliva or breath specimen, as applicable, for any test required by this part or DOT agency regulations;

(3) Refuse to sign the certification in Step 2 of the BATF (see § 40.241(b)(7));

(4) Fail to provide a sufficient breath specimen, unless the physician has determined, through a required medical evaluation, that there is an adequate medical explanation for the failure (see § 40.265(c));

(5) Fail to undergo an additional medical examination, as directed by the physician conducting the evaluation as part of the insufficient breath procedures outlined at § 40.265(c); or

(6) Fail to cooperate with any part of the testing process.

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(c) As a BAT or an STT, when an employee refuses to take an alcohol test, you must terminate the portion of the testing process in which you are involved, document the refusal on the BATF, and immediately notify the DER by any means (e.g., telephone or secure facsimile machine) that ensures the refusal notification is immediately received by the DER.

§ 40.263 What happens when an employee is unable to provide an adequate amount of saliva for an alcohol screening test?

(a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (*e.g.,* the employee does not provide sufficient saliva to activate the device).

(1) You must conduct a new screening test using a new screening device.

(2) If the employee refuses to complete the new test, you must discontinue testing, note the fact in the ''Remarks'' section of the BATF, and immediately notify the DER.

(3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact in the ''Remarks'' section of the BATF and immediately notify the DER.

(b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

(a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.

(b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath.

(1) If the employee refuses to make the attempt, you must discontinue the test, note the fact in the ''Remarks'' section of the BATF, and immediately notify the DER.

(2) If the employee again attempts and fails to provide a sufficient amount of breath, you must note the fact in the ''Remarks'' section of the BATF and immediately notify the DER.

(3) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.

(4) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.

(c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath (see paragraph (b)(2) of this section), you must direct the employee to obtain, within five working days, an evaluation from a licensed physician who is acceptable to you concerning the employee's medical ability to provide a sufficient amount of breath.

(1) You are required to provide the physician who will conduct the evaluation with the following information and instruction:

(i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;

(iii) That the physician must provide you with a written statement of his or her conclusions; and

(iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

(A) A medical condition has, or with a high degree of probability could have,

precluded the employee from providing a sufficient amount of breath. The physician must not include in the written statement detailed information on the employee's medical condition. In this case, the test is canceled.

(B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.

(C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported assertions of ''situational anxiety'' or hyperventilation.

(2) Upon receipt of the report from the examining physician, you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

§ 40.267 What problems always cause an alcohol test to be canceled?

As an employer, a BAT, or an STT, you must always cancel an alcohol test if any of the following problems occur. These are ''fatal flaws'' that always cause an alcohol test to be canceled and cannot be corrected:

(a) In the case of a screening test conducted on a saliva ASD:

(1) The STT reads the result either sooner than or later than the time allotted by the manufacturer (see § 40.245(h));

(2) The device does not activate (see § 40.245(e), (f), and(g)); or

(3) The device is used for a test after the expiration date printed on its package (see § 40.245(a)).

(b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c)).

(c) In the case of a confirmation test:

(1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see § 40.251(a)(1));

(2) The BAT does not conduct an air blank before the confirmation test (see § 40.253(a));

(3) There is not a 0.00 result on the air blank conducted before the confirmation test (see § 40.253(a)(1) and(2));

(4) The EBT does not print the result (see § 40.253(f)); or

(5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is canceled (see § 40.233(a)(1) and (d)).

§ 40.269 What problems cause an alcohol test to be canceled unless they are corrected?

You must treat an alcohol test as canceled if any of the following problems occur, unless they are corrected. These are ''correctable flaws.''

(a) The BAT or STT does not sign the BATF (see §§ 40.247(c)(2) and 40.255(a)(1)).

(b) The BAT or STT fails to note in the remarks section of the BATF that the employee has failed or refused to sign the BATF after the result is obtained (see §§ 40.247(b)(2) and 40.255(a)(2)).

(c) In the case of a screening test using an ASD, the BAT or STT fails to note in the remarks section of the BATF, whether the test was conducted using a saliva or non-evidential breath ASD (see § 40.247(a)).

(d) The BAT or STT uses a non-DOT form for the test (see § 40.225(a)).

§ 40.271 How are alcohol testing problems corrected?

(a) As a BAT or STT, you are responsible for completing successfully an alcohol test for each employee.

(1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be canceled (see § 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.

(2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new BATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT.

(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a ''correctable flaw'' (see § 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not canceled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply, in writing, the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation in the ''Remarks'' section of the BATF that the employee refused to sign the certification. You would, when the problem is called to your attention, supply a written statement that the employee refused to sign the certification, and you would certify, in writing, that your statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT. You must also provide a written statement that the incorrect form was used either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the BATF), and the steps you have taken to prevent future use of non-DOT forms for DOT tests.

§ 40.273 What is the effect of a canceled alcohol test?

(a) A canceled alcohol test is neither positive nor negative.

(1) As an employer, you must not attach to a canceled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).

(2) As an employer, you must not use a canceled test for the purposes of a test result that is below 0.02 (*e.g.,* in the case of a pre-employment, return-to-duty, or follow-up test to authorize the employee to perform safety-sensitive functions).

(b) A canceled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

(a) As an STT, BAT, employer or other service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not ''fatal flaws'' or ''correctable flaws'' listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test canceled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with these regulations to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial,) or an error that does not affect employee protections under this part.

(c) As an employer, these errors, even though not sufficient to cancel an

alcohol test result, may subject you to enforcement action under DOT agency regulations.

§ 40.277 Are alcohol tests other than saliva or breath for screening and breath for confirmation permitted under these regulations?

No. Other types of alcohol tests (i.e., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests are permitted.

Subpart O—Return-to-duty Process And Role of Substance Abuse Professionals (SAPs)

§ 40.281 Who is qualified to act as a SAP?

You are qualified to act as a SAP in DOT drug and alcohol testing programs if you meet each of the following criteria:

(a) You have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders, and:

(1) You are a licensed physician; or

(2) You are a licensed or certified social worker; or

(3) You are a licensed or certified psychologist; or

(4) You are a licensed or certified employee assistance professional; or

(5) You are a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse.

(b) You have a working knowledge of this part, the current ''Substance Abuse Professional Procedures Guidelines'' and the DOT agency regulations applicable to the employers for which you evaluate employees. In addition, you are cognizant of the SAP function as it relates to employer interests in safety-sensitive duties. (The ''Substance Abuse Professional Procedures Guidelines'' is available at ODAPC, Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590.)

(c) You participate in and document training (e.g., a course) at least once every two years that relates directly to the SAP responsibilities of the DOT program, or self-certify that you have re-reviewed and understand this part and applicable DOT agency regulations. You must maintain these records for two years.

(d) If you were a SAP prior to [effective date of the final regulation], you must meet the requirements of paragraph (c) of this section by [date six months from the effective date of the final regulation]. If you become a SAP after [effecitve date of the final regulation], you must meet the requirements of paragraph (c) of this section prior to acting as a SAP.

(e) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be included in paragraph (a)(5) of this section, you may submit a written petition to DOT requesting a review of your petition for inclusion.

(1) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation as a prerequisite for having the DOT review your petition.

(2) You must meet the minimum requirements at Appendix F of this part as a prerequisite for having the DOT review your petition.

(3) If you are a certification organization with a petition already submitted for DOT review, you must obtain NCCA accreditation before the review can continue.

(4) If you were a certification organization listed in paragraph (a)(5) of this section prior to [effective date of the final regulation], you are not required by DOT to have NCCA accreditation.

§ 40.283 When is a SAP evaluation required?

(a) When an employee has violated DOT drug and alcohol regulations, the employee cannot again perform any DOT safety-sensitive duties until and unless he or she completes the SAP evaluation, referral, and treatment process set forth in this subpart and in applicable DOT agency regulations. (In some cases, DOT agency regulations may prohibit your return to work in safety-sensitive functions.) The first step in this process is to be evaluated by a SAP.

(b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test, or any violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

§ 40.285 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

As an employer, you must provide to each employee who engages in a DOT drug and alcohol regulation violation, a listing of SAPs readily available to the employee, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list.

§ 40.287 Are employers required to provide SAP and treatment services to employees?

(a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

(b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, then before the employee again performs that duty, you must first ensure that the employee receives an evaluation by a SAP suitable to you and that the employee successfully complies with the SAP's evaluation recommendations.

(c) As an employer, you must ensure that the selected SAP is qualified to do the job, and is aware of the SAP role and function as it relates to your interests in safety sensitive duties.

(d) You must, as an employer, use as a SAP only someone who is knowledgeable about this part, the DOT SAP guidelines, and the appropriate DOT agency regulation under which you conduct your drug and alcohol program.

(e) SAP and treatment payment matters are left for employers and employees to decide and may be governed by existing management-labor agreements and insurance coverage.

§ 40.289 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated the DOT drug and alcohol regulations?

As a SAP, you are charged with:

(a) Making a face-to-face clinical assessment and evaluation to determine what assistance, if any, is needed by the employee to resolve problems associated with alcohol and/or drug use.

(b) Referring the employee to an appropriate education and/or treatment program(s) if assistance is needed.

(c) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations (if assistance was needed).

(d) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee.

§ 40.291 Can employees who are referred for SAP evaluations be required to waive liability with regard to negligence or malpractice on the part of the SAP?

(a) As a SAP, you must not ask or require an employee or employer to waive liability with regard to negligence and/or malpractice related to the SAP

evaluation, referral, treatment, and follow-up evaluation processes, nor indemnify any person or group for the negligence of others in the SAP process.

(b) As a service agent or service agent representative, you must not ask or require an employee or employer to sign any form, statement, or authorization with regard to waiving SAP liability.

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, when an employee comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

(a) Provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol and/or drug use.

(b) If you find the employee is in need of assistance as a result of your evaluation, recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.

(1) Appropriate education modalities may include, but are not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and *bona fide* drug and alcohol education courses.

(2) Appropriate treatment modalities may include, but are not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.

(3) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).

(c) If you find the employee needs no assistance as a result of your evaluation, you must follow the instructions for follow-up testing at § 40.307(b), and provide a written report (see § 40.311(d)) directly to the DER. You have no additional responsibilities with regard to §§ 40.301, 40.303, and 40.311(c) and (e).

§ 40.295 Can employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

(a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP suitable to the employer, you cannot seek a second SAP's evaluation in order to obtain another recommendation.

(b) As an employer, you cannot seek a second SAP's evaluation if the employee has already been evaluated by a SAP suitable to you.

§ 40.297 Does anyone have the authority to change a SAP's initial assessment recommending assistance?

No one (e.g., an employer, employee, a managed-care coordinator, or any service agent or service agent network) has the authority to change, append, or modify the SAP's evaluation recommendation for assistance. This is most important in cases where a third party wishes to lessen or downgrade a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation. In situations where the third party wishes a more stringent recommendation, the same basic principle applies.

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for treatment and education?

(a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into a treatment and/or education program.

(b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive remuneration or to a person or organization in which you have a financial interest. You are precluded from making referrals to entities with which you are financially associated.

(c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:

(1) A public agency (e.g., treatment facility) operated by a state, county, or municipality;

(2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment services (e.g., the employer's contracted treatment provider);

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or

(4) The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only appropriate treatment facility reasonably located within the general commuting area).

(d) As a SAP, you must maintain a signed statement that you will not make treatment referrals covered under this DOT program to yourself or to persons and entities with which you are financially associated. The statement will remain in effect and be maintained until its conditions change, at which time you will so notify the employer of the change. This signed statement will be made available for review by employers.

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

(a) As a SAP, when you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.

(1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.

(2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.

(b) As the SAP making the follow-up evaluation determination, you must:

(1) Confer with the appropriate education or treatment program professionals where the employee was referred;

(2) Conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations; and

(3) Provide a written report directly to the DER highlighting your clinical determination whether the employee has demonstrated successful compliance with your initial evaluation recommendation (see § 40.311(e)).

(c) You may determine that an employee has successfully demonstrated compliance even though the individual has not completed the full regimen of treatment you recommended or needs additional treatment or continuing care. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a ''successful completion'' determination even though you conclude that the employee has not completed the out-patient counseling you recommended or should continue in an aftercare program.

(d) As a SAP, if you believe, as a result of the follow-up evaluation, the employee has not demonstrated successful compliance with your initial recommendation, you must postpone the follow-up evaluation pending the employee's further compliance with the education and/or treatment plan.

§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

(a) As a SAP who believes that on-going services are needed to assist an employee to maintain sobriety or abstinence from drug use upon returning to safety-sensitive duties, you must clearly state what services are needed as part of the follow-up evaluation report sent directly to the DER (see § 40.311(e)(10)).

(b) As an employer receiving this determination from the SAP, you must, as part of a return-to-work agreement with the employee, require the employee to continue to participate in recommended on-going services after returning to safety-sensitive duties.

(c) As an employer, you must monitor and document the employee's participation in on-going services after returning to safety-sensitive duties.

§ 40.305 Must an employer return an employee to safety-sensitive functions following a SAP determination that the employee demonstrated successful compliance with the SAP's recommendation?

(a) As an employer, you are not obligated under DOT regulations to return the employee to safety-sensitive duties.

(b) The employee's demonstrating successful compliance with prescribed education and/or treatment as determined by the SAP and subsequently testing negative on the return-to-duty drug and/or alcohol test are not guarantees of continued employment or of return to work in a safety-sensitive position. They are merely preconditions the employee must meet in order to be considered for reinstatement into safety-sensitive duties.

(c) As a SAP, you are not to make a ''fitness for duty'' determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

(a) As the SAP, when you have made a ''successful compliance'' determination regarding the employee during the follow-up evaluation, you must then determine what manner of follow-up testing (as specified in paragraph (c) of this section) is needed when the employee returns to safety-sensitive duties, and present a plan for follow-up testing directly to the DER (see § 40.311(e)(9)).

(b) Under specific DOT agency regulations, you must determine what manner of follow-up testing (as specified in paragraph (c) of this section) is needed following an initial evaluation when you have concluded that the employee needs no assistance and present a plan for follow-up testing directly to the DER (see § 40.311(d)(6)).

(c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you could require that the employee have follow-up tests for both drugs and alcohol.

(d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months following the employee's return to safety-sensitive duties.

(1) You may require a greater number of tests during the first 12-month period (e.g., you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).

(2) You may also require follow-up tests during the 48 months following this first 12-month period.

(3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is up to the employer.

(e) You may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing.

§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.

(b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.

(c) You cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

(d) You cannot count a follow-up test that has been canceled as a completed test. A canceled follow-up test must be recollected.

§ 40.311 Are there any special instructions regarding SAP reports to employers and SAP records?

(a) As the SAP conducting the required evaluations, you must send your written reports in writing directly to the DER and not to a third party or entity for forwarding to the DER.

(b) As an employer, you must ensure that you receive SAP written reports directly from SAPs performing the evaluation and that no third party or entity forwarded those reports to you or changed the SAP's report in any way.

(c) The SAP's written report, following an initial evaluation that determines that *assistance is needed* to address the employee's drug and/or alcohol problems, must be on the SAP's letterhead, signed by the SAP, and must contain the following delineated items:

(1) Employee's name and SSN;

(2) Employer's name and address;

(3) Reason for the assessment;

(4) Date of the assessment;

(5) SAP's education and/or treatment recommendation; and

(6) SAP's telephone number.

(d) The SAP's written report, following an initial evaluation that determines that *no assistance is needed* to address the employee's drug and/or alcohol problems, must be on the SAP's letterhead, signed by the SAP, and must contain the following delineated items:

(1) Employee's name and SSN;

(2) Employer's name and address;

(3) Reason for the assessment;

(4) Date of the assessment;

(5) SAP's reasons for determining that no assistance is needed;

(6) Follow-up testing plan (if required or authorized by the appropriate DOT agency regulation); and

(7) SAP's telephone number.

(e) The SAP's written report concerning the follow-up evaluation that determines the employee has demonstrated *successful compliance,* must be on the SAP's letterhead, signed by the SAP, and must contain the following delineated items:

(1) Employee's name and SSN;

(2) Employer's name and address;

(3) Reason for the initial assessment;

(4) Date of the initial assessment and synopsis of the treatment plan;

(5) Name of practice(s) or service(s) providing the recommended education and/or treatment;

(6) Inclusive dates of employee's program participation;

(7) Clinical characterization of employee's program participation;

(8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;

(9) Follow-up testing plan;

(10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and

(11) SAP's telephone number.

(f) As a SAP, you must provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.

(g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information.

(h) As an employer, you must maintain your reports from SAPs for 5 years.

§ 40.313 Where is other information on SAP functions found in this regulation?

You can find other information on the role and functions of SAPs in the following sections of this part:

§ 40.1—application to SAPs of regulation coverage.
§ 40.3—definition.
§ 40.347—service agent assistance with SAP-required follow-up testing.
§ 40.353—transmission of SAP reports.

Subpart P—Confidentiality and Release of Information

§ 40.321 What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

(a) A ''third party'' is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) ''Specific written consent'' means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. ''Blanket releases,'' in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a consortium, companies to which the employee may apply for employment) are not permitted under this part.

§ 40.323 Can program participants release drug or alcohol test information in connection with legal proceedings?

(a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.

(1) These proceedings include a lawsuit (*e.g.,* a wrongful discharge action), grievance (*e.g.,* an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (*e.g.,* an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test.

(2) In such a proceeding, you may release the information to the decisionmaker in the proceeding (e.g., the court in a lawsuit, the arbitrator in a grievance). You may release the information only with a binding stipulation that the party to whom it is released will not release it to additional parties.

(b) If you are a service agent, you may release information pertaining to an employee's drug or alcohol test without the employee's consent to the employer who directed that the test occur so that the employer can introduce it in such a proceeding or directly to the decision maker in the proceeding.

§ 40.325 May service agents transfer drug or alcohol test information to one another?

(a) As a service agent authorized to maintain drug and/or alcohol test results and you are no longer providing services with respect to an employer, you may transfer that employer's records to your successor without obtaining each employee's consent. For example, if Employer X is replacing Dr. A with Dr. B as its MRO, Dr. A may transfer drug testing records of Employer X's employees to Dr. B without getting the employees' consent.

(b) The service agent must use the provisions of § 40.335 in determining which records to transfer and the time period that must be covered.

(c) Records that are not transferred must be maintained for the employer in accordance with the provisions of section § 40.335.

§ 40.327 When may the MRO release medical information gathered in the verification process?

(a) As the MRO, you must warn an employee who has a confirmed positive test that you may provide medical information the employee gives you in the verification process to other persons specified in this section, without the employee's consent.

(1) You must give this warning to the employee before obtaining any medical information as part of the verification process.

(2) For purposes of this section, medical information includes information on medications or other substances the employee reports using or medical conditions the employee reports having.

(3) The only other persons to whom you may provide such information are the employer, a physician responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a DOT agency, the National Transportation Safety Board in the course of an accident investigation, or another employer who would receive a positive test result under § 40.329.

(b) As the MRO, you may provide medical information to third parties without the employee's consent only if you determine, in your reasonable medical judgment, that:

(1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or

(2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

(c) As the MRO, before informing any third party about any medication the employee is using pursuant to a prescription legally valid under the Controlled Substances Act, you should, if the employee consents, contact the prescribing physician to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk.

§ 40.329 May an MRO provide information about a positive drug test result to another employer?

(a) Except as otherwise provided in this section, as an MRO you must provide the results of a verified drug positive test result only to the employer who required that particular test to be conducted.

(b) If you have personal knowledge that an employee whose drug test result you have verified positive is also employed or is seeking employment in

a safety-sensitive position for another employer subject to a DOT agency's drug testing regulations, you must notify the other employer of the positive drug test result if you meet all of the following conditions:

(1) You also personally are the current MRO, perform DOT-required physical examinations, function as the Aviation Medical Examiner, or function as the Medical Examiner conducting medical qualification physicals in the transportation industry for the other employer;

(2) Your knowledge that the employee works for the other employer was obtained in one of these capacities or through your review of the result of a drug test mandated by a DOT agency regulation;

(3) You have affirmed that the employee is currently employed by the other employer in a safety-sensitive position subject to drug testing under a DOT agency regulation; and

(4) You have informed the employee at the beginning of the verification process that a verified positive test result may be shared with other employers for whom the employee is performing, or is seeking employment to perform, safety-sensitive functions subject to drug testing under a DOT agency regulation.

(c) The only party to whom you are authorized to convey this information is the other employer itself. You must not convey the information to or through a service agent who performs drug testing services for the other employer.

(d) In notifying the other employer, you must follow the same procedures as you follow in notifying any employer of a drug test result. In doing so, you must notify the other employer to immediately remove the employee from performing safety-sensitive functions. You must also inform the other employer if the employee requests a test of a split specimen, cautioning the other employer not to take irrevocable personnel action until the result of the test of the split specimen is known. You must also provide to the other employer the results of the test of the split specimen.

Example to § 40.329: Employer 1 sends in Employee X for a random drug test. You verify the result positive. You also act as the MRO for Employer 2, which is subject to DOT drug testing regulations. In that capacity, you have learned that Employee X also performs DOT safety sensitive functions for Employer 2. You must inform Employer 2 about the positive test result. You do not need to obtain the employee's consent to do so. Employer 2 has the same obligation as Employer 1 after receiving this information. That is, both employers must remove Employee X from the performance of safety-sensitive functions.

§ 40.331 What information must laboratories and other service agents release to employees?

(a) As a service agent you must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.

(b) As a laboratory, you must also provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of any relevant HHS certification, review, or revocation-of-certification (*i.e.,* **Federal Register** Notice listing current laboratories). You may charge no more than the cost of preparation and reproduction for copies of these records.

(c) As a laboratory, you must also provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (*i.e.,* laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.

§ 40.333 To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

(a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from someone who worked for you to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.

(b) Upon request and as required by DOT agency regulations, employers must provide to DOT agencies the following:

(1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations.

(c) Upon request and as required by DOT agency regulations, service agents must provide to DOT agencies the following:

(1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations.

(d) When requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.

(e) As a laboratory you must not release or provide a specimen or an aliquot of a specimen to a requesting party, without first obtaining written consent from a DOT agency. You are permitted to release a specimen or an aliquot of a specimen if you are presented with a court order to do so from a court with proper and legal jurisdiction.

§ 40.335 What records must employers keep?

(a) As an employer, you must keep the following records for the following periods of time:

(1) You must keep the following records for five years:

(i) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;

(ii) Records of employee verified positive drug test results;

(iii) Documentation of refusals to take required alcohol and/or drug tests;

(iv) SAP reports;

(v) Calibration documentation for EBTs;

(vi) Records related to the administration of the alcohol and drug testing programs; and

(vii) All follow-up tests and schedules for follow-up tests.

(2) You must keep records related to the alcohol and drug testing process, records of the inspection and maintenance (but not calibration) of EBTs, for two years.

(3) You must keep records of negative and canceled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

(4) You must keep records related to the education and training of applicable

service agents, supervisors, and employees as long as the individual performs the functions which require the training and for two years after he or she ceases to perform those functions.

(5) You must keep signed statements of any agreements with service agents as long as the organization or individual performs functions under the DOT drug and alcohol testing program and for two years after it ceases doing so.

(b) You do not have to keep records related to a program requirement that does not apply to you (*e.g.*, a maritime employer who does not have a DOT-mandated alcohol testing program need not maintain alcohol testing records).

(c) You must maintain the records in a secure location with controlled access.

(d) A service agent may maintain these records for you. However, you must ensure that you can produce these records, at your principal place of business, in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must make sure that you can provide them within two working days.

Subpart Q—Roles And Responsibilities of Service Agents

§ 40.341 Can an employer use a service agent to meet DOT drug and alcohol testing requirements?

(a) Yes. As an employer, you may use a service agent to perform the tasks needed to comply with DOT agency drug and alcohol testing regulations.

(b) As an employer, you are responsible for ensuring that the service agent you use performs these tasks in accordance with DOT agency regulations.

(c) If a consortium, third-party administrator, or other service agent fails to comply with DOT agency regulations, you as the employer are responsible for the noncompliance. A DOT agency can subject you to sanctions for the noncompliance of a consortium, third-party administrator, or any other service agent who works for you.

§ 40.343 May service agents impose requirements on employers that DOT agency regulations do not authorize?

As a service agent, you must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a consortium or third-party administrator serving employers in the pipeline industry, you may not require employers to have provisions in their plans that RSPA regulations do not require.

§ 40.345 If, as a service agent, you fail to comply with DOT regulations, can employers use your services?

(a) As a service agent, employers are not permitted to use your services if, in providing these services, you fail to comply with DOT drug and alcohol testing requirements.

(b) If you do not comply, you are subject to proceedings under Subpart R of this part that can result in a directive to employers not to use your services.

§ 40.347 What functions can service agents perform with respect to selection for testing?

As a service agent, you may perform the following functions for employers concerning random selection and other selections for testing.

(a) You may operate random testing programs for employers and may assist (*e.g.*, contracting with labs or collectors, conducting collections) employers with other types of testing (*e.g.*, pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).

(b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by individual DOT agency regulations.

(1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.

(2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.

(c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the schedule established by the SAP or MRO. However, you may not randomly select employees from a ''follow-up pool'' for follow-up testing.

§ 40.349 What requirements must a service agent implement concerning the use and confidentiality of information?

As a service agent, the following requirements apply to you with respect to the use and confidentiality of information.

(a) You may receive confidential information about employees (*e.g.*, individual test results) from an employer without the employees' written consent. You must follow the same confidentiality regulations as the employer with respect to the use and release of this information.

(b) You may receive and maintain all records concerning DOT drug and alcohol testing programs, including individual test results, both positive and negative, as well as SAP follow-up summary reports to employers.

(c) Where DOT agency regulations require employers to keep certain information in their own files (*e.g.*, for purposes of review during inspections), employers must do so, but you may also maintain copies of these records at the employer's direction.

(d) You may maintain information needed for operating a drug/alcohol program (*e.g.,* names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.

(e) If you are either conducting or arranging for drug testing, the employer's copy of the CCF may pass through you to provide notice so that you know the employee's specimen has been collected. You must ensure that the document is forwarded immediately to the actual employer.

(f) You must follow all confidentiality and records retention requirements applicable to employers.

(g) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a consortium that has employers X and Y as members. Employee Jones works for X, and has a drug or alcohol test result maintained for X by you. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without obtaining specific, written consent from Jones. Likewise, you may not provide this information to Z, who is not a consortium member, without this consent.

(h) You may not use blanket consent forms authorizing the release of employee testing information.

(i) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.

(j) You must permit DOT agency access to all facilities, files, records, and documents used in complying with DOT agency drug and alcohol testing regulations.

§ 40.351 What principles govern the interaction between MROs and other service agents?

As a service agent, the following principles govern your interaction with MROs:

(a) As a service agent you may provide MRO services to employers, directly or through contract, if you ensure that the provisions of §§ 40.101(a) and 40.125(a) are met.

(b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship in writing (e.g., through a contract) to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.

(c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.

(d) You may not act as an intermediary in the transmission of individual drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO. For example, a practice in which results are transmitted from a laboratory to your computer system, and then assigned to an available MRO, is not permitted.

(e) You may not act as an intermediary in the transmission of negative and verified positive test results from the MRO to the actual employer. That is, the MRO may not send these results to you, with you in turn sending them to the actual employer. However, you may maintain individual test results after they are sent to the DER, and the MRO may transmit such results to you simultaneously with sending them to the DER.

(f) In exception to paragraph (e) of this section, you may receive positive results directly from the MRO, if you are authorized by a DOT agency's regulation to do so.

(g) Like other MROs, an MRO whom your service agent employs or contracts with must personally conduct verification interviews with employees who have tested positive and must personally make the decision concerning whether to verify a test as positive or negative. Your staff cannot perform these functions.

§ 40.353 What other limitations apply to the activities of service agents?

As a service agent, you are subject to the following limitations on your activities in the DOT drug and alcohol testing program.

(a) You may not act as an intermediary in the transmission of individual positive alcohol test results from the BAT to the actual employer. That is, the BAT may not send such results to you, with you in turn sending them to the actual employer. However, you may maintain individual test results after they are sent to the DER, and the BAT may transmit such results to you simultaneously with sending them to the DER.

(b) You may not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.

(c) You cannot make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are non-delegable duties of the actual employer. You may, however, provide advice and information to employers regarding these testing issues and schedule required testing.

(d) You cannot make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.

(e) In exception to paragraph (d) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:

(1) You are authorized by a DOT agency's regulation to do so; and

(2) You schedule a required test for an owner-operator and subsequently find out that he or she failed to show for the test.

(f) It is not your responsibility, but the actual employer's, to make sure that an employee who has tested positive for alcohol or drugs, or otherwise violated the DOT agency regulations, is removed from performance of safety-sensitive duties.

(g) While you must follow the DOT agency regulations, the actual employer remains obligated to DOT for compliance, and your failure to implement any aspect of the program as required in this part and applicable DOT agency regulations make the employer as well as you subject to enforcement action by the Department.

(h) You may not act as ''program manager'' in FAA and RSPA programs, which call for the employer itself to designate an individual within the company to manage the drug and alcohol testing program for the employer.

(i) You must continue to transmit laboratory statistical summaries to each actual employer.

(j) The limitations on SAP referrals (see § 40.299(b)) for education and/or treatment apply where SAPs are part of your organization or its services.

(k) Even if your organization is operated by or affiliated with a laboratory, you must ensure that laboratories receive only the appropriate CCFs. (This is because, under this part, it is not appropriate for laboratories to receive an individual's CCF and the BATF packaged or attached (*e.g.,* stapled) together, since this is inconsistent with the privacy and confidentiality of personally-identified test records.) You can comply with this requirement by, for example, establishing separate addresses for the receipt of CCFs and BATFs, respectively, or establishing procedures to separate alcohol and drug forms that arrive together.

Subpart R—Public Interest Exclusions

§ 40.361 What is the purpose of a public interest exclusion?

(a) The purpose of a public interest exclusion (PIE) is to protect employers from noncompliance with DOT drug and alcohol regulations resulting from the use of a service agent who fails or refuses to provide drug and alcohol testing-related services to DOT-regulated employers consistent with the requirements of this part. A PIE is also intended to protect employees from the consequences of services that do not meet DOT requirements. A PIE is a serious action used only in the public interest and not for the purposes of punishment.

(b) Nothing in this subpart precludes a DOT agency from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

§ 40.363 In what circumstances does the Department issue a public interest exclusion concerning a service agent?

(a) The Department may issue a PIE concerning a service agent if the

Department determines that the service agent has failed or refused to provide drug or alcohol testing services to one or more DOT-regulated employers consistent with the requirements of this part.

(b) The Department also may issue a PIE concerning a service agent who has failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, interviews, compliance and enforcement reviews, or requests for documents and other information.

§ 40.365 Who issues public interest exclusions on behalf of the Department?

The person responsible for issuing PIEs is the ODAPC Director, or her or his designee.

§ 40.367 Who initiates the public interest exclusion process?

(a) If a DOT agency official, an ODAPC official (other than the Director), or an official of the Office of Inspector General learns that a service agent may be failing or refusing to provide drug and alcohol testing-related services to DOT-regulated employers consistent with the requirements of this part, this official (the ''initiating official'') may investigate the matter.

(b) Initiating officials have broad discretion in deciding whether to take action on the basis of information concerning the conduct of a service agent. In exercising their discretion, initiating officials may take into account such factors as the seriousness of the alleged conduct of the service agent and the availability of agency resources to pursue the matter.

§ 40.369 Does a service agent have the opportunity to correct a problem before becoming subject to a public interest exclusion?

(a) If the initiating official determines that there is a reasonable basis for believing that the service agent is failing or refusing to provide drug and alcohol testing-related services to DOT-regulated employers consistent with the requirements of this part, the official issues a written correction notice to the service agent. This notice tells the service agent what changes it must make to ensure that its services to DOT-regulated employers are provided consistent with the requirements of this part.

(b) If the service agent makes and documents the changes set forth in the correction notice to the satisfaction of the initiating official within 60 days of the date the notice is received, the Department will not begin the process leading to a PIE. In this case, the Department sends a notice to the service agent that the matter is concluded.

(c) If the initiating official learns, in a matter concluded through a notice under paragraph (b) of this section, that the service agent has failed to implement satisfactory corrections, the initiating official may begin the process set forth in § 40.371. The initiating official does not issue a second correction notice in this case.

§ 40.371 How does the process leading to a public interest exclusion begin?

(a) If a service agent who receives a correction notice does not make and document the corrections set forth in the notice in a manner satisfactory to the initiating official within 60 days of receiving the notice, the initiating official sends a written notice to the service agent.

(b) The notice will include the following information:

(1) That the Department is considering issuing a PIE concerning the service agent;

(2) The reasons for believing that the service agent is not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part;

(3) The consequences of the PIE that the Department is considering issuing and a proposed interval between the issuance of an exclusion and the first date on which the service agent may apply to end it; and

(4) That the service agent will have the opportunity to contest the issuance of a PIE, as provided in § 40.373.

§ 40.373 How does a service agent contest the issuance of a public interest exclusion?

(a) If, as a service agent, you receive a notice that the Department is considering issuing a PIE concerning you, you have the right to contest the issuance of the exclusion.

(b) Within 30 days of receiving the notice, you may submit a written response containing information and arguments contesting the issuance of a PIE. You submit this material to the Director. If you do not submit a written response contesting the issuance of the PIE within this time, the matter will proceed as an uncontested case.

(c) Within this same 30-day period, you may also request, in writing, an opportunity to meet with the Director or her or his designee, stating what material facts, if any, you believe are in dispute. If you do not submit such a written notice within this time, the matter will proceed as a case in which there are no material facts in dispute. The Director will grant your request for a meeting if she or he determines that there are any material facts in dispute. The meeting may be in person or a teleconference, at the option of the service agent.

(d) This opportunity to meet with the Director is informal. During the meeting, you may appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses the initiating official presents.

(e) A transcribed record of the meeting will be made available to the service agent, at cost, upon the service agent's request.

§ 40.375 How does the Department make decisions in public interest exclusion matters?

(a) The initiating official acts as the proponent of issuing a PIE. The Director acts as a neutral decisionmaker.

(b) The initiating official bears the burden of proof, which is to demonstrate by a preponderance of the evidence that the service agent has failed or refused to perform drug and/or alcohol testing services as required by this part.

(c) In an uncontested case or a case in which there are no material facts in dispute, the Director makes her or his decision on the basis of all the information in the administrative record, including any submission by the service agent.

(d) In a case in which there are material facts in dispute, the Director makes written findings of fact. The Director makes her or his decision on the basis of the facts as found, together with any information and argument submitted by the service agent, and any other information in the administrative record (including any meeting between the Director and the service agent).

(e) The initiating official and the service agent, with the concurrence of the Director or her or his designee, may settle a PIE matter at any time before the issuance of the Director's decision.

(f) For purposes of judicial review under the Administrative Procedure Act, the Director's decision is a final administrative action of the Department.

§ 40.377 How does the Department notify service agents and employers about decisions on public interest exclusions?

(a) The Director provides a notice to the service agent concerning her or his decision on whether to issue a PIE. The notice includes the following elements:

(1) A reference to the notice that initiated the process (see § 40.371);

(2) A statement of the reasons for the decision; and

(3) When the Director issues a PIE, a statement of the first date on which the service agent may apply to end the exclusion.

(b) When the Director issues a PIE, she or he also issues a **Federal Register** notice, the text of which is posted on the Department's Web site. This notice includes the name of the service agent and other persons to which the exclusion applies (see § 40.379), the reason for the PIE, and the first date on which the service agent may apply to end the exclusion. This issuance constitutes notice to DOT-regulated employers that they may not use the service agent's drug or alcohol testing-related services. ODAPC also publishes a list in the **Federal Register** on a quarterly basis of those service agents who are currently the subject of PIEs.

(c) The Director notifies the DOT agencies of her or his decision.

§ 40.379 To whom does a public interest exclusion apply?

(a) A PIE applies to all the divisions and organizational elements of, and types of services provided by, the service agent, unless the Director limits the scope of the exclusion to one or more of those divisions, organizational elements, or types of services.

(b) A PIE may apply to any affiliate of the service agent, if the affiliate is specifically notified and given the opportunity to respond as provided by this subpart.

(c) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with the service agent in the following circumstances:

(1) Conduct forming any part of the basis of PIE occurred in connection with the individual's performance of duties by or on behalf of the service agent; or

(2) The individual knew, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.

§ 40.381 What is the effect of a public interest exclusion?

(a) As an employer, you must not use a service agent that is covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations.

(b) As an employer, you must stop using the services of a service agent concerning whom the Director has issued a PIE no later than 90 days after the Department has published the decision in the **Federal Register** and posted it on its Web site.

(c) This prohibition on using a service agent concerning whom the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations. For example, if the initiating office is the FAA, and the conduct forming the basis of the PIE pertains to the aviation industry, as an employer in another regulated industry (e.g., trucking, railroads, transit), you are also prohibited from using the service agent involved.

(d) The issuance of a PIE does not affect the validity of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the **Federal Register** and posting on the Department's Web site. For example, if the Department published a decision issuing a PIE concerning a service agent on September 1, all tests conducted using the service agent's services before September 1, and through November 30, would be valid for all purposes under DOT drug and alcohol testing regulations, assuming they met all other regulatory requirements.

(e) If you are a service agent concerning whom the Director has issued a PIE, you must, on the request of any employer covered by DOT drug and alcohol testing regulations, immediately transfer all records pertaining to that employer and its employees to the employer or to any service agent the employer designates.

§ 40.383 How long does a public interest exclusion stay in effect?

(a) A PIE remains in effect until the Director ends it.

(b) In each decision issuing a PIE, the Director designates the first date on which a service agent may apply to end its exclusion. This date shall be at least nine months but no more than five years from the date on which the Department publishes the exclusion in the **Federal Register** and posts it on its Web site.

(c) As a service agent concerning whom the Department has issued a PIE, you may apply to the Director at any time after this date, in writing, to end the exclusion. You must include documentation that supports a determination that the reasons for the issuance for the exclusion have been eliminated and all drug or alcohol testing-related services provided to DOT-regulated employers will be consistent with the requirements of this part.

(d) If the Director determines that the reasons for the issuance for the exclusion have been eliminated and all drug or alcohol testing-related services provided to DOT-regulated employers will be consistent with the requirements of this part, the Director issues a notice ending the exclusion.

(e) The Department will publish a notice ending an exclusion in the **Federal Register** and post it on the Department's Web site.

§ 40.385 What is the role of the Inspector General's office?

(a) An official of the DOT Office of Inspector General may act as the initiating official in a PIE proceeding.

(b) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of Office of Inspector General.

(c) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.

(d) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

Appendix A to Part 40—DOT Standards for Urine Collection Kits

The Collection Kit Contents

1. Single-Use Plastic Collection Container

a. Must be large enough to easily catch and hold at least 55 mL urine voided from the body.

b. Must have a graduated volume markings clearly noting levels of 45 mL and above.

c. Must have a temperature strip providing graduated temperature readings 90°–100° F or 32°–38° C, that is affixed or can be affixed at a proper level on the collection container.

d. Must be individually wrapped in a sealed plastic sack or shrink wrapping; or must have a peelable, sealed lid or other tamper-evident system.

2. Plastic Specimen Bottles

a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.

b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles.

c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.

d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with chance that seal overlap would conceal printed information.

e. Must be wrapped (with caps) together in a sealed plastic sack or shrink wrapping; or must be wrapped (with cap) individually in sealed plastic sacks or shrink wrapping; or must have peelable, sealed lid or other easily-visible tamper-evident system.

f. Must be leach-resistant.

3. Leak-resistant Plastic Bag

Must have two sealable compartments or pouches; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.

4. Plastic Bag Seal

a. Must be tamper-evident.

b. Must have pre-printed space for the collector's initials and the date of the collection.

5. Shipping Container

a. Must be a box (e.g., standard courier cardboard box, small cardboard box) designed to adequately protect the specimen bottles from shipment damage in their transport of specimens from collection site to the laboratory.

b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.

c. A shipping container is not necessary if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

Appendix B to Part 40—DOT Drug Testing Semi-annual Laboratory Report

The following items are required on each report:
Reporting Period: (inclusive dates)
Laboratory Identification:
Employer Identification:
C/TPA Identification: (where applicable)

1. Number of specimen results reported: (total number) By test type:
(a) Pre-employment testing: (number)
(b) Post-accident testing: (number)
(c) Random testing: (number)
(d) Reasonable suspicion/cause testing: (number)
(e) Return-to-duty testing: (number)
(f) Follow-up testing: (number)
(g) Type not noted on CCF: (number)

2. Number of specimens reported as Negative: (total number)

3. Number of specimens reported as Test Not Performed: (total number) By reason:
(a) Fatal Flaw/Uncorrected Flaw: (number)
(b) Specimen Unsuitable: (number)
(c) Specimen Rejected for Testing: (number)
(d) Specimen Adulterated: (number)
(e) Specimen Substituted: (number)

4. Number of specimens reported as Positive: (total number) By drug:
(a) Marijuana Metabolite: (number)
(b) Cocaine Metabolite: (number)
(c) Opiates:
(1) Codeine: (number)
(2) Morphine: (number)
(3) 6–AM (number)
(d) Phencyclidine: (number)
(e) Amphetamines: (number)

Appendix C to Part 40—CCF Copies Needed for the MRO Review

I. Negative Laboratory Results

a. To initiate and complete the MRO's administrative review and report the test result to the employer, the MRO needs:

1. The original or a legible facsimile of the original MRO copy of the CCF, or if not available, a legible copy of any copy of the CCF signed by the employee; *and*

2. A legible facsimile of the original laboratory copy of the CCF, or the original laboratory copy of the CCF, or the electronically-transmitted laboratory report.

b. Laboratories sending an electronically-transmitted report must also follow-up by sending a legible facsimile of the original laboratory copy or the original laboratory copy of the CCF. Upon receiving this laboratory copy of the CCF, MROs must match it with the MRO copy.

II. All Other Laboratory Results

a. To initiate the MRO review, the MRO needs:

1. The original or a legible facsimile of the original MRO copy of the CCF; or if not available, a legible copy of any copy of the CCF signed by the employee; *and*

2. A legible facsimile of the original laboratory copy of the CCF, the original laboratory copy of the CCF, or the electronically-transmitted laboratory report.

b. To complete the MRO review and report the result to the employer, the MRO needs:

1. The original or a legible facsimile of the original MRO copy of the CCF; or if not available, a legible copy of any copy of the CCF signed by the employee; *and*

2. A legible facsimile of the original laboratory copy or the original laboratory copy of the CCF.

III. Employee Inability to Provide Requisite Amount of Urine at the Collection Site

To report the result (i.e., refusal to test or canceled test) to the employer, the MRO needs:

1. The original or a legible facsimile of the original MRO copy of the CCF; *and*

2. The examining physician's report documenting whether the employee had a legitimate medical (i.e., physiological or psychological) reason for the inability to provide a complete urine specimen.

IV. Employee Refusals to Test at the Collection Site

To advise the employer, the MRO needs the original or a legible facsimile of the original MRO copy of the CCF that documents the on-site refusal (e.g., employee leaves collection site prior to providing specimen) to test.

Appendix D to Part 40—DOT Drug Testing MRO Reporting Summary

A. Bottle A Lab Report:

	MRO Reporting Action
1. Negative	The MRO reports the negative result to the employer.
2. Negative Dilute	The MRO reports the negative result to the employer and informs the employer that the next time the employee is selected for a drug test the employer may require the specimen to be collected under direct observation.
3. Positive	a. If the MRO verifies the test as positive, the MRO reports the positive result to the employer. b. If the MRO ''downgrades'' the test, the MRO reports the negative result to the employer.
4. Positive Dilute	a. If the MRO verifies the test as positive, the MRO reports the positive result to the employer and informs the employer that the next time the employee is selected for a drug test the employer may require the specimen to be collected under direct observation. b. If the MRO ''downgrades'' the test, the MRO reports the negative result to the employer and informs the employer that the next time the employee is selected for a drug test the employer may require the specimen to be collected under direct observation.
5. Test Not Performed—Fatal Flaw or Uncorrected Flaw.	The MRO reports the result to the employer as canceled and the reason for cancellation. Certain tests—pre-employment, return-to-duty, and follow-up tests—requiring a negative result, must be recollected.
6. Test Not Performed—Specimen Unsuitable.	a. If the employee provides an acceptable explanation and/or a prescription, the MRO reports to the employer that the test is canceled and the reason for cancellation. Certain tests—pre-employment, return-to-duty, and follow-up tests—requiring a negative result, must be recollected. b. If the employee is unable to provide an acceptable explanation and/or a prescription, but denies having adulterated the specimen, the MRO reports to the employer that the test is canceled and the reason for cancellation. The MRO shall also inform the employer that an immediate collection under direct observation of another specimen is required of the employee and that no advanced notice is to be given the employee.[1]

	MRO Reporting Action
7. Test Not Performed—Specimen Rejected for Testing.	a. If the MRO determines that the specimen is rejected for testing due to collector error, the MRO reports the result to the employer as canceled and the reason for cancellation. The MRO shall also inform the employer that an immediate collection of another specimen is required of the employee and that no advanced notice is to be given the employee. This collection is not to be collected under direct observation. b. If the MRO determines that collector error is not the cause of the specimen being rejected for testing, the MRO reports to the employer that the test is canceled and the reason for cancellation. The MRO shall also inform the employer that an immediate collection under direct observation of another specimen is required of the employee and that no advanced notice is to be given the employee.
8. Test Not Performed—Specimen Adulterated/Substituted.	The MRO reports to the employer that the test was either adulterated or substituted and is, therefore, a ''refusal to test.'' [2]
B. Bottle B Lab Report:	
1. Reconfirmed	The MRO reports the reconfirmation to the employer and to the employee.
2. Failure to Reconfirm—Drug/Drug Metabolite Not Detected.	The MRO reports to the employer and to the employee that both tests must be canceled. The MRO also reports the failure to reconfirm to the ODAPC.
3. Failure to Reconfirm—Specimen Adulterated/Substituted.	The MRO reports to the employer and to the employee that the specimen was adulterated or substituted and that this constitutes a ''refusal to test.'' The ''refusal to test'' becomes the final, single result for both tests.
4. Test Not Performed	The MRO reports to the employer and the employee that both tests must be canceled and the reason for cancellation. The MRO shall also inform the employer that an immediate collection under direct observation of another specimen is required of the employee and that no advanced notice is to be given the employee.

[1] For a ''test not performed specimen unsuitable'' lab result, if the employee admits to adulterating or substituting a specimen, the result will be a ''refusal to test.''

[2] The employee cannot have the ''split'' specimen tested following an adulterated or substituted test result.

Appendix E to Part 40—Report Format for Split Specimen Failure to Reconfirm

Fax or mail to: Department of Transportation, Office of Drug and Alcohol Policy and Compliance 400 7th Street, SW., Washington, DC 20590, (fax) 202 366–3897.

1. MRO name, address, phone number, and fax number.
2. Collector name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Laboratory accession number.
6. Primary specimen laboratory name, address, and phone number.
7. Date specimen received.
8. Split specimen laboratory name, address, and phone number.
9. Date split specimen received.
10. Drug present in primary specimen.
11. Reason for failure to reconfirm as reported by the laboratory (e.g., drug not present, specimen unsuitable for testing, split not collected, insufficient volume).
12. Action taken by MRO.

Appendix F to Part 40—SAP Equivalency Requirements for Certification Organizations

1. Experience: Minimum requirements are for three years' full-time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor. The supervision must be provided by a licensed or certified practitioner. Supervised experience is important if the individual is to be considered a professional in the field of alcohol and drug abuse evaluation and counseling.

2. Education: There exists a requirement of 270 contact hours of education and training in alcoholism and/or drug abuse or related training. These hours can take the form of formal education, in-service training, and professional development courses. Part of any professional counselor's development is participation in formal and non-formal education opportunities within the field.

3. Continuing Education: The certified counselor must receive at least 40—60 hours of continuing education units (CEU) during each two year period. These CEUs are important to the counselor's keeping abreast of changes and improvements in the field.

4. Testing: A passing score on a national test is a requirement. The test must accurately measure the application of the knowledge, skills, and abilities possessed by the counselor. The test establishes a national standard that must be met to practice.

5. Testing Validity: The certification examination must be reviewed by an independent authority for validity (examination reliability and relationship to the knowledge, skills, and abilities required by the counseling field). The reliability of the exam is paramount if counselor attributes are to be accurately measured. The examination passing score point must be placed at an appropriate minimal level score as gauged by statistically reliable methodology.

6. Measurable Knowledge Base: The certification process must be based upon measurable knowledge possessed by the applicant and verified through collateral data and testing. That level of knowledge must be of sufficient quantity to ensure a high quality of SAP evaluation and referral services.

7. Measurable Skills Base: The certification process must be based upon measurable skills possessed by the applicant and verified through collateral data and testing. That level of skills must be of sufficient quality to ensure a high quality of SAP evaluation and referral services.

8. Quality Assurance Plan: The certification agency must ensure that a means exists to determine that applicant records are verified as being true by the certification staff. This is an important check to ensure that true information is being accepted by the certifying agency.

9. Code of Ethics: Certified counselors must be pledged to adhering to an ethical standard for practice. It must be understood that code violations could result in de-certification. These standards are vital in maintaining the integrity of practitioners. High ethical standards are required to ensure quality of client care and confidentiality of client information as well as to guard against inappropriate referral practices.

10. Re-certification Program: Certification is not just a one time event. It is a continuing privilege with continuing requirements. Among these are continuing education, continuing state certification, and concomitant adherence to the code of ethics. Re-certification serves as a protector of client interests by removing poor performers from the certified practice.

11. Fifty State Coverage: Certification must be available to qualified counselors in all 50 states and, therefore, the test must be available to qualified applicants in all 50 states. Because many companies are multi-state operators, consistency in SAP evaluation quality and opportunities is paramount. The test need not be given in all 50 states but should be accessible to candidates from all states.

12. National Commission for Certifying Agencies (NCCA) Accreditation: Having NCCA accreditation is a means of demonstrating to the Department of Transportation that your certification has been reviewed by a panel of impartial experts that have determined that your examination(s) has met stringent and appropriate testing standards.

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federal register

Thursday
December 9, 1999

Part III

Department of Education

34 CFR Part 304

Special Education; Personnel Preparation To Improve Services and Results for Children With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 304

RIN 1820–AB46

Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services of Special Education Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations governing specific provisions of the Personnel Preparation Program to Improve Services and Results for Children with Disabilities. The regulations are needed to implement changes to the Individuals with Disabilities Education Act (IDEA or the Act) that were adopted as part of the IDEA Amendments of 1997. Specifically, the regulations establish procedures to implement section 673(h) of IDEA which requires that individuals who receive a scholarship through personnel preparation projects funded under the Act must subsequently provide special education and related services to children with disabilities (or, for leadership personnel, work in areas related to their preparation) for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy their service obligation must repay all or part of the cost of their assistance in accordance with the regulations. The regulations implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations.

DATES: These regulations are effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Renee Bradley, U.S. Department of Education, 600 Independence Avenue, Washington, DC 20202–2641. Telephone: (202) 358–2849. If you use a telecommunications device for the deaf (TDD), you may call at (202) 205–9374.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On July 10, 1998 we published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (63 FR 37466). In the preamble to the NPRM, we discussed on pages 37466 through 37469 the major provisions proposed to implement the service obligation requirements. These are summarized below. In several instances the final regulations contain changes from the NPRM. These changes are noted below, and are fully explained in the Analysis of Comments and Changes section of this preamble.

These regulations restate the statutory requirement for the service obligation under this program, stipulate that the service requirement applies to individuals who receive scholarship assistance from a funded project, and clarify that scholarships may be awarded only to individuals pursuing degrees, licenses, certifications, or endorsements related to special education, related services, or early intervention services.

Subpart A—General

Section 304.3 defines key terms used in this part of the regulations, including related services, special education, academic year, full-time work, and scholarship.

Subpart B—What Conditions Must Be Met By the Grantee?

Section 304.20 reflects our intention to announce for each personnel training grant competition a specific percentage, up to 75 percent, of a grantee's total award that must be used to support scholarships. The provision would allow us to award grants that use less than the published percentage to pay for scholarships in light of the unique nature of a particular project. However, because financial support for graduate assistants is not considered scholarship assistance, such costs may not be paid from the minimum percentage of grant funds that must be used to support scholarships.

Section 304.21 stipulates the types of costs that would be allowable under program grants.

Section 304.22 identifies requirements that grantees must meet in disbursing scholarships. Paragraph (a) relates to citizenship or residency requirements. Paragraph (b) requires grantees to limit a scholarship to the amount by which the cost of attendance at the institution exceeds the amount of any grant assistance the individual receives under Title IV of the Higher Education Act. The final regulation deletes paragraph (c) of the NPRM that specified that scholarship assistance would be limited to an individual's cost of attendance for no more than four academic years total, with certain exceptions (see the discussion in the Analysis of Comments and Changes section elsewhere in this preamble).

Section 304.23 lists the assurances that must be provided by a grantee intending to provide scholarships. These include providing a written agreement with each scholar who receives a scholarship that specifies the terms and conditions applicable to the scholarship. The most significant part of this agreement is the requirement that the scholar provide special education and related services to children with disabilities or early intervention services to infants and toddlers and their families on a full-time basis; and for a period of at least two years for every year for which assistance was received. Paragraph (b)(2) requires scholars to fulfill their service obligation by working in a position or positions in which a majority of the persons to whom the individual provides services are receiving from the individual special education and related services as defined in Part B of the Act or early intervention as defined in Part C of the Act. Because scholars who enter leadership positions related to special education do not typically serve a classroom or caseload of students, paragraph (b)(3) would apply a somewhat different standard to the service obligation for those who receive scholarships from leadership training projects (section 673(c) of the Act). Those scholars would be required to work full-time, for a period of at least two years for each year of assistance, in a position (or positions) in which a majority of the scholar's time is expended on work related to his or her training (i.e., special education, related service, or early intervention leadership).

Section 304.23(b)(4) clarifies that the service obligation requirements as applied to part-time scholars will be based on the accumulated academic years of training for which the scholarship is received.

Section 304.23(c) through (f) respectively identify grantee assurances related to: scholarship repayment, the grantee's standards for measuring a scholar's academic progress, the grantee's responsibility for ensuring compliance with the service obligation requirements, and the grantee's procedures for notifying scholars in writing of their service obligation upon their exit from the training project. A grantee would provide assurances to the Department that it has established policies or procedures to address each of these requirements and the remaining requirements in § 304.23, prior to receiving a training grant under IDEA. In the final regulations, specific

reference to a tracking system in § 304.23(e) has been eliminated.

Section 304.23(g) and (h) identifies the requirements governing maintenance and submission of information related to each scholarship recipient that enable grantees to monitor compliance of scholars with the proposed regulations.

Section 304.23(i) requires grantees to notify the Department at the time an individual has failed to fulfill or has chosen not to fulfill the applicable service obligation within the appropriate time period.

Subpart C—What Conditions Must Be Met By the Scholar?

Section 304.30 specifies the requirements that a scholar must meet in order to receive a scholarship under the program including (a) being enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services; (b) entering into a written agreement with the grantee establishing the service obligation requirements; (c) receiving training at the institution or agency designated in the scholarship; (d) not accepting educational allowances from any other entity if that allowance conflicts with the individual's obligations under the program; (e) maintaining satisfactory academic progress; and (f) providing information to the grantee. In the final regulation, § 304.30(f) has been modified to eliminate a specific requirement for a tracking system and, instead, to require that the scholar provide information as requested by the grantee.

The final regulation also adds a new § 304.23(g) that requires the scholar to notify the grantee institution of changes in address, employment setting, or employment status throughout the duration of the service obligation.

Section 304.31 identifies circumstances under which a scholar may receive a deferral or exemption to the repayment requirement.

Section 304.32 specifies the requirements governing the accrual of interest and assessment of costs that would be included as part of the individual's payback obligation.

Section 304.32(e) lists the various points at which a scholar enters repayment status.

Section 304.32(f) authorizes the Department to establish a repayment schedule that a scholar in repayment status must follow.

Analysis of Comments and Changes

In response to our invitation in the NPRM, thirty-nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we not address technical and other minor changes—and suggested changes the law does not authorized the Secretary to make.

Section 304.3 What Definitions Apply to This Program?

Comments: Several commenters requested that we clarify the proposed definition of ''academic year''. Specifically, these commenters noted that the NPRM defines ''academic year'' in terms of a full-time course of study and asked how to interpret the definition, and determine the required service obligation, for scholars pursuing special education, related service, or early intervention degrees or certificates on a part-time basis. Other commenters proposed limiting the definition of ''scholarship'' in the NPRM to exclude disbursements for fees, student stipends, books, travel, and other types of financial assistance. These commenters stated that the service obligation provisions in the proposed regulations should apply only to scholars receiving tuition assistance since tuition scholarships are typically much higher than those used to pay other costs.

Discussion: We agree that further clarification of the term ''academic year'', and of how it applies to part-time students, is needed. Section 673(h) of the Act requires students receiving scholarship assistance to fulfill a service obligation for a period of 2 years for each year of assistance. The proposed regulations reflected our interpretation of the Act that the period of the scholar's service obligation must be calculated based on the period for which the student was enrolled in a full-time course of study (what constitutes a ''full-time course of study'' is to be determined by the grantee institution). Colleges and universities that award IDEA-funded scholarships to part-time students must, therefore, add up the period for which a part-time scholar receives a scholarship and calculate the length of the individual's service obligation based on the number of accumulated full-time academic years for which the student received financial assistance. For example, a scholar who obtains a degree after attending a university on a half-time basis for 4 academic years would accumulate 2 full-time academic years of assistance and have a 4-year service obligation (2 years for each year of assistance) upon completion of the program. Thus, the final regulations define ''academic year'' for part-time students as the equivalent of a full-time academic year based on the accumulation of part-time periods of study. Also, the work requirements in § 304.23 of the final regulations clarify that the period of a scholar's service obligation is dependent on the number of ''academic years'' for which the individual receives scholarship assistance.

We believe that the definition of ''scholarship'' in the proposed regulations reflects congressional intent. The Act requires individuals receiving a ''scholarship'' to fulfill an appropriate service obligation for every year for which assistance was received. The Act does not limit the service obligation to students receiving certain types of assistance. Thus, we interpret ''scholarship'' to refer to all types of financial assistance that a scholar might receive under an IDEA-funded project, including assistance used to pay for student fees, stipends, books, travel, as well as tuition. Moreover, the proposed regulations followed the Act by basing the service requirements on the period for which the scholar receives assistance, not on the amount of assistance an individual receives.

Changes: The proposed definition of ''academic year'' has been revised to mean a full-time course of study, or the equivalent of a full-time course of study for a part-time student.

Section 304.20 What are the Requirements for Directing Grant Funds?

Comments: Several commenters expressed concern that requiring grantees to expend at least 75% of their grant on scholarships would impede the ability of projects to implement regional training or distance education programs, or other unique (but costly) training methods. Other commenters noted similar constraints on projects that require extensive faculty supervision of scholars and questioned the basis for the Secretary to impose a cap on a project's nonscholarship costs. Some commenters also questioned the rationale for not considering graduate assistantships to be scholarship assistance, as was explained in the preamble to the NPRM. Finally, one commenter stated that the minimum percentage of a grant that must be used for scholarships should be established for each competition rather than on a project-by-project basis.

Discussion: As the preamble to the NPRM indicates, setting a minimum percentage of grant funds that must be used for scholarships is one means of

addressing the significant shortage of qualified individuals available to serve certain populations of children with disabilities (e.g., children with low-incidence disabilities) and is consistent with Congress' expectation that personnel training monies be used to support students pursuing training. We believe that establishing an appropriate limit on nonscholarship costs offers the most effective option for addressing well-established personnel shortages in the special education, related services, and early intervention fields. Moreover, we recognize the responsibility of States and institutions to provide necessary training programs and, therefore, consider it appropriate to focus Federal dollars on student support rather than university program expenses.

We emphasize that the regulation authorizes the Secretary to establish a minimum scholarship-directed percentage of up to 75% (i.e., the percentage will not exceed 75%). We consider 75% a reasonable level at which to require scholarship support for some competitions based on OSEP's extensive review of past budgets for a variety of OSEP training grants. However, the actual published percentage will be determined on a competition-by-competition basis depending on the type of projects to be funded. The feasibility of, and need for, distance education programs (used, for example, by projects preparing personnel to serve those with low-incidence disabilities) and other costly features (e.g., extended supervision, regional training, etc.) will be taken into account when the percentage for a grant competition is set. The final regulations also clarify that the Secretary can allow an exception to the published percentage for a particular project applicant only in exceptional circumstances when the Secretary determines that an exception is necessary to achieve the purposes of the program.

The explanation in the preamble as to how institutions of higher education (IHEs) should classify costs for graduate assistantships was intended to clarify the distinction between scholarships that pay for student expenses and payments made to students in return for working as graduate assistants. As we indicated in the NPRM, funding for graduate assistants cannot be considered ''scholarship'' assistance and, therefore, cannot be included as part of the minimum percentage of grant funds that must be used to pay for scholarships, since assistantships are conditioned on the individual working for the institution. Scholarship assistance, on the other hand, supports the cost of the student's attendance and is dependent, under section 673(h) of the Act, on the individual fulfilling a service obligation in return for that assistance. In order to fulfill Congress' mandate that students receiving financial support under IDEA subsequently work in the special education field, we again note that applicants proposing to use IDEA funds to pay graduate assistants to assist in facilitating or administering projects must classify those funds as personnel or other nonscholarship costs and count those costs against the applicable percentage limit for nonscholarship expenditures. If, as some commenters indicated, an IHE considers the practical work experience gained by its graduate assistants as an essential educational component of the student's training, then we would urge the IHE to incorporate that work into the student's course of study. In that way, an individual's tuition-supported scholarship would cover the cost of such training and students need not be compensated separately for their work.

Changes: Section 304.20(b) has been amended to clarify that the Secretary may award a grant that uses less than the published percentage for scholarships in exceptional circumstances if the Secretary determines that such an exception is necessary to achieve the purposes of the program.

Section 304.22 What are the Requirements for Grantees in Disbursing Scholarships?

Comments: Four commenters expressed concern about limiting scholars to four years of financial assistance. These commenters suggested that regulations authorize scholars to receive four years of assistance per grant, thereby enabling individuals to receive additional assistance under subsequent grants.

Discussion: We agree that the 4-year limit on assistance under § 304.22(c) of the proposed regulations should be amended. The proposed limit was viewed as a reasonable period for individuals to obtain their degree. It was not, however, intended to preclude scholars from receiving assistance under subsequent grants when pursuing additional degrees or training (e.g., doctoral training). We believe that the best way to address the commenters' concerns is to eliminate the provision in the proposed regulations that would have established the limit. By not imposing a specific time limit on scholarship assistance (and eliminating the need for the exceptions to the time limit as set out in proposed paragraph (c)), scholars, in effect, will be authorized to receive financial assistance for the same period as that which applies to the grant. For example, an individual can receive up to 5 years of assistance under a 5-year training grant provided the remaining regulatory requirements are satisfied, including the requirement in § 304.22(b) that the level of assistance not exceed the difference between the student's cost of attendance and the amount of student financial aid the scholar receives. Scholars may also receive assistance under subsequent grants in order to obtain additional training (e.g., doctoral, postdoctoral training).

Changes: Paragraph (c), including the 4-year limit on financial assistance, in this section of the proposed regulations has been removed from the final regulations.

Section 304.23 What Assurances Must be Provided by a Grantee That Intends to Provide Scholarships?

Comments: Several commenters requested that the length of a scholar's service obligation be proportional to the amount of financial assistance received. Other commenters requested that the regulations not apply to post-doctoral students.

Most comments on this section questioned the service obligation requirements in the proposed regulations, particularly the proposed requirement in § 304.23(b)(2) that the majority of the persons to whom the scholar provides services be children receiving special education, related, or early intervention services. Some of these commenters stated that the service obligation provisions would serve to limit the ability of scholars to work in regular education settings or prevent special education teachers from being promoted out of the classroom. Others indicated that the work requirements would negatively impact teachers in early intervention settings who serve both infants and toddlers with disabilities and those considered ''at risk of'' developmental delays.

A number of commenters on the service obligation requirements also requested clarification in the regulations for determining whether an individual working part-time has fulfilled the applicable service obligation. Other commenters viewed the work requirements for leadership personnel as unduly narrow. In addition, some commenters asked whether individuals could begin fulfilling their service obligation by working in the IDEA field during their training program.

Some commenters asked that Federal program officials determine the appropriateness of the employment

settings in which each former scholar proposes to fulfill his or her service obligation. Similarly, many commenters sought a much larger Federal role—and a reduced grantee role—in tracking scholars following completion of their training programs. Other commenters recognized the need for grantees to track their former scholars and sought additional Federal funding to carry out that function. Many were concerned with the additional time and paperwork burden associated with tracking that the proposed regulations placed on grantee institutions, particularly large training universities. Others requested clarification as to what happens if an institution is unable to locate a former scholar. Lastly, a number of commenters requested clarification on how the regulations applied to scholars who do not complete their training.

Discussion: As explained in the preamble discussion to § 304.3, the Act bases a scholar's service obligation on the period for which the individual received financial assistance rather than on the amount of that assistance. Thus, regardless of the amount of financial assistance offered to a scholar, the Act requires that the scholar choose between fulfilling the two-year per year of assistance service obligation, on the one hand, or paying back the scholarship on the other. Both the proposed and final regulations reflect these options.

The statute also does not provide a basis for excepting certain types of scholarships from the work or repay requirements. Thus, a post-doctoral student, for example, receiving scholarship assistance from a leadership preparation project funded under section 673(c) of the Act is required to fulfill the service obligation requirements specified in § 304.23(b)(3) or repay the scholarship.

We have provided in the final regulations greater flexibility for purposes of determining whether a scholar's job is sufficiently focused on serving children with disabilities. Section 304.23(b) of the final regulations authorizes a scholar to serve in a position in which the individual spends a majority of his or her time providing special education, related, or early intervention services. Thus, a former scholar who provides services under Part B or Part C of IDEA (Part B) to children with disabilities, would satisfy § 304.23(b)(2) as long as a majority of his or her students are children with disabilities receiving Part B or Part C services from the individual (§ 304.23(b)(2)(i)) or the individual expends a majority of his or her time providing services under Part B or Part C (§ 304.23(b)(2)(ii)).

We believe that it is critical that scholars be required to work extensively with children with disabilities since the service obligation requirements in section 673(h) were adopted in response to the continued shortages of qualified personnel providing special education, related services, and early intervention services. We also believe that is critical for personnel providing services under IDEA to be capable of working with children with disabilities in regular education settings given the requirement in Part B of IDEA that children with disabilities be educated, to the maximum extent appropriate, with nondisabeld children in the regular education environment. Accordingly, the final regulations permit, as the proposed regulations would have permitted, a scholar to work with children with disabilities in the regular education classroom. If the individual's primary purpose for being in a regular education classroom is to provide IDEA-related services to children with disabilities, then that individual would be considered to be providing IDEA services to children with disabilities during the time the individual is in that regular education classroom (for purposes of § 304.23(b)(2)(i) or (b)(2)(ii)), even though one or more nondisabled children may benefit from that individual working in the classroom. The regulations, therefore, support the expectation that children with disabilities be served in the least restrictive environment appropriate to the child. At the same time, the majority-student or majority-time requirement in § 304.23(b)(2) ensure that limited IDEA training monies do in fact benefit the targeted population—children and infants and toddlers with disabilities.

The final regulations also do not diminish the importance of regular education teachers being trained to serve children with disabilities. To the contrary, regular education teachers, and individuals in regular education training programs, are encouraged to participate in courses or other aspects of IDEA-funded training programs. On the other hand, a current regular education teacher who accepts scholarship assistance under an IDEA personnel training program, like all other IDEA-funded scholars, must subsequently work in the special education, related service, or early intervention field (or payback the scholarship) consistent with the requirements of these regulations. Because special education teachers, related service and early intervention service providers, and special education leadership personnel continue to be in high demand in schools and school districts across the Nation, directing personnel training funds under IDEA toward addressing that demand is clearly warranted.

The regulations do not limit a scholar's opportunities for advancement as long as the position to which the former scholar advances meets the service obligation requirements in this section. For example, a former scholar who received training to work with the high-incidence disability population, subsequently works as a special education teacher, and then advances into a position as a special education administrator would continue to meet the requirements in § 304.23(b)(2) if the majority of students for which the administrator is responsible are receiving services under either Part B or C of IDEA. On the other hand, a secondary school principal position, in which the administrator is responsible for the entire student population (a majority of which is not disabled) likely would not qualify as an appropriate work setting under the regulations. Of course, a former scholar need not work in a qualified setting once the period of the service obligation has been met or if the individual pays back the portion of the scholarship that is proportional to the period for which the service obligation was not completed.

As some commenters noted, a State may serve, through its infant and toddler program under Part C of the Act, those infants and toddlers in the State who would be at risk of experiencing substantial developmental delays without early intervention services. In those States, these ''at-risk'' infants and toddlers qualify as infants and toddlers with disabilities and are eligible to receive early intervention services under Part C. Thus, whether a former scholar of an early intervention training program who is providing early intervention services to infants and toddlers with identified disabilities or developmental delays, and to at-risk infants and toddlers, would meet the service obligation requirements in this section of the regulations may depend upon whether the State has elected to serve at-risk infants and toddlers under Part C of IDEA. If the State has elected to include the at-risk population under its Part C program, and the scholar works full-time with that population, then § 304.23(b)(2) of the regulations would be satisfied. On the other hand, if the State does not serve at-risk infants and toddlers under Part C, then the scholar could still satisfy the regulations by serving mostly Part C-eligible children or spending a majority of his or

her time providing Part C services to such children under § 304.23(b)(2)(ii).

Although the critical need for full-time special education, related service, and early intervention personnel is well-documented, we recognize that some former scholars may elect, for a variety of reasons, to work part-time following their training. Thus, we agree that § 304.23(b)(1)(ii) and (b)(3)(ii) of the proposed regulations should clarify that part-time employment is authorized. However, because an individual's service obligation is based on full-time employment, a part-time worker must still meet the full-time obligation, by accumulating the periods of part-time work, by the end of the regulatory time period (i.e., the sum of the number of years required plus three additional years). For example, a scholar who received two years of financial assistance would have seven years to complete a four-year service obligation. If that scholar subsequently works full-time for an initial two years and half-time for the next four (i.e., the equivalent of two full-time years), the individual would meet the service obligation required under this section. Accordingly, the final regulations authorize individuals to fulfill their service obligation through employment on a full-time or full-time equivalent basis. By ''full-time equivalent'' we mean the accumulation of part-time employment periods to equal full-time employment. What constitutes ''full-time employment'' is determined by the individual's employer or the agencies the individual serves, as stated under the definition of ''full-time'' in § 304.3.

The work requirements in the Act and regulations that apply to scholarship recipients in leadership training programs enable scholars to pursue a wide variety of administrative or other leadership positions related to the provision of services under IDEA. By requiring leadership program graduates to spend a majority of their time performing work related to their training, we expect these former scholars to help address the shortage of qualified supervisory and policymaking officials, and university faculty, in the special education, related service, and early intervention fields. As indicated previously, however, IDEA leadership funds are not intended to pay for the training of administrators (e.g., principals) who work primarily with a nondisabled student population (although former scholars can certainly assume those positions after the period of their service obligation or by paying back their scholarship). We believe the proposed regulatory requirements established an appropriate standard that is sufficiently focused on children with disabilities, yet provides for limited work in other areas.

We recognize that in some instances individuals may begin, or already be, working in the special education, related service, or early intervention fields prior to completing the training program for which they received scholarship assistance. For example, a current special education teacher could receive a scholarship to pursue an additional degree or certificate in special education; or a scholar working toward a doctorate in a leadership training program may begin teaching in a university's special education program while completing a dissertation or other component of a degree. In cases in which a scholarship recipient is both completing training and working in a job that would satisfy the service obligation requirements (e.g., the special education teacher who provides Part B services to a majority of his or her students), we agree that the regulations should afford some flexibility to enable individuals to count toward the period of their service obligation appropriate work performed before the completion of training. At the same time, it is expected that scholarship recipients fulfill a service obligation that is sufficiently related to the training for which assistance was provided. Because some persons may work in this type of job before completing training, the final regulations authorize scholars to count toward the period of their service obligation requirement work that is performed after the completion of one full-time academic year of training. Of course, the applicable job must meet the work setting and other requirements in the regulations, and the individual must fulfill the remaining portion of the service obligation upon completion of the training.

Assigning responsibility for determining the appropriateness of a former scholar's work setting to the Department would create additional burden on scholars and limit the flexibility on grantee institutions that the Act intentionally provides. Section 673(h) of the Act states that applicants for IDEA training grants ''will ensure'' that their scholarship recipients subsequently meet the service obligation requirements, meaning that the grantee institution is responsible for determining whether a scholarship recipient has fulfilled his or her subsequent work obligations under this section of the regulations. The Act recognizes that the grantee institution is in the best position to counsel and assist its former scholars in meeting the work responsibilities that result from receiving an IDEA-funded scholarship. Moreover, imposing an across-the-board rule for scholarship recipients to consult the Federal Government regarding the appropriateness of their work setting would be overly burdensome to scholars. Therefore, the regulations, consistent with the Act, rely upon the expertise of the grantee institution to assist its scholar in obtaining an appropriate job (or jobs) among the many employment options available to the individual following training.

Statutory intent, as well as the need for program effectiveness and efficiency, also requires that grantees ensure that their former scholars fulfill the service obligation requirements in the regulations. Both the proposed and final regulations are intended to provide training institutions maximum flexibility to determine, through the most efficient means possible, the compliance of their scholars with the applicable statutory and regulatory requirements. Thus, rather than establishing a specific type of system that grantees must follow, § 304.23(e) required that grantees establish policies and procedures, including a ''tracking system,'' to determine the compliance of their scholars with their service obligations outlined in the required agreement between each scholar and the grantee. The broad, flexible language of paragraph (e) was viewed as the least burdensome means for grantees ''to ensure,'' as the Act requires, that scholarship recipients fulfill their employment obligations. Nevertheless, the term ''tracking system'' has been removed from the regulations since many commenters believed that this term suggested a specific and more complicated procedure than might be necessary for certain institutions to comply with the Act and regulations. Grantee institutions still remain responsible for ensuring that their former scholars comply with the service obligation requirements and for notifying the Department if a scholar fails to fulfill his or her obligation. Since no specific type of ''tracking system'' is required, grantees are free to utilize existing practices at their institution (e.g., alumni office procedures or university accreditation practices for reporting on the progress and employment status of former graduates), modify those practices, or develop new procedures specific to graduates of IDEA training programs. Regardless of the approach instituted, we expect that the costs incurred under § 304.23(e) will be primarily the initial costs of establishing the institution's policies and procedures for following former scholars.

The estimates of the time and paperwork burden associated with implementing § 304.23(e) were developed following a review of the history of IDEA training programs and available data, including the number of scholarships awarded by funded projects. We agree that the relevant burden could depend on the size of the institution and the number of scholars. It is more likely, however, that the time and effort needed to follow former scholars will depend upon the institutions' existing practices and whether those institutions receiving IDEA training grants can adopt or modify those practices for purposes of fulfilling their responsibilities under § 304.23 and other provisions of these regulations. Moreover, the Department intends to closely monitor the impact of the requirements of this section on funded projects and to provide technical assistance (e.g., sharing model procedures of other projects) during the continued implementation of § 304.23 and of the final regulations as a whole. Aside from the fact that the Act compels grantee institutions to ensure their scholars' compliance, we also note that the grantee's procedures for following former scholars will provide the institution with valuable evaluative information related to the success of its training program and the progress of its graduates.

We do recognize, however, that in some instances, an institution may be unable to locate a former scholar regardless of its persistency in doing so. If, for example, the institution has sent the scholar a letter of inquiry and follow-up reminders without receiving any response, and it cannot otherwise verify that the former scholar has met the service obligation requirements, then the institution must notify the Department of the individual's possible noncompliance.

We note that the regulations apply to training program drop-outs in the same manner as other scholarship recipients. Thus, an individual receiving financial assistance under an IDEA-funded grant who fails to satisfy the service obligation must repay the cost of the assistance consistent with § 304.23(c). We expect that grant applicants, however, will minimize the number of students who do not complete their training by accepting, and limiting scholarship assistance to, highly-qualified students able to sustain satisfactory performance and complete their program of studies. In addition, grantee institutions should establish sufficient support services to ensure the success of their students. We also note that drop-outs who had received scholarship assistance would not be able to meet their service obligation (and, therefore, must payback their scholarship) if they are not qualified to fill available special education, related service, or early intervention jobs that meet the requirements in § 304.23(b)(2) or (b)(3)(i).

Changes: Section 304.23(b)(1)(iii) and (b)(3)(iii) have been revised to clarify that the length of an individual's service obligation is based on the number of ''academic years'' for which scholarship assistance was received. Also, § 304.23(b)(2) has been revised to authorize scholars to work in positions in which the individual spends a majority of his or her time providing special education, related, or early intervention services. In addition, a new paragraph, § 304.23(b)(5), has been added to the final regulations to allow scholars to count toward their service obligation employment that meets the regulatory requirements and is performed subsequent to the completion of one academic year of the training. Finally, § 304.23(e) of the proposed regulations has been amended by removing the term ''tracking system'' as a required component of the grantee's policies and procedures for determining the compliance of scholars with their regulatory obligations.

Section 304.30 What are the Requirements for Scholars?

Comments: A number of commenters asked that the regulations highlight the need for scholars to provide information to the grantee institution following training, including changes in address and the status of the individual's employment. These commenters emphasized the importance of former scholars providing this information in order for institutions to ensure that the service obligation requirements are being fulfilled.

Discussion: Although the statute requires that grantees ensure that their scholarship recipients fulfill their service obligation, we recognize that scholars have a responsibility to keep their institutions informed of their whereabouts and their progress toward meeting the work requirements in § 304.23(b). Scholars, therefore, are expected to provide any information the institution requests that is needed to determine whether the scholar has fulfilled the service obligation requirements or needs to repay the scholarship. Moreover, scholars should keep their institution apprised of changes in address or job status throughout the period of their service obligation, enabling institutions to keep track of their former scholars more readily.

Changes: Section 304.30(f) of the proposed regulations has been amended to require that a scholar provide his or her training institution with any requested information that is necessary for the grantee to determine the scholar's progress in meeting the service obligation requirements. Also, under § 304.30, a new paragraph (g) has been added to the final regulations to require that each scholar notify the grantee institution of changes in address, employment setting, or employment status during the period of the service obligation.

Section 304.31 What are the Requirements for Obtaining a Deferral or Exemption to Performance or Repayment Under an Agreement?

Comments: Some commenters requested that deferral of the service obligation requirements be authorized for scholars who are pregnant or have other temporary medical conditions.

Discussion: We do not believe that expanding the bases for receiving a deferral of the service obligation requirements is needed. As in the proposed regulations, § 304.23(b) of the final regulations provides for an additional three years, beyond the number of years required by the Act, to complete the service obligation. Thus, a scholar with a four-year service obligation, for example, has seven years to fulfill that requirement. The additional three-year time period in the regulations is intended to provide greater flexibility in meeting the work obligation for those former scholars who become pregnant, experience short-term illness, relocate, or, for other reasons, choose not to work full-time or in successive years. In addition, § 304.31(b) of the regulations authorizes scholars to obtain a deferral of the service obligation time period (i.e., number of years required plus three additional years) under different types of circumstances, including the situation where a disability prevents an individual from working. Thus, a disabling medical condition may provide a basis for a deferral.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those

we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM published on July 10, 1998 (63 FR 37469).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.325, Personnel Preparation to Improve Services and Results for Children with Disabilities.)

List of Subjects in 34 CFR Part 304

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Individuals with disabilities, Reporting and recordkeeping requirements, Schools.

Dated: December 6, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

For the reasons discussed in the preamble, the Secretary amends Title 34 of the Code of Federal Regulations by revising Part 304 to read as follows:

PART 304—SPECIAL EDUCATION—PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

304.1 Purpose.
304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?
304.3 What definitions apply to this program?
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Subpart B—What Conditions Must Be Met By the Grantee?

304.20 What are the requirements for directing grant funds?
304.21 What are allowable costs?
304.22 What are the requirements for grantees in disbursing scholarships?
304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Subpart C—What Conditions Must Be Met By the Scholar?

304.30 What are the requirements for scholars?
304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?
304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

Authority: 20 U.S.C. 1473, unless otherwise noted.

Subpart A—General

§ 304.1 Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 673(h) of the Individuals with Disabilities Education Act and the regulations of this part.

(Authority: 20 U.S.C. 1473(h))

§ 304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?

The Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program (program) provides financial assistance under section 673 of the Act to—

(a) Help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

(b) Ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

(Authority: 20 U.S.C. 1473(a))

§ 304.3 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Department
EDGAR
Grantee
Project
Recipient
Secretary

(b) The following definitions apply to this program:

Academic year means—

(1) A full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters; or

(2) For a part-time student, the accumulation of periods of part-time courses of study that is equivalent to an ''academic year'' under paragraph (b)(1) of this section.

Act means the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

Early intervention services means early intervention services as defined in section 632(4) of the Act.

Full-time, for purposes of determining whether an individual is employed full-time in accordance with § 304.23, means a full-time position as defined by the individual's employer or by the agencies served by the individual.

Payback means monetary repayment of scholarship assistance in lieu of completion of a service obligation.

Related services means related services as defined in section 602(22) of the Act.

Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under this part.

Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.

Service obligation means a scholar's employment obligation, as described in section 673(h) of the Act and § 304.23(b).

Special education means special education as defined in section 602(25) of the Act.

(Authority: 20 U.S.C. 1473(h))

§ 304.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(10) Part 97 (Protection of Human Subjects).

(11) Part 98 (Student Rights in Research, Experimental Programs and Testing).

(12) Part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 304.

(Authority: 20 U.S.C. 1473; 20 U.S.C. 3474(a))

Subpart B—What Conditions Must Be Met By the Grantee?

§ 304.20 What are the requirements for directing grant funds?

(a) The Secretary, as appropriate, identifies in a notice published in the **Federal Register**, the percentage (up to 75 percent) of a total award under the program that must be used to support scholarships as defined in § 304.3.

(b) The Secretary may award a grant that uses a percentage for scholarships, as determined by the Secretary, that is lower than that published under paragraph (a) of this section in exceptional circumstances if the Secretary determines that such an exception is necessary to achieve the purposes of the program.

(Authority: 20 U.S.C. 1473(h))

§ 304.21 What are allowable costs?

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.

(b) Student stipends and books.

(c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1473(h))

§ 304.22 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee must—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Is a permanent resident of—

(i) Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(ii) The Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau (during the period in which these entities are eligible to receive an award under the program); or

(3) Provides evidence from the U.S. Immigration and Naturalization Service that the individual is—

(i) A lawful permanent resident of the United States; or

(ii) In the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(b) Limit scholarship assistance to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act; and

(c) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473)

§ 304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Before receiving an award, a grantee that intends to grant scholarships under the program must assure that the following requirements will be satisfied:

(a) *Requirement for agreement.* Each scholar who will receive a scholarship must first enter into a written agreement with the grantee that contains the terms and conditions required by this section.

(b) *Terms of the agreement.* Each agreement under paragraph (a) of this section must contain, at a minimum, the following provisions:

(1) Individuals who receive scholarship assistance from projects funded under section 673(b) and (e), and to the extent determined appropriate by the Secretary, section 673(d), of the Act will subsequently maintain employment—

(i) In which the individual provides special education or related services to children with disabilities or early intervention services to infants and toddlers, and their families;

(ii) On a full-time or full-time equivalent basis; and

(iii) For a period of at least two years for every academic year for which assistance was received.

(2) In order to meet the requirements of paragraph (b)(1) of this section, an

individual must be employed in a position in which—

(i) A majority of the persons to whom the individual provides services are receiving from the individual special education, related services, or early intervention services; or

(ii) The individual spends a majority of his or her time providing special education or related services to children with disabilities or early intervention services to infants and toddlers with disabilities.

(3) Individuals who receive scholarship assistance from a leadership preparation project funded under section 673(c) of the Act will subsequently maintain employment—

(i) In which the individual expends a majority of his or her time performing work related to the individual's preparation;

(ii) On a full-time or full-time equivalent basis; and

(iii) For a period of at least two years for every academic year for which assistance was received.

(4) A scholarship recipient must complete the service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section within the period ending not more than the sum of the number of years required in paragraph (b)(1)(iii) or (b)(3)(iii) of this section, as appropriate, plus three additional years, from the date the recipient completes the training for which the scholarship assistance was awarded.

(5) Employment that meets the requirements of paragraph (b) of this section, and is performed by a scholar subsequent to the completion of one academic year of the training for which the scholarship assistance was received, can be used to meet, in part, the period of the scholar's service obligation under paragraph (b)(1)(iii) or (b)(3)(iii) of this section.

(6) The service obligation in paragraph (b) of this section, as applied to a part-time scholar, is based on the accumulated academic years of training for which the scholarship is received.

(c) *Repayment.* (1) Subject to the provisions in § 304.31 regarding a deferral or exception, a scholar who does not fulfill the requirements in paragraph (b)(1) or (b)(3) of this section, as appropriate, must repay all or part of any scholarship received, plus interest.

(2) The amount of the scholarship that has not been retired through eligible service will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar in accordance with § 304.32; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar's failure to meet the obligation of § 304.32.

(d) *Standards for satisfactory progress.* The grantee must establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study;

(e) *Compliance.* The grantee must establish policies and procedures to determine compliance of scholars with the terms of the written agreement developed under this section;

(f) *Exit certification.* The grantee must establish policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in paragraph (b) of this section.

(2) The total amount of scholarship assistance received subject to the work-or-repay provision in paragraph (b) of this section.

(3) The time period, consistent with paragraph (b)(1)(iii) or (b)(3)(iii) of this section, during which the scholar must satisfy the work requirements in paragraph (b) of this section.

(4) All other obligations of the scholar under this section.

(g) *Information.* The grantee must provide, upon request of the Secretary, information, including records maintained under paragraphs (e) and (f) of this section, that is necessary to carry out the Secretary's functions under this part.

(h) *Records.* The grantee must maintain the information under this section related to a scholar for a period of time equal to the time required to fulfill the obligation under paragraph (b) of this section.

(i) *Notification.* The grantee must inform the Secretary if a scholar fails to fulfill or chooses not to fulfill the obligation under paragraph (b)(1) or (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473(h))

Subpart C—What Conditions Must Be Met By the Scholar?

§ 304.30 What are the requirements for scholars?

A scholar must—

(a) Be enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services in order to be eligible to receive a scholarship under the program;

(b) Enter into a written agreement with the grantee that meets the terms and conditions of § 304.23 of this part before starting training;

(c) Receive the training at the educational institution or agency designated in the scholarship;

(d) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under this part;

(e) Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee;

(f) Provide the grantee all requested information necessary to determine the scholar's progress in meeting the service obligation under § 304.23(b); and

(g) Notify the grantee of changes in address, employment setting, or employment status during the period of the scholar's service obligation under § 304.23(b).

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473(h))

§ 304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?

(a) An exception to the repayment requirement in § 304.23(c) may be granted, in whole or part, if the scholar—

(1) Is unable to continue the course of study or perform the service obligation because of a disability that is expected to continue indefinitely; or

(2) Has died.

(b) Deferral of the repayment requirement in § 304.23(c) may be granted during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act;

(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Has a disability which prevents the individual from working, for a period not to exceed three years; or

(6) Is unable to secure employment as required by the agreement by reason of the care provided to a disabled family member for a period not to exceed 12 months.

(c) Deferrals or exceptions to performance or repayment may be provided by grantees based upon sufficient evidence to substantiate the grounds for an exception under paragraph (a) of this section or a deferral under paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473(h))

§ 304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

If a scholar fails to meet the terms and conditions of a scholarship agreement under § 304.23(b) or to obtain a deferral or an exception as provided in § 304.31, the scholar must repay all or part of the scholarship assistance to the Secretary as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the service obligation not completed.

(b) *Interest Rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 304.31.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the grantee that he or she does not plan to fulfill the service obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in § 304.23(b).

(3) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).

(f) *Amounts and frequency of payment.* The scholar must make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0622)

(Authority: 20 U.S.C. 1473(h))

[FR Doc. 99–31951 Filed 12–8–99; 8:45 am]

BILLING CODE 4000–01–U

federal register

Thursday
December 9, 1999

Part IV

Department of Education

English Literacy and Civics Education Demonstration Grants Program; Technical Assistance Workshops for Grant Applications, Fiscal Year 1999 Funds; English Literacy and Civics Education Demonstration Grants Program, Field Readers; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.191]

English Literacy and Civics Education Demonstration Grants Program; Notice of Technical Assistance Workshops for Grant Applications for Fiscal Year 1999 Funds

SUMMARY: The Secretary announces technical assistance workshops, including satellite telecast and a webcast, to assist applicants in preparing grant applications for FY 1999 funds under the English Literacy and civics Education (EL/Civics education) Demonstration Grants Program. for further information on the competition of the EL/Civics education program, please refer to the U.S. Department of Education, Office of Vocational and Adult Education, El/Civics Education website at: http://www.ed.gov/offices/OVAE/ELCIVICS.

DATES, TIMES, AND LOCATIONS: The dates, times, and locations of the technical assistance workshops are as follows:

1. December 6, 1999, 9:00 a.m. to 1:00 p.m., Illinois State Board of Education, James R. Thompson Center, 100 West Randolph, Room 2–025, Chicago, Illinois.

2. December 7, 1999, 10:00 a.m. to 1:00 p.m., St. Philip's College, 1801 Martin Luther King Drive, Watson Fine Arts Theater, San Antonio, Texas.

3. December 10, 1999, 8:30 a.m. to 11:00 a.m., and 1:30 p.m. to 3:00 p.m., San Diego County Office of Education, 6401 Linda Vista Road, Room 306 (8:30 a.m. session) and Annex C (1:30 p.m. session), San Diego, California.

4. December 10, 1999, 10:00 a.m. to 1:00 p.m., U.S. Department of Education, 400 Maryland Avenue, SW, Barnard Auditorium, Washington, DC.

FOR FURTHER INFORMATION AND REGISTRATION FOR THE ONSITE WORKSHOPS, CONTACT: Rose Tilghman, EL/Civics Education Demonstration Grants Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, Washington, DC 20202–7240. Inquiries and registrations also may be sent by e-mail to rose__tilghman@ed.gov or by Fax to (202) 205–8973. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

5. December 15, 1999, 1:00 p.m. to 2:00 p.m. (Washington, DC time), Satellite Telecast and Webcast. Coordinates for the telecast are C–Band: GE–1, Transponder C–1, Downlink Frequency 3720 MHz, Horizontal, Orbit 103 degrees West. Ku Band: SBS–5, Transponder K–10, Downlink Frequency 12166 MHz, Horizontal, Orbit 123 degrees West. You may access the webcast at: http://www.iti-corp.com/doed/live.htm.

FOR FURTHER INFORMATION AND REGISTRATION FOR A SATELLITE DOWNLINK FOR THE TELECAST WORKSHOP, CONTACT: 1–800–USA–LEARN or http://stm.xpandcorp.com (to register on-line).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION: The workshops are free to the public. However, you must pay your own travel and hotel accommodations.

Assistance to Individuals With Disabilities at the Technical Assistance Workshops

The technical assistance workshop sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice as soon as possible before the scheduled workshop date. Although we will attempt to meet a request, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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Program Authority: 20 U.S.C. 9253.

Dated: December 6, 1999.

Patricia W. McNeil,

Assistant Secretary, Vocational and Adult Education.

[FR Doc. 99–31950 Filed 12–8–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.191]

Notice Inviting Applicants To Serve as Field Readers for the English Literacy and Civics Education Demonstration Grants Program

SUMMARY: The Office of Vocational and Adult Education (OVAE) invites interested individuals to apply to serve as field readers to evaluate grant applications for the English Literacy and Civics Education (EL/Civics education) Demonstration Grants Program. The purpose of the EL/Civics education program is to support projects that demonstrate effective practices in providing, and increasing access to, English literacy programs linked to civics education.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable selection criteria. Each field reader will serve for a period of approximately five days, including an orientation session. The orientation and field reader panel discussions may be conducted entirely by teleconference, and readers may read applications at their homes or offices. Each field reader who is selected will receive an honorarium and, if travel is involved, compensation for certain travel expenses, as well as postage and necessary telephone calls.

Field Reader Qualifications: The Department is seeking experienced and knowledgeable professionals who are current with issues regarding effective practices in providing English literacy programs linked to civics education. Applicants should have expertise in administration of adult education and family literacy programs; curriculum development and assessment in English as a Second Language (ESL) programs; teaching ESL or civics education; coordination of local programs at various levels; collecting and analyzing data; or educational technology applications in adult education, including ESL programs. Prospective field readers may include adult education administrators and teachers; teachers of English as a Second Language, English literacy, or civics education; individuals with experience in educational technology applications in adult education and ESL programs; individuals from State agencies,

elementary and secondary education, institutions of higher education, and community-based organizations and agencies; and individuals with experience in coordinating community services to support adult learners in English literacy and ESL programs. In particular, each field reader must have the necessary expertise to accurately evaluate applicants with regard to project goals, objectives, and outcomes; project implementation; and project evaluation and performance measures.

Application Process: If you are interested in serving as a field reader, mail, fax, or e-mail your resume to the appropriate address or telephone number listed below and indicate that you are interested in serving as a field reader for the EL/Civics education program. Resumes should not exceed two pages and should include an e-mail address if available. Interested individuals are strongly encouraged to apply by January 7, 2000.

FOR FURTHER INFORMATION CONTACT: English Literacy/Civics Education Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, Washington, DC 20202–7240. Inquiries and resumes may be sent by e-mail to ursula__lord@ed.gov or karen__lee@ed.gov or by Fax to: (202) 205–8973. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Program Authority: 20 U.S.C. 9253.

Dated: December 6, 1999.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 99–31949 Filed 12–8–99; 8:45 am]

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federal register

Thursday
December 9, 1999

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 2000–2001 for Model Spinal Cord Injury Centers.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes a funding priority for Model Spinal Cord Injury Centers under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on areas of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities. This notice contains a proposed priority under the Special Projects and Demonstrations for Spinal Cord Injuries Program.

DATES: Comments must be received on or before January 10, 2000.

ADDRESSES: All comments concerning this proposed priority should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: donna__nangle@ed.gov

You must include the term ''Special Projects and Demonstrations for Spinal Cord Injuries'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: donna__nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to comment:

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program. During and after the comment period, you may inspect all public comments about this priority in Room 3424, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

This proposed priority supports the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764). Regulations governing this program are found in 34 CFR parts 350 and 359.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

Special Projects and Demonstrations for Spinal Cord Injury

The authority for Model Spinal Cord Injury Centers is contained in section 204(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(4)). The Secretary may make awards for up to 60 months through grants or cooperative agreements. This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

Description of Special Projects and Demonstrations for Spinal Cord Injuries

This program provides assistance for projects that provide comprehensive rehabilitation services to individuals with spinal cord injuries and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Each Spinal Cord Injury Center funded under this program establishes a multidisciplinary system of providing rehabilitation services, specifically designed to meet the special needs of individuals with spinal cord injuries. This includes acute care as well as periodic inpatient or outpatient follow up and vocational services. Centers demonstrate and evaluate the benefits and cost effectiveness of such a system for the care of individuals with spinal cord injury and demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injuries. Grantees demonstrate and evaluate methods of community outreach and education for individuals with spinal cord injuries in connection with the problems of such individuals in areas such as housing, transportation, recreation, employment, and community activities.

Projects funded under this program ensure widespread dissemination of research findings to all Spinal Cord Injury Centers, and to rehabilitation practitioners, individuals with spinal cord injury, and the parents, family members, guardians, advocates, or authorized representatives of such individuals. They engage in initiatives and new approaches and maintain close working relationships with other governmental and voluntary institutions and organizations to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury researchers.

NIDRR requires all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical Service and training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified

by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any Center, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed Priority for Model Spinal Cord Injury Centers

Estimates of the number of people living with traumatic spinal cord injury (SCI) range from 183,000 to 230,000, with an incidence of approximately 10,000 new cases each year (''Spinal Cord Injury Facts and Figures at a Glance,'' National Spinal Cord Injury Statistical Center (NSCISC), University of Alabama at Birmingham). Although SCI predominately affects young adults (56% of SCIs occur among people aged 16–30 years), there is an increasing proportion of new SCI cases in the population over 60 years of age (NSCISC, ibid.). The true significance of traumatic SCI lies not primarily in the numbers affected, but in the substantial impact on individuals' lives and the associated substantial health care costs and living expenses. A traumatic SCI has far-reaching repercussions on the lives of the injured persons and their families that can be devastating if not addressed effectively. According to a report from the Agency for Health Care Policy and Research (Hospital Inpatient Statistics, 1996, AHCPR Publication No. 99–0034), spinal cord injury is the most expensive condition or diagnosis treated in U.S. hospitals. The estimated lifetime costs for an individual injured at the age of 25 range from $365,000 for an incomplete injury to more than $1.7 million for an individual with a high cervical injury (NSCISC, *op cit*).

The Model SCI program was developed in 1970 to demonstrate the value of a comprehensive integrated continuum of care for SCI. Twenty-six sites have been designated, at various times, as Model SCI Centers through funding initially from the Rehabilitation Services Administration, and subsequently from the National Institute on Handicapped Research, and its successor, the National Institute on Disability and Rehabilitation Research (NIDRR). For the period 1995–2000 there are 18 funded Model SCI Centers. (Additional information is available on the World Wide Web at http://www.ncddr.org/mscis/). The clinical components of the Model Centers are specified in the program regulations, and include ''. . . emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance'' (34 CFR 359.11). In addition to demonstrating and evaluating the benefits of such a system the centers are required to contribute data on their patients to the National Spinal Cord Injury Database (NSCID), and engage in research both within the center, and in collaboration with other centers.

During the past 30 years, there have been substantial improvements in outcomes following SCI (Stover, S.L, *et al., Spinal Cord Injury: Clinical Outcomes From the Model Systems,* and Special Issue, Spinal Cord Injury: Current Research Outcomes from the Model Spinal Cord Injury Care Systems, *Archives of Physical Medicine and Rehabilitation,* Vol. 80, No. 11, November, 1999). Enhanced emergency medical services have led to increased preservation of neurologic function. Mortality during the first year following injury has continuously declined. Life expectancy, while still below that for those without SCI, has significantly increased for all levels of injury. The ideal of a comprehensive multi-disciplinary system of care for SCI has gained widespread acceptance.

However, significant challenges and opportunities remain for SCI rehabilitation. Recent statistics from the National Spinal Cord Injury Statistical Center (NSCISC) suggest that as the length of stay in rehabilitation settings has progressively decreased (1993–1998), there has been an increase in re-hospitalization during the first year after injury. In addition, mortality after the first anniversary of injury declined continuously from 1973–1992, but now has increased for the period 1993–1998. Secondary medical complications, including, but not limited to, respiratory complications, pressure ulcers and autonomic dysreflexia, continue to be significant problems. Injuries due to interpersonal violence have increased as a proportion of the total SCI incidence and are more likely to be neurologically complete injuries.

There is a need to identify, evaluate, and eliminate barriers in the natural, built, cultural, and social environments to enable people with SCI to achieve the goal of fully reintegrating into their community. Particular focus is required to address the needs of minority and underserved populations. Although employment for the U.S. population is at historically high levels, employment for the SCI population remains low. Individuals with SCI due to inter-personal violence have an employment rate approximately half of the average for all individuals with SCI (NSCISC, *op cit*).

NIDRR shares the concerns of the rehabilitation community about the impact of changes in health care delivery and financing upon the continuum of care for SCI. People with SCI often have more difficulty in obtaining adequate primary health care than non-disabled individuals. The unique needs of women with SCI in cardiac rehabilitation, reproductive health, and early cancer screening are special issues that need to be addressed.

There are also new and developing opportunities for improving SCI care. Medical and pharmacological therapies show promise for preserving and enhancing function. There is a need to identify and evaluate therapeutic interventions, including prevention and wellness programs, and complementary and alternative therapies using evidence-based evaluation protocols.

Advancing technology has the potential to enhance access and function for individuals with SCI. There is a need to develop and evaluate service delivery models incorporating telerehabilitation strategies and technologies to provide services for people with SCI. Assistive technologies may reduce the likelihood of secondary complications in SCI. For example, improved wheelchair and seating systems may reduce musculoskeletal trauma associated with long term wheelchair use. Technological advancement has the promise of providing greater accessibility to information, telecommunications, and employment. The adoption of universal design methodologies will enhance access to the built environment as well as rapidly developing electronic and information technologies.

The development of strong collaborations by SCI centers with community and social support organizations has the potential to impact positively the independence and community integration for individuals with SCI. Peer support beginning early in the rehabilitation process may enhance return to participation in the community. The causes of unemployment in SCI include lack of education and skills, lack of prior work experience, and policy disincentives. Pending changes in legislation and policy to permit retention of some medical insurance during employment, together with the high demand for skilled individuals in the workforce, represents an opportunity to foster education and employment of individuals with SCI.

NIDRR has published a Long-Range Plan (the Plan) that is based upon a new paradigm for rehabilitation that identifies disability in terms of the relationship between the individual and the natural, built, cultural, and social environments (63 FR 57189–57219). The Plan focuses on both individual and systemic factors that have an impact on the ability of people to function. The elements of the Plan include employment outcomes, health and function, technology for access and function, and independent living and community integration. As part of the Plan to attain the goals in these areas, NIDRR is committed to capacity building for research and training, and to ensure knowledge dissemination and utilization. Each area of the Plan includes objectives at both the individual and system levels. For example, the health and function objectives include research to improve medical rehabilitation interventions, as well as research to ensure access to an integrated continuum of quality health care services that address the unique needs of persons with disabilities. It is clear that the challenges and opportunities for SCI care reflect all of the priority areas of the Plan.

NIDRR has recently completed Program Reviews of all current Model SCI Centers. Based upon presentations by the Centers, and discussion with the external reviewers, NIDRR has concluded that the value of a comprehensive integrated system of care for SCI has been demonstrated. Because this conclusion is widely accepted, NIDRR is shifting the focus of the program from demonstration, to place a greater emphasis upon research. Participants in the Program Reviews observed that the comprehensive continuum of quality care should continue to be a requirement for participation in the Model SCI Centers Program. There is significant diversity among the Centers, however, in research interests and capacities. This diversity extends across the priority areas of the Plan, and represents the strength of the program.

Reviewers noted that uniformly comprehensive, high quality care, together with a common data collection system and administrative infrastructure makes the Model SCI Centers Program a valuable platform for various collaborative studies, including multi-center trials of therapies and technologies. To further the enhancement of the research mission, participants recommended a separate competition for the collaborative research portion of the program. A separate competition will facilitate focused, considered proposals, a higher level of scientific review, and the development of significant research projects in the Model SCI Centers. The competition for collaborative research projects will be conducted subsequent to the identification of the Model SCI Centers, and funds will be reserved for that purpose.

During the Program Reviews, there was considerable discussion of the National SCI Database (NSCID). It is clear that the database is a valuable resource and that participation in the NSCID is an essential element for the Model SCI Centers. For the purpose of the present competition, the data collection activities will be maintained without change. NIDRR expects that applicants will include historical documentation of numbers of patients as well as expected new patients and expected annual follow-up submissions based on current eligibility criteria for the NSCID. However, it is anticipated that, through discussion among the newly identified Model SCI Centers, NIDRR staff, and external reviewers, details of data collection may be modified following the award. This process should not result in increased data collection workloads above current levels.

Proposed Priority

The Assistant Secretary proposes to establish Model Spinal Cord Injury Centers for the purpose of generating new knowledge through research, development, or demonstration to improve outcomes for SCI through improved interventions and service delivery models. A Model Spinal Cord Injury Center must:

(1) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injury (SCI), including emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance;

(2) Participate as directed by the Assistant Secretary in national studies of SCI by contributing to a national database and by other means as required by the Assistant Secretary; and

(3) Conduct a significant and substantial research program in SCI that will contribute to the advancement of knowledge in one of the goal areas of the NIDRR Long Range Plan. Applicants may select one of the following research objectives related to specific areas of the Plan:

- (Chapter 3, Employment Outcomes): Either (1) Assess the impact of legislative and policy changes on employment outcomes; or (2) Test direct intervention strategies for improving employment outcomes.
- (Chapter 4, Maintaining Health and Function): Either (1) Study interventions to improve outcomes in the preservation or restoration of function or the prevention and treatment of secondary conditions; or (2) Design and test service delivery models that provide quality care under constraints imposed by recent changes in the health care financing system.
- (Chapter 5, Technology for Access and Function): Either (1) Evaluate the impact of selected innovations in technology and rehabilitation engineering on service delivery; or (2) Evaluate the impact of selected innovations in technology and rehabilitation engineering on outcomes such as function, independence, and employment.
- (Chapter 6, Independent Living and Community Integration): Assess the value of peer support and early onset of services from community and social support organizations to improve outcomes such as independence and community integration, employment function, and health maintenance.

(4) Provide for the widespread dissemination of research and demonstration findings to other SCI centers, rehabilitation practitioners, researchers, individuals with SCI and their families and representatives, and other public and private organizations involved in SCI care and rehabilitation. In carrying out these purposes, the SCI center must:

- Incorporate culturally appropriate methods of community outreach and education in areas such as health and wellness, housing, transportation, recreation, employment, and other community activities for individuals with diverse backgrounds with spinal cord injury;
- Demonstrate the research and clinical capacity to participate in collaborative projects, clinical trials, or technology transfer with other model SCI centers, other NIDRR grantees, and similar programs of other public and private agencies and institutions; and
- Demonstrate the likelihood of having a sufficient number of individuals with SCI, including newly injured persons, to conduct statistically significant research.

Proposed Selection Criteria

The new emphasis on research and NIDRR's Long-Range Plan, plus the importance of the NSCID, require some modifications to the selection criteria for this program. The Secretary proposes

to redistribute points to reflect the increased emphasis on research, and to add references to the Plan and NSCID.

The Secretary proposes to use the following criteria to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Project design* (30 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program and the NIDRR Long Range Plan;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined and are sufficient for meaningful research and demonstration;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service comprehensiveness* (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective;

(4) Participation in the National Spinal Cord Injury Database is clearly and adequately described; and

(5) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(d) *Quality of key personnel* (10 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Individuals with disabilities; and

(iv) The elderly.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness* (5 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress, and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR part 359.

Program Authority: 29 U.S.C. 762(b)(4).

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(Catalog of Federal Domestic Assistance Numbers 84.133N, Special Projects and Demonstrations for Spinal Cord Injuries)

Dated: December 6, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–31952 Filed 12–8–99; 8:45 am]

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federal register

Thursday
December 9, 1999

Part VI

The President

Proclamation 7258—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1999

Proclamation 7259—National Pearl Harbor Remembrance Day, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7258 of December 6, 1999

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1999

By the President of the United States of America

A Proclamation

President Carter once said, ''America did not invent human rights. In a very real sense, it's the other way around. Human rights invented America.'' Human rights have been an integral part of America's history since the birth of our Nation more than two centuries ago. Refusing to accept tyranny and oppression, our founders secured a better way of life with our Constitution and Bill of Rights. These revolutionary documents have continued to protect our cherished freedoms of religion, speech, press, and assembly and to preserve the principles of equality, liberty, and justice that lie at the heart of our national identity.

As Americans, we have always strived to advance these rights and values both at home and abroad, and just as our founders sought a brighter future for our Nation, we envision a better future for our world. One of our most powerful tools in realizing that vision has been the Universal Declaration of Human Rights, which the United Nations General Assembly approved in December of 1948. It is not surprising that this document, which owed so much to the courage, imagination, and leadership of Eleanor Roosevelt, reaffirms in tone, thought, and language our own great charters of freedom. To honor Mrs. Roosevelt's legacy, and to acknowledge those who follow her example of commitment to human rights around the world, last year we established the Eleanor Roosevelt Award for Human Rights.

In the 51 years since the adoption of the Universal Declaration, the United Nations has developed numerous legal instruments that specify the rights and obligations contained in the document, and the international community has made encouraging progress toward improving human rights for people of all nations. Today, more individuals than ever before are living in representative democracies where they can exercise their right to freely choose their own government. The international community responded vigorously to halt ethnic cleansing in Kosovo and is helping the people of East Timor not only to achieve legal recognition of their independence but also to develop the institutions they need to thrive as an independent and secure state. But despite this heartening progress, there are still many regions of the world where human rights are daily denied and aspirations to freedom routinely crushed. Our work is still far from complete.

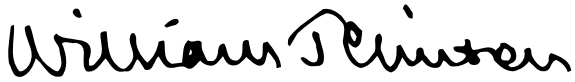
Rising to these challenges, we in the United States have strengthened our commitment to improving international human rights. To enable the world community to react more quickly to genocidal conditions, we have established a genocide early warning system. We continue to fund nongovernmental organizations that respond rapidly to human rights emergencies. And we have created an interagency working group to help implement the human rights treaties we have already ratified and to make recommendations on treaties we have yet to ratify.

We also continue to be a world leader in the fight to eliminate exploitative and abusive child labor. Last week, I signed the instrument of ratification of the International Labor Organization's Convention on the Elimination of the Worst Forms of Child Labor, declaring on behalf of the American

people that we simply will not tolerate child slavery, the sale or trafficking of children, child prostitution or pornography, forced or compulsory child labor, and hazardous work that harms the health, safety, and morals of children. Through these and other initiatives, America continues to reaffirm both at home and across the globe our fundamental belief in human dignity and our unchanging reverence for human rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1999, as Human Rights Day; December 15, 1999, as Bill of Rights Day; and the week beginning December 10, 1999, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate activities, ceremonies, and programs that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and promotion and protection of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Presidential Documents

Proclamation 7259 of December 7, 1999

National Pearl Harbor Remembrance Day, 1999

By the President of the United States of America

A Proclamation

Early on Sunday morning, December 7, 1941, the 130 vessels of the U.S. Pacific Fleet lay quiet and serene in Pearl Harbor. American sailors were preparing to raise colors, unaware that the worst naval disaster in American history was about to unfold. As the first wave of Japanese planes dropped torpedo bombs on the fleet, all eight battleships along with three destroyers and three light cruisers were hit. Two hours after the first Japanese bomber hit its target, 21 ships of the U.S. Pacific Fleet lay sunk or badly damaged. U.S. aircraft losses included 188 planes destroyed and another 159 damaged. Before the bombing was over, some 3,500 Americans had been killed or injured. The sinking of the battleship *USS ARIZONA* remains the most recognized symbol of that tragic day. Of the *ARIZONA*'s crew, 1,177 were killed, nearly half of all the deaths suffered at Pearl Harbor.

Time has not dimmed our memory of the ferocity of that attack 58 years ago or the pain of the losses we suffered. The assault brought shock and grief not only to the families and loved ones of those who were injured or lost their lives, but also to our entire country.

The attack on Pearl Harbor shook our Nation but strengthened our resolve. Two days later, in a Fireside Chat, President Roosevelt affirmed that resolve in explaining America's sudden thrust into World War II: ''We don't like it—we didn't want to get in it—but we are in it and we're going to fight it with everything we've got. We are going to win the war and we are going to win the peace that follows.'' Just as the American forces at Pearl Harbor responded to the attack with great courage, the United States responded with determination that this assault would not keep us from victory over the Axis powers. Union leaders agreed not to strike for the duration of the war as President Roosevelt garnered the support of our working men and women to increase war production and build our ''Arsenal of Democracy.'' Millions of American patriots joined the Armed Forces, willing to serve and sacrifice in the cause of freedom.

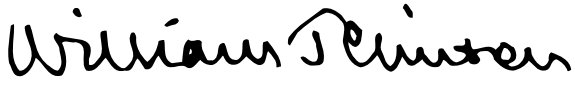
Rising from the destruction at Pearl Harbor, all but three of the ships sunk there were repaired and put back into service. Less than 4 years later, the Pacific Fleet sailed victoriously into Tokyo Bay. Today, the Battleship Missouri Memorial is docked on Pearl Harbor's Battleship Row, a fitting tribute to our triumph in World War II. It was Pearl Harbor that cemented the United States resolve to win the war, and it was aboard the ''Mighty Mo'' that the Japanese signed surrender documents in 1945, and peace in the Pacific was finally realized.

Pearl Harbor is both a reminder of what can happen when we are unprepared and a call for continuing vigilance in defense of our Nation. The world has changed greatly since that dark day more than half a century ago, but our need to remain engaged is more crucial than ever. We must never forget the lessons of Pearl Harbor or the courage, determination, and indomitable spirit of that generation of Americans who recovered from a devastating defeat to win the ultimate victory for freedom, democracy, and peace.

The Congress, by Public Law 103–308, has designated December 7, 1999, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1999, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations, and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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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 9, 1999

ENVIRONMENTAL PROTECTION AGENCY

Water pollution control:
- Water quality standards—
  - Polychlorinated biphenyls (PCBs); priority toxic pollutants numeric criteria; States' compliance; published 11-9-99

FEDERAL HOUSING FINANCE BOARD

Unpublished information availability; published 11-9-99

PERSONNEL MANAGEMENT OFFICE

Civil Service Reform Act:
- Authority delegations to agencies to take certain actions without prior OPM approval; final regulations
- Correction; published 12-9-99

COMMENTS DUE NEXT WEEK

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Agricultural Marketing Service

Peanuts, domestically produced and imported; comments due by 12-17-99; published 10-18-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 12-14-99; published 10-15-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Sea turtle conservation; shrimp trawling requirements—
  - Turtle excluder devices; comments due by 12-13-99; published 10-13-99
- Sea turtle conservation; summer flounder trawling requirements—
  - Turtle excluder devices; comments due by 12-14-99; published 10-15-99

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries and Gulf of Mexico stone crab—
  - Reef fish, red drum, etc.; comments due by 12-17-99; published 11-2-99

DEFENSE DEPARTMENT

Air Force Department

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ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Dishwashers; test procedures; comments due by 12-13-99; published 9-28-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Heavy duty highway engines and vehicles (2004 and later model years); emissions control, and light-duty truck definition; comments due by 12-16-99; published 12-7-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Georgia; comments due by 12-14-99; published 11-13-98
- Nebraska; comments due by 12-16-99; published 11-16-99
- Vermont; comments due by 12-16-99; published 11-16-99

Air quality implementation plans; approval and promulgation; various States:
- Texas; comments due by 12-13-99; published 11-12-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Rhizobium inoculants; comments due by 12-14-99; published 10-15-99

Superfund program:
- Toxic chemical release reporting; community right-to-know—
  - Lead and lead compounds; lowering of reporting thresholds; comments due by 12-16-99; published 10-29-99

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Radio stations; table of assignments:
- Illinois and Kentucky; comments due by 12-13-99; published 11-3-99
- Pennsylvania; comments due by 12-13-99; published 11-3-99
- South Carolina; comments due by 12-13-99; published 11-10-99

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Personal property; transfer of excess; comments due by 12-16-99; published 11-16-99

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Food and Drug Administration

Animal drugs, feeds, and related products:
- Approved and abbreviated new drug applications; supplements and other changes; comments due by 12-15-99; published 10-1-99

Food additive petitions:
- Adjuvants, production aids, and sanitizers—
  - N,N-bis (2-hydroxyethyl) alkyl (C13-C15) amine; comments due by 12-17-99; published 11-17-99

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Fish and Wildlife Service

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- Bull trout; comments due by 12-16-99; published 11-1-99

LABOR DEPARTMENT

Workforce Investment Act of 1998; implementation of nondiscrimination and equal opportunity provisions; comments due by 12-13-99; published 11-12-99

LABOR DEPARTMENT

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  - Emergency core cooling system evaluation models; comments due by 12-15-99; published 10-1-99

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  - Down syndrome in adults; medical criteria for determining disability; comments due by 12-13-99; published 10-12-99

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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.R. 459/P.L. 106–121

To extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower Project. (Dec. 6, 1999; 113 Stat. 1637)

H.R. 1094/P.L. 106–122

To amend the Federal Reserve Act to broaden the range of discount window loans which may be used as collateral for Federal reserve notes. (Dec. 6, 1999; 113 Stat. 1638)

H.R. 1191/P.L. 106–123

To designate certain facilities of the United States Postal Service in Chicago, Illinois. (Dec. 6, 1999; 113 Stat. 1639)

H.R. 1251/P.L. 106–124

To designate the United States Postal Service building located at 8850 South 700 East, Sandy, Utah, as the ''Noal Cushing Bateman Post Office Building''. (Dec. 6, 1999; 113 Stat. 1641)

H.R. 1327/P.L. 106–125

To designate the United States Postal Service building located at 34480 Highway 101 South in Cloverdale, Oregon, as the ''Maurine B. Neuberger United States Post Office''. (Dec. 6, 1999; 113 Stat. 1642)

H.R. 3373/P.L. 106–126

To require the Secretary of the Treasury to mint coins in conjunction with the minting of coins by the Republic of Iceland in commemoration of the millennium of the discovery of the New World by Leif Ericson. (Dec. 6, 1999; 113 Stat. 1643)

H.J. Res. 85/P.L. 106–127

Appointing the day for the convening of the second session of the One Hundred Sixth Congress. (Dec. 6, 1999; 113 Stat. 1651)

S. 574/P.L. 106–128

To direct the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System. (Dec. 6, 1999; 113 Stat. 1652)

S. 580/P.L. 106–129

Healthcare Research and Quality Act of 1999 (Dec. 6, 1999; 113 Stat. 1653)

Last List December 7, 1999

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